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SECOND SUBSTITUTE SENATE BILL 5576

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State of Washington

65th Legislature

2018 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Fortunato, Conway, Miloscia, Hobbs, Takko, Hasegawa, Wellman, and Saldaña)

READ FIRST TIME 02/01/18.

1 AN ACT Relating to compliance with apprenticeship utilization  
2 requirements; amending RCW 39.04.320, 39.04.350, and 39.12.080; and  
3 adding a new section to chapter 49.04 RCW.

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

5 **Sec. 1.** RCW 39.04.320 and 2015 3rd sp.s. c 40 s 1 are each  
6 amended to read as follows:

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

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

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

20 (iii) For contracts advertised for bid on or after July 1, 2008,  
21 and before July 1, 2009, for all public works by the department of

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

4 (iv) For contracts advertised for bid on or after July 1, 2015,  
5 and before July 1, 2020, 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 fifteen percent of the  
8 labor hours be performed by apprentices.

9 (v) For contracts advertised for bid on or after July 1, 2020,  
10 for all public works by the department of transportation estimated to  
11 cost two million dollars or more, all specifications shall require  
12 that no 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  
15 bid before January 1, 2008, for any public works by a school  
16 district, or to any project funded in whole or in part by bond issues  
17 approved before July 1, 2007.

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

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

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

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

38 (ii) For contracts advertised for bid on or after January 1,  
39 2011, for all public works by a four-year institution of higher  
40 education estimated to cost two million dollars or more, all

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

3 (iii) For contracts advertised for bid on or after January 1,  
4 2012, for all public works by a four-year institution of higher  
5 education estimated to cost one million dollars or more, all  
6 specifications must require that no less than fifteen percent of the  
7 labor hours be 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  
16 effort to comply with the requirements of RCW 39.04.300 and 39.04.310  
17 and this section; or

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

20 (3) The secretary of the department of transportation shall  
21 adjust the requirements of this section for a specific project for  
22 the 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)(a) This section applies to public works contracts awarded by  
29 the state, to public works contracts awarded by school districts, and  
30 to 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 (b) Awarding agencies are responsible for monitoring  
35 apprenticeship utilization hours by contractor. There must be a  
36 specific line item in the contract specifying that apprenticeship  
37 utilization goals should be met and an expected cost value to be  
38 included in the bid associated with meeting the goals. The awarding  
39 agency must report the apprenticeship utilization by contractor and  
40 subcontractor to the supervisor of apprenticeship at the department

1 of labor and industries by final project acceptance. Awarding  
2 agencies must develop a compliance consequence process similar to the  
3 three-strike system developed by the Washington state department of  
4 transportation, including the allowance for a good faith effort.

5 (5)(a) The department of enterprise services must provide  
6 information and technical assistance to affected agencies and collect  
7 the following data from affected agencies for each project covered by  
8 this section:

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

11 (ii) The name of each project;

12 (iii) The dollar value of each project;

13 (iv) The date of the contractor's notice to proceed;

14 (v) The number of apprentices and labor hours worked by them,  
15 categorized by trade or craft;

16 (vi) The number of journey level workers and labor hours worked  
17 by them, categorized by trade or craft; and

18 (vii) The number, type, and rationale for the exceptions granted  
19 under subsection (2) of this section.

20 (b) The department of labor and industries shall assist the  
21 department of enterprise services in providing information and  
22 technical assistance.

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

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

1 utilization program and information on skill shortages in each trade  
2 or craft.

3 (8) All contracts subject to this section must include  
4 specifications that a contractor or subcontractor may not be required  
5 to exceed the apprenticeship utilization requirements of this  
6 section.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.04  
8 RCW to read as follows:

9 (1) In addition to the duties established under RCW 49.04.030,  
10 the supervisor of apprenticeship must verify compliance by  
11 contractors, subcontractors, and awarding agencies of apprenticeship  
12 utilization requirements. The supervisor may coordinate with the  
13 department of enterprise services, the state department of  
14 transportation, the office of the superintendent of public  
15 instruction, and any other appropriate agency or organization to  
16 assist in tracking compliance.

17 (2) Compliance information must be made available to the  
18 apprenticeship council and must be used to determine compliance for  
19 purposes of RCW 39.04.350 and 39.12.055.

20 (3) The director of labor and industries must adopt rules to  
21 implement this section.

22 **Sec. 3.** RCW 39.04.350 and 2017 c 258 s 2 are each amended to  
23 read as follows:

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

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

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

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

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

1 (e) If bidding on a public works project subject to the  
2 apprenticeship utilization requirements in RCW 39.04.320((7)):

3 (i) Not have been found out of compliance by the Washington state  
4 apprenticeship and training council for working apprentices out of  
5 ratio, without appropriate supervision, or outside their approved  
6 work processes as outlined in their standards of apprenticeship under  
7 chapter 49.04 RCW for the one-year period immediately preceding the  
8 date of the bid solicitation; and

9 (ii) Not have received a third strike from an awarding agency  
10 under the compliance process developed under RCW 39.04.320(4)(b)  
11 during the one year immediately preceding the date of the bid  
12 solicitation;

13 (f) Until December 31, 2013, not have violated RCW 39.04.370 more  
14 than one time as determined by the department of labor and  
15 industries; and

16 (g) Within the three-year period immediately preceding the date  
17 of the bid solicitation, not have been determined by a final and  
18 binding citation and notice of assessment issued by the department of  
19 labor and industries or through a civil judgment entered by a court  
20 of limited or general jurisdiction to have willfully violated, as  
21 defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or  
22 49.52 RCW.

23 (2) Before award of a public works contract, a bidder shall  
24 submit to the contracting agency a signed statement in accordance  
25 with RCW 9A.72.085 verifying under penalty of perjury that the bidder  
26 is in compliance with the responsible bidder criteria requirement of  
27 subsection (1)(g) of this section. A contracting agency may award a  
28 contract in reasonable reliance upon such a sworn statement.

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

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

37 (b) In a timely manner before the bid submittal deadline, a  
38 potential bidder may request that the state or municipality modify  
39 the supplemental criteria. The state or municipality must evaluate  
40 the information submitted by the potential bidder and respond before

1 the bid submittal deadline. If the evaluation results in a change of  
2 the criteria, the state or municipality must issue an addendum to the  
3 bidding documents identifying the new criteria.

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

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

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

24 **Sec. 4.** RCW 39.12.080 and 2006 c 230 s 2 are each amended to  
25 read as follows:

26 The public works administration account is created in the state  
27 treasury. The department of labor and industries shall deposit in the  
28 account all moneys received from fees or civil penalties collected  
29 under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from  
30 the account may be made only for the purposes of administration of  
31 this chapter, including, but not limited to, the performance of  
32 adequate wage surveys(~~(, and)~~); for the investigation and enforcement  
33 of all alleged violations of this chapter as provided for in this  
34 chapter and chapters 49.48 and 49.52 RCW; and state agency costs for  
35 programs required by chapter 39.04 RCW.

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