

D R A F T

SUMMARY

Requires state contracting agency, in specifications, solicitation documents and contract for public improvement with contract price that state contracting agency anticipates will exceed \$5 million, to require contractor and subcontractor to employ apprentices for at least 10 percent of total work hours that workers in apprenticeable occupations perform on public improvement. Raises percentage of required apprentices to 15 percent on public improvement contracts with anticipated contract price of \$3 million on January 1, 2019. Specifies certain exemptions from requirement.

Provides that state contracting agency shall retain amount equivalent to not more than three percent of amount due contractor under contract for public improvement and pay contractor, when contractor completes public improvement, amount withheld less \$20 for each hour in which contractor or subcontractor did not employ apprentice for work that apprentice must perform under provisions of Act. Requires state contracting agency to pay amount state contracting agency withholds and does not pay to contractor into State Apprenticeship Education and Training Fund.

Establishes State Apprenticeship Education and Training Fund. Continuously appropriates moneys in fund to State Apprenticeship and Training Council for specified purposes.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to apprenticeship; creating new provisions; amending ORS 279C.850;
3 and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 6 of this 2015 Act are added to and made**
6 **a part of ORS chapter 279C.**

7 **SECTION 2. (1) As used in this section:**

8 **(a)(A) “Apprentice” has the meaning given that term in ORS**

1 **660.010.**

2 (B) "Apprentice" does not include a youth apprentice as described
3 in ORS 344.745 and 344.750.

4 (b) "Apprenticeable occupation" has the meaning given that term
5 in ORS 660.010.

6 (2) In specifications and solicitation documents for every procure-
7 ment for a public improvement that a state contracting agency antic-
8 ipates will have a total contract price that exceeds \$5 million, the state
9 contracting agency shall notify prospective bidders and proposers that
10 the state contracting agency will require each contractor and subcon-
11 tractor to employ apprentices who are participating in programs of
12 apprenticeship and training under ORS 660.002 to 660.210 for at least
13 10 percent of the total work hours that workers in apprenticeable oc-
14 cupations perform, as applicable, on the entire public improvement or
15 under each contract or subcontract for the public improvement that
16 has a contract price that exceeds \$500,000.

17 (3) Except as provided in subsection (7) of this section, each public
18 improvement contract between a state contracting agency and a con-
19 tractor that has a contract price that exceeds \$500,000 and is part of
20 a public improvement for which the total contract price exceeds \$5
21 million shall provide that:

22 (a) Each contractor shall employ apprentices that are participating
23 in programs of apprenticeship and training under ORS 660.002 to
24 660.210 for at least 10 percent of the total work hours that workers in
25 apprenticeable occupations perform on the public improvement; and

26 (b) Each contractor, in each of the contractor's subcontracts in
27 which the subcontract price exceeds \$500,000, shall require the sub-
28 contractor to employ apprentices that are participating in programs
29 of apprenticeship and training under ORS 660.002 to 660.210 for at least
30 10 percent of the total work hours that workers in apprenticeable oc-
31 cupations perform on the public improvement.

1 **(4)(a) A state contracting agency shall retain an amount equivalent**
2 **to not more than three percent of the amount due a contractor under**
3 **a contract for an entire public improvement or, as appropriate, under**
4 **each contract or subcontract for a portion of the public improvement.**
5 **Within 10 days after the contractor completes the public improvement,**
6 **or within the time the state contracting agency otherwise specifies in**
7 **the public improvement contract, the state contracting agency shall**
8 **pay the contractor the amount the state contracting agency retained,**
9 **less \$20 for each hour in which the contractor or a subcontractor that**
10 **is subject to this section did not employ an apprentice for work that**
11 **an apprentice must perform under subsection (3) of this section.**

12 **(b) A state contracting agency shall immediately pay into the State**
13 **Apprenticeship Education and Training Fund any moneys that remain**
14 **after the state contracting agency pays the amount due a contractor**
15 **from amounts the state contracting agency retained under paragraph**
16 **(a) of this subsection.**

17 **(5) Each contractor or subcontractor that is subject to the re-**
18 **quirement set forth in subsection (3) of this section shall post notices**
19 **of the requirement in conspicuous and accessible places in and around**
20 **the construction site for the public improvement. The notices must**
21 **describe the requirement and have information about how to report a**
22 **violation of the requirement to the Commissioner of the Bureau of**
23 **Labor and Industries and where to obtain further information.**

24 **(6) A person may not take any action to circumvent the require-**
25 **ments set forth in this section including, but not limited to, struc-**
26 **turing the work performed on a public improvement so as to avoid**
27 **employing workers in apprenticeable occupations.**

28 **(7)(a) The requirement to employ apprentices in accordance with**
29 **subsection (3) of this section does not apply to:**

30 **(A) A business that is certified as a disadvantaged, minority,**
31 **women or emerging small business enterprise under ORS 200.055 if the**

1 **business has existed for less than five years; or**

2 **(B) The Department of Transportation, except that:**

3 **(i) The department must have in the department's public improve-**
4 **ment contracts requirements that are substantially similar to the re-**
5 **quirement set forth in subsection (3) of this section or that require a**
6 **contractor to employ a higher percentage of apprentices to perform**
7 **work on the public improvement than the percentage set forth in**
8 **subsection (3) of this section; and**

9 **(ii) The department is subject to the requirements set forth in ORS**
10 **279C.850 and section 6 of this 2015 Act.**

11 **(b) This section applies to:**

12 **(A) The State Board of Higher Education;**

13 **(B) The Oregon University System as described in ORS 351.011;**

14 **(C) A public university listed in ORS 352.002;**

15 **(D) A university with a governing board that is listed in ORS**
16 **352.054; and**

17 **(E) Any not-for-profit organization or other entity, the equity of**
18 **which is owned or controlled exclusively by a university with a gov-**
19 **erning board listed in ORS 352.054; and**

20 **(F) A community college as defined in ORS 341.005.**

21 **SECTION 3.** Section 2 of this 2015 Act is amended to read:

22 **Sec. 2.** (1) As used in this section:

23 (a)(A) "Apprentice" has the meaning given that term in ORS 660.010.

24 (B) "Apprentice" does not include a youth apprentice as described in ORS
25 344.745 and 344.750.

26 (b) "Apprenticeable occupation" has the meaning given that term in ORS
27 660.010.

28 (2) In specifications and solicitation documents for every procurement for
29 a public improvement that a state contracting agency anticipates will have
30 a total contract price that exceeds [*\$5 million*] **\$3 million**, the state con-
31 tracting agency shall notify prospective bidders and proposers that the state

1 contracting agency will require each contractor and subcontractor to employ
2 apprentices who are participating in programs of apprenticeship and training
3 under ORS 660.002 to 660.210 for at least [10] **15** percent of the total work
4 hours that workers in apprenticeable occupations perform, as applicable, on
5 the entire public improvement or under each contract or subcontract for the
6 public improvement that has a contract price that exceeds [*\$500,000*]
7 **\$300,000**.

8 (3) Except as provided in subsection (7) of this section, each public im-
9 provement contract between a state contracting agency and a contractor that
10 has a contract price that exceeds [*\$500,000*] **\$300,000** and is part of a public
11 improvement for which the total contract price exceeds [*\$5 million*] **\$3**
12 **million** shall provide that:

13 (a) Each contractor shall employ apprentices that are participating in
14 programs of apprenticeship and training under ORS 660.002 to 660.210 for at
15 least [10] **15** percent of the total work hours that workers in apprenticeable
16 occupations perform on the public improvement; and

17 (b) Each contractor, in each of the contractor's subcontracts in which the
18 subcontract price exceeds [*\$500,000*] **\$300,000**, shall require the subcontractor
19 to employ apprentices that are participating in programs of apprenticeship
20 and training under ORS 660.002 to 660.210 for at least [10] **15** percent of the
21 total work hours that workers in apprenticeable occupations perform on the
22 public improvement.

23 (4)(a) A state contracting agency shall retain an amount equivalent to not
24 more than three percent of the amount due a contractor under a contract for
25 an entire public improvement or, as appropriate, under each contract or
26 subcontract for a portion of the public improvement. Within 10 days after the
27 contractor completes the public improvement, or within the time the state
28 contracting agency otherwise specifies in the public improvement contract,
29 the state contracting agency shall pay the contractor the amount the state
30 contracting agency retained, less \$20 for each hour in which the contractor
31 or a subcontractor that is subject to this section did not employ an appren-

1 tice for work that an apprentice must perform under subsection (3) of this
2 section.

3 (b) A state contracting agency shall immediately pay into the State Ap-
4 prenticeship Education and Training Fund any moneys that remain after the
5 state contracting agency pays the amount due a contractor from amounts the
6 state contracting agency retained under paragraph (a) of this subsection.

7 (5) Each contractor or subcontractor that is subject to the requirement
8 set forth in subsection (3) of this section shall post notices of the require-
9 ment in conspicuous and accessible places in and around the construction
10 site for the public improvement. The notices must describe the requirement
11 and have information about how to report a violation of the requirement to
12 the Commissioner of the Bureau of Labor and Industries and where to obtain
13 further information.

14 (6) A person may not take any action to circumvent the requirements set
15 forth in this section including, but not limited to, structuring the work per-
16 formed on a public improvement so as to avoid employing workers in
17 apprenticeable occupations.

18 (7)(a) The requirement to employ apprentices in accordance with sub-
19 section (3) of this section does not apply to:

20 (A) A business that is certified as a disadvantaged, minority, women or
21 emerging small business enterprise under ORS 200.055 if the business has
22 existed for less than five years; or

23 (B) The Department of Transportation, except that:

24 (i) The department must have in the department's public improvement
25 contracts requirements that are substantially similar to the requirement set
26 forth in subsection (3) of this section or that require a contractor to employ
27 a higher percentage of apprentices to perform work on the public improve-
28 ment than the percentage set forth in subsection (3) of this section; and

29 (ii) The department is subject to the requirements set forth in ORS
30 279C.850 and section 6 of this 2015 Act.

31 (b) This section applies to:

1 (A) The State Board of Higher Education;

2 (B) The Oregon University System as described in ORS 351.011;

3 (C) A public university listed in ORS 352.002;

4 (D) A university with a governing board that is listed in ORS 352.054;

5 (E) Any not-for-profit organization or other entity, the equity of which is
6 owned or controlled exclusively by a university with a governing board listed
7 in ORS 352.054; and

8 (F) A community college, as defined in ORS 341.005.

9 **SECTION 4. Section 5 of this 2015 Act is added to and made a part**
10 **of ORS 660.002 to 660.210.**

11 **SECTION 5. (1) The State Apprenticeship Education and Training**
12 **Fund is established in the State Treasury, separate and distinct from**
13 **the General Fund. Interest earned by the State Apprenticeship Edu-**
14 **cation and Training Fund shall be credited to the fund. The moneys**
15 **in the fund consist of amounts that state contracting agencies retain**
16 **from public improvement contracts and do not pay to contractors in**
17 **accordance with section 2 of this 2015 Act.**

18 **(2) Moneys in the State Apprenticeship Education and Training**
19 **Fund are continuously appropriated to the State Apprenticeship and**
20 **Training Council for the purposes of:**

21 **(a) Making grants on a competitive basis and in conformance with**
22 **a plan adopted under ORS 279C.807 to programs that directly provide**
23 **career and technical education for occupations prevalent in the con-**
24 **struction and manufacturing industries. The council may consult the**
25 **Department of Education in determining which programs should re-**
26 **ceive grants.**

27 **(b) Overseeing and monitoring apprenticeship education and train-**
28 **ing programs, including programs identified in paragraph (a) of this**
29 **subsection, for compliance with applicable rules, standards and laws.**

30 **(3) The council may make grants from the State Apprenticeship**
31 **Education and Training Fund for the purposes described in subsection**

1 **(3)(a) of this section to:**

2 **(a) Apprenticeship education and training programs, direct entry**
3 **programs and preapprenticeship and youth apprenticeship programs**
4 **that are registered with the council;**

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

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

7 **SECTION 6. (1) A public improvement contract between a state**
8 **contracting agency and a contractor shall provide that a contractor**
9 **or subcontractor that is subject to section 2 of this 2015 Act, or the**
10 **contractor or subcontractor's surety, shall submit to the state con-**
11 **tracting agency the statements described in ORS 279C.845, even if the**
12 **public improvement is not otherwise subject to the provisions of ORS**
13 **279C.800 to 279C.870. Statements that a contractor or subcontractor**
14 **submits to a state contracting agency under this subsection, in addi-**
15 **tion to the information required under ORS 279C.845, must include**
16 **each worker's apprenticeship agreement registration number, if the**
17 **worker has a number.**

18 **(2) A state contracting agency, using the information included in**
19 **the statements described in subsection (1) of this section, shall total**
20 **and compare the number of work hours that workers in apprenticeable**
21 **occupations performed under a public improvement contract with the**
22 **number of work hours that apprentices performed under the public**
23 **improvement contract to verify the extent to which the contractor or**
24 **subcontractor complied with the requirements set forth in section 2**
25 **of this 2015 Act.**

26 **SECTION 7. ORS 279C.850 is amended to read:**

27 **279C.850. (1) At any reasonable time the Commissioner of the Bureau of**
28 **Labor and Industries may enter the office or business establishment of any**
29 **contractor or subcontractor performing **work under a public improvement****
30 ****contract or on** public works and gather facts and information necessary to**
31 **determine whether the *[prevailing rate of wage is actually being paid by such***

1 *contractor or subcontractor to workers upon public works.]* **contractor or**
2 **subcontractor is:**

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

5 (b) **Meeting the requirement set forth in section 2 of this 2015 Act**
6 **for work under a public improvement contract.**

7 (2) [*Upon request by the commissioner*] **At the commissioner's request,**
8 every contractor or subcontractor [*performing*] **that performs work under**
9 **a public improvement contract or** on public works shall make available
10 to the commissioner for inspection during normal business hours any payroll
11 or other records [*in*] **that** the [*possession or under the control of the*] con-
12 tractor or subcontractor **possesses or controls and** that [*are deemed*] **the**
13 **commissioner deems** necessary [*by the commissioner*] to determine whether
14 the [*prevailing rate of wage is actually being paid by such*] contractor or
15 subcontractor **is actually paying the prevailing rate of wage** to workers
16 upon public works **and whether the contractor or subcontractor is**
17 **meeting the requirement set forth in section 2 of this 2015 Act for**
18 **work under a public improvement contract.** The [*commissioner's*] **com-**
19 **missioner must make the** request [*must be made*] **within** a reasonable time
20 [*in advance of*] **before** the inspection.

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

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

1 Account.

2 **SECTION 8. (1) Sections 2, 5 and 6 of this 2015 Act and the amend-**
3 **ments to ORS 279C.850 by section 7 of this 2015 Act become operative**
4 **January 1, 2016.**

5 **(2) The amendments to section 2 of this 2015 Act by section 3 of this**
6 **2015 Act become operative on January 1, 2019, and apply to public im-**
7 **provement contracts that a state contracting agency first advertises**
8 **or otherwise solicits on or after January 1, 2019, or, if the state con-**
9 **tracting agency does not advertise or solicit the public improvement**
10 **contract, to a public improvement contract into which the state con-**
11 **tracting agency first enters on or after January 1, 2019.**

12 **(3) Sections 2, 5 and 6 of this 2015 Act and the amendments to ORS**
13 **279C.850 by section 7 of this 2015 Act apply to public improvement**
14 **contracts that a state contracting agency first advertises or otherwise**
15 **solicits on or after the operative date specified in subsection (2) of this**
16 **section or, if the state contracting agency does not advertise or solicit**
17 **the public improvement contract, to a public improvement contract**
18 **into which the state contracting agency first enters on or after the**
19 **operative date specified in subsection (2) of this section.**

20 **(4) A state contracting agency that adopts rules under ORS 279A.065**
21 **may take any action before the operative date specified in subsection**
22 **(2) of this section that is necessary to enable the state contracting**
23 **agency to exercise, on and after the operative date specified in sub-**
24 **section (2) of this section, all of the duties, functions and powers**
25 **conferred on the state contracting agency by sections 2, 5 and 6 of this**
26 **2015 Act and the amendments to ORS 279C.850 by section 7 of this 2015**
27 **Act.**

28 **SECTION 9. This 2015 Act being necessary for the immediate pres-**
29 **ervation of the public peace, health and safety, an emergency is de-**
30 **clared to exist, and this 2015 Act takes effect on its passage.**

31