

# House Bill 2649

Sponsored by Representative HOLVEY, Senator MANNING JR, Representative RUIZ (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**.

Provides that qualifying agency must require as material provision of public improvement contract that contractor establish and implement plan for outreach to and recruitment and retention of women, minority individuals and veterans to perform work under public improvement contract, with aspirational target of having individuals in one or more of these groups perform at least 15 percent of total work hours that workers perform under public improvement contract. Specifies requirements for plan of outreach, recruitment and retention.

Requires contractor to report information concerning contractor's compliance with provisions of Act to qualifying agency and that qualifying agency in turn report information to Oregon Department of Administrative Services, which must aggregate information for state and report results to committee of Legislative Assembly related to public contracting not later than March 1 of each odd-numbered year.

Provides that qualifying agency may reduce payment due to contractor for failure to comply with requirement to employ apprentices on public improvement project and specifies formula for calculating amount of penalty. Provides that Construction Contractors Board must list contractor or subcontractor that fails to pay apprentices as required as ineligible for award of public improvement contract for period of three years.

Increases utilization of apprentices for work on public improvement projects from 12 percent of all work hours performed on the public improvement to 15 percent on January 1, 2025.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to workforce requirements; amending ORS 279C.533; and prescribing an effective date.

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

4 **SECTION 1.** ORS 279C.533 is amended to read:

5 279C.533. (1) As used in this section:

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

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

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

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

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

14 (f) "**Qualifying agency**" means:

15 (A) **A state contracting agency; and**

16 (B) **The Higher Education Coordinating Commission, a public university listed in ORS**  
17 **352.002 and a community college district, as defined in ORS 341.005, to the extent that the**  
18 **commission, the university or the district uses funds paid directly or indirectly from the**  
19 **State Treasury for all or a portion of the construction costs of a public improvement.**

20 (g) "**Veteran**" has the meaning given that term in ORS 408.225.

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

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

3 (a) Employ apprentices to perform 12 percent of the work hours that workers in apprenticeable  
4 occupations perform on the public improvement; and

5 (b) Require in each subcontract for which the contract price exceeds the lesser of \$1 million or  
6 25 percent of the price of the contract that the subcontractor employ apprentices to perform 12  
7 percent of the work hours that workers in apprenticeable occupations perform on the subcontract.

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

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

16 (5)(a) **A qualifying agency shall require as a material provision of a public improvement  
17 contract that the contractor establish and implement a plan for outreach to and recruitment  
18 and retention of women, minority individuals and veterans to perform work under the public  
19 improvement contract, with an aspirational target of having individuals in one or more of  
20 these groups to perform at least 15 percent of the total work hours that workers perform  
21 under the public improvement contract. A contractor's plan for outreach, recruitment and  
22 retention must require the contractor to, at a minimum:**

23 (A) **Advertise employment opportunities available under the public improvement contract  
24 in general circulation publications, trade association publications and publications that serve  
25 an audience or readership that consists primarily of minority individuals, women or veterans;**

26 (B) **Follow up on the contractor's initial solicitations of interest by contacting minority  
27 individuals, women or veterans who expressed interest in or responded to the initial solici-  
28 tation to determine with certainty whether the minority individual, woman or veteran is  
29 interested in the opportunities described in subparagraph (A) of this paragraph;**

30 (C) **Provide persons who express continued interest with adequate information about  
31 hiring qualifications, pay rates, benefits, the expected duration of employment, work hours  
32 and other conditions of employment under the public improvement contract;**

33 (D) **Negotiate in good faith with prospective employees and must not without justifiable  
34 reason reject a prospective employee as unqualified;**

35 (E) **Make efforts to encourage minority individuals, women and veterans to seek em-  
36 ployment under the public improvement contract that the contractor may reasonably expect  
37 will produce a level of participation that meets the qualifying agency's goals or requirements;  
38 and**

39 (F) **Use the services of minority community organizations, minority contractor groups,  
40 local, state and federal minority business assistance offices and other organizations that  
41 have recruiting, training and otherwise assisting minority individuals, women and veterans  
42 as the group's, office's or organization's primary purpose or mission to assist the contractor  
43 with outreach, recruitment and retention.**

44 (b) **A qualifying agency may rebuttably presume that for the purposes of this subsection  
45 a contractor is not responsible and has not made good faith efforts to encourage minority**

1 **individuals, women or veterans to seek employment under the public improvement contract**  
 2 **if the contractor does not take all of the actions required under paragraph (a) of this sub-**  
 3 **section. Superficial or pro forma efforts do not demonstrate responsibility or constitute ad-**  
 4 **equate good faith efforts under this subsection.**

5 **(c) A contractor shall require any subcontractor with which the contractor has a sub-**  
 6 **contract with a contract price of \$200,000 or more to comply with the requirements set forth**  
 7 **for the contractor in paragraph (a) of this subsection.**

8 [(5)] (6) A contractor shall report the extent of the contractor's compliance with this section to  
 9 the [state contracting] **qualifying** agency on forms, with contents the [state contracting] **qualifying**  
 10 agency specifies by rule, and at regular intervals that the [state contracting] **qualifying** agency  
 11 specifies in the public improvement contract. The forms and the contents that the [state  
 12 contracting] **qualifying** agency specifies must include, at a minimum, a report in which the contrac-  
 13 tor provides a detailed accounting of:

14 **(a) The total number of work hours each month and the cumulative total number of work hours**  
 15 **since the public improvement contract term began in which:**

16 [(a)] **(A) Workers in apprenticeable occupations performed work on the public improvement; and**

17 [(b)] **(B) Apprentices performed work on the public improvement.**

18 **(b) The total numbers of minority individuals, women and veterans who performed con-**  
 19 **struction work under the public improvement contract.**

20 [(6)] (7) At least 30 days before making any final payment to a contractor under a public im-  
 21 provement contract, a [state contracting] **qualifying** agency shall determine the extent of the  
 22 contractor's compliance with the [requirement] **requirements** in [subsection (2)] **subsections (2) and**  
 23 **(3)** of this section. The [state contracting] **qualifying** agency shall base the determination on the  
 24 ratio between the actual number of work hours that workers in apprenticeable occupations per-  
 25 formed on the public improvement and the actual number of work hours that apprentices performed  
 26 on the public improvement, as shown in reports the [state contracting] **qualifying** agency receives  
 27 under subsection [(5)] (6) of this section.

28 **(8)(a) Not later than 30 days after making a final payment to a contractor under a public**  
 29 **improvement contract, a qualifying agency shall report to the Oregon Department of Ad-**  
 30 **ministrative Services the information the qualifying agency collected from the contractor**  
 31 **under subsection (6) of this section, together with the qualifying agency's determination**  
 32 **under subsection (7) of this section as to whether the contractor met the requirements for**  
 33 **employing and paying apprentices set forth in subsections (2) and (3) of this section.**

34 **(b) Not later than March 1 of each odd-numbered year the department shall report to a**  
 35 **committee of the Legislative Assembly that considers matters related to public contracting**  
 36 **the following aggregated data concerning all public improvement projects that occurred**  
 37 **within the previous two years:**

38 **(A) The total number of work hours that workers in apprenticeable occupations performed**  
 39 **on the public improvement projects;**

40 **(B) The total number of apprentices that performed work on the public improvement**  
 41 **projects;**

42 **(C) The percentage of the work hours described in subparagraph (A) of this paragraph**  
 43 **that apprentices performed on the public improvements;**

44 **(D) Which public improvement projects met and did not meet the requirements set forth**  
 45 **in subsections (2) and (3) of this section; and**

1 (E) The total number of minority individuals, women and veterans who performed work  
 2 on the public improvement projects.

3 (9)(a) A qualifying agency shall reduce the payment due under a public improvement  
 4 contract to a contractor that does not meet the requirements set forth under subsections  
 5 (2) and (3) of this section. The amount of the reduction must be equivalent to the difference  
 6 between the total number of work hours that apprentices in apprenticeable occupations  
 7 should have performed on the public improvement project to meet the requirement set forth  
 8 in subsection (2) of this section less the total number of work hours that apprentices in  
 9 apprenticeable occupations actually performed on the public improvement project, multiplied  
 10 by the hourly rate of wage for the highest-paid journeyman in an apprenticeable occupation  
 11 that the contractor employed on the public improvement.

12 (b) The qualifying agency shall pay the amount of the reduction under paragraph (a) of  
 13 this subsection to the State Treasury to the credit of the Bureau of Labor and Industries.  
 14 The bureau shall use the amount deposited to fund programs that expand apprentice training  
 15 programs throughout the state and that otherwise foster regional workforce development.

16 (c) A contractor, in a subcontract related to the contractor’s public improvement con-  
 17 tract, may provide to the same extent described in paragraph (a) of this subsection for a  
 18 reduction in the amount due to the subcontractor if the subcontractor fails to perform the  
 19 subcontract in accordance with the contractor’s requirements under subsection (4) of this  
 20 section. The contractor may also provide in the contract for a reduction in the amount due  
 21 a subcontractor that fails to comply with subsection (5)(c) of this section.

22 (10) The Construction Contractors Board for a period of three years shall list as ineligible  
 23 for an award of a public improvement contract any contractor or subcontractor that does  
 24 not comply with subsection (3) of this section.

25 [(7)] (11) This section does not apply to[:]

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

28 [(b) a public contract that a [state contracting] **qualifying** agency enters into under ORS  
 29 279B.080.

30 **SECTION 2.** ORS 279C.533, as amended by section 1 of this 2023 Act, is amended to read:

31 279C.533. (1) As used in this section:

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

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

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

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

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

40 (f) “Qualifying agency” means:

41 (A) A state contracting agency; and

42 (B) The Higher Education Coordinating Commission, a public university listed in ORS 352.002  
 43 and a community college district, as defined in ORS 341.005, to the extent that the commission, the  
 44 university or the district uses funds paid directly or indirectly from the State Treasury for all or a  
 45 portion of the construction costs of a public improvement.

1 (g) “Veteran” has the meaning given that term in ORS 408.225.

2 (h) “Woman” has the meaning given that term in ORS 200.005.

3 (2) A qualifying agency shall provide in each public improvement contract for which the con-  
4 tract price exceeds \$3 million that the contractor shall:

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

7 (b) Require in each subcontract for which the contract price exceeds the lesser of \$1 million or  
8 25 percent of the price of the contract that the subcontractor employ apprentices to perform [12]  
9 **15** percent of the work hours that workers in apprenticeable occupations perform on the subcon-  
10 tract.

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

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

19 (5)(a) A qualifying agency shall require as a material provision of a public improvement contract  
20 that the contractor establish and implement a plan for outreach to and recruitment and retention  
21 of women, minority individuals and veterans to perform work under the public improvement con-  
22 tract, with an aspirational target of having individuals in one or more of these groups to perform  
23 at least 15 percent of the total work hours that workers perform under the public improvement  
24 contract. A contractor’s plan for outreach, recruitment and retention must require the contractor  
25 to, at a minimum:

26 (A) Advertise employment opportunities available under the public improvement contract in  
27 general circulation publications, trade association publications and publications that serve an audi-  
28 ence or readership that consists primarily of minority individuals, women or veterans;

29 (B) Follow up on the contractor’s initial solicitations of interest by contacting minority individ-  
30 uals, women or veterans who expressed interest in or responded to the initial solicitation to deter-  
31 mine with certainty whether the minority individual, woman or veteran is interested in the  
32 opportunities described in subparagraph (A) of this paragraph;

33 (C) Provide persons who express continued interest with adequate information about hiring  
34 qualifications, pay rates, benefits, the expected duration of employment, work hours and other con-  
35 ditions of employment under the public improvement contract;

36 (D) Negotiate in good faith with prospective employees and must not without justifiable reason  
37 reject a prospective employee as unqualified;

38 (E) Make efforts to encourage minority individuals, women and veterans to seek employment  
39 under the public improvement contract that the contractor may reasonably expect will produce a  
40 level of participation that meets the qualifying agency’s goals or requirements; and

41 (F) Use the services of minority community organizations, minority contractor groups, local,  
42 state and federal minority business assistance offices and other organizations that have recruiting,  
43 training and otherwise assisting minority individuals, women and veterans as the group’s, office’s  
44 or organization’s primary purpose or mission to assist the contractor with outreach, recruitment and  
45 retention.

1 (b) A qualifying agency may rebuttably presume that for the purposes of this subsection a con-  
 2 tractor is not responsible and has not made good faith efforts to encourage minority individuals,  
 3 women or veterans to seek employment under the public improvement contract if the contractor  
 4 does not take all of the actions required under paragraph (a) of this subsection. Superficial or pro  
 5 forma efforts do not demonstrate responsibility or constitute adequate good faith efforts under this  
 6 subsection.

7 (c) A contractor shall require any subcontractor with which the contractor has a subcontract  
 8 with a contract price of \$200,000 or more to comply with the requirements set forth for the con-  
 9 tractor in paragraph (a) of this subsection.

10 (6) A contractor shall report the extent of the contractor's compliance with this section to the  
 11 qualifying agency on forms, with contents the qualifying agency specifies by rule, and at regular  
 12 intervals that the qualifying agency specifies in the public improvement contract. The forms and the  
 13 contents that the qualifying agency specifies must include, at a minimum, a report in which the  
 14 contractor provides a detailed accounting of:

15 (a) The total number of work hours each month and the cumulative total number of work hours  
 16 since the public improvement contract term began in which:

- 17 (A) Workers in apprenticeable occupations performed work on the public improvement; and
- 18 (B) Apprentices performed work on the public improvement.

19 (b) The total numbers of minority individuals, women and veterans who performed construction  
 20 work under the public improvement contract.

21 (7) At least 30 days before making any final payment to a contractor under a public improve-  
 22 ment contract, a qualifying agency shall determine the extent of the contractor's compliance with  
 23 the requirements in subsections (2) and (3) of this section. The qualifying agency shall base the  
 24 determination on the ratio between the actual number of work hours that workers in apprenticeable  
 25 occupations performed on the public improvement and the actual number of work hours that ap-  
 26 prentices performed on the public improvement, as shown in reports the qualifying agency receives  
 27 under subsection (6) of this section.

28 (8)(a) Not later than 30 days after making a final payment to a contractor under a public im-  
 29 provement contract, a qualifying agency shall report to the Oregon Department of Administrative  
 30 Services the information the qualifying agency collected from the contractor under subsection (6)  
 31 of this section, together with the qualifying agency's determination under subsection (7) of this  
 32 section as to whether the contractor met the requirements for employing and paying apprentices set  
 33 forth in subsections (2) and (3) of this section.

34 (b) Not later than March 1 of each odd-numbered year the department shall report to a com-  
 35 mittee of the Legislative Assembly that considers matters related to public contracting the following  
 36 aggregated data concerning all public improvement projects that occurred within the previous two  
 37 years:

- 38 (A) The total number of work hours that workers in apprenticeable occupations performed on the  
 39 public improvement projects;
- 40 (B) The total number of apprentices that performed work on the public improvement projects;
- 41 (C) The percentage of the work hours described in subparagraph (A) of this paragraph that ap-  
 42 prentices performed on the public improvements;
- 43 (D) Which public improvement projects met and did not meet the requirements set forth in  
 44 subsections (2) and (3) of this section; and
- 45 (E) The total number of minority individuals, women and veterans who performed work on the

1 public improvement projects.

2 (9)(a) A qualifying agency shall reduce the payment due under a public improvement contract  
 3 to a contractor that does not meet the requirements set forth under subsections (2) and (3) of this  
 4 section. The amount of the reduction must be equivalent to the difference between the total number  
 5 of work hours that apprentices in apprenticeable occupations should have performed on the public  
 6 improvement project to meet the requirement set forth in subsection (2) of this section less the total  
 7 number of work hours that apprentices in apprenticeable occupations actually performed on the  
 8 public improvement project, multiplied by the hourly rate of wage for the highest-paid journeyman  
 9 in an apprenticeable occupation that the contractor employed on the public improvement.

10 (b) The qualifying agency shall pay the amount of the reduction under paragraph (a) of this  
 11 subsection to the State Treasury to the credit of the Bureau of Labor and Industries. The bureau  
 12 shall use the amount deposited to fund programs that expand apprentice training programs  
 13 throughout the state and that otherwise foster regional workforce development.

14 (c) A contractor, in a subcontract related to the contractor’s public improvement contract, may  
 15 provide to the same extent described in paragraph (a) of this subsection for a reduction in the  
 16 amount due to the subcontractor if the subcontractor fails to perform the subcontract in accordance  
 17 with the contractor’s requirements under subsection (4) of this section. The contractor may also  
 18 provide in the contract for a reduction in the amount due a subcontractor that fails to comply with  
 19 subsection (5)(c) of this section.

20 (10) The Construction Contractors Board for a period of three years shall list as ineligible for  
 21 an award of a public improvement contract any contractor or subcontractor that does not comply  
 22 with subsection (3) of this section.

23 (11) This section does not apply to a public contract that a qualifying agency enters into under  
 24 ORS 279B.080.

25 **SECTION 3. The amendments to ORS 279C.533 by section 1 of this 2023 Act apply to**  
 26 **procurements that a qualifying agency advertises or otherwise solicits or, if the qualifying**  
 27 **agency does not advertise or otherwise solicit the procurement, to public improvement con-**  
 28 **tracts into which the qualifying agency enters on and after the operative date specified in**  
 29 **section 4 (1) of this 2023 Act.**

30 **SECTION 4. (1) The amendments to ORS 279C.533 by section 1 of this 2023 Act become**  
 31 **operative on January 1, 2024.**

32 **(2) The amendments to ORS 279C.533 by section 2 of this 2023 Act become operative on**  
 33 **January 1, 2025.**

34 **(3) The Attorney General, the Director of the Oregon Department of Administrative**  
 35 **Services, the Director of Transportation and a qualifying agency, as defined in section 1 of**  
 36 **this 2023 Act, that adopts rules under ORS 279A.065 or 279A.070, or under another provision**  
 37 **of law that provides for adopting rules related to public contracting, may adopt rules and**  
 38 **take any other action before the operative date specified in subsection (1) of this section that**  
 39 **is necessary to enable the Attorney General, the directors or the qualifying agency, on and**  
 40 **after the operative date specified in subsection (1) of this section, to undertake and exercise**  
 41 **all of the duties, functions and powers conferred on the Attorney General, the directors or**  
 42 **the qualifying agency under the amendments to ORS 279C.533 by section 1 of this 2023 Act.**

43 **SECTION 5. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
 44 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**