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HOUSE BILL 2526

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State of Washington

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By Representatives Moeller, Ormsby, Moscoso, Sells, Bergquist, Reykdal, Appleton, S. Hunt, Roberts, Cody, Morrell, Freeman, and Pollet

Read first time 01/20/14. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to increasing the use of apprenticeships; amending  
2 RCW 39.12.055, 39.04.350, and 39.04.320; and adding a new section to  
3 chapter 39.04 RCW.

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

5 **Sec. 1.** RCW 39.12.055 and 2009 c 197 s 3 are each amended to read  
6 as follows:

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

- 11 (1) Violated RCW 51.48.020(1) or 51.48.103;
- 12 (2) Committed an infraction or violation under chapter 18.27 RCW  
13 for performing work as an unregistered contractor; (~~or~~)
- 14 (3) Determined to be out of compliance by the Washington state  
15 apprenticeship and training council for working apprentices out of  
16 ratio, without appropriate supervision, or outside their approved work  
17 processes as outlined in their standards of apprenticeship under  
18 chapter 49.04 RCW; or

1       (4) Determined to be out of compliance with the percentage of labor  
2 hours required to be performed by apprentices under RCW 39.04.320.

3       **Sec. 2.** RCW 39.04.350 and 2010 c 276 s 2 are each amended to read  
4 as follows:

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

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

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

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

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

17       (e) If bidding on a public works project subject to the  
18 apprenticeship utilization requirements in RCW 39.04.320, not have been  
19 found out of compliance with the percentage of labor hours required to  
20 be performed by apprentices under RCW 39.04.320 or not have been found  
21 out of compliance by the Washington state apprenticeship and training  
22 council for working apprentices out of ratio, without appropriate  
23 supervision, or outside their approved work processes as outlined in  
24 their standards of apprenticeship under chapter 49.04 RCW for the one-  
25 year period immediately preceding the date of the bid solicitation; and

26       (f) Until December 31, 2013, not have violated RCW 39.04.370 more  
27 than one time as determined by the department of labor and industries.

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

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

36       (b) In a timely manner before the bid submittal deadline, a  
37 potential bidder may request that the state or municipality modify the

1 supplemental criteria. The state or municipality must evaluate the  
2 information submitted by the potential bidder and respond before the  
3 bid submittal deadline. If the evaluation results in a change of the  
4 criteria, the state or municipality must issue an addendum to the  
5 bidding documents identifying the new criteria.

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

11 (d) If the state or municipality determines a bidder to be not  
12 responsible, the state or municipality must provide, in writing, the  
13 reasons for the determination. The bidder may appeal the determination  
14 within the time period specified in the bidding documents by presenting  
15 additional information to the state or municipality. The state or  
16 municipality must consider the additional information before issuing  
17 its final determination. If the final determination affirms that the  
18 bidder is not responsible, the state or municipality may not execute a  
19 contract with any other bidder until two business days after the bidder  
20 determined to be not responsible has received the final determination.

21 (3) The capital projects advisory review board created in RCW  
22 39.10.220 shall develop suggested guidelines to assist the state and  
23 municipalities in developing supplemental bidder responsibility  
24 criteria. The guidelines must be posted on the board's web site.

25 **Sec. 3.** RCW 39.04.320 and 2009 c 197 s 1 are each amended to read  
26 as follows:

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

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

35 (ii) For contracts advertised for bid on or after July 1, 2007, and  
36 before July 1, 2008, for all public works by the department of

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

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

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

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

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

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

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

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

35 (ii) For contracts advertised for bid on or after January 1, 2011,  
36 for all public works by a four-year institution of higher education  
37 estimated to cost two million dollars or more, all specifications must

1 require that no less than twelve percent of the labor hours be  
2 performed by apprentices.

3 (iii) For contracts advertised for bid on or after January 1, 2012,  
4 for all public works by a four-year institution of higher education  
5 estimated to cost one million dollars or more, all specifications must  
6 require that no less than fifteen percent of the labor hours be  
7 performed by apprentices.

8 (2) Awarding entities may adjust the requirements of this section  
9 for a specific project for the following reasons:

10 (a) The demonstrated lack of availability of apprentices in  
11 specific geographic areas;

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

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

18 (d) Other criteria the awarding entity deems appropriate, which are  
19 subject to review by the office of the governor.

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

23 (a) The demonstrated lack of availability of apprentices in  
24 specific geographic areas; or

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

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

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

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

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

10 (b) The department of labor and industries shall assist the  
11 department of (~~general administration~~) enterprise services in  
12 providing information and technical assistance.

13 (c) The department of enterprise services shall monitor  
14 contractors' compliance with this section. The department of  
15 enterprise services shall maintain on its web site a list of  
16 contractors that have been found to be out of compliance with the  
17 percentage of labor hours required to be performed by apprentices under  
18 this section. The department of enterprise services may adopt rules to  
19 implement this subsection (5)(c).

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

33 (7) At the request of the senate labor, commerce, research and  
34 development committee, the house of representatives commerce and labor  
35 committee, or their successor committees, and the governor, the  
36 department of (~~general administration~~) enterprise services and the  
37 department of labor and industries shall compile and summarize the  
38 agency data and provide a joint report to both committees. The report

1 shall include recommendations on modifications or improvements to the  
2 apprentice utilization program and information on skill shortages in  
3 each trade or craft.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 39.04 RCW  
5 to read as follows:

6 (1) For the purposes of determining the lowest responsible bidder  
7 on a contract for public works under this chapter, the state or  
8 municipality shall decrease the bid amount of a bidder by five percent  
9 if the bidder is employing a trade on the public work, the trade is one  
10 for which there is a registered apprenticeship program with the  
11 department of labor and industries, and the bidder is a party to an  
12 apprenticeship agreement registered with the department of labor and  
13 industries for that trade. If the bidder will employ more than one  
14 trade on the public work, the bidder must be a party to an  
15 apprenticeship agreement for each trade it is employing that has a  
16 registered apprenticeship program. The preference granted in this  
17 section does not reduce the contract amount awarded.

18 (2)(a) To receive the preference in this section, the responsible  
19 bidder must, at the time of submitting a bid, furnish written proof of  
20 being a party to a registered apprenticeship agreement for each  
21 apprenticed trade the bidder will employ on the public work.

22 (b) After being awarded the contract, if the bidder at any time  
23 during the contract is no longer a party to a registered apprenticeship  
24 agreement for each apprenticed trade the bidder is employing on the  
25 public work, the bidder shall notify the state or municipality within  
26 thirty days of no longer being a party to a registered apprenticeship  
27 agreement.

28 (c) The state or municipality may include in the contract sanctions  
29 to be imposed on a bidder that fails to remain a party to a registered  
30 apprenticeship agreement during the duration of the contract.  
31 Sanctions may include, but are not limited to, temporary or permanent  
32 cessation of work on the project without recourse to breach of contract  
33 claims by the bidder or restitution for nonperformance.

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