

By Senator Cruz

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1 A bill to be entitled
2 An act relating to public construction contracts;
3 creating s. 255.104, F.S.; defining terms; requiring a
4 contractor who responds to a solicitation for a
5 vertical construction project, as part of the bid, to
6 certify certain information regarding the usage of
7 apprentice or on-the-job training labor for the
8 project; requiring the contractor to submit the
9 certification before the awarding body enters into the
10 contract; specifying the minimum percentage of
11 apprentice labor required on the vertical construction
12 project; requiring the contractor to submit a written
13 notification of its inability to meet the labor
14 requirement to the awarding body for its determination
15 of whether a good faith effort existed; requiring
16 applicable contracts to include a provision regarding
17 compliance with the act; requiring the Department of
18 Management Services to develop a form that the
19 contractor must submit to document compliance with the
20 requirements; requiring the contractor to submit the
21 form to the awarding body on a monthly basis;
22 providing penalties for noncompliance; requiring the
23 department to adopt a rule to determine the amount of
24 the penalty for noncompliance; specifying authorized
25 uses for any collected penalties; providing the
26 awarding body with remedies for noncompliance by the
27 contractor; requiring awarding bodies to submit
28 reports to the department detailing contracts entered
29 into under the act; providing applicability; providing

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30 an effective date.

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32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Section 255.104, Florida Statutes, is created to
35 read:

36 255.104 Use of apprentices in specified public construction
37 contracts.—

38 (1) As used in this section, the term:

39 (a) "Apprentice" means any person who is enrolled in and
40 participating in an apprenticeship program or on-the-job
41 training program, as those terms are defined in s. 446.021(6)
42 and (7), respectively, registered with the Department of
43 Education or the United States Department of Labor.

44 (b) "Awarding body" means any state agency, department,
45 county, or municipality or any political subdivision that awards
46 and enters into a contract with a contractor for a vertical
47 construction project.

48 (c) "Good faith effort" means that the contractor, without
49 an intent to defraud or seek an unfair advantage, took all
50 necessary steps to secure and maximize the required percentage
51 for apprentice labor on a vertical construction project, to the
52 satisfaction of the awarding body.

53 (d) "Labor hours" means the total hours worked on the site
54 of a vertical construction project by workers who are employed
55 by contractors or subcontractors on the vertical construction
56 project, not including any hours worked by forepersons,
57 superintendents, or owners.

58 (e) "Vertical construction project" means a contract of \$1

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59 million or more which is funded by the awarding body and
60 involves the building, altering, repairing, improving, or
61 demolishing of any public structure or building or making other
62 public improvements of any kind which are predominately above
63 ground to any real property owned by or under control of the
64 awarding body.

65 (2) When responding to a solicitation for a vertical
66 construction project, a contractor who bids on the project must
67 certify one of the following:

68 (a) The contractor or its subcontractors participate in an
69 apprenticeship program that is registered with the Department of
70 Education or the United States Department of Labor.

71 (b) The contractor commits that at the time the contractor
72 executes a construction contract, it or its subcontractors will
73 participate in an apprenticeship program that is approved by the
74 Department of Education or the United States Department of Labor
75 or an on-the-job training program.

76 (c) The contractor has submitted documentation that
77 confirms, to the satisfaction of the awarding body, that there
78 are no registered apprenticeship or on-the-job training programs
79 for any type of work to be performed on the construction
80 project.

81 (3) The contractor must submit documentation verifying
82 compliance with subsection (2) to the awarding body before the
83 awarding body may enter into a contract for a vertical
84 construction project with the contractor.

85 (4) For the duration of the contract for the vertical
86 construction project, and as the project may be extended through
87 the issuance of change orders, at least 12 percent of the labor

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88 hours on the vertical construction project, including all work
89 performed pursuant to change orders, must be performed by
90 apprentices employed by the contractor or subcontractors.

91 (5) (a) If the contractor is unable to achieve or maintain
92 the percentage prescribed in subsection (4), the contractor must
93 notify the awarding body in writing and must provide evidence of
94 good faith efforts to achieve or maintain the required
95 percentage for consideration by the awarding body. Following
96 such notification and evaluation of any submitted documentation,
97 the awarding body must determine whether the contractor has made
98 a good faith effort.

99 (b) The evidence of a good faith effort may include
100 documentation of the contractor's communication with the
101 Department of Education's Division of Career and Adult
102 Education's Apprenticeship section; documentation of its
103 communication with state-approved training programs, labor
104 organizations, and technical schools and training schools;
105 documentation of its use of job fairs and other outreach
106 efforts; the frequency and duration of any employment
107 advertisements for apprentices; the extent to which the size of
108 the contractor's workforce affects its hiring opportunities for
109 apprentices; or any other evidence demonstrating to the
110 satisfaction of the awarding body that the contractor made a
111 good faith attempt to secure apprentice labor.

112 (6) The contract for the vertical construction project must
113 include a provision requiring the contractor and its
114 subcontractors to comply with the requirements of this section,
115 unless any of the exceptions under subsection (10) apply.

116 (7) (a) The Department of Management Services must develop a

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117 standardized form for the contractor to use to report all of the
118 following information:

119 1. The name, hourly rate, and trade classification of each
120 apprentice.

121 2. The cumulative number of hours worked on the project by
122 each apprentice.

123 3. The number of labor hours of all workers on the
124 construction project, including subcontractors.

125 (b) On a monthly basis, the contractor must prepare,
126 certify, and submit to the awarding body, using the form
127 provided, the information required under paragraph (a).

128 (8) (a) Contracts for all projects to which these
129 requirements apply must provide that if a contractor fails to
130 fully comply with the percentage requirement prescribed in
131 subsection (4) and the percentage required has not been reduced
132 by the awarding body in accordance with paragraph (10) (d), the
133 contractor will be assessed a penalty for each hour that the
134 percentage requirement is not achieved.

135 1. The penalty amount per hour must be assessed based on
136 the extent to which the contractor or subcontractor met the
137 percentage requirements prescribed in subsection (4). The
138 Department of Management Services shall adopt by rule the fee
139 schedule for the hourly assessment.

140 2. The assessments imposed must be deducted from the
141 contractor's monthly pay application and be used to support
142 construction or building trade apprentice training programs
143 registered with the Department of Education or the United States
144 Department of Labor which are located within the area of the
145 vertical construction project.

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146 (b) Failure of a contractor to comply with the requirements
147 of this section may subject the contractor to all remedies
148 available under state law, including, but not limited to,
149 debarment or suspension of the contractor from consideration for
150 the award of future contracts and termination of the current
151 contract.

152 (9) (a) By January 1, 2022, July 1, 2022, and thereafter by
153 July 1 of each year, each awarding body shall prepare a report
154 to be submitted to the Department of Management Services which
155 includes all of the following information for each contract that
156 is subject to this section:

157 1. The name of the contractor.

158 2. The name or description of the construction project.

159 3. The total dollar value of the construction project.

160 4. The number of apprentices hired for the construction
161 project.

162 5. The number of apprentice hours worked on the
163 construction project.

164 6. The total labor hours expended on the construction
165 project.

166 (b) The report must also identify any contracts in which
167 the percentage requirement prescribed in subsection (4) was not
168 met and any reasons for such failure and must include any
169 recommendations regarding the program which the awarding body
170 wishes to provide.

171 (10) This section does not apply if:

172 (a) It is prohibited by or in conflict with federal or
173 state law or the terms of a federal or state grant applicable to
174 the vertical construction project.

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175 (b) The awarding body determines that emergency
176 circumstances exist and that applying the requirements of this
177 section to the vertical construction project is not in the best
178 interest of the awarding body.

179 (c) A subcontractor is a women-owned or minority-owned
180 business and the amount to be paid under the applicable
181 subcontract for labor costs does not exceed \$1 million.

182 (d) The awarding body reduces the percentage of required
183 apprentice labor because:

184 1. The contractor demonstrated to the awarding body, after
185 making a good faith effort, that the contractor was unable to
186 find, or there does not exist, a sufficient number or type of
187 apprentices available to meet the percentage prescribed in
188 subsection (4).

189 2. The awarding body determined that a disproportionately
190 high ratio of material costs to labor hours exists for a
191 vertical construction project which makes attaining the
192 percentage prescribed in subsection (4) infeasible.

193 Section 2. This act shall take effect July 1, 2021.