

HOUSE BILL REPORT

ESSB 5873

As Passed House:
April 9, 2009

Title: An act relating to apprentice utilization.

Brief Description: Regarding apprenticeship utilization.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Kline, Keiser, Hobbs, Marr, Fairley, McAuliffe, Kohl-Welles and Shin).

Brief History:

Committee Activity:

Commerce & Labor: 3/17/09, 3/27/09 [DP];
Capital Budget: 4/6/09 [DP].

Floor Activity

Passed House: 4/9/09, 63-34.

Brief Summary of Engrossed Substitute Bill

- Extends apprenticeship utilization requirements to public works contracts awarded by institutions of higher education.
- Disqualifies a contractor from being awarded a public works contract if he or she has been found out of compliance for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes, for the one-year period immediately preceding the date of the bid solicitation.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler and Crouse.

Staff: Alison Hellberg (786-7152)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass. Signed by 9 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Blake, Chase, Grant-Herriot, Jacks, Maxwell, Orwall and White.

Minority Report: Do not pass. Signed by 6 members: Representatives Warnick, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Anderson, Hope, McCune and Smith.

Staff: Steve Masse (786-7115)

Background:

Apprenticeship Utilization Requirements.

State agencies under the Governor's authority and school districts must require that apprentices enrolled in state-approved apprenticeship training programs participate in public works projects. The requirement for state agencies was originally established in an executive order issued in 2000, and codified in legislation enacted in 2005. The requirement for school districts was enacted in 2007.

For public works by a state agency under the Governor's authority estimated to cost \$1 million or more, the specifications must require that no less than 15 percent of the labor hours be performed by apprentices enrolled in state-approved apprenticeship training programs.

These apprenticeship utilization provisions apply to public works contracts awarded by state agencies, but not the state Department of Transportation, state four-year institutions of higher education, or state agencies headed by a separately elected public official. (Public works by the state Department of Transportation are subject to slightly different apprenticeship utilization requirements.)

For contracts advertised for bid on or after January 1, 2009, for public works by a school district estimated to cost \$2 million or more, contract specifications must require that no less than 12 percent of the labor hours be performed by apprentices. For contracts advertised for bid on or after January 1, 2010, estimated to cost \$1 million or more, contract specifications must require that no less than 15 percent of the labor hours be performed by apprentices.

Awarding agencies may adjust this apprenticeship utilization requirement for specific projects for the following reasons:

- a demonstrated lack of availability of apprentices in specific geographic areas;
- a disproportionately high ratio of material costs to labor hours;
- a demonstrated good faith effort by participating contractors to comply with the apprenticeship utilization requirement; or
- other criteria the agency director deems appropriate, subject to prior review by the Office of the Governor.

Responsible Bidders.

Contractors bidding on public works contracts must meet responsibility criteria in order to be considered a responsible bidder and qualified to be awarded a public works project. Bidders must be registered as a contractor; have a current state unified business identifier number; have industrial insurance, unemployment insurance, and a state excise tax registration number; and not be disqualified from bidding for prevailing wage or contractor registration violations.

Contractors are barred from bidding on public works contracts for one year if the contractor has committed any combination of two of the following violations in a five-year period: knowingly misrepresenting payroll or employee hours upon which the industrial insurance premium is based; engaging in business without having obtained a certificate of industrial insurance coverage; committing an infraction under the Contractor Registration Act; or performing work as an unregistered contractor.

Summary of Bill:

Public works contracts awarded by state four-year institutions of higher education must include apprentice utilization provisions. The apprentice utilization requirements are phased in over a three-year period:

- For contracts advertised for bid on or after January 1, 2010, for public works by four-year institutions of higher education that are estimated to cost \$3 million or more, the specifications must require that no less than 10 percent of the labor hours be performed by apprentices enrolled in state-approved apprenticeship training programs.
- For contracts advertised for bid on or after January 1, 2011, for public works by four-year institutions of higher education estimated to cost \$2 million or more, the specifications must require that no less than 12 percent of the labor hours be performed by apprentices enrolled in state-approved apprenticeship training programs.
- For contracts advertised for bid on or after January 1, 2012, for public works by four-year institutions of higher education estimated to cost \$1 million or more, all specifications shall require that no less than 15 percent of the labor hours be performed by apprentices enrolled in state-approved apprenticeship training programs.

In order to meet the responsible bidder criteria and qualify to be awarded a public works project, a bidder on a public works subject to the apprenticeship utilization requirements must not have been found out of compliance by the Washington State Apprenticeship and Training Council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes, for the one-year period immediately preceding the date of the bid solicitation.

An additional violation is added to the list of violations for which a contractor can be barred from bidding on a public works contract if the contractor commits any combination of two violations in a five-year period. The additional violation is being found out of compliance for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Commerce & Labor):

(In support) In recent years, apprentices in the construction industry have doubled. The apprenticeship utilization requirements for state agencies and public schools have certainly helped this expansion. The stimulus money will result in an increase in construction jobs. The main reason apprentices leave apprenticeship programs is because of lack of employment. This bill insures that apprentices stay employed.

This bill also addresses concerns about the authority of the Washington State Apprenticeship and Training Council (Council). Under current law the Council may reject apprenticeship program standards, but has no authority to punish contractors who are out of compliance without disbanding the joint apprentice and training committee.

Apprenticeship utilization requirements were pioneered in Seattle and adopted by the Port of Seattle in 1993. They have also been in place in other state agencies and there has not been a decrease in bids. Washington's apprenticeship utilization requirements are models for other states. These requirements add more impact to the use of public funds. Money spent on public works projects does not just build something, but invests in training and the future. Large contractors have been doing this for a long time. This just further extends a good policy. The administrative costs are generally pretty low. The existing staff who deal with public contracting compliance can easily monitor this requirement as well.

Apprenticeship gives students a chance to have a career in the trades with family-wage jobs. Many students do not want to pursue a four-year degree, but face barriers in pursuing a technical education. Multiple career paths are necessary.

The bill should be expanded to make the apprenticeship utilization requirements by trade or craft.

(With concerns) Apprenticeship is very important and the concept is supported. Institutions of higher education, however, are facing severe budget problems and this bill would create an undue burden. The bill could be improved if the thresholds were raised and it would apply to projects estimated to cost more than \$5 million.

(Opposed) This bill interferes with worksite management and micromanages a contractor's business. Apprenticeship quotas should not be substituted for effective management. Apprenticeship is important to the construction industry and contractors put a tremendous amount of effort and resources into supporting it, but this bill is not the way to promote it. There are already processes in place to insure that apprentices get a full-range of experience in types and phases of projects. More flexibility is needed to allow apprentices to complete their education. This puts them all in public works projects and keeps them away from

private projects. An exemption for employers who contractually agree to use apprentices would improve this bill.

This bill restricts access to public works contracts. Open shops do not have equal access to apprenticeship programs. Only 7 - 10 percent of the existing apprentice programs are open shop. Most women and minority-owned businesses and small family-owned businesses are open shop so it further excludes these businesses from public contracts.

The enforcement issues are a major concern with this bill. It is hoped that the rule-making provision will be vigorously pursued to protect the due process rights of contractors.

Staff Summary of Public Testimony (Capital Budget):

(In support) In recent years, apprentices in the construction industry have doubled. The apprenticeship utilization requirements for state agencies and public schools have certainly helped this expansion. The stimulus money will result in an increase in construction jobs.

The main reason apprentices leave apprenticeship programs is because of lack of employment. This bill insures that apprentices stay employed. This bill also addresses concerns about the authority of the Washington State Apprenticeship and Training Council (Council). Under current law the Council may reject apprenticeship program standards, but has no authority to punish contractors who are out of compliance without disbanding the Joint Apprentice and Training Committee. Apprenticeship utilization requirements were pioneered in Seattle and adopted by the Port of Seattle in 1993. They have also been in place in other state agencies and there has not been a decrease in bids. Washington's apprenticeship utilization requirements are models for other states. These requirements add more impact to the use of public funds. Money spent on public works projects does not just build something, but invests in training and the future. Large contractors have been doing this for a long time. This just further extends a good policy. The administrative costs are generally pretty low. The existing staff who deal with public contracting compliance can easily monitor this requirement as well. Apprenticeship gives students a chance to have a career in the trades with family-wage jobs. Many students do not want to pursue a four-year degree, but face barriers in pursuing a technical education. Multiple career paths are necessary.

The bill should be expanded to make the apprenticeship utilization requirements by trade or craft.

(Information only) The Department of General Administration has managed the apprenticeship program for about 10 years for state agencies and the Community and Technical College system. They have not seen an additional administrative expense as a result of the program.

(Opposed) Apprenticeship is very important and the concept is supported. Institutions of higher education, however, are facing severe budget problems and this bill would create an undue burden. The bill could be improved if the thresholds were raised and it would apply to projects estimated to cost more than \$5 million.

This bill interferes with worksite management and micromanages a contractor's business. Apprenticeship quotas should not be substituted for effective management. Apprenticeship is important to the construction industry and contractors put a tremendous amount of effort and resources into supporting it, but this bill is not the way to promote it. There are already processes in place to insure that apprentices get a full-range of experience in types and phases of projects. More flexibility is needed to allow apprentices to complete their education. This puts them all in public works projects and keeps them away from private projects. An exemption for employers who contractually agree to use apprentices would improve this bill.

This bill restricts access to public works contracts. Open shops do not have equal access to apprenticeship programs. Only 7 to 10 percent of the existing apprenticeship programs are open shop. Most women and minority-owned businesses and small family-owned businesses are open shop so it further excludes these businesses from public contracts. The enforcement issues are a major concern with this bill. It is hoped that the rule-making provision will be vigorously pursued to protect the due process rights of contractors.

Persons Testifying (Commerce & Labor): (In support) Melinda Nichols and Susan Crane, Washington State Apprenticeship and Training Council; Dave Johnson, Washington State Building and Construction Trades Council; Brian Zandell, Spokane Alliance and Iron Workers Local 14; Olga Addea and Sherry Kreinick, Sound Alliance; Don DeMulling, Iron Workers Local 86; and Bob Abbott, Washington and North Idaho District Council of Laborers.

(With concerns) Julie Suchanek, The Evergreen State College.

(Opposed) Aran Buchan, Associated Builders and Contractors; James Curry, Washington Construction Industry Council; Larry Stevens, Mechanical Contractors Association and National Electrical Contractors Association; and Rick Slunaker, Associated General Contractors of Washington.

Persons Testifying (Capital Budget): (In support) Senator Kline, prime sponsor; Dave Johnson, Washington State Building and Construction Trades Council; Bob Abbott, Laborers District Council; and John Aultman, Office of the Superintendent of Public Instruction.

(Information only) John Lynch, Department of General Administration.

(Opposed) James Curry, Associated Builders and Contractors; Rick Slunaker, Associated General Contractors; Larry Stevens, Mechanical Contractors Association and National Contractors Association; and Cliff Webster, Washington Construction Industry Council.

Persons Signed In To Testify But Not Testifying (Commerce & Labor): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.