

House Bill 2756

Sponsored by Representative HOLVEY, Senator DEMBROW; Representative OWENS (at the request of Associated Wall and Ceiling Contractors, Northwest Carpenters Union) (Pre-session 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

1
2 Relating to apprentice utilization requirements for public improvement contracts with state con-
3 tracting agencies; creating new provisions; amending ORS 279C.375 and 279C.533; and prescrib-
4 ing an effective date.

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

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

8 279C.533. (1) As used in this section:

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

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

11 (c) "Apprenticeship agreement" has the meaning given that term in ORS 660.010.

12 (d) "Apprenticeship training program" means the total system of apprenticeship that a particular
13 local joint committee, as defined in ORS 660.010, operates, including the local joint committee's
14 registered standards and all other terms and conditions for qualifying, recruiting, selecting, em-
15 ploying and training apprentices in an apprenticeable occupation.

16 (e) **"Economically disadvantaged individual" has the meaning given that term in ORS**
17 **200.005.**

18 (f) **"Minority individual" has the meaning given that term in ORS 200.005.**

19 (g) **"Service-disabled veteran" has the meaning given that term in ORS 200.005.**

20 (h) **"Socially disadvantaged individual" has the meaning given that term in ORS 200.005.**

21 (i) **"Woman" has the meaning given that term in ORS 200.005.**

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

24 (a) Employ apprentices to perform 12 percent of the work hours that workers in apprenticeable
25 occupations perform on the public improvement; [*and*]

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 (b) Require in each subcontract for which the contract price exceeds the lesser of \$1 million or
 2 25 percent of the price of the **public improvement** contract that the subcontractor employ ap-
 3 prentices to perform 12 percent of the work hours that workers in apprenticeable occupations per-
 4 form on the subcontract[.]; **and**

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

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

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

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

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

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

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

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

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

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

2 (b) Apprentices performed work on the public improvement.

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

10 (7) This section does not apply to[:]

11 [(a) *The Department of Transportation or a public improvement contract that a contractor enters*
 12 *into with the department; or]*

13 [(b)] a public contract that a state contracting agency enters into under ORS 279B.080.

14 **SECTION 2.** ORS 279C.533, as amended by section 3, chapter 416, Oregon Laws 2017, and sec-
 15 tion 1 of this 2021 Act, is amended to read:

16 279C.533. (1) As used in this section:

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

18 (b) “Apprenticeable occupation” has the meaning given that term in ORS 660.010.

19 (c) “Apprenticeship agreement” has the meaning given that term in ORS 660.010.

20 (d) “Apprenticeship training program” means the total system of apprenticeship that a particular
 21 local joint committee, as defined in ORS 660.010, operates, including the local joint committee’s
 22 registered standards and all other terms and conditions for qualifying, recruiting, selecting, em-
 23 ploying and training apprentices in an apprenticeable occupation.

24 (e) “Economically disadvantaged individual” has the meaning given that term in ORS 200.005.

25 (f) “Minority individual” has the meaning given that term in ORS 200.005.

26 (g) “Service-disabled veteran” has the meaning given that term in ORS 200.005.

27 (h) “Socially disadvantaged individual” has the meaning given that term in ORS 200.005.

28 (i) “Woman” has the meaning given that term in ORS 200.005.

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

31 (a) Employ apprentices to perform [12] **15** percent of the work hours that workers in
 32 apprenticeable occupations perform on the public improvement;

33 (b) Require in each subcontract for which the contract price exceeds the lesser of [*\$1 million*]
 34 **\$200,000** or 25 percent of the price of the public improvement contract that the subcontractor em-
 35 ploy apprentices to perform [12] **15** percent of the work hours that workers in apprenticeable occu-
 36 pations perform on the subcontract; and

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

43 (A) Advertises apprenticeship opportunities available with the subcontractor in general circu-
 44 lation publications, trade association publications, social media websites and other printed and
 45 electronic publications that serve an audience or readership that consists primarily of minorities,

1 women, service-disabled veterans, economically disadvantaged individuals and socially disadvantaged
 2 individuals;

3 (B) Provides written notice of apprenticeship opportunities available with the subcontractor di-
 4 rectly to apprenticeship programs in the local area in which work under the public improvement
 5 contract will occur;

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

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

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

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

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

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

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

34 (b) Apprentices performed work on the public improvement.

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

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

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

45 279C.375. (1) After a contracting agency has opened bids and determined that the contracting

1 agency will award a public improvement contract, the contracting agency shall award the contract
2 to the lowest responsible bidder.

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

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

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

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

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

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

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

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

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

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

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

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

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

43 **(J) Is a training agent, as defined in ORS 660.010, if the contracting agency is a state**
44 **contracting agency and if the public improvement contract has a contract price that exceeds**
45 **\$3 million. The bidder must also demonstrate that the bidder will require, in any subcontract**

1 **the bidder awards that is related to the public improvement contract and that has a contract**
2 **price that exceeds \$200,000, that the subcontractor is a training agent.**

3 [(J)] (K) Supplied all necessary information in connection with the inquiry concerning respon-
4 sibility. If a bidder fails to promptly supply information concerning responsibility that the contract-
5 ing agency requests, the contracting agency shall determine the bidder's responsibility based on
6 available information, or may find that the bidder is not responsible.

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

9 _____

10
11 RESPONSIBILITY DETERMINATION FORM

12
13 Project Name: _____

14 Bid Number: _____

15 Business Entity Name: _____

16 CCB License Number: _____

17 Form Submitted By (Contracting Agency):
18 _____

19 Form Submitted By (Contracting Agency Representative's Name): _____

20 Title: _____

21 Date: _____

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

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

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

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

35 [] Has available the appropriate
36 financial, material, equipment,
37 facility and personnel resources
38 and expertise, or the ability to
39 obtain the resources and
40 expertise, necessary to meet
41 all contractual responsibilities.

42 [] Holds current licenses that
43 businesses or service professionals
44 operating in this state must hold
45 in order to undertake or perform

- 1 the work specified in the contract.
- 2 [] Is covered by liability insurance
- 3 and other insurance in amounts
- 4 required in the solicitation
- 5 documents.
- 6 [] Qualifies as a carrier-insured
- 7 employer or a self-insured
- 8 employer under ORS 656.407 or has
- 9 elected coverage under ORS 656.128.
- 10 [] Has disclosed the bidder's first-
- 11 tier subcontractors in accordance
- 12 with ORS 279C.370.
- 13 [] Has a satisfactory record of
- 14 performance.
- 15 [] Has a satisfactory record of
- 16 integrity.
- 17 [] Is legally qualified to contract
- 18 with the contracting agency.
- 19 [] Possesses a certificate that
- 20 the Oregon Department of
- 21 Administrative Services issued under
- 22 ORS 279A.167.
- 23 [] **Is a training agent for**
- 24 **apprentices in apprenticeable**
- 25 **occupations, if the contract**
- 26 **is with a state contracting**
- 27 **agency.**
- 28 [] Has supplied all necessary
- 29 information in connection with
- 30 the inquiry concerning
- 31 responsibility.
- 32 [] Determined the bidder to be
- 33 (check one of the following):
- 34 [] Responsible under ORS 279C.375
- 35 (3)(a) and (b).
- 36 [] Not responsible under
- 37 ORS 279C.375 (3)(a) and (b).
- 38 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

-
- 41 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
 - 42 Construction Contractors Board within 30 days after the date the contracting agency awards the
 - 43 contract.
 - 44 (4) The successful bidder shall:
 - 45 (a) Promptly execute a formal contract; and

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

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

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

9 **SECTION 4. The amendments to ORS 279C.375 and 279C.533 by sections 1 and 3 of this**
10 **2021 Act apply to public improvement contracts that a state contracting agency advertises**
11 **or otherwise solicits or, if the state contracting agency does not advertise or solicit the**
12 **public improvement contract, to public improvement contracts into which the state con-**
13 **tracting agency enters on and after the operative date specified in section 5 (1) of this 2021**
14 **Act.**

15 **SECTION 5. (1) The amendments to ORS 279C.375 and 279C.533 by sections 1 and 3 of this**
16 **2021 Act become operative on January 1, 2022.**

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

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

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

29