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ENGROSSED SUBSTITUTE SENATE BILL 5873

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State of Washington

61st Legislature

2009 Regular Session

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Kline, Keiser, Hobbs, Marr, Fairley, McAuliffe, Kohl-Welles, and Shin)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to apprentice utilization; amending RCW 39.04.320,  
2 39.04.350, and 39.12.055; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 39.04.320 and 2007 c 437 s 2 are each amended to read  
5 as follows:

6 (1)(a) Except as provided in (b) (~~and (e)~~) through (d) of this  
7 subsection, from January 1, 2005, and thereafter, for all public works  
8 estimated to cost one million dollars or more, all specifications shall  
9 require that no less than fifteen percent of the labor hours be  
10 performed by apprentices.

11 (b)(i) This section does not apply to contracts advertised for bid  
12 before July 1, 2007, for any public works by the department of  
13 transportation.

14 (ii) For contracts advertised for bid on or after July 1, 2007, and  
15 before July 1, 2008, for all public works by the department of  
16 transportation estimated to cost five million dollars or more, all  
17 specifications shall require that no less than ten percent of the labor  
18 hours be performed by apprentices.

1 (iii) For contracts advertised for bid on or after July 1, 2008,  
2 and before July 1, 2009, for all public works by the department of  
3 transportation estimated to cost three million dollars or more, all  
4 specifications shall require that no less than twelve percent of the  
5 labor hours be performed by apprentices.

6 (iv) For contracts advertised for bid on or after July 1, 2009, for  
7 all public works by the department of transportation estimated to cost  
8 two million dollars or more, all specifications shall require that no  
9 less than fifteen percent of the labor hours be performed by  
10 apprentices.

11 (c)(i) This section does not apply to contracts advertised for bid  
12 before January 1, 2008, for any public works by a school district, or  
13 to any project funded in whole or in part by bond issues approved  
14 before July 1, 2007.

15 (ii) For contracts advertised for bid on or after January 1, 2008,  
16 for all public works by a school district estimated to cost three  
17 million dollars or more, all specifications shall require that no less  
18 than ten percent of the labor hours be performed by apprentices.

19 (iii) For contracts advertised for bid on or after January 1, 2009,  
20 for all public works by a school district estimated to cost two million  
21 dollars or more, all specifications shall require that no less than  
22 twelve percent of the labor hours be performed by apprentices.

23 (iv) For contracts advertised for bid on or after January 1, 2010,  
24 for all public works by a school district estimated to cost one million  
25 dollars or more, all specifications shall require that no less than  
26 fifteen percent of the labor hours be performed by apprentices.

27 (d)(i) For contracts advertised for bid on or after January 1,  
28 2010, for all public works by a four-year institution of higher  
29 education estimated to cost three million dollars or more, all  
30 specifications must require that no less than ten percent of the labor  
31 hours be performed by apprentices.

32 (ii) For contracts advertised for bid on or after January 1, 2011,  
33 for all public works by a four-year institution of higher education  
34 estimated to cost two million dollars or more, all specifications must  
35 require that no less than twelve percent of the labor hours be  
36 performed by apprentices.

37 (iii) For contracts advertised for bid on or after January 1, 2012,  
38 for all public works by a four-year institution of higher education

1 estimated to cost one million dollars or more, all specifications must  
2 require that no less than fifteen percent of the labor hours be  
3 performed by apprentices.

4 (2) Awarding (~~agency directors or school districts~~) entities may  
5 adjust the requirements of this section for a specific project for the  
6 following reasons:

7 (a) The demonstrated lack of availability of apprentices in  
8 specific geographic areas;

9 (b) A disproportionately high ratio of material costs to labor  
10 hours, which does not make feasible the required minimum levels of  
11 apprentice participation;

12 (c) Participating contractors have demonstrated a good faith effort  
13 to comply with the requirements of RCW 39.04.300 and 39.04.310 and this  
14 section; or

15 (d) Other criteria the awarding (~~agency director or school~~  
16 ~~district~~) entity deems appropriate, which are subject to review by the  
17 office of the governor.

18 (3) The secretary of the department of transportation shall adjust  
19 the requirements of this section for a specific project for the  
20 following reasons:

21 (a) The demonstrated lack of availability of apprentices in  
22 specific geographic areas; or

23 (b) A disproportionately high ratio of material costs to labor  
24 hours, which does not make feasible the required minimum levels of  
25 apprentice participation.

26 (4) This section applies to public works contracts awarded by the  
27 state (~~and~~), to public works contracts awarded by school districts,  
28 and to public works contracts awarded by state four-year institutions  
29 of higher education. However, this section does not apply to contracts  
30 awarded by (~~state four-year institutions of higher education or~~)  
31 state agencies headed by a separately elected public official.

32 (5)(a) The department of general administration must provide  
33 information and technical assistance to affected agencies and collect  
34 the following data from affected agencies for each project covered by  
35 this section:

36 (i) The name of each apprentice and apprentice registration number;

37 (ii) The name of each project;

38 (iii) The dollar value of each project;

- 1 (iv) The date of the contractor's notice to proceed;
- 2 (v) The number of apprentices and labor hours worked by them,  
3 categorized by trade or craft;
- 4 (vi) The number of journey level workers and labor hours worked by  
5 them, categorized by trade or craft; and
- 6 (vii) The number, type, and rationale for the exceptions granted  
7 under subsection (2) of this section.

8 (b) The department of labor and industries shall assist the  
9 department of general administration in providing information and  
10 technical assistance.

11 (6) The secretary of transportation shall establish an  
12 apprenticeship utilization advisory committee, which shall include  
13 statewide geographic representation and consist of equal numbers of  
14 representatives of contractors and labor. The committee must include  
15 at least one member representing contractor businesses with less than  
16 thirty-five employees. The advisory committee shall meet regularly  
17 with the secretary of transportation to discuss implementation of this  
18 section by the department of transportation, including development of  
19 the process to be used to adjust the requirements of this section for  
20 a specific project. The committee shall provide a report to the  
21 legislature by January 1, 2008, on the effects of the apprentice labor  
22 requirement on transportation projects and on the availability of  
23 apprentice labor and programs statewide.

24 (7) At the request of the senate labor, commerce, research and  
25 development committee, the house of representatives commerce and labor  
26 committee, or their successor committees, and the governor, the  
27 department of general administration and the department of labor and  
28 industries shall compile and summarize the agency data and provide a  
29 joint report to both committees. The report shall include  
30 recommendations on modifications or improvements to the apprentice  
31 utilization program and information on skill shortages in each trade or  
32 craft.

33 **Sec. 2.** RCW 39.04.350 and 2007 c 133 s 2 are each amended to read  
34 as follows:

35 (1) Before award of a public works contract, a bidder must meet the  
36 following responsibility criteria to be considered a responsible bidder  
37 and qualified to be awarded a public works project. The bidder must:

1 (a) At the time of bid submittal, have a certificate of  
2 registration in compliance with chapter 18.27 RCW;

3 (b) Have a current state unified business identifier number;

4 (c) If applicable, have industrial insurance coverage for the  
5 bidder's employees working in Washington as required in Title 51 RCW;  
6 an employment security department number as required in Title 50 RCW;  
7 and a state excise tax registration number as required in Title 82 RCW;  
8 ((and))

9 (d) Not be disqualified from bidding on any public works contract  
10 under RCW 39.06.010 or 39.12.065(3); and

11 (e) If bidding on a public works project subject to the  
12 apprenticeship utilization requirements in RCW 39.04.320, not have been  
13 found out of compliance by the Washington state apprenticeship and  
14 training council for working apprentices out of ratio, without  
15 appropriate supervision, or outside their approved work processes as  
16 outlined in their standards of apprenticeship under chapter 49.04 RCW  
17 for the one-year period immediately preceding the date of the bid  
18 solicitation.

19 (2) In addition to the bidder responsibility criteria in subsection  
20 (1) of this section, the state or municipality may adopt relevant  
21 supplemental criteria for determining bidder responsibility applicable  
22 to a particular project which the bidder must meet.

23 (a) Supplemental criteria for determining bidder responsibility,  
24 including the basis for evaluation and the deadline for appealing a  
25 determination that a bidder is not responsible, must be provided in the  
26 invitation to bid or bidding documents.

27 (b) In a timely manner before the bid submittal deadline, a  
28 potential bidder may request that the state or municipality modify the  
29 supplemental criteria. The state or municipality must evaluate the  
30 information submitted by the potential bidder and respond before the  
31 bid submittal deadline. If the evaluation results in a change of the  
32 criteria, the state or municipality must issue an addendum to the  
33 bidding documents identifying the new criteria.

34 (c) If the bidder fails to supply information requested concerning  
35 responsibility within the time and manner specified in the bid  
36 documents, the state or municipality may base its determination of  
37 responsibility upon any available information related to the  
38 supplemental criteria or may find the bidder not responsible.

1 (d) If the state or municipality determines a bidder to be not  
2 responsible, the state or municipality must provide, in writing, the  
3 reasons for the determination. The bidder may appeal the determination  
4 within the time period specified in the bidding documents by presenting  
5 additional information to the state or municipality. The state or  
6 municipality must consider the additional information before issuing  
7 its final determination. If the final determination affirms that the  
8 bidder is not responsible, the state or municipality may not execute a  
9 contract with any other bidder until two business days after the bidder  
10 determined to be not responsible has received the final determination.

11 (3) The capital projects advisory review board created in RCW  
12 (~~(39.10.800)~~) 39.10.220 shall develop suggested guidelines to assist  
13 the state and municipalities in developing supplemental bidder  
14 responsibility criteria. The guidelines must be posted on the board's  
15 web site.

16 **Sec. 3.** RCW 39.12.055 and 2008 c 120 s 3 are each amended to read  
17 as follows:

18 A contractor shall not be allowed to bid on any public works  
19 contract for one year from the date of a final determination that the  
20 contractor has committed any combination of two of the following  
21 violations or infractions within a five-year period:

22 (1) Violated RCW 51.48.020(1) or 51.48.103; (~~(or)~~)

23 (2) Committed an infraction or violation under chapter 18.27 RCW  
24 for performing work as an unregistered contractor; or

25 (3) Determined to be out of compliance by the Washington state  
26 apprenticeship and training council for working apprentices out of  
27 ratio, without appropriate supervision, or outside their approved work  
28 processes as outlined in their standards of apprenticeship under  
29 chapter 49.04 RCW.

30 NEW SECTION. **Sec. 4.** The Washington state apprenticeship and  
31 training council shall adopt rules necessary to implement sections 2  
32 and 3 of this act. Rules shall address due process protections for all  
33 parties and shall strengthen the accountability for apprenticeship  
34 committees approved under chapter 49.04 RCW in enforcing the

1 apprenticeship program standards adopted by the council.

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