

House Bill 3115

Sponsored by COMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits public agencies from entering into public works contracts for which contract price exceeds \$750,000 unless public agency verifies that every employer under contract is approved apprenticeship training agent. Provides exception if local joint committee or apprenticeship training program does not exist in this state.

Requires contractors and subcontractors that are parties to contract for which contract price exceeds \$750,000 to employ apprentices for specified minimum percentage of total hours worked on project by workers in apprenticeable occupations. Allows Bureau of Labor and Industries to adjust percentage in certain circumstances.

Requires bureau to develop, adopt and revise plan to increase diversity among workers employed on public works projects, including workers who are apprentices.

Requires advisory committee to evaluate periodically minimum percentage set for number of hours to be worked by apprentices on public works projects and to assist Commissioner of Bureau of Labor and Industries in administration of prevailing wage provisions related to apprenticeship requirements.

Requires contractor or contractor's surety and every subcontractor or subcontractor's surety to provide certified statements concerning employment of apprentices on public works projects.

Reduces civil penalty for violation of prevailing wage provisions. Creates additional civil penalty in amount equal to \$20 multiplied by number of hours required to be worked, but not worked, by apprentices.

Establishes State Apprenticeship Training and Education Fund. Directs State Treasurer to deposit moneys collected from additional civil penalty into State Apprenticeship Training and Education Fund. Continuously appropriates moneys in fund to State Apprenticeship and Training Council for specified purposes.

A BILL FOR AN ACT

1
2 Relating to apprenticeship; creating new provisions; amending ORS 279C.800, 279C.807, 279C.820,
3 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 279C.865; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 660.002 to**
6 **660.210.**

7 **SECTION 2. (1) Except as provided in subsection (2) of this section, a public agency may**
8 **not enter into a contract for public works, as defined in ORS 279C.800, for which the contract**
9 **price exceeds \$750,000 unless the public agency has verified that every employer under the**
10 **contract, including the contractor and any subcontractor, is a training agent that is ap-**
11 **proved by a local joint committee under ORS 660.137.**

12 **(2) A public agency may enter into a contract described in subsection (1) of this section**
13 **even if an employer under the contract is not an approved training agent if the employer is**
14 **not an approved training agent because a local joint committee or program for the**
15 **apprenticeable occupations that the employer uses does not exist in this state.**

16 **(3) If a local joint committee for an apprenticeable occupation that an employer uses does**
17 **not exist in the county in which the employer is located, the State Director of Apprenticeship**
18 **and Training may extend the jurisdiction of a local joint committee in an adjoining county**
19 **to the county in which the employer is located. The director's action is subject to ratification**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 by the State Apprenticeship and Training Council.

2 **SECTION 3.** ORS 279C.807 and section 4 of this 2013 Act are added to and made a part
3 of ORS 279C.800 to 279C.870.

4 **SECTION 4.** (1) A contractor or subcontractor that is a party to a contract for public
5 works for which the contract price exceeds \$750,000 shall employ apprentices that are par-
6 ticipating in programs of apprenticeship and training under ORS 660.002 to 660.210 for at
7 least 10 percent of the total hours worked on the public works project by workers in
8 apprenticeable occupations. Either the contractor or the subcontractor may meet the re-
9 quirement set forth in this subsection, except that the subcontractor shall independently
10 meet the requirement in performing work on a subcontract for which the subcontract price
11 exceeds \$750,000.

12 (2) If a contractor or subcontractor that is subject to subsection (1) of this section is
13 unable, at any time after executing the contract, to meet the requirement set forth in sub-
14 section (1) of this section because too few apprentices are available to the contractor or
15 subcontractor, the contractor shall notify the Commissioner of the Bureau of Labor and In-
16 dustries and the public agency that awarded the contract for public works. In the notification
17 the contractor shall document the contractor's or subcontractor's efforts to locate and em-
18 ploy suitable apprentices in sufficient detail to enable the commissioner to verify that the
19 contractor or subcontractor is unable to meet the requirement set forth in subsection (1)
20 of this section because too few apprentices are available to the contractor or subcontractor.

21 (3) If the commissioner verifies the information in the notification, the commissioner
22 may adjust the minimum percentage required under subsection (1) of this section to reflect
23 the number of apprentices that are available to the contractor or subcontractor for work
24 on the affected public works contract. The parties to the contract may execute an amend-
25 ment to the contract that reflects the adjusted minimum percentage.

26 (4) Every contractor or subcontractor engaged on a project for which there is a contract
27 for public works shall post notices of the requirement set forth in subsection (1) of this
28 section in conspicuous and accessible places in or about the project, preferably in the same
29 places as the prevailing rates of wage are posted under ORS 279C.840 (4). The notice must
30 describe the requirement and contain information about how to report a violation of the re-
31 quirement to the commissioner and where to obtain further information.

32 (5) Except as provided in subsections (2) and (3) of this section, a person may not take
33 any action to circumvent the requirement set forth in subsection (1) of this section includ-
34 ing, but not limited to, structuring the work performed on a public works project so as to
35 avoid employing workers in apprenticeable occupations.

36 **SECTION 5.** Section 4 of this 2013 Act is amended to read:

37 **Sec. 4.** (1) A contractor or subcontractor that is a party to a contract for public works for
38 which the contract price exceeds \$750,000 shall employ apprentices that are participating in pro-
39 grams of apprenticeship and training under ORS 660.002 to 660.210 for at least [10] **12.5** percent of
40 the total hours worked on the public works project by workers in apprenticeable occupations. Either
41 the contractor or the subcontractor may meet the requirement set forth in this subsection, except
42 that the subcontractor shall independently meet the requirement in performing work on a subcon-
43 tract for which the subcontract price exceeds \$750,000.

44 (2) If a contractor or subcontractor that is subject to subsection (1) of this section is unable,
45 at any time after executing the contract, to meet the requirement set forth in subsection (1) of this

1 section because too few apprentices are available to the contractor or subcontractor, the contractor
 2 shall notify the Commissioner of the Bureau of Labor and Industries and the public agency that
 3 awarded the contract for public works. In the notification the contractor shall document the
 4 contractor's or subcontractor's efforts to locate and employ suitable apprentices in sufficient detail
 5 to enable the commissioner to verify that the contractor or subcontractor is unable to meet the re-
 6 quirement set forth in subsection (1) of this section because too few apprentices are available to the
 7 contractor or subcontractor.

8 (3) If the commissioner verifies the information in the notification, the commissioner may adjust
 9 the minimum percentage required under subsection (1) of this section to reflect the number of ap-
 10 prentices that are available to the contractor or subcontractor for work on the affected public works
 11 contract. The parties to the contract may execute an amendment to the contract that reflects the
 12 adjusted minimum percentage.

13 (4) Every contractor or subcontractor engaged on a project for which there is a contract for
 14 public works shall post notices of the requirement set forth in subsection (1) of this section in con-
 15 spicuous and accessible places in or about the project, preferably in the same places as the pre-
 16 vailing rates of wage are posted under ORS 279C.840 (4). The notice must describe the requirement
 17 and contain information about how to report a violation of the requirement to the commissioner and
 18 where to obtain further information.

19 (5) Except as provided in subsections (2) and (3) of this section, a person may not take any
 20 action to circumvent the requirement set forth in subsection (1) of this section including, but not
 21 limited to, structuring the work performed on a public works project so as to avoid employing
 22 workers in apprenticeable occupations.

23 **SECTION 6.** Section 4 of this 2013 Act, as amended by section 5 of this 2013 Act, is amended
 24 to read:

25 **Sec. 4.** (1) A contractor or subcontractor that is a party to a contract for public works for
 26 which the contract price exceeds \$750,000 shall employ apprentices that are participating in pro-
 27 grams of apprenticeship and training under ORS 660.002 to 660.210 for at least [12.5] **15** percent of
 28 the total hours worked on the public works project by workers in apprenticeable occupations. Either
 29 the contractor or the subcontractor may meet the requirement set forth in this subsection, except
 30 that the subcontractor shall independently meet the requirement in performing work on a subcon-
 31 tract for which the subcontract price exceeds \$750,000.

32 (2) If a contractor or subcontractor that is subject to subsection (1) of this section is unable,
 33 at any time after executing the contract, to meet the requirement set forth in subsection (1) of this
 34 section because too few apprentices are available to the contractor or subcontractor, the contractor
 35 shall notify the Commissioner of the Bureau of Labor and Industries and the public agency that
 36 awarded the contract for public works. In the notification the contractor shall document the
 37 contractor's or subcontractor's efforts to locate and employ suitable apprentices in sufficient detail
 38 to enable the commissioner to verify that the contractor or subcontractor is unable to meet the re-
 39 quirement set forth in subsection (1) of this section because too few apprentices are available to the
 40 contractor or subcontractor.

41 (3) If the commissioner verifies the information in the notification, the commissioner may adjust
 42 the minimum percentage required under subsection (1) of this section to reflect the number of ap-
 43 prentices that are available to the contractor or subcontractor for work on the affected public works
 44 contract. The parties to the contract may execute an amendment to the contract that reflects the
 45 adjusted minimum percentage.

1 (4) Every contractor or subcontractor engaged on a project for which there is a contract for
 2 public works shall post notices of the requirement set forth in subsection (1) of this section in con-
 3 spicuous and accessible places in or about the project, preferably in the same places as the pre-
 4 vailing rates of wage are posted under ORS 279C.840 (4). The notice must describe the requirement
 5 and contain information about how to report a violation of the requirement to the commissioner and
 6 where to obtain further information.

7 (5) Except as provided in subsections (2) and (3) of this section, a person may not take any
 8 action to circumvent the requirement set forth in subsection (1) of this section including, but not
 9 limited to, structuring the work performed on a public works project so as to avoid employing
 10 workers in apprenticeable occupations.

11 **SECTION 7.** ORS 279C.800 is amended to read:

12 279C.800. As used in ORS 279C.800 to 279C.870:

13 (1)(a) **“Apprentice” has the meaning given that term in ORS 660.010.**

14 (b) **“Apprentice” does not include a youth apprentice as described in ORS 344.745 and**
 15 **344.750.**

16 (2) **“Apprenticeable occupation” has the meaning given that term in ORS 660.010.**

17 (3) **“Apprenticeship agreement” has the meaning given that term in ORS 660.010.**

18 [(1)] (4) **“Fringe benefits” means the amount of:**

19 (a) The rate of contribution a contractor or subcontractor makes irrevocably to a trustee or to
 20 a third person under a plan, fund or program; and

21 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
 22 providing the following items, except for items that federal, state or local law requires the con-
 23 tractor or subcontractor to provide:

24 (A) Benefits to workers pursuant to an enforceable written commitment to the workers to carry
 25 out a financially responsible plan or program for:

26 (i) Medical or hospital care;

27 (ii) Pensions on retirement or death; or

28 (iii) Compensation for injuries or illness that result from occupational activity;

29 (B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;

30 (C) Unemployment benefits;

31 (D) Life insurance;

32 (E) Disability and sickness insurance or accident insurance;

33 (F) Vacation and holiday pay;

34 (G) Costs of apprenticeship or other similar programs; or

35 (H) Other bona fide fringe benefits.

36 [(2)] (5) **“Housing” has the meaning given that term in ORS 456.055.**

37 [(3)] (6) **“Locality” means the following district in which the public works, or the major portion**
 38 **thereof, is to be performed:**

39 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

40 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;

41 (c) District 3, composed of Marion, Polk and Yamhill Counties;

42 (d) District 4, composed of Benton, Lincoln and Linn Counties;

43 (e) District 5, composed of Lane County;

44 (f) District 6, composed of Douglas County;

45 (g) District 7, composed of Coos and Curry Counties;

- 1 (h) District 8, composed of Jackson and Josephine Counties;
- 2 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 3 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 4 (k) District 11, composed of Klamath and Lake Counties;
- 5 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 6 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 7 (n) District 14, composed of Harney and Malheur Counties.

8 [(4)] (7) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits,
 9 that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to
 10 the majority of workers employed on projects of a similar character in the same trade or occupation.

11 [(5)] (8) "Public agency" means the State of Oregon or a political subdivision of the State of
 12 Oregon, or a county, city, district, authority, public corporation or public entity organized and ex-
 13 isting under law or charter or an instrumentality of the county, city, district, authority, public cor-
 14 poration or public entity.

15 [(6)(a)] (9)(a) "Public works" includes, but is not limited to:

16 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
 17 construction, major renovation or painting of which is carried on or contracted for by any public
 18 agency to serve the public interest;

19 (B) A project that uses funds of a private entity and \$750,000 or more of funds of a public agency
 20 for constructing, reconstructing, painting or performing a major renovation on a privately owned
 21 road, highway, building, structure or improvement of any type;

22 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
 23 way, building, structure or improvement of any type in which a public agency will use or occupy
 24 25 percent or more of the square footage of the completed project; or

25 (D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), a device, structure or
 26 mechanism, or a combination of devices, structures or mechanisms, that:

27 (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

28 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
 29 structures or buildings that a public body, as defined in ORS 174.109, owns.

30 (b) "Public works" does not include:

31 (A) The reconstruction or renovation of privately owned property that a public agency leases;
 32 or

33 (B) The renovation of publicly owned real property that is more than 75 years old by a private
 34 nonprofit entity if:

35 (i) The real property is leased to the private nonprofit entity for more than 25 years;

36 (ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost
 37 of the renovation; and

38 (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before
 39 July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

40 **SECTION 8.** ORS 279C.807 is amended to read:

41 279C.807. (1) The Bureau of Labor and Industries shall develop and adopt a plan to increase
 42 diversity statewide among workers employed on projects subject to ORS 279C.800 to 279C.870, **in-**
 43 **cluding apprentices that are participating in programs of apprenticeship and training under**
 44 **ORS 660.002 to 660.210.** The bureau shall develop the plan after conducting [a] statewide public
 45 [process] **processes** to solicit proposals to increase diversity and shall adopt the plan after consid-

1 ering proposals submitted to the bureau.

2 (2) The bureau shall report each year to the Legislative Assembly or to the appropriate legis-
 3 lative interim committee concerning progress that results from *[the]* a plan adopted under this sec-
 4 tion and may submit recommendations for legislation or other measures that will improve diversity
 5 among workers employed on projects subject to ORS 279C.800 to 279C.870, **including apprentices**
 6 **that are participating in programs of apprenticeship and training under ORS 660.002 to**
 7 **660.210.** *[The bureau shall submit the first report no later than January 1, 2009.]*

8 (3) **The bureau shall revise the plan every two years in accordance with the procedure**
 9 **described in subsection (1) of this section.**

10 **SECTION 9.** ORS 279C.820 is amended to read:

11 279C.820. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory
 12 committee to assist the commissioner in *[the administration of]* **administering** ORS 279C.800 to
 13 279C.870.

14 (2) The advisory committee must include equal representation of members from management and
 15 labor in the building and construction industry who perform work on public works contracts and
 16 *[such]* other interested parties *[as]* **that** the commissioner *[shall appoint]* **appoints.**

17 (3) **The advisory committee, at least once each year, shall evaluate the minimum per-**
 18 **centage set forth in section 4 (1) of this 2013 Act and make recommendations to the com-**
 19 **missioner concerning needed adjustments in the minimum percentage. The advisory**
 20 **committee shall base the recommendations on actual or projected increases or decreases in**
 21 **the availability of apprentices in apprenticeable occupations that employers use in connection**
 22 **with public works projects.**

23 (4) **The advisory committee shall consult with the State Apprenticeship and Training**
 24 **Council when necessary to:**

25 (a) **Determine the current and projected availability of apprentices in apprenticeable oc-**
 26 **cupations that employers use in connection with public works projects; and**

27 (b) **Make recommendations to the commissioner or otherwise assist the commissioner in**
 28 **administering the provisions of ORS 279C.800 to 279C.870 related to apprenticeship require-**
 29 **ments in public works contracts.**

30 **SECTION 10.** ORS 279C.827 is amended to read:

31 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-
 32 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

33 (b) *[When]* **If** the Commissioner of the Bureau of Labor and Industries determines that a public
 34 agency has divided a public works project into more than one contract for the purpose of avoiding
 35 compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order *[compelling]* **to**
 36 **compel** compliance.

37 (c) In making determinations under this subsection, the commissioner shall consider:

38 (A) The physical separation of the project structures;

39 (B) The timing of the work on project phases or structures;

40 (C) The continuity of project contractors and subcontractors working on project parts or phases;

41 (D) The manner in which the public agency and the contractors administer and implement the
 42 project;

43 (E) Whether a single public works project includes several types of improvements or structures;
 44 and

45 (F) Whether the combined improvements or structures have an overall purpose or function.

1 (2) If a project is a public works of the type described in ORS 279C.800 [(6)(a)(B) or (C)] **(9)(a)(B)**
 2 **or (C)**, the commissioner shall divide the project, if appropriate, after applying the considerations
 3 set forth in subsection (1)(c) of this section to separate the parts of the project that include funds
 4 of a public agency or that [*will be occupied or used by*] a public agency **will occupy or use** from the
 5 parts of the project that do not include funds of a public agency and that [*will not be occupied or*
 6 *used by*] a public agency **will not occupy or use**. If the commissioner divides the project, any part
 7 of the project that does not include funds of a public agency and that [*will not be occupied or used*
 8 *by*] a public agency **will not occupy or use** is not subject to ORS 279C.800 to 279C.870.

9 (3) If a project includes parts that are owned by a public agency and parts that are owned by
 10 a private entity, the commissioner shall divide the project, if appropriate, after applying the con-
 11 siderations set forth in subsections (1)(c) and (2) of this section to separate the parts of the project
 12 that are public works from the parts of the project that are not public works. If the commissioner
 13 divides the project, parts of the project that are not public works are not subject to ORS 279C.800
 14 to 279C.870.

15 **SECTION 11.** ORS 279C.830 is amended to read:

16 279C.830. (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for
 17 every contract for public works must contain a provision that states the existing state prevailing
 18 rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon
 19 Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that the
 20 contractor or subcontractor or other person who is a party to the contract uses in performing all
 21 or part of the contract. If the prevailing rates of wage are available electronically or are accessible
 22 on the Internet, the rates may be incorporated into the specifications by referring to the electron-
 23 ically accessible or Internet-accessible rates and by providing adequate information about how to
 24 access the rates.

25 (b) If a public agency, under paragraph (a) of this subsection, must include the state and federal
 26 prevailing rates of wage in the specifications, the public agency shall also require the contractor to
 27 pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public
 28 works.

29 (c) Every contract and subcontract must provide that the workers must be paid not less than
 30 the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

31 (d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon
 32 Act, every contract and subcontract must provide that workers on the public works must be paid
 33 not less than the higher of the applicable state or federal prevailing rate of wage.

34 (e) A public works project described in ORS 279C.800 [(6)(a)(B) or (C)] **(9)(a)(B) or (C)** is subject
 35 to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage
 36 required under the Davis-Bacon Act that is in effect at the time a public agency enters into an
 37 agreement with a private entity for the project. After that time, the specifications for a contract for
 38 the public works must include the applicable prevailing rate of wage.

39 (2) The specifications for a contract for public works must provide that the contractor and every
 40 subcontractor must have a public works bond filed with the Construction Contractors Board before
 41 starting work on the project, unless **the contractor or subcontractor is** exempt under ORS
 42 279C.836 (4), (7), (8) or (9). Every contract that a contracting agency awards must require the con-
 43 tractor to:

44 (a) Have a public works bond filed with the Construction Contractors Board before starting
 45 work on the project, unless **the contractor is** exempt under ORS 279C.836 (4), (7), (8) or (9).

1 (b) Require, in every subcontract, that the subcontractor have a public works bond filed with
 2 the Construction Contractors Board before starting work on the project, unless **the subcontractor**
 3 **is exempt under ORS 279C.836 (4), (7), (8) or (9).**

4 (3)(a) **The specifications for every contract for public works for which the contract price**
 5 **exceeds \$750,000 must provide that the contractor and every subcontractor must be a train-**
 6 **ing agent that is approved by a local joint committee under ORS 660.137, if a local joint**
 7 **committee or program of apprenticeship and training under ORS 660.002 to 660.210 exists in**
 8 **this state for the apprenticeable occupations that the contractor or subcontractor uses.**

9 (b) **For a contract between a public agency and a contractor for which the contract price**
 10 **exceeds \$750,000, the specifications required under paragraph (a) of this subsection must also**
 11 **state the minimum percentage of the total hours worked on the public works project by**
 12 **workers in apprenticeable occupations that must be performed by apprentices that are par-**
 13 **ticipating in programs of apprenticeship and training under ORS 660.002 to 660.210. The**
 14 **minimum percentage set forth in the specifications may not be less than the minimum per-**
 15 **centage set forth in section 4 of this 2013 Act. The contractor or any subcontractor on the**
 16 **public works project may employ the apprentices, except that a subcontractor shall inde-**
 17 **pendently meet the minimum percentage requirement in performing work on any subcon-**
 18 **tract for which the contract price exceeds \$750,000.**

19 (c) **A contract or subcontract for public works for which the contract price exceeds**
 20 **\$750,000 must state that the contractor and every subcontractor must be a training agent**
 21 **that is approved by a local joint committee under ORS 660.137, if a local joint committee or**
 22 **program of apprenticeship and training under ORS 660.002 to 660.210 exists in this state for**
 23 **the apprenticeable occupations that the contractor or subcontractor uses.**

24 (d) **A contract or subcontract described in paragraph (c) of this subsection also must**
 25 **state the minimum percentage of the total hours worked on the public works project by**
 26 **workers in apprenticeable occupations that must be performed by apprentices that are par-**
 27 **ticipating in programs of apprenticeship and training under ORS 660.002 to 660.210. The**
 28 **minimum percentage set forth in the contract or subcontract may not be less than the**
 29 **minimum percentage set forth in section 4 of this 2013 Act. The contractor or any subcon-**
 30 **tractor may employ the apprentices on the public works project, except that a subcontractor**
 31 **shall independently meet the minimum percentage requirement in performing work on any**
 32 **subcontract for which the contract price exceeds \$750,000.**

33 **SECTION 12.** ORS 279C.840 is amended to read:

34 279C.840. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers
 35 upon all public works shall be not less than the prevailing rate of wage for an hour's work in the
 36 same trade or occupation in the locality where the labor is performed. The obligation of a contractor
 37 or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in
 38 cash, by [*the*] making [*of*] contributions of a type referred to in ORS 279C.800 [(1)(a)] (4)(a), or by
 39 [*the assumption of*] **assuming** an enforceable commitment to bear the costs of a plan or program of
 40 a type [*referred to*] **described** in ORS 279C.800 [(1)(b)] (4)(b), or any combination [*thereof*] **of pay-**
 41 **ments, contributions or costs**, where the aggregate [*of any such*] **value of the** payments, contri-
 42 butions and costs is not less than the prevailing rate of wage. The contractor or subcontractor shall
 43 pay all wages due and owing to the contractor's or subcontractor's workers upon public works on
 44 the regular payday established and maintained under ORS 652.120.

45 (2) After a contract for public works is executed with any contractor or work is commenced

1 upon any public works, **a contractor or subcontractor may not attack** the amount of the pre-
 2 vailing rate of wage **in any legal proceeding related to the contract** [*is not subject to attack in*
 3 *any legal proceeding by any contractor or subcontractor in connection with that contract*].

4 (3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the
 5 amount required to be in the specifications of a contract for public works, or that [*there was an*
 6 *agreement between*] the employee and the employer **agreed that the employee would** [*to*] work at
 7 less than the wage rates required to be paid under this section.

8 (4) Every contractor or subcontractor engaged on a project for which there is a contract for
 9 [a] public works shall keep the prevailing rates of wage for that project posted in a conspicuous and
 10 accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries
 11 shall furnish without charge copies of the prevailing rates of wage to contractors and subcontrac-
 12 tors.

13 (5) Every contractor or subcontractor engaged on a project for which there is a contract for
 14 [a] public works to which the prevailing wage requirements apply that also provides or contributes
 15 to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's em-
 16 ployees on the project shall post a notice describing the plan in a conspicuous and accessible place
 17 in or about the project, [. *The notice*] preferably [*shall be posted*] in the same place as the **prevailing**
 18 **rates of wage** notice required under subsection (4) of this section. In addition to the description of
 19 the plan, the notice [*shall*] **must** contain information on how and where to make claims and where
 20 to obtain further information.

21 (6)(a) Except as provided in paragraph (c) of this subsection, [*no*] **a person other than the con-**
 22 **tractor or subcontractor may not** pay or contribute any portion of the prevailing rate of wage [*paid*
 23 *by*] the contractor or subcontractor **pays** to workers employed in [*the performance of*] **performing**
 24 a public works contract.

25 (b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage
 26 specified in the contract.

27 (c) This subsection [*is not intended to*] **does not** prohibit payments to a worker who is enrolled
 28 in any government-subsidized training or retraining program.

29 (7) A person may not take any action that circumvents the payment of the prevailing rate of
 30 wage to workers employed on a public works contract, including, but not limited to, reducing an
 31 employee's regular rate of pay on any project not subject to ORS 279C.800 to 279C.870 in a manner
 32 that has the effect of offsetting the prevailing rate of wage on a public works project.

33 **SECTION 13.** ORS 279C.845 is amended to read:

34 279C.845. (1) [*The*] **A** contractor or the contractor's surety and every subcontractor or the
 35 subcontractor's surety shall file [*certified*] statements with the public agency in writing, on a form
 36 prescribed by the Commissioner of the Bureau of Labor and Industries, [*certifying*] **that certify:**

37 (a) The hourly rate of wage **the contractor or subcontractor** paid each worker whom the
 38 contractor or [*the*] subcontractor [*has*] employed upon the public works; and

39 (b) That [*no*] **the contractor or subcontractor did not pay any** worker employed upon the
 40 public works [*has been paid*] less than the prevailing rate of wage or less than the minimum hourly
 41 rate of wage specified in the contract.

42 (2) [*The certified statement shall be verified by the oath of*] The contractor or the contractor's
 43 surety or subcontractor or the subcontractor's surety **shall certify by oath** that the contractor or
 44 subcontractor has read the [*certified*] statement, that the contractor or subcontractor knows the
 45 contents of the [*certified*] statement and that to the contractor or subcontractor's knowledge the

1 [certified] statement is true.

2 (3) The certified statements shall set out accurately and completely the contractor's or
 3 subcontractor's payroll records, including the name and address of each worker, the worker's cor-
 4 rect classification, **the worker's apprenticeship agreement registration number, if any**, rate of
 5 pay, daily and weekly number of hours worked and the gross wages the worker earned upon the
 6 public works during each week identified in the certified statement.

7 (4) **In addition to the certified statements required by subsection (1) of this section, the**
 8 **contractor or the contractor's surety and every subcontractor or the subcontractor's surety**
 9 **shall file apprenticeship utilization statements with the public agency, in writing and on a**
 10 **form that the commissioner prescribes, that show the weekly cumulative total of hours**
 11 **worked on the public works project by apprentices that are participating in programs of ap-**
 12 **prenticeship and training under ORS 660.002 to 660.210. The contractor or contractor's surety**
 13 **and the subcontractor or subcontractor's surety shall certify the statements as provided in**
 14 **subsection (2) of this section.**

15 [(4)] (5) **Once each month**, the contractor or subcontractor shall deliver or mail **to the public**
 16 **agency** each certified statement required [by subsection (1)] **under subsections (1) and (4)** of this
 17 section [to the public agency. Certified statements] for each week during which the contractor or
 18 subcontractor employs a worker upon the public works. [shall be submitted once a month,] **The**
 19 **contractor or subcontractor shall deliver the certified statements** by the fifth business day of
 20 the following month. Information submitted on certified statements may be used only to ensure
 21 compliance with the provisions of ORS 279C.800 to 279C.870.

22 [(5)] (6) Each contractor or subcontractor shall preserve the certified statements **required un-**
 23 **der this section** for a period of three years [from] **after** the date of completion of the contract.

24 [(6)] (7) Certified statements [received by] a public agency **receives under this section** are
 25 public records subject to the provisions of ORS 192.410 to 192.505.

26 [(7)] (8) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor [is required to] **must** file
 27 certified statements under this section, the public agency shall retain 25 percent of any amount
 28 [earned by] the contractor **earns** on the public works until the contractor has filed [with the public
 29 agency] certified statements **with the public agency** as required by this section. The public agency
 30 shall pay the contractor the amount retained under this subsection within 14 days after the con-
 31 tractor files the certified statements as required by this section, regardless of whether a subcon-
 32 tractor has failed to file certified statements as required by this section. [The public agency is not
 33 required to verify the truth of the contents of certified statements filed by the contractor under this
 34 section.]

35 [(8)] (9) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount
 36 [earned by] a first-tier subcontractor **earns** on a public works until the subcontractor has filed [with
 37 the public agency] certified statements **with the public agency** as required by this section. The
 38 contractor shall verify that the first-tier subcontractor has filed the certified statements before the
 39 contractor may pay the subcontractor any amount **the contractor retains** [retained] under this
 40 subsection. The contractor shall pay the first-tier subcontractor the amount [retained] **the con-**
 41 **tractor retains** under this subsection within 14 days after the subcontractor files the certified
 42 statements as required by this section. [Neither the public agency nor the contractor is required to
 43 verify the truth of the contents of certified statements filed by a first-tier subcontractor under this sec-
 44 tion.]

45 (10) **This section does not require:**

1 (a) A public agency to verify the truth of the contents of certified statements a con-
 2 tractor files under this section; or

3 (b) A public agency or a contractor to verify the truth of the contents of certified
 4 statements a subcontractor files under this section.

5 **SECTION 14.** ORS 279C.850 is amended to read:

6 279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries
 7 may enter the office or business establishment of any contractor or subcontractor performing public
 8 works and gather facts and information necessary to determine whether the *[prevailing rate of wage*
 9 *is actually being paid by such contractor or subcontractor to workers upon public works.]* **contractor**
 10 **or subcontractor is:**

11 (a) **Actually paying the prevailing rate of wage to workers upon public works; and**

12 (b) **Meeting the requirement set forth in section 4 of this 2013 Act.**

13 (2) *[Upon request by the commissioner]* **At the commissioner's request**, every contractor or
 14 subcontractor performing work on public works shall make available to the commissioner for in-
 15 spection during normal business hours any payroll or other records in the possession or under the
 16 control of the contractor or subcontractor that are deemed necessary by the commissioner to de-
 17 termine whether the *[prevailing rate of wage is actually being paid by such]* contractor or subcon-
 18 tractor **is actually paying the prevailing rate of wage to workers upon public works and whether**
 19 **the contractor or subcontractor is meeting the requirement set forth in section 4 of this 2013**
 20 **Act.** The *[commissioner's]* **commissioner must make the request** *[must be made]* **within** a reason-
 21 able time *[in advance of]* **before** the inspection.

22 (3) Notwithstanding ORS 192.410 to 192.505, any record *[obtained or made by]* the commissioner
 23 **obtains or makes** under this section is not open to inspection by the public.

24 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings against
 25 employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to
 26 require the *[payment of]* **employers to pay** prevailing rates of wage or overtime pay due employees.
 27 The commissioner *[is entitled to]* **may** recover, in addition to other costs, such sum as the court or
 28 judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action,
 29 the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries
 30 Account.

31 **SECTION 15.** ORS 279C.865 is amended to read:

32 279C.865. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
 33 of Labor and Industries may assess a civil penalty not to exceed *[\$5,000]* **\$3,000** for each violation
 34 of any provision of ORS 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

35 (2) **In addition to any penalty assessed under subsection (1) of this section, the commis-**
 36 **sioner may assess a civil penalty for violating the requirement set forth in section 4 of this**
 37 **2013 Act in an amount equal to \$20 multiplied by the number of hours required under section**
 38 **4 of this 2013 Act to be performed by apprentices that are participating in programs of ap-**
 39 **prenticeship and training under ORS 660.002 to 660.210, less an amount equal to \$20 multiplied**
 40 **by the number of hours of work that apprentices actually perform.**

41 *[(2)]* (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

42 *[(3)]* (4) All moneys collected as penalties under **subsection (1) of this section** *[shall]* **must** be
 43 first applied toward *[reimbursement of]* **reimbursing** costs incurred in determining violations, con-
 44 ducting hearings and assessing and collecting the penalties. The remainder, if any, of moneys col-
 45 lected as penalties under **subsection (1) of this section** shall be paid into the State Treasury and

1 credited to the General Fund and are available for general governmental expenses.

2 **(5) All moneys collected as penalties under subsection (2) of this section must be paid**
 3 **into the State Treasury and the State Treasurer shall deposit the moneys into the State**
 4 **Apprenticeship Training and Education Fund established in section 16 of this 2013 Act.**

5 **SECTION 16. (1) The State Apprenticeship Training and Education Fund is established in**
 6 **the State Treasury, separate and distinct from the General Fund. Interest earned by the**
 7 **State Apprenticeship Training and Education Fund shall be credited to the fund. The moneys**
 8 **in the State Apprenticeship Training and Education Fund are continuously appropriated to**
 9 **the State Apprenticeship and Training Council for the purposes of:**

10 **(a) Making grants on a competitive basis, in consultation with the Department of Edu-**
 11 **cation and the Department of Community Colleges and Workforce Development and in con-**
 12 **formance with a plan adopted under ORS 279C.807, to programs that directly provide career**
 13 **technical education for occupations prevalent in the construction and manufacturing indus-**
 14 **tries; and**

15 **(b) Overseeing and monitoring apprenticeship and training programs, including programs**
 16 **identified in paragraph (a) of this subsection, for compliance with applicable rules, standards**
 17 **and laws.**

18 **(2) The State Apprenticeship and Training Council may make grants from the State Ap-**
 19 **prenticeship Training and Education Fund described in this section to:**

20 **(a) Apprenticeship and training programs, direct entry programs and preapprenticeship**
 21 **and youth apprenticeship programs that are registered with the council;**

22 **(b) Public school districts and education service districts; or**

23 **(c) Public post-secondary educational institutions.**

24 **SECTION 17. (1) Sections 2, 4 and 16 of this 2013 Act and the amendments to ORS**
 25 **279C.800, 279C.807, 279C.820, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 279C.865 by**
 26 **sections 7 to 15 of this 2013 Act apply to a public works contract that a public agency first**
 27 **advertises, or if the public agency does not advertise the public works contract, to a contract**
 28 **into which the public agency first enters on or after the effective date of this 2013 Act.**

29 **(2) The amendments to section 4 of this 2013 Act by section 5 of this 2013 Act:**

30 **(a) Become operative on January 1, 2015; and**

31 **(b) Apply to a public works contract that a public agency first advertises, or if the public**
 32 **agency does not advertise the public works contract, to a contract into which the public**
 33 **agency first enters on or after January 1, 2015.**

34 **(3) The amendments to section 4 of this 2013 Act by section 6 of this 2013 Act:**

35 **(a) Become operative on January 1, 2016; and**

36 **(b) Apply to a public works contract that a public agency first advertises, or if the public**
 37 **agency does not advertise the public works contract, to a contract into which the public**
 38 **agency first enters on or after January 1, 2016.**