



Published: January 2, 2024

New Public Contracting Law (House Bill 2649) Frequently Asked Questions

1. What are the *changes* in the law?

In the 2023 Legislative Session, the Legislature passed [House Bill \(HB\) 2649](#) which was signed by the Governor and is effective January 1, 2024. HB 2649 amends state law ([ORS 279C.533](#)) to require apprenticeship utilization on certain public improvement projects with qualifying agencies. The bill also aims to increase the workforce participation on public improvement projects of women, veterans, and individuals that identify as American Indians or Alaska Natives, Asian, Black or African American, Hispanic or Latino, Native Hawaiians or Pacific Islanders, and Portuguese or Brazilian.

2. Who are the *qualifying agencies*?

Qualifying agencies subject to these new requirements include state agencies, such as the Oregon Department of Transportation (ODOT) and Department of Administrative Services (DAS). Qualifying agencies also include the Higher Education Coordinating Commission (HECC), public universities, and community colleges when funds are paid directly or indirectly from the State Treasury.

3. Which *contractors* will be affected by HB 2649?

Contractors subject to these new requirements include prime contractors who are awarded contracts on public improvement projects with a contract value of more than \$3 million, and subcontractors on these projects with a contract value of \$750,000 or more.

4. Which *contracts* are covered by HB 2649?

Procurements that a qualifying agency advertises or otherwise solicits on or after January 1, 2024 must comply with this new law. If the qualifying agency does not solicit the procurement, then contracts that are entered on or after January 1, 2024 are subject to these requirements.

5. Will *qualifying agencies and contractors* need to track the individual worker hours?

Yes, contractors must track each worker's first name, last name, occupation, number of hours on the project and indicate whether the hours are journey worker or apprentice hours (and provide the apprentice registration agreement if known), their race/ethnicity, gender, and veteran status. Contractors may choose to track this information using BOLI's Enhanced Payroll/Certified Statement

(Enhanced WH-38)¹ form located on our website here:

<https://www.oregon.gov/boli/employers/Pages/prevaling-wage.aspx>

Qualifying agencies are required to submit the information reported to them by each contractor to the Oregon Bureau of Labor and Industries (BOLI) using the Online System for Reporting on Public Improvement Projects. Any qualifying agency may register for the Online System for Reporting on Public Improvement Projects here: <https://pwr-reporting.boli.oregon.gov/auth/login>

For convenience, a bulk upload “Public Improvement Reporting Template” agencies may use to upload worker information can be obtained online at <https://www.oregon.gov/boli/employers/Pages/prevaling-wage.aspx>, by emailing whd.reporting@boli.oregon.gov, or on the user dashboard of the Online System for Reporting Information on Public Improvement Projects.

6. What is the aspirational participation rate?

The aspirational participation rate for women, veterans, and individuals that identify as American Indians or Alaska Natives, Asian, Black or African American, Hispanic or Latino, Native Hawaiians or Pacific Islanders, and Portuguese or Brazilian is 15% of the total number of workers who perform work under the public improvement contract. This requirement must be included in the public improvement contract.

7. What are the minimum duties a contractor must perform for outreach, recruitment, and retention?

A contractor must establish and implement a plan for outreach, recruitment, and retention. This requirement must be included in the public improvement contract. At a minimum, the contractor must do the following:

- 1) Advertise employment opportunities available under the public improvement contract in general circulation publications, trade association publications and publications that serve an audience or readership that consists primarily of minority individuals, women or veterans;
- 2) Follow up on initial solicitations of interest by contacting minority individuals, women or veterans who expressed interest in or responded to the initial advertisement;
- 3) Provide all persons who express continued interest with adequate information about hiring qualifications, pay rates, benefits, the expected duration of employment, work hours and other conditions of employment under the public improvement contract;
- 4) Make efforts to encourage minority individuals, women, and veterans to seek employment under the public improvement contract that the contractor may reasonably expect will produce a level of participation that meets the aspirational target described in this paragraph; and

¹ Contractors on public works projects have an independent obligation to submit certified statements for each week once per month. See ORS 279C.845(4).

5) Use the services of minority community organizations, local, state, federal and tribal governments or other organizations that have recruiting, training and otherwise assisting minority individuals, women and veterans as the organization's primary purpose or mission to assist the contractor with outreach, recruitment, and retention.

8. What is the apprenticeship utilization requirement?

The apprenticeship utilization requirement is 12% or more of the total workforce hours starting January 1, 2024. This requirement must be included in the public improvement contract. The requirement increases to 15% or more of the total workforce hours starting January 1, 2027.

9. What will need to occur if a contractor does not meet the apprenticeship utilization requirement?

The qualifying agency must reduce the contractor payments less the total number of work hours that apprentices in apprenticeable occupations performed on the public improvement project, multiplied by \$15 per hour. Thereafter, the qualifying agency must pay the amount of the reduction over to the State Treasury, for credit to the Bureau of Labor and Industries Account.

10. When must qualifying agencies upload demographic and apprenticeship utilization reports in the Online Reporting on Public Improvement Projects?

The qualifying agencies must report demographic and apprenticeship utilization within 30 calendar days of making the final payment.