

SENATE BILL REPORT

SB 5576

As of February 6, 2018

Title: An act relating to compliance with apprenticeship utilization requirements.

Brief Description: Addressing compliance with apprenticeship utilization requirements.

Sponsors: Senators Keiser, Fortunato, Conway, Miloscia, Hobbs, Takko, Hasegawa, Wellman and Saldaña.

Brief History:

Committee Activity: Commerce, Labor & Sports: 2/09/17, 6/28/17.

Labor & Commerce: 1/11/18, 1/15/18 [DPS, DNP].

Ways & Means: 1/29/18, 1/30/18 [DP2S-TRAN, DNP].

Transportation: 2/05/18.

Brief Summary of Second Substitute Bill

- Requires public works contracts to contain apprenticeship utilization goals by cost value and, except for Department of Transportation (DOT) contracts, monetary penalties and incentives for not meeting the goals.
- Requires contracts to include specifications that a contractor or subcontractor may not be required to exceed the apprenticeship utilization requirements.
- Requires awarding agencies to monitor and report compliance by contractor and subcontractor to the Supervisor of Apprenticeship (Supervisor) for verification.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5576 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

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.

Minority Report: Do not pass.
Signed by Senators Braun, King and Wilson.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5576 be substituted therefor, and the second substitute bill do pass and be referred to Committee on Transportation.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Schoesler, Wagoner and Warnick.

Staff: Richard Ramsey (786-7412)

SENATE COMMITTEE ON TRANSPORTATION

Staff: Erica Bramlet (786-7321)

Background: Apprenticeship Programs. Apprenticeship programs offer on-the-job training under the supervision of journey-level workers and require a certain number of instructional hours. The Washington State Apprenticeship and Training Council (Council), which is part of the Department of Labor and Industries (L&I), establishes standards for apprenticeship programs and approves training programs. Standards set by the Council address the allowable ratios of apprentices to journey-level workers, the type of work apprentices may do, and the required supervision of apprentices. An employer may partner with an approved apprenticeship program or develop its own, subject to approval of the Council.

The Supervisor is appointed by the director of L&I. The Supervisor's duties include:

- encouraging and promoting apprenticeship programs that conform to state and federal standards;
- acting as secretary of the Council;
- registering, keeping record of, and terminating apprenticeship agreements; and
- issuing certificates of completion of apprenticeships.

Apprenticeship Utilization Requirements. In general, all public works that are estimated to cost \$1 million or more must require at least 15 percent of the labor hours be performed by apprentices enrolled in approved apprenticeship training programs. This requirement applies to contracts awarded by the state, school districts, and state four-year institutions of higher education. For DOT, apprenticeship utilization requirements apply to projects of \$3 million or more until 2020. After 2020, the utilization requirements for DOT apply to projects of \$2 million or more.

Labor hours are the total hours of workers receiving an hourly wage who are directly employed upon the public works project. Labor hours include hours performed by workers

employed by the contractor and all subcontractors working on the project. It does not include hours worked by foremen, superintendents, owners, and workers not required to be paid prevailing wage.

Awarding agencies may adjust apprenticeship utilization requirements for certain reasons, such as an insufficient number of apprentices in a certain geographic area.

The Department of Enterprise Services (DES) must provide information and technical assistance and collect certain data from agencies regarding apprenticeship utilization requirements.

Responsibility Criteria. A contractor bidding on a public works project must meet certain criteria, known as responsible bidder criteria, in order to be awarded a public works contract. One of the criteria is that the contractor must not have been found to be out of compliance for working apprentices out of ratio, without supervision, or outside their approved work processes, for the one-year period preceding the date of the bid solicitation.

Debarment. A contractor is debarred from bidding on any public works contract for one year if the contractor has committed any two of the following violations in a five-year period:

- filing a false payroll report;
- failing to obtain industrial insurance coverage;
- failing to register as a contractor; or
- working apprentices out of ratio, without supervision, or outside their approved work processes.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Within existing resources, awarding agencies are responsible for monitoring compliance with requirements regarding apprenticeship utilization hours and must report noncompliance by contractors and subcontractors to the Supervisor. Public works contracts are required to specify that contractors and subcontractors may not be required to exceed apprenticeship utilization requirements.

The Supervisor must verify compliance by contractors, subcontractors, and awarding agencies and may coordinate with DES, DOT, the Office of the Superintendent of Public Instruction, and other agencies to track compliance. Compliance information must be made available to the Council and used to determine compliance for the purposes of responsibility criteria and debarment.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Removes a provision requiring public works contracts to contain monetary incentives and disincentives tied to meeting apprenticeship utilization goals.
- Requires awarding agencies to develop a compliance process similar to the three-strike system developed by the Washington State Department of Transportation.

- Adds not receiving a third strike under the compliance process developed under the bill to the responsible bidder criteria that bidders must meet in order to be awarded a public works contract.
- Authorizes appropriations from the Public Works Administration Account for state agency costs for programs required by chapter 39.04 RCW.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Removes a provision requiring apprenticeship utilization requirements and labor hours apply to each and every contractor.
- Removes a provision adding apprenticeship utilization to the responsible bidder criteria.
- Removes a provision adding violations of apprenticeship utilization requirements to the violations that make a contractor eligible for debarment.
- Adds a requirement for public works contracts to specify apprenticeship utilization goals and monetary incentives and disincentives for meeting and not meeting the goals.
- Adds a requirement for the Supervisor of Apprenticeship to verify compliance.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony on Original Bill (Commerce, Labor & Sports): *Testimony from 2017 Regular Session.* PRO: Apprenticeships ensure there are plenty of good workers available in the state and trains the new crop of skilled workers. Apprenticeship utilization is good public policy. Apprenticeship utilization requirements are frequently not met. The bill increases accountability on subcontractors and contractors who sometimes free ride on certain trades or other contractors. The bill puts contract monitoring in the proper place.

CON: The bill would make it even more difficult to find workers in an already difficult climate. In some circumstances, apprenticeship requirements are impossible to meet, this bill would punish those contractors. The bill is too rigid and does not allow flexibility on projects. The bill would make it impossible for small contractors to do business. The Legislature should give incentives instead of punishing contractors.

Persons Testifying (Commerce, Labor & Sports): PRO: Senator Karen Keiser, Prime Sponsor; Neil Hartman, Washington State Building and Construction Trades Council; Scott Middleton, Mechanical Contractors Association of Western Washington.

CON: Jerry VanderWood, Associated General Contractors; Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying (Commerce, Labor & Sports): No one.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: Apprenticeships are good for industry and grow the worker pool, helping with the shortage of workers. Proponents are working with industry on providing incentives rather than punishments and putting better data collection provisions into the bill.

CON: Smaller contractors have concerns about the bill because it would be impossible for them to meet the apprenticeship thresholds in the bill.

OTHER: General contractors are working with proponents on possible changes, but have concerns about the original bill.

Persons Testifying (Labor & Commerce): PRO: Senator Karen Keiser, Prime Sponsor; Neil Hartman, Washington State Building & Construction Trades Council; Chris McClain, Business Manager/Iron Workers; Michael Transue, Mechanical Contractors Association of Western Washington.

CON: Gary Smith, Independent Business Association.

OTHER: Jerry VanderWood, AGC of Washington.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: There have been very good results for the WSDOT apprenticeship program and we're looking to broaden the approach to other state agencies. Apprenticeships are vitally important to training the skilled workforce for Washington's future. The bill provides predictability for contractors in bidding on public works projects. We're working with WSDOT to reduce the fiscal effect of the bill.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Scott Middleton, Mechanical Contractors Association of Western Washington; Neil Hartman, Washington Building and Construction Trades Council.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

Staff Summary of Public Testimony on Proposed Third Substitute (Transportation): PRO: Apprenticeships are a critical investment for Washington's future workforce and infrastructure. The bill is trying to ensure compliance with the apprenticeship utilization policy.

The third proposed substitute version is a result of a lot of stakeholders working together to fine-tune the policy and reduce fiscal impacts to agencies, especially by allowing WSDOT to continue using their existing, highly regarded program. Where the apprentice hours come from is still up to the contractors, as this version of the bill keeps the data reporting by total project.

OTHER: This version is better because it has a later effective date, which allows time for the L&I reporting system to catch up with the data reporting requirements, and because it uses incentives/disincentives instead of debarment. Language to clarify that contractors can still negotiate with subcontractors on where apprenticeship utilization hours come from would be helpful.

Persons Testifying (Transportation): PRO: Scott Middleton, Mechanical Contractors Association of Western Washington; Neil Hartman, Washington State Building & Construction Trades Council.

OTHER: Jerry VanderWood, Associated General Contractors of Washington.

Persons Signed In To Testify But Not Testifying (Transportation): No one.