

# SENATE BILL REPORT

## ESB 6239

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As Amended by House, March 4, 2020

**Title:** An act relating to compliance with apprenticeship utilization requirements and bidding on public works projects.

**Brief Description:** Addressing compliance with apprenticeship utilization requirements and bidding on public works projects.

**Sponsors:** Senators Conway, Keiser, Hasegawa, Saldaña, Van De Wege, Lovelett and Wilson, C.

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/27/20, 2/06/20 [DP, w/oRec, DNP].

**Floor Activity:**

Passed Senate: 2/18/20, 37-10.

Passed House: 3/04/20, 60-37.

**Brief Summary of Engrossed Bill**

- Requires a bidder for a public works project that has a history of receiving monetary penalties for not achieving apprenticeship utilization goals, or habitually utilizes the good faith effort exemption process, to submit an apprenticeship utilization plan with its bid documents.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Majority Report:** Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Stanford and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senators King, Ranking Member; Walsh.

**Minority Report:** Do not pass.

Signed by Senators Braun and Schoesler.

**Staff:** Jarrett Sacks (786-7448)

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*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.*

**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 of apprenticeship (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.

Any person, firm, association, committee, or organization that operates an apprenticeship program is known as the sponsor. A training agent is an employer of registered apprentices approved by the program sponsor to furnish on-the-job training. A training agreement is a written agreement between a sponsor and a training agent that contains the provisions of the apprenticeship program applicable to the training agent, and the duties of the training agent in providing on-the-job training.

Apprenticeship Utilization. In general, all public works 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 higher education institutions. For the Department of Transportation (DOT), apprenticeship utilization requirements apply to projects of \$3 million or more until July 1, 2020. After July 1, 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.

Within existing resources, awarding agencies are responsible for monitoring apprenticeship utilization and must report apprenticeship utilization by contractor and subcontractor to the Supervisor by final project acceptance.

Responsibility Criteria. A contractor bidding on a public works project must meet certain criteria, known as responsible bidder criteria, to be awarded a public works contract. To be a responsible bidder, the bidder must:

- be a registered contractor;
- have a current Unified Business Identifier number;

- have applicable industrial insurance coverage, an Employment Security Department number, and a state excise tax registration number;
- not be disqualified from bidding due to previous non-compliance with registration or prevailing wage requirements; and
- not have been found out of compliance with apprenticeship requirements, if the project is subject to apprenticeship utilization requirements;
- have received training on public works and prevailing wage; and
- not have been found by L&I or a court to have willfully violated the state's wage payment laws within the three-year period prior to the bid solicitation.

State agencies and municipalities are authorized to adopt relevant supplemental criteria for determining bidder responsibility for a particular project.

**Summary of Engrossed Bill:** A bidder on a public works project that has a history of receiving monetary penalties for not achieving apprenticeship utilization goals, or is habitual in utilizing the good faith effort exception process, is required to submit an apprenticeship utilization plan with its bid documents.

An apprenticeship utilization plan is a plan submitted by a prospective bidder specifically detailing verifiable efforts to meet apprenticeship utilization requirements.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The bill would improve apprenticeship utilization. A lot of training opportunities are lost because only one contractor on a project has apprentices and will carry whole weight of apprenticeship goals. General contractors are required to meet apprenticeship utilization totals, so there is no individual responsibility for some contractors to meet them. The bill will lead to more opportunities for all apprentices. Currently, some crafts are relied on more heavily for apprenticeship hours. Under the bill, all crafts must meet apprenticeship requirements, which will lead to the whole workforce being trained.

OTHER: Under the bill, penalties still fall on the general contractor. If the bill wants individual contractors to be responsible for apprenticeships, then the penalties should apply to individual contractors instead of the general contractor. The bill should also exclude smaller companies who may not be able to have apprentices. Certification of an apprenticeship program is not an easy process.

**Persons Testifying:** PRO: Senator Steve Conway, Prime Sponsor; Robert Korth, Ironworkers Local 86; Robert Arce, Ironworkers Local 86; Heather Kurtenbach, Ironworkers Local 86; Mark Riker, Washington State Building and Construction Trades Council.

OTHER: Jerry VanderWood, Associated General Contractors.

**Persons Signed In To Testify But Not Testifying:** No one.

**EFFECT OF HOUSE AMENDMENT(S):** The apprenticeship utilization plan requirement applies to bidders with a history of not meeting apprenticeship utilization requirements, rather than apprenticeship utilization goals. Instead of submitting the apprenticeship utilization plan along with its bid documents, the bidder must submit the plan within ten business days following the notice to proceed date.