

# Senate Bill 809

Sponsored by Senator DEMBROW, Representative MCKEOWN

## 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 bidder that submits bid for contract for public works with estimated contract price of \$1 million or more to demonstrate responsibility by belonging to local joint committee whose training agents, in aggregate, employed apprentices for 10 percent or more of hours that training agents' employees worked on contracts in previous calendar year or by showing that bidder employed apprentices for 10 percent or more of hours that bidder's employees worked on contracts during previous calendar year.

Provides that Commissioner of Bureau of Labor and Industries may set percentage at which public agency may determine responsibility of bidder for contract for public works.

Requires contracting agency to base determination of bidder's responsibility in contracts for public works with estimated contract price of \$1 million or more on training agents approved by local joint committee of which bidder is part employing apprentices for 10 percent or more of hours training agents' employees worked during previous calendar year or on bidder's status as approved training agent and on bidder's record of employing apprentices for 10 percent or more of hours that bidder's employees worked during previous calendar year.

Requires contractors and subcontractors performing work on public works to submit statements to public agency that show hours that apprentices work during each week. Permits commissioner to verify compliance with requirement. Appropriates moneys to Bureau of Labor and Industries to establish verification program and for other purposes.

Requires local joint training committee to report to bureau hours that apprentices and journeyworkers worked during previous calendar year and requires bureau to publish information on bureau's website.

Becomes operative January 1, 2017.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to apprenticeship utilization on public works projects; creating new provisions; amending  
3 ORS 279C.375, 279C.800, 279C.807, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 660.137;  
4 and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 279C.800 to**  
7 **279C.870.**

8 **SECTION 2. (1) The Commissioner of the Bureau of Labor and Industries, by rule and in**  
9 **consultation with affected crafts, trades and other worker associations and with contractors**  
10 **and subcontractors that perform contracts for public works for public agencies, may deter-**  
11 **mine:**

12 (a) **The percentage of the total hours that a bidder's employees worked on contracts**  
13 **during the previous calendar year for which the bidder was required to employ apprentices**  
14 **participating in programs of apprenticeship or training under ORS 660.002 to 660.210 in order**  
15 **for a public agency to determine that the bidder is responsible under ORS 279C.375 (4), if the**  
16 **bidder submits a bid for a contract for public works with an estimated contract price of \$1**  
17 **million or more; or**

18 (b) **The percentage of the total hours that employees of training agents approved by a**  
19 **local joint committee worked on contracts during the previous calendar year for which the**

**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 **training agents were required to employ apprentices participating in programs of appren-**  
 2 **ticeship or training under ORS 660.002 to 660.210 in order for a public agency to determine**  
 3 **that a bidder associated with the local joint committee is responsible under ORS 279C.375 (4),**  
 4 **if the bidder submits a bid for a contract for public works with an estimated contract price**  
 5 **of \$1 million or more.**

6 **(2) The commissioner may not set a percentage under subsection (1) of this section that**  
 7 **is less than the percentage set forth in ORS 279C.375 (4).**

8 **(3) The commissioner shall review the percentages described in subsection (1) of this**  
 9 **section at least once every other year to determine whether the commissioner should set a**  
 10 **different percentage.**

11 **SECTION 3.** ORS 279C.375 is amended to read:

12 279C.375. (1) After a contracting agency has opened bids and determined that the contracting  
 13 agency will award a public improvement contract, the contracting agency shall award the contract  
 14 to the lowest responsible bidder.

15 (2) At least seven days before awarding a public improvement contract, unless the contracting  
 16 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the  
 17 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the  
 18 contracting agency's intent to award a contract. This subsection does not apply to a contract to  
 19 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the  
 20 manner in which the **contracting agency issues or posts the** notice [*is posted or issued*] must  
 21 conform to rules adopted under ORS 279A.065.

22 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-  
 23 lowing:

24 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders  
 25 who are not qualified to hold a public improvement contract.

26 (b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the  
 27 contracting agency that the bidder:

28 (A) Has available the appropriate financial, material, equipment, facility and personnel resources  
 29 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-  
 30 tractual responsibilities.

31 (B) Holds current licenses that businesses or service professionals operating in this state must  
 32 hold in order to undertake or perform the work specified in the contract.

33 (C) Is covered by liability insurance and other insurance in amounts the contracting agency  
 34 requires in the solicitation documents.

35 (D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has  
 36 elected coverage under ORS 656.128.

37 (E) Has made the disclosure required under ORS 279C.370.

38 (F) Completed previous contracts of a similar nature with a satisfactory record of performance.  
 39 For purposes of this subparagraph, a satisfactory record of performance means that to the extent  
 40 that the costs associated with and time available to perform a previous contract remained within  
 41 the bidder's control, the bidder stayed within the time and budget allotted for the procurement and  
 42 otherwise performed the contract in a satisfactory manner. The contracting agency shall document  
 43 the bidder's record of performance if the contracting agency finds under this subparagraph that the  
 44 bidder is not responsible.

45 (G) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's

1 record of integrity may consider, among other things, whether the bidder has previous criminal  
2 convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in  
3 connection with the bidder's performance of a contract or subcontract. The contracting agency shall  
4 document the bidder's record of integrity if the contracting agency finds under this subparagraph  
5 that the bidder is not responsible.

6 (H) Is legally qualified to contract with the contracting agency.

7 (I) Supplied all necessary information in connection with the inquiry concerning responsibility.  
8 If a bidder fails to promptly supply information concerning responsibility that the contracting  
9 agency requests, the contracting agency shall determine the bidder's responsibility based on avail-  
10 able information, or may find that the bidder is not responsible.

11 (c) Document the contracting agency's compliance with the requirements of paragraphs (a) and  
12 (b) of this subsection in substantially the following form:

13 \_\_\_\_\_  
14  
15 RESPONSIBILITY DETERMINATION FORM

16  
17 Project Name: \_\_\_\_\_

18 Bid Number: \_\_\_\_\_

19 Business Entity Name: \_\_\_\_\_

20 CCB License Number: \_\_\_\_\_

21 Form Submitted By (Contracting Agency):  
22 \_\_\_\_\_

23 Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_

24 Title: \_\_\_\_\_

25 Date: \_\_\_\_\_

26 (The contracting agency must submit this form with attachments, if any, to the Construction  
27 Contractors Board within 30 days after the date of contract award.)

28 The contracting agency has (check all of the following):

29 [ ] Checked the list created by the  
30 Construction Contractors Board  
31 under ORS 701.227 for bidders who  
32 are not qualified to hold a public  
33 improvement contract.

34 [ ] Determined whether the bidder has  
35 met the standards of responsibility.  
36 In so doing, the contracting agency  
37 has found that the bidder  
38 demonstrated that the bidder:

39 [ ] Has available the appropriate  
40 financial, material, equipment,  
41 facility and personnel resources  
42 and expertise, or the ability to  
43 obtain the resources and  
44 expertise, necessary to meet  
45 all contractual responsibilities.

- 1            Holds current licenses that
- 2                 businesses or service professionals
- 3                 operating in this state must hold
- 4                 in order to undertake or perform
- 5                 the work specified in the contract.
- 6            Is covered by liability insurance
- 7                 and other insurance in amounts
- 8                 required in the solicitation
- 9                 documents.
- 10           Qualifies as a carrier-insured
- 11                 employer or a self-insured
- 12                 employer under ORS 656.407 or has
- 13                 elected coverage under ORS 656.128.
- 14           Has disclosed the bidder's first-
- 15                 tier subcontractors in accordance
- 16                 with ORS 279C.370.
- 17           Has a satisfactory record of
- 18                 performance.
- 19           Has a satisfactory record of
- 20                 integrity.
- 21           Is legally qualified to contract
- 22                 with the contracting agency.
- 23           Has supplied all necessary
- 24                 information in connection with
- 25                 the inquiry concerning
- 26                 responsibility.
- 27           Determined the bidder to be
- 28                 (check one of the following):
- 29                  Responsible under ORS 279C.375
- 30                         (3)(a) and (b).
- 31                  Not responsible under
- 32                         ORS 279C.375 (3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

**(4)(a) If a bidder submits a bid for a contract for public works with an estimated contract price of \$1 million or more, a contracting agency shall require the bidder, in addition to demonstrating that the bidder is responsible as provided in subsection (3)(b) of this section, to show that the bidder is an approved training agent under ORS 660.137 and:**

**(A) Belongs to a local joint committee whose approved training agents, in the aggregate, employed apprentices for 10 percent or more of all hours that the employees of the approved training agents worked in the previous calendar year; or**

1 (B) Employed apprentices for 10 percent or more of all hours that the bidder’s employees  
 2 worked on contracts in the previous calendar year.

3 (b) In the circumstances described in paragraph (a) of this subsection, a contracting  
 4 agency shall include in the form set forth in subsection (3)(c) of this section an additional  
 5 criterion for determining responsibility that reads substantially as follows:

6 [ ] Belongs to a local joint  
 7 committee with training agents  
 8 that, in the aggregate, employed  
 9 apprentices for 10 percent or  
 10 more of the hours that the  
 11 training agents’ employees  
 12 worked in the previous calendar  
 13 year or is an approved training  
 14 agent and has employed apprentices  
 15 for 10 percent or more of the total  
 16 number of hours the bidder’s  
 17 employees worked in the previous  
 18 calendar year.

19 (c) This subsection does not apply to the Department of Transportation.

20 [(4)] (5) [The] A successful bidder shall:

21 (a) Promptly execute a formal contract; and

22 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when  
 23 required under ORS 279C.380.

24 [(5)] (6) [Based on competitive bids,] A contracting agency may award a public improvement  
 25 contract or may award multiple public improvement contracts **based on competitive bids if the**  
 26 **contracting agency specifies that the contracting agency will do so** [when specified] in the in-  
 27 vitation to bid.

28 [(6)] (7) A contracting agency may not exclude a commercial contractor from competing for a  
 29 public contract on the basis that [the] a license [issued by] **that** the Construction Contractors Board  
 30 **issued** is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor”  
 31 has the meaning given that term in ORS 701.005.

32 **SECTION 4.** ORS 279C.800 is amended to read:

33 279C.800. As used in ORS 279C.800 to 279C.870:

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

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

36 [(1)] (3) “Fringe benefits” means the amount of:

37 (a) [The rate of contribution] **Contributions that** a contractor or subcontractor makes  
 38 irrevocably to a trustee or to a third person under a plan, fund or program; and

39 (b) [The rate of] Costs [to the] **that** a contractor or subcontractor [that] may [be] reasonably  
 40 [anticipated] **anticipate** in providing the following items, except for items that federal, state or local  
 41 law requires the contractor or subcontractor to provide:

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

44 (i) Medical or hospital care;

45 (ii) Pensions on retirement or death; or

- 1 (iii) Compensation for injuries or illness that result from occupational activity;
- 2 (B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;
- 3 (C) Unemployment benefits;
- 4 (D) Life insurance;
- 5 (E) Disability and sickness insurance or accident insurance;
- 6 (F) Vacation and holiday pay;
- 7 (G) Costs of apprenticeship or other similar programs; or
- 8 (H) Other bona fide fringe benefits.

9 [(2)] (4) "Housing" has the meaning given that term in ORS 456.055.

10 [(3)] (5) "Locality" means the following district in which the public works, or the major portion  
11 thereof, is to be performed:

- 12 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- 13 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- 14 (c) District 3, composed of Marion, Polk and Yamhill Counties;
- 15 (d) District 4, composed of Benton, Lincoln and Linn Counties;
- 16 (e) District 5, composed of Lane County;
- 17 (f) District 6, composed of Douglas County;
- 18 (g) District 7, composed of Coos and Curry Counties;
- 19 (h) District 8, composed of Jackson and Josephine Counties;
- 20 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 21 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 22 (k) District 11, composed of Klamath and Lake Counties;
- 23 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 24 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 25 (n) District 14, composed of Harney and Malheur Counties.

26 [(4)] (6) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits,  
27 that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to  
28 the majority of workers employed on projects of a similar character in the same trade or occupation.

29 [(5)] (7) "Public agency" means the State of Oregon or a political subdivision of the State of  
30 Oregon, or a county, city, district, authority, public corporation or public entity organized and ex-  
31 isting under law or charter or an instrumentality of the county, city, district, authority, public cor-  
32 poration or public entity.

33 [(6)(a)] (8)(a) "Public works" includes, but is not limited to:

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

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

40 (C) A project that uses funds of a private entity for constructing a privately owned road, high-  
41 way, building, structure or improvement of any type in which a public agency will use or occupy  
42 25 percent or more of the square footage of the completed project;

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

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

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

3 (E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (2)(b) and (c), con-  
 4 struction, reconstruction, painting or major renovation of a road, highway, building, structure or  
 5 improvement of any type that occurs, with or without using funds of a public agency, on real prop-  
 6 erty that the Oregon University System or an institution in the Oregon University System owns.

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

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

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

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

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

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

17 **SECTION 5.** ORS 279C.807 is amended to read:

18 279C.807. (1) The Bureau of Labor and Industries shall develop, *[and]* adopt **and update** a plan  
 19 to increase diversity statewide among workers **and apprentices** employed on projects subject to  
 20 ORS 279C.800 to 279C.870. The bureau shall develop the plan after conducting a statewide public  
 21 process to solicit proposals to increase diversity and shall adopt the plan after considering proposals  
 22 submitted to the bureau.

23 (2) The bureau shall report each year to the Legislative Assembly or to the appropriate legis-  
 24 lative interim committee concerning progress that results from the plan adopted under this section  
 25 and may submit recommendations for legislation or other measures that will improve diversity  
 26 among workers **and apprentices** employed on projects subject to ORS 279C.800 to 279C.870. *[The*  
 27 *bureau shall submit the first report no later than January 1, 2009.]*

28 **SECTION 6.** ORS 279C.827 is amended to read:

29 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-  
 30 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

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

35 (c) In making *[determinations]* **a determination** under this subsection, the commissioner shall  
 36 consider:

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

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

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

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

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

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

45 (2) If a project is a public works of the type described in ORS 279C.800 *[(6)(a)(B)]* **(8)(a)(B)** or

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

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

15 **SECTION 7.** ORS 279C.830 is amended to read:

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

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

30 (c) Every contract and subcontract must provide that **a contractor, subcontractor or other**  
 31 **person that is a party to the contract must pay** the workers [*must be paid*] not less than the  
 32 specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

33 (d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon  
 34 Act, every contract and subcontract must provide that **the contractor, subcontractor or other**  
 35 **person that is a party to the contract must pay the** workers on the public works [*must be*  
 36 *paid*] not less than the higher of the applicable state or federal prevailing rate of wage.

37 (e) A public works project described in ORS 279C.800 [(6)(a)(B)] **(8)(a)(B)** or (C) is subject to the  
 38 existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required  
 39 under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement  
 40 with a private entity for the project. After that time, the specifications for a contract for the public  
 41 works must include the applicable prevailing rate of wage.

42 (2) The specifications for a contract for public works must provide that the contractor and every  
 43 subcontractor must have a public works bond filed with the Construction Contractors Board before  
 44 starting work on the project, unless **the contractor or subcontractor is** exempt under ORS  
 45 279C.836 (4), (7), (8) or (9). Every contract that a contracting agency awards must require the con-



1 tractor to:

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

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

7 **(3)(a) Every contract for public works must provide that the contractor, before awarding**  
8 **a subcontract, must require a prospective subcontractor to demonstrate to the contractor**  
9 **and the contracting agency that the prospective subcontractor meets the same standards**  
10 **of responsibility that apply to the contractor under ORS 279C.375 (4).**

11 **(b) This subsection does not apply to the Department of Transportation.**

12 **SECTION 8.** ORS 279C.840 is amended to read:

13 279C.840. (1) The hourly rate of wage [*to be paid by any*] **that a** contractor or subcontractor  
14 **must pay** to workers upon all public works [*shall be not*] **may not be** less than the prevailing rate  
15 of wage for an hour's work in the same trade or occupation in the locality where the labor is per-  
16 formed. [*The obligation of*] A contractor or subcontractor **may discharge the obligation** to pay the  
17 prevailing rate of wage [*may be discharged*] by making the payments in cash, by [*the*] making [*of*]  
18 contributions of a type [*referred to*] **described** in ORS 279C.800 [(1)(a)] **(3)(a)**, or by [*the assumption*  
19 *of*] **assuming** an enforceable commitment to bear the costs of a plan or program of a type [*referred*  
20 *to*] **described** in ORS 279C.800 [(1)(b)] **(3)(b)**, or any combination [*thereof*] **of payments, contribu-**  
21 **tions or costs**, [*where*] **if** the aggregate of [*any such*] **the** payments, contributions and costs is not  
22 less than the prevailing rate of wage. The contractor or subcontractor shall pay all wages due and  
23 owing to the contractor's or subcontractor's workers upon public works on the regular payday es-  
24 tablished and maintained under ORS 652.120.

25 (2) After a contract for public works is executed with any contractor or work [*is commenced*]  
26 **begins** upon any public works, **a contractor or subcontractor may not attack** the amount of the  
27 prevailing rate of wage [*is not subject to attack*] in any legal proceeding [*by any contractor or sub-*  
28 *contractor*] in connection with that contract.

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

33 (4) Every contractor or subcontractor **that is** engaged on a project [*for which there is*] **under**  
34 a contract for a public works shall keep the prevailing rates of wage for that project posted in a  
35 conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor  
36 and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and  
37 subcontractors.

38 (5) Every contractor or subcontractor **that is** engaged on a project [*for which there is*] **under**  
39 a contract for a public works to which the prevailing wage requirements apply that also provides  
40 or contributes to a health and welfare plan or a pension plan, or both, for the contractor or  
41 subcontractor's employees on the project shall post a notice describing the plan in a conspicuous  
42 and accessible place in or about the project. The **contractor or subcontractor shall preferably**  
43 **post the** notice [*preferably shall be posted*] in the same place as the **contractor or subcontractor**  
44 **posts the** notice required under subsection (4) of this section. In addition to the description of the  
45 plan, the notice [*shall contain*] **must have** information on how and where to make claims and where

1 to obtain further information.

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

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

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

10 (7) A person may not take any action that circumvents the payment of the prevailing rate of  
 11 wage to workers employed on a **contract for** public works *[contract]*, including, but not limited to,  
 12 reducing an employee's regular rate of pay on any project **that is** not subject to ORS 279C.800 to  
 13 279C.870 in a manner that has the effect of offsetting the prevailing rate of wage on a public works  
 14 project.

15 **SECTION 9.** ORS 279C.845 is amended to read:

16 279C.845. (1) *[The]* **A** contractor or the contractor's surety and every subcontractor or the  
 17 subcontractor's surety shall file *[certified]* **written** statements with the public agency **with which**  
 18 **the contractor has a contract for public works** *[in writing]*, on a form prescribed by the Com-  
 19 missioner of the Bureau of Labor and Industries, *[certifying]* **in which the contractor or subcon-**  
 20 **tractor certifies:**

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

23 (b) That **the contractor or subcontractor has not paid a** *[no]* worker *[employed]* **the con-**  
 24 **tractor or subcontractor employs** upon the public works *[has been paid]* less than the prevailing  
 25 rate of wage or less than the minimum hourly rate of wage specified in the contract*[,]*; **and**

26 (c) **The total number of hours that apprentices who are participating in programs of ap-**  
 27 **prenticeship and training under ORS 660.002 to 660.210 worked on the public works project**  
 28 **in the previous week.**

29 (2) The *[certified statement shall be verified by the oath of the]* contractor or the contractor's  
 30 surety or **the** subcontractor or the subcontractor's surety **shall attest by oath** that the contractor  
 31 or subcontractor has read the *[certified]* statement **described in subsection (1) of this section**, that  
 32 the contractor or subcontractor knows the contents of the *[certified]* statement and that to the  
 33 contractor or subcontractor's knowledge the *[certified]* statement is true.

34 (3) The *[certified statements]* **contractor or subcontractor, in the statements described in**  
 35 **subsection (1) of this section**, shall set out accurately and completely the contractor's or  
 36 subcontractor's payroll records, including the name and address of each worker, the worker's cor-  
 37 rect classification, **the worker's apprenticeship agreement registration number, when avail-**  
 38 **able**, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned  
 39 upon the public works during each week identified in the *[certified]* statement.

40 (4) *[The]* **A** contractor or subcontractor shall deliver or mail *[each certified statement required*  
 41 *by subsection (1) of this section to the public agency. Certified statements]* **a statement required**  
 42 **under subsection (1) of this section to the public agency with which the contractor has a**  
 43 **contract for public works. The contractor or subcontractor shall submit, by the fifth busi-**  
 44 **ness day of each month, a statement** for each week **in the previous month** during which the  
 45 contractor or subcontractor employs a worker upon the public works *[shall be submitted once a*

1 month, by the fifth business day of the following month]. **A public agency may use** information  
 2 [submitted on certified] **on** statements [may be used] **that a contractor or subcontractor submits**  
 3 **under this section** only to:

4 (a) Ensure compliance with the provisions of ORS 279C.800 to 279C.870[.]; **and**

5 (b) **Determine the percentage of the total hours that workers performed on the public**  
 6 **works for which the contractor or subcontractor employed apprentices participating in pro-**  
 7 **grams of apprenticeship and training under ORS 660.002 to 660.210.**

8 (5) Each contractor or subcontractor shall preserve the [certified] statements **described in**  
 9 **subsection (1) of this section** for a period of three years [from] **after** the date [of completion of]  
 10 **on which the contractor completes** the contract **for public works.**

11 (6) [Certified statements received by] **A statement that** a public agency [are public records] **re-**  
 12 **ceives under this section is** subject to the provisions of ORS 192.410 to 192.505.

13 (7) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor is required to file [certified  
 14 statements] **a statement** under this section, the public agency shall retain 25 percent of any amount  
 15 [earned by] the contractor **earns** on the public works until the contractor has filed with the public  
 16 agency [certified] **the** statements [as] required [by] **under** this section. The public agency shall pay  
 17 the contractor the amount **the public agency** retained under this subsection within 14 days after  
 18 the contractor files the [certified] statements [as required by] **in accordance with** this section, re-  
 19 gardless of whether a subcontractor has failed to file [certified statements as] **a statement** required  
 20 [by] **under** this section. The public agency is not required to verify the truth of the contents of  
 21 [certified] statements [filed by] the contractor **submits** under this section.

22 (8) Notwithstanding ORS 279C.555, [the] **a** contractor shall retain 25 percent of any amount  
 23 [earned by] **that** a first-tier subcontractor **earns** on a public works until the subcontractor [has filed  
 24 with] **submits the statements required under this section to** the public agency **with which the**  
 25 **contractor has a contract for public works** [certified statements as required by this section]. The  
 26 contractor shall verify that the first-tier subcontractor has filed the [certified] statements before the  
 27 contractor may pay the subcontractor any amount **the contractor** retained under this subsection.  
 28 The contractor shall pay the first-tier subcontractor the amount **the contractor** retained under this  
 29 subsection within 14 days after the subcontractor files the [certified] statements [as required by] **in**  
 30 **accordance with** this section. [Neither] The public agency [nor] **and** the contractor [is] **are not**  
 31 required to verify the truth of the contents of [certified] statements [filed by] **that** a first-tier sub-  
 32 contractor **submits** under this section.

33 **SECTION 10.** ORS 279C.850 is amended to read:

34 279C.850. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries  
 35 may enter the office or business establishment of any contractor or subcontractor [performing] **with**  
 36 **a contract for** public works and gather facts and information necessary to determine whether the  
 37 [prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon  
 38 public works.] **contractor or subcontractor is:**

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

40 (b) **Reporting the information required under ORS 279C.845 (1)(c) accurately and**  
 41 **truthfully.**

42 (2) [Upon request by the commissioner] **At the commissioner's request**, every contractor or  
 43 subcontractor [performing work on] **with a contract for** public works shall make available to the  
 44 commissioner for inspection during normal business hours any payroll or other records [in the pos-  
 45 session or under the control of] the contractor or subcontractor **possesses or controls** that [are

1 *deemed necessary by*] the commissioner **deems necessary** to determine whether the **contractor or**  
 2 **subcontractor is actually paying the** prevailing rate of wage [*is actually being paid by such con-*  
 3 *tractor or subcontractor*] to workers upon public works. The [*commissioner's request must be made*]  
 4 **commissioner must make the request** a reasonable time in advance of the inspection.

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

7 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings against  
 8 [*employers*] **a contractor or subcontractor with a contract for public works** to enjoin future  
 9 failures to pay required prevailing rates of wage or overtime pay and to require the **contractor or**  
 10 **subcontractor to** [*payment of*] **pay** prevailing rates of wage or overtime pay due employees. The  
 11 commissioner [*is entitled to*] **may** recover, in addition to other costs, [*such*] **a sum** [*as*] **that** the court  
 12 or judge [*may determine*] **determines is** reasonable as attorney fees. If the commissioner does not  
 13 prevail in the action, the commissioner shall pay all costs and disbursements from the Bureau of  
 14 Labor and Industries Account.

15 (5) **The commissioner by rule shall establish a program to regularly carry out the pro-**  
 16 **visions of this section.**

17 **SECTION 11.** ORS 660.137 is amended to read:

18 660.137. [*Every local apprenticeship or training program administered by a local joint committee,*  
 19 *or by a trade committee functioning as a local joint committee, shall:*] (1) **A local joint committee,**  
 20 **or a trade committee that functions as a local joint committee, shall:**

21 [(1)] (a) Propose to the State Apprenticeship and Training Council and the Apprenticeship and  
 22 Training Division of the Bureau of Labor and Industries standards for [*the*] **the local joint**  
 23 **committee's local apprenticeship or training** program that [*are in substantial conformity*] **sub-**  
 24 **stantially conform** with ORS 660.126 and with the uniform standards, if any, [*adopted by*] **that** the  
 25 state joint committee **adopted** for [*that occupation*] **the program**, and recommend to the council and  
 26 the division modifications of the standards.

27 [(2)] (b) Administer [*its*] **the local joint committee's** program in conformity with [*its*] **stan-**  
 28 **dards the local joint committee** approved [*standards*], with the provisions of ORS 660.002 to  
 29 660.210, and with the rules and policies of the council and the division. [*Particularly*] **Specifically,**  
 30 the local joint committee shall:

31 [(a)] (A) Maintain records of all apprentices in [*its*] **the local joint committee's** program[,] with  
 32 respect to work experience, instruction on the job, attendance at related instruction [*and*]  
 33 *progress,*] and **progress made, along with** [*such*] other records [*as may be*] **that are** appropriate  
 34 or required[, *and shall*];

35 (B) Submit [*such*] reports [*as*] **that** the council, division or other appropriate governmental  
 36 agencies [*may*] require;

37 [(b)] (C) Submit to the state joint committee appropriate requests for changes in courses of study  
 38 for [*the instruction of*] **instructing** apprentices; [*and*]

39 [(c)] (D) [*Be responsible for apprentices receiving*] **Provide** necessary on-the-job and related  
 40 instruction[,] and [*for all*]

41 (E) **Promptly register all** apprenticeship agreements [*being promptly registered*] with the  
 42 council.

43 [(3)] (c) [*Be responsible for the recruitment, qualification, selection, approval and registration of*]  
 44 **Recruit, qualify, select, approve and register** apprentices [*entering*] **that enter** the program[, *in-*  
 45 *cluding the evaluation of*] **and evaluate** previous creditable work experience, education and training

1 for which **the local joint committee must give** advanced credit, [*must be given, provided that*] **if**  
 2 **the local joint committee can give** advanced credit [*may be given for such*] **for the** creditable ex-  
 3 perience, education and training.

4 [(4)] **(d)** Review and evaluate, at least semiannually, [*the*] **each apprentice's** progress [*of each*  
 5 *apprentice,*] as to job performance and related instruction[, *and*]. Consistent with the skill **the ap-**  
 6 **prentice has** acquired, **the local joint committee shall** [*accordingly*] advance the apprentice to the  
 7 next level of apprenticeship, [*or*] hold the apprentice at the same level for a reasonable period[,  
 8 *and*] with reasonable opportunity for corrective action, or terminate the apprentice from the pro-  
 9 gram for serious or continued inadequate progress and notify the council and the division of the  
 10 **local joint committee's** action [*taken*]. **The local joint committee shall also notify** the council,  
 11 the division and the appropriate training agent [*shall also be notified*] of each rerating and of the  
 12 apprentice's new level on the wage schedule. *Recognition for* **and shall ensure that an**  
 13 **apprentice's** successful completion of apprenticeship [*shall be*] **is** evidenced by an appropriate cer-  
 14 tificate [*issued by*] **from** the council.

15 [(5)(a)] **(e)** Determine the qualifications, minimum facilities and training conditions [*required of*]  
 16 **that** an employer **must have** to serve as an approved training agent, [*and*] approve training agents  
 17 [*accordingly;*] **in accordance with the required qualifications, minimum facilities and training**  
 18 **conditions and ensure compliance by:**

19 [(b)] **(A)** [*Make*] **Making** periodic checks of approved training agents to ensure that [*there are*]  
 20 **each training agency has** qualified training personnel and [*that there is*] adequate supervision on  
 21 the job, adequate and safe equipment and facilities for training and supervision[, ] and safety training  
 22 for apprentices on the job and in related instruction; and

23 [(c)] **(B)** [*Withdraw*] **Withdrawing** approval of training agents [*when*] **that no longer meet** the  
 24 **required** qualifications [*are no longer met or when it appears to*] **or that** the committee **believes**  
 25 [*that the training agent is in violation of*] **have violated** the terms of an apprenticeship agreement,  
 26 **the local joint committee's** standards, **the** provisions of ORS 660.002 to 660.210 or the rules and  
 27 policies of the council and the division.

28 [(6)] **(f)** Determine and redetermine at least annually the average journeyworker hourly rate of  
 29 wage for the purposes of ORS 660.142 and submit the rate to the State Director of Apprenticeship  
 30 and Training, along with a statement explaining how the **local joint committee made the** deter-  
 31 mination [*was made*].

32 **(g) Report by January 31 of each year to the Apprenticeship and Training Division of the**  
 33 **Bureau of Labor and Industries all hours that apprentices and journeyworkers worked during**  
 34 **the previous calendar year, after collecting all necessary information from the local joint**  
 35 **committee's training agents. The report must attribute each of the hours to a specific**  
 36 **training agent.**

37 **(2)(a)** [*Training agents that fail or refuse to provide their committees with information shall be*  
 38 *terminated as approved training agents.*] **A local joint committee shall withdraw approval from**  
 39 **a training agent that fails or refuses to provide the local joint committee with the informa-**  
 40 **tion required under subsection (1)(f) and (g) of this section.**

41 **(b)** The council and the division may withhold approval of a new program or terminate an ex-  
 42 isting program [*for failure or refusal by the committee or its*] **if a local joint committee or the local**  
 43 **joint committee's** training agents **fail or refuse** to keep the established journeyworker hourly rate  
 44 of wage current and correct.

45 **(c)** The committee shall retain all records from which a **local joint committee made a** wage

1 determination [*was made for inspection by*] **for** the council and division **to inspect**, as required by  
2 law.

3 **(3) The Apprenticeship and Training Division of the Bureau of Labor and Industries shall**  
4 **publish the information that each local joint committee reports to the division under sub-**  
5 **section (1)(g) of this section on the Bureau of Labor and Industries website and make the**  
6 **information available to the public.**

7 **SECTION 12. Section 2 of this 2015 Act and the amendments to ORS 279C.375, 279C.800,**  
8 **279C.807, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 660.137 by sections 3 to 11 of this**  
9 **2015 Act apply to contracts for public works that a public agency advertises or solicits or,**  
10 **if the public agency does not advertise or solicit the contract for public works, that the**  
11 **public agency enters into on or after the operative date specified in section 13 of this 2015**  
12 **Act.**

13 **SECTION 13. (1) Section 2 of this 2015 Act and the amendments to ORS 279C.375,**  
14 **279C.800, 279C.807, 279C.827, 279C.830, 279C.840, 279C.845, 279C.850 and 660.137 by sections 3 to**  
15 **11 of this 2015 Act become operative January 1, 2017.**

16 **(2) The Attorney General, the Commissioner of the Bureau of Labor and Industries, the**  
17 **Director of the Oregon Department of Administrative Services and a contracting agency,**  
18 **other than the Department of Transportation, that adopts rules under ORS 279A.065 may**  
19 **adopt rules and take any other action before the operative date specified in subsection (1)**  
20 **of this section that is necessary to enable the Attorney General, the commissioner, the di-**  
21 **rector or the contracting agency to exercise, on and after the operative date specified in**  
22 **subsection (1) of this section, all of the duties, functions and powers conferred on the At-**  
23 **torney General, the commissioner, the director or the contracting agency by section 2 of this**  
24 **2015 Act and the amendments to ORS 279C.375, 279C.800, 279C.807, 279C.827, 279C.830,**  
25 **279C.840, 279C.845, 279C.850 and 660.137 by sections 3 to 11 of this 2015 Act.**

26 **SECTION 14. This 2015 Act being necessary for the immediate preservation of the public**  
27 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
28 **on its passage.**

29 \_\_\_\_\_