

House Bill 3306

Sponsored by COMMITTEE ON HIGHER EDUCATION, INNOVATION, 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**.

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; and declaring an
3 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 a part of ORS**
6 **chapter 279C.**

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

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

9 **(B) "Apprentice" does not include a youth apprentice as described in ORS 344.745 and**
10 **344.750.**

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

12 **(2) In specifications and solicitation documents for every procurement for a public im-**
13 **provement that a state contracting agency anticipates will have a total contract price that**
14 **exceeds \$5 million, the state contracting agency shall notify prospective bidders and**
15 **proposers that the state contracting agency will require each contractor and subcontractor**
16 **to employ apprentices who are participating in programs of apprenticeship and training un-**
17 **der ORS 660.002 to 660.210 for at least 10 percent of the total work hours that workers in**
18 **apprenticeable occupations perform, as applicable, on the entire public improvement or under**
19 **each contract or subcontract for the public improvement that has a contract price that ex-**
20 **ceeds \$500,000.**

21 **(3) Except as provided in subsection (7) of this section, each public improvement contract**
22 **between a state contracting agency and a contractor that has a contract price that exceeds**
23 **\$500,000 and is part of a public improvement for which the total contract price exceeds \$5**

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 million shall provide that:

2 (a) Each contractor shall employ apprentices that are participating in programs of ap-
 3 prenticeship and training under ORS 660.002 to 660.210 for at least 10 percent of the total
 4 work hours that workers in apprenticeable occupations perform on the public improvement;
 5 and

6 (b) Each contractor, in each of the contractor's subcontracts in which the subcontract
 7 price exceeds \$500,000, shall require the subcontractor to employ apprentices that are par-
 8 ticipating in programs of apprenticeship and training under ORS 660.002 to 660.210 for at
 9 least 10 percent of the total work hours that workers in apprenticeable occupations perform
 10 on the public improvement.

11 (4)(a) A state contracting agency shall retain an amount equivalent to not more than
 12 three percent of the amount due a contractor under a contract for an entire public im-
 13 provement or, as appropriate, under each contract or subcontract for a portion of the public
 14 improvement. Within 10 days after the contractor completes the public improvement, or
 15 within the time the state contracting agency otherwise specifies in the public improvement
 16 contract, the state contracting agency shall pay the contractor the amount the state con-
 17 tracting agency retained, less \$20 for each hour in which the contractor or a subcontractor
 18 that is subject to this section did not employ an apprentice for work that an apprentice must
 19 perform under subsection (3) of this section.

20 (b) A state contracting agency shall immediately pay into the State Apprenticeship Edu-
 21 cation and Training Fund any moneys that remain after the state contracting agency pays
 22 the amount due a contractor from amounts the state contracting agency retained under
 23 paragraph (a) of this subsection.

24 (5) Each contractor or subcontractor that is subject to the requirement set forth in
 25 subsection (3) of this section shall post notices of the requirement in conspicuous and ac-
 26 cessible places in and around the construction site for the public improvement. The notices
 27 must describe the requirement and have information about how to report a violation of the
 28 requirement to the Commissioner of the Bureau of Labor and Industries and where to obtain
 29 further information.

30 (6) A person may not take any action to circumvent the requirements set forth in this
 31 section including, but not limited to, structuring the work performed on a public improve-
 32 ment so as to avoid employing workers in apprenticeable occupations.

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

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

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

39 (i) The department must have in the department's public improvement contracts re-
 40 quirements that are substantially similar to the requirement set forth in subsection (3) of
 41 this section or that require a contractor to employ a higher percentage of apprentices to
 42 perform work on the public improvement than the percentage set forth in subsection (3) of
 43 this section; and

44 (ii) The department is subject to the requirements set forth in ORS 279C.850 and section
 45 6 of this 2015 Act.

1 (b) This section applies to:

2 (A) The State Board of Higher Education;

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

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

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

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

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

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

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

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

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

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

14 (2) In specifications and solicitation documents for every procurement for a public improvement
15 that a state contracting agency anticipates will have a total contract price that exceeds [*\$5*
16 *million*] **\$3 million**, the state contracting agency shall notify prospective bidders and proposers that
17 the state contracting agency will require each contractor and subcontractor to employ apprentices
18 who are participating in programs of apprenticeship and training under ORS 660.002 to 660.210 for
19 at least [*10*] **15** percent of the total work hours that workers in apprenticeable occupations perform,
20 as applicable, on the entire public improvement or under each contract or subcontract for the public
21 improvement that has a contract price that exceeds [*\$500,000*] **\$300,000**.

22 (3) Except as provided in subsection (7) of this section, each public improvement contract be-
23 tween a state contracting agency and a contractor that has a contract price that exceeds
24 [*\$500,000*] **\$300,000** and is part of a public improvement for which the total contract price exceeds
25 [*\$5 million*] **\$3 million** shall provide that:

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

29 (b) Each contractor, in each of the contractor's subcontracts in which the subcontract price
30 exceeds [*\$500,000*] **\$300,000**, shall require the subcontractor to employ apprentices that are partic-
31 ipating in programs of apprenticeship and training under ORS 660.002 to 660.210 for at least [*10*]
32 **15** percent of the total work hours that workers in apprenticeable occupations perform on the public
33 improvement.

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

42 (b) A state contracting agency shall immediately pay into the State Apprenticeship Education
43 and Training Fund any moneys that remain after the state contracting agency pays the amount due
44 a contractor from amounts the state contracting agency retained under paragraph (a) of this sub-
45 section.

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

6 (6) A person may not take any action to circumvent the requirements set forth in this section
 7 including, but not limited to, structuring the work performed on a public improvement so as to avoid
 8 employing workers in apprenticeable occupations.

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

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

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

14 (i) The department must have in the department's public improvement contracts requirements
 15 that are substantially similar to the requirement set forth in subsection (3) of this section or that
 16 require a contractor to employ a higher percentage of apprentices to perform work on the public
 17 improvement than the percentage set forth in subsection (3) of this section; and

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

20 (b) This section applies to:

21 (A) The State Board of Higher Education;

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

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

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

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

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

28 **SECTION 4. Section 5 of this 2015 Act is added to and made a part of ORS 660.002 to**
 29 **660.210.**

30 **SECTION 5. (1) The State Apprenticeship Education and Training Fund is established in**
 31 **the State Treasury, separate and distinct from the General Fund. Interest earned by the**
 32 **State Apprenticeship Education and Training Fund shall be credited to the fund. The moneys**
 33 **in the fund consist of amounts that state contracting agencies retain from public improve-**
 34 **ment contracts and do not pay to contractors in accordance with section 2 of this 2015 Act.**

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

37 **(a) Making grants on a competitive basis and in conformance with a plan adopted under**
 38 **ORS 279C.807 to programs that directly provide career and technical education for occupa-**
 39 **tions prevalent in the construction and manufacturing industries. The council may consult**
 40 **the Department of Education in determining which programs should receive grants.**

41 **(b) Overseeing and monitoring apprenticeship education and training programs, including**
 42 **programs identified in paragraph (a) of this subsection, for compliance with applicable rules,**
 43 **standards and laws.**

44 **(3) The council may make grants from the State Apprenticeship Education and Training**
 45 **Fund for the purposes described in subsection (3)(a) of this section to:**

1 (a) Apprenticeship education and training programs, direct entry programs and preap-
2 prenticeship and youth apprenticeship programs that are registered with the council;

3 (b) Public school districts and education service districts; or

4 (c) Public post-secondary educational institutions.

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

13 (2) A state contracting agency, using the information included in the statements de-
14 scribed in subsection (1) of this section, shall total and compare the number of work hours
15 that workers in apprenticeable occupations performed under a public improvement contract
16 with the number of work hours that apprentices performed under the public improvement
17 contract to verify the extent to which the contractor or subcontractor complied with the
18 requirements set forth in section 2 of this 2015 Act.

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

20 279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries
21 may enter the office or business establishment of any contractor or subcontractor performing **work**
22 **under a public improvement contract or on** public works and gather facts and information nec-
23 essary to determine whether the *[prevailing rate of wage is actually being paid by such contractor*
24 *or subcontractor to workers upon public works.]* **contractor or subcontractor is:**

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

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

28 (2) *[Upon request by the commissioner]* **At the commissioner's request**, every contractor or
29 subcontractor *[performing]* **that performs work under a public improvement contract or on**
30 public works shall make available to the commissioner for inspection during normal business hours
31 any payroll or other records *[in]* **that** the *[possession or under the control of the]* contractor or sub-
32 contractor **possesses or controls and** that *[are deemed]* **the commissioner deems** necessary *[by*
33 *the commissioner]* to determine whether the *[prevailing rate of wage is actually being paid by such]*
34 contractor or subcontractor **is actually paying the prevailing rate of wage** to workers upon public
35 works **and whether the contractor or subcontractor is meeting the requirement set forth in**
36 **section 2 of this 2015 Act for work under a public improvement contract.** The
37 *[commissioner's]* **commissioner must make the** request *[must be made]* **within** a reasonable time
38 *[in advance of]* **before** the inspection.

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

41 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings against
42 employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to
43 require *[the payment of]* **employers to pay** prevailing rates of wage or overtime pay due employees.
44 The commissioner *[is entitled to]* **may** recover, in addition to other costs, such sum as the court or
45 judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action,

1 the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries
2 Account.

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

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

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

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

23 **SECTION 9.** This 2015 Act being necessary for the immediate preservation of the public
24 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
25 on its passage.
26