House Bill 2756

Sponsored by Representative HOLVEY, Senator DEMBROW; Representative OWENS (at the request of Associated Wall and Ceiling Contractors, Northwest Carpenters Union) (Presession filed.)

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.

Lowers estimated contract price at which apprentice utilization requirements apply to public improvement contracts with state contracting agencies from $1 million to $200,000 and raises percentage of work hours that apprentices must perform from 12 percent to 15 percent.

Requires subcontractors on public improvement contracts to make good-faith efforts to encourage minority individuals, women, economically disadvantaged individuals, socially disadvantaged individuals and service-disabled veterans to become apprentices with subcontractor. Specifies actions that constitute good-faith efforts.

Requires bidder or proposer for public improvement contract to demonstrate to state contracting agency that bidder or proposer is training agent for apprentices in apprenticeable occupations and will require subcontractors to which bidder awards subcontracts to also be training agents.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to apprentice utilization requirements for public improvement contracts with state contracting agencies; creating new provisions; amending ORS 279C.375 and 279C.533; and prescribing an effective date.

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

SECTION 1. ORS 279C.533, as amended by section 3, chapter 416, Oregon Laws 2017, is amended to read:

279C.533. (1) As used in this section:

(a) “Apprentice” has the meaning given that term in ORS 660.010.
(b) “Apprenticeable occupation” has the meaning given that term in ORS 660.010.
(c) “Apprenticeship agreement” has the meaning given that term in ORS 660.010.
(d) “Apprenticeship training program” means the total system of apprenticeship that a particular local joint committee, as defined in ORS 660.010, operates, including the local joint committee’s registered standards and all other terms and conditions for qualifying, recruiting, selecting, employing and training apprentices in an apprenticeable occupation.
(e) “Economically disadvantaged individual” has the meaning given that term in ORS 200.005.
(f) “Minority individual” has the meaning given that term in ORS 200.005.
(g) “Service-disabled veteran” has the meaning given that term in ORS 200.005.
(h) “Socially disadvantaged individual” has the meaning given that term in ORS 200.005.
(i) “Woman” has the meaning given that term in ORS 200.005.

(2) A state contracting agency shall provide in each public improvement contract for which the contract price exceeds $3 million that the contractor shall:

(a) Employ apprentices to perform 12 percent of the work hours that workers in apprenticeable occupations perform on the public improvement; [and]
(b) Require in each subcontract for which the contract price exceeds the lesser of $1 million or
25 percent of the price of the public improvement contract that the subcontractor employ appren-
tices to perform 12 percent of the work hours that workers in apprenticeable occupations per-
form on the subcontract[; and]

(c) Require subcontractors that bid on public improvement contracts for which the esti-
imated contract price is $200,000 or more to make good-faith efforts to encourage minority
individuals, women, economically disadvantaged individuals, socially disadvantaged individ-
uals and service-disabled veterans to become apprentices. For the purposes of this para-
graph, a subcontractor makes a good-faith effort if the subcontractor, at a minimum, and
without engaging in superficial or pro forma actions:

(A) Advertises apprenticeship opportunities available with the subcontractor in general
circulation publications, trade association publications, social media websites and other
printed and electronic publications that serve an audience or readership that consists pri-
marily of minorities, women, service-disabled veterans, economically disadvantaged individ-
uals and socially disadvantaged individuals;

(B) Provides written notice of apprenticeship opportunities available with the subcon-
tractor directly to apprenticeship programs in the local area in which work under the public
improvement contract will occur;

(C) Follows up on the subcontractor’s initial solicitations of interest by contacting indi-
viduals who responded to the advertisements described in subparagraph (A) of this paragraph
or who otherwise expressed interest in becoming an apprentice to determine with certainty
whether the individual is interested in the opportunity;

(D) Advises and assists interested individuals in completing any required application
materials or certifications or in providing any other needed evidence of the individual’s
qualifications to become an apprentice with the subcontractor; and

(E) Uses the services of minority community organizations, minority contractor groups,
local, state and federal minority business assistance offices and other organizations that
provide assistance in recruiting minority individuals, women, economically disadvantaged
individuals, socially disadvantaged individuals or service-disabled veterans into any of the
trades or occupations that the subcontractor employs.

(3) A contractor or subcontractor shall pay an apprentice for work on the public improvement
at the hourly rate to which the apprentice is entitled under an apprenticeship agreement or that the
apprenticeship training program specifies.

(4) Subject to the terms of the public improvement contract, a contractor on a public improve-
ment may decide the locations in which, the types of work for which and other details concerning
how the contractor employs apprentices for work on the public improvement. The contractor may
meet the requirement set forth in subsection (2) of this section by requiring one or more subcon-
tractors to employ apprentices for work on the public improvement.

(5) A contractor shall report the extent of the contractor’s compliance with this section to the
state contracting agency on forms, with contents the state contracting agency specifies by rule, and
at regular intervals that the state contracting agency specifies in the public improvement contract.
The forms and the contents that the state contracting agency specifies must include, at a minimum,
a report in which the contractor provides a detailed accounting of the total number of work hours
each month and the cumulative total number of work hours since the public improvement contract
term began in which:
(a) Workers in apprenticeable occupations performed work on the public improvement; and
(b) Apprentices performed work on the public improvement.

(6) At least 30 days before making any final payment to a contractor under a public improve-
ment contract, a state contracting agency shall determine the extent of the contractor’s compliance
with the requirement in subsection (2) of this section. The state contracting agency shall base the
determination on the ratio between the actual number of work hours that workers in apprenticeable
occupations performed on the public improvement and the actual number of work hours that ap-
prentices performed on the public improvement, as shown in reports the state contracting agency
receives under subsection (5) of this section.

(7) This section does not apply to:
[(a) The Department of Transportation or a public improvement contract that a contractor enters
into with the department; or]

SECTION 2. ORS 279C.533, as amended by section 3, chapter 416, Oregon Laws 2017, and sec-
tion 1 of this 2021 Act, is amended to read:
279C.533. (1) As used in this section:
(a) “Apprentice” has the meaning given that term in ORS 660.010.
(b) “Apprenticeable occupation” has the meaning given that term in ORS 660.010.
(c) “Apprenticeship agreement” has the meaning given that term in ORS 660.010.
(d) “Apprenticeship training program” means the total system of apprenticeship that a particular
local joint committee, as defined in ORS 660.010, operates, including the local joint committee's
registered standards and all other terms and conditions for qualifying, recruiting, selecting, em-
ploying and training apprentices in an apprenticeable occupation.
(e) “Economically disadvantaged individual” has the meaning given that term in ORS 200.005.
(f) “Minority individual” has the meaning given that term in ORS 200.005.
(g) “Service-disabled veteran” has the meaning given that term in ORS 200.005.
(h) “Socially disadvantaged individual” has the meaning given that term in ORS 200.005.
(i) “Woman” has the meaning given that term in ORS 200.005.

(2) A state contracting agency shall provide in each public improvement contract for which the
contract price exceeds $3 million that the contractor shall:
(a) Employ apprentices to perform 15 percent of the work hours that workers in
apprenticeable occupations perform on the public improvement;
(b) Require in each subcontract for which the contract price exceeds the lesser of [$1 million]
$200,000 or 25 percent of the price of the public improvement contract that the subcontractor em-
ploy apprentices to perform 15 percent of the work hours that workers in apprenticeable occu-
plications perform on the subcontract; and
(c) Require subcontractors that bid on public improvement contracts for which the estimated
contract price is $200,000 or more to make good-faith efforts to encourage minority individuals,
women, economically disadvantaged individuals, socially disadvantaged individuals and service-
disabled veterans to become apprentices. For the purposes of this paragraph, a subcontractor makes
a good-faith effort if the subcontractor, at a minimum, and without engaging in superficial or pro
forma actions:
(A) Advertises apprenticeship opportunities available with the subcontractor in general circu-
lation publications, trade association publications, social media websites and other printed and
electronic publications that serve an audience or readership that consists primarily of minorities,
women, service-disabled veterans, economically disadvantaged individuals and socially disadvantaged
individuals;

(B) Provides written notice of apprenticeship opportunities available with the subcontractor directly
to apprenticeship programs in the local area in which work under the public improvement
contract will occur;

(C) Follows up on the subcontractor’s initial solicitations of interest by contacting individuals
who responded to the advertisements described in subparagraph (A) of this paragraph or who other-
wise expressed interest in becoming an apprentice to determine with certainty whether the indi-
vidual is interested in the opportunity;

(D) Advises and assists interested individuals in completing any required application materials
or certifications or in providing any other needed evidence of the individual’s qualifications to be-
come an apprentice with the subcontractor; and

(E) Uses the services of minority community organizations, minority contractor groups, local,
state and federal minority business assistance offices and other organizations that provide assistance
in recruiting minority individuals, women, economically disadvantaged individuals, socially disad-
vantaged individuals or service-disabled veterans into any of the trades or occupations that the
subcontractor employs.

(3) A contractor or subcontractor shall pay an apprentice for work on the public improvement
at the hourly rate to which the apprentice is entitled under an apprenticeship agreement or that the
apprenticeship training program specifies.

(4) Subject to the terms of the public improvement contract, a contractor on a public improve-
ment may decide the locations in which, the types of work for which and other details concerning
how the contractor employs apprentices for work on the public improvement. The contractor may
meet the requirement set forth in subsection (2) of this section by requiring one or more subcon-
tractors to employ apprentices for work on the public improvement.

(5) A contractor shall report the extent of the contractor’s compliance with this section to the
state contracting agency on forms, with contents the state contracting agency specifies by rule, and
at regular intervals that the state contracting agency specifies in the public improvement contract.
The forms and the contents that the state contracting agency specifies must include, at a minimum,
a report in which the contractor provides a detailed accounting of the total number of work hours
each month and the cumulative total number of work hours since the public improvement contract
term began in which:

(a) Workers in apprenticeable occupations performed work on the public improvement; and

(b) Apprentices performed work on the public improvement.

(6) At least 30 days before making any final payment to a contractor under a public improve-
ment contract, a state contracting agency shall determine the extent of the contractor’s compliance
with the requirement in subsection (2) of this section. The state contracting agency shall base the
determination on the ratio between the actual number of work hours that workers in apprenticeable
occupations performed on the public improvement and the actual number of work hours that ap-
prentices performed on the public improvement, as shown in reports the state contracting agency
receives under subsection (5) of this section.

(7) This section does not apply to a public contract that a state contracting agency enters into
under ORS 279B.080.

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

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

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

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

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

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

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

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

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

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

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

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

(G) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder’s
record of integrity may consider, among other things, whether the bidder has previous criminal
convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in
connection with the bidder’s performance of a contract or subcontract. The contracting agency shall
document the bidder’s record of integrity if the contracting agency finds under this subparagraph
that the bidder is not responsible.

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

(I) Possesses an unexpired certificate that the Oregon Department of Administrative Services
issued under ORS 279A.167, if the bidder employs 50 or more full-time workers and submitted a bid
for a procurement with an estimated contract price that exceeds $500,000 in response to an adver-
tisement or solicitation from a state contracting agency.

(J) Is a training agent, as defined in ORS 660.010, if the contracting agency is a state
contracting agency and if the public improvement contract has a contract price that exceeds
$3 million. The bidder must also demonstrate that the bidder will require, in any subcontract
the bidder awards that is related to the public improvement contract and that has a contract price that exceeds $200,000, that the subcontractor is a training agent.

[(J) (K)] Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder’s responsibility based on available information, or may find that the bidder is not responsible.

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

RESPONSIBILITY DETERMINATION FORM

Project Name: ______________________

Bid Number: ______________________

Business Entity Name: ______________________

CCB License Number: ______________________

Form Submitted By (Contracting Agency):

_______________________________________________________________________________________

Form Submitted By (Contracting Agency Representative’s Name): ______________________

Title: ______________________

Date: ______________________

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

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

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

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

  [ ] Has available the appropriate
    financial, material, equipment,
    facility and personnel resources
    and expertise, or the ability to
    obtain the resources and
    expertise, necessary to meet
    all contractual responsibilities.

[ ] Holds current licenses that
  businesses or service professionals
  operating in this state must hold
  in order to undertake or perform
the work specified in the contract.

[ ] Is covered by liability insurance
and other insurance in amounts
required in the solicitation
documents.

[ ] Qualifies as a carrier-insured
employer or a self-insured
employer under ORS 656.407 or has
elected coverage under ORS 656.128.

[ ] Has disclosed the bidder's first-
tier subcontractors in accordance
with ORS 279C.370.

[ ] Has a satisfactory record of
performance.

[ ] Has a satisfactory record of
integrity.

[ ] Is legally qualified to contract
with the contracting agency.

[ ] Possesses a certificate that
the Oregon Department of
Administrative Services issued under
ORS 279A.167.

[ ] Is a training agent for
apprentices in apprenticeable
occupations, if the contract
is with a state contracting
agency.

[ ] Has supplied all necessary
information in connection with
the inquiry concerning
responsibility.

[ ] Determined the bidder to be
(check one of the following):

[ ] Responsible under ORS 279C.375
(3)(a) and (b).

[ ] Not responsible under
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) The successful bidder shall:

(a) Promptly execute a formal contract; and
(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

(5) Based on competitive bids, a contracting agency may award a public improvement contract or may award multiple public improvement contracts when specified in the invitation to bid.

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

SECTION 4. The amendments to ORS 279C.375 and 279C.533 by sections 1 and 3 of this 2021 Act apply to public improvement contracts that a state contracting agency advertises or otherwise solicits or, if the state contracting agency does not advertise or solicit the public improvement contract, to public improvement contracts into which the state contracting agency enters on and after the operative date specified in section 5 (1) of this 2021 Act.

SECTION 5. (1) The amendments to ORS 279C.375 and 279C.533 by sections 1 and 3 of this 2021 Act become operative on January 1, 2022.

(2) The amendments to ORS 279C.533 by section 2 of this 2021 Act become operative on January 1, 2024.

(3) The Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and a state contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General, the director or the state contracting agency, on and after the operative date specified in subsection (1) of this section, to undertake or exercise all of the duties, functions and powers conferred on the Attorney General, the director or the state contracting agency by the amendments to ORS 279C.375 and 279C.533 by sections 1 and 3 of this 2021 Act.

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.