



SPONSOR: Sen. Walsh & Rep. Osienski

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 184

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE RELATING TO CRAFT TRAINING REQUIREMENTS IN PUBLIC WORKS CONTRACTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 204, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 204. Training and apprenticeship programs.

4 (b)(1) The Secretary of the Department of Human Resources, in cooperation with the Department of Labor and
5 other participating appointing authorities, shall develop and annually revise a list of employment classifications in the
6 classified service which are appropriate for apprenticeship training by December 31.

7 (2) For purposes of the craft training requirement under § 6960A of Title 29, the Department of Labor shall
8 maintain a list of crafts for which there are approved and registered craft training programs in this State as follows:

9 a. An updated list must be published by January 31 each year.

10 b. At the time of the annual January update, the list must include all of the following:

11 1. All of the crafts that had 1 or more active Delaware registered apprentices complete their
12 apprenticeship during the previous 2 years.

13 2. The amount of the payment that satisfies the craft training requirement under § 6960A of Title 29
14 for each craft. The Secretary of Labor, with the concurrence of the Director of the Office of Management and
15 Budget and the Controller General, shall establish the amount of the payment which shall be 4 times the
16 average annual related technical instruction cost. The annual related technical instruction cost is calculated
17 using the cost or tuition for 1 person to attend training for each craft in each adult education division
18 vocational-technical school district offering training for the craft.

19 (3) The list of approved programs under paragraph (b)(2) of this section may be updated during the year to
20 add craft training programs after a program is approved and registered.

21 (4) The amount of the payment under paragraph (b)(2)b.2. of this section must be reviewed at least once every
22 3 years and the review must consider all of the following:

- a. The amount of monies collected.
- b. The number of additional programs created.
- c. Changes in the cost or tuition for related technical instruction.
- d. The number of contractors who have complied with the craft training requirement by making
payments.

Section 2. Amend Chapter 2, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 205. Apprenticeship and Training Fund.

(a) A special fund known as the Apprenticeship and Training Fund ("Fund") is established and the State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board.

(b) The following moneys must be deposited in the Fund:

(1) All payments made under § 6960A of Title 29.

(2) Any other money appropriated or transferred to the Fund by the General Assembly.

(c) The Department of Labor must allocate the money in the Fund at least annually, as follows:

(1) Twenty percent, after administrative costs, to the Apprenticeship and Training Section of the Department of Labor to do any of the following:

a. To promote and increase education and public awareness about registered apprenticeship and other occupational training.

b. To support pre-apprenticeship programs.

(2) Eighty percent, after administrative costs, to the Department of Education to support the related technical instruction of registered apprenticeship programs, including new areas of technical instruction for crafts that are in-demand by employers in this State, and to support pre-apprenticeship programs. The Department of Education shall disperse money from this Fund for the same purposes as other appropriations for adult trade extension and apprenticeship programs.

(3) No more than 15% of the money annually deposited into the Fund may be used for administering this Fund.

(d) Money in the Fund may not be used to supplant existing state funding.

(e) Notwithstanding paragraph (c)(3) of this section, money appropriated by the General Assembly to implement this section may be reimbursed from money received under this section.

Section 3. Amend § 6902, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6902. Definitions.

~~As used in~~ For purposes of this chapter:

(7) “Craft ~~training~~” training program” means an apprenticeship program approved by and registered with any Delaware state apprenticeship agency or the United States Department of Labor. ~~The Secretary of the Department of Labor shall maintain a list of crafts for which there are approved and registered training programs.~~

Section 4. Amend Chapter 69, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6960A. Craft training requirement.

(a)(1) A contract relating to a public works project under § 6962 of this title must include a craft training program for each craft in the project if at the time the contractor executes a public works contract, all of the following apply:

a. A project meets the prevailing wage requirement under § 6960 of this title.

b. The contractor employs 10 or more total employees.

c. The project is not a federal highway project, except for the project under § 6962(c)(11) of this title.

d. There is an apprenticeship program for a craft in the project on the list of crafts under § 204(b)(2) of

Title 19.

(2) A contractor must commit that all subcontractors provide craft training if paragraph (a)(1) of this section apply to the subcontractor.

(b)(1) If a contract requires a craft training program under subsection (a) of this section, the contractor must satisfy the craft training requirement before the contract is executed. A contractor or subcontractor may satisfy the craft training requirement under this section by doing any of the following for each craft under paragraph (a) of this section:

a. Having at least 1 active apprentice in a craft training program for the craft.

b. Having at least 1 active apprentice who completes a craft training program for the craft within the 6 months before the date the contract was executed.

c. Making a payment under subsection (c) of this section.

(2) The craft training program under paragraphs (b)(1)a. through (b)(1)b. of this section may be provided by the contractor or subcontractor or through agreement with another entity.

(3) The active apprentice under paragraphs (b)(1)a. through (b)(1)b. of this section does not have to work on the contract being executed under paragraph (b)(1) of this section.

(c) For contracts executed after [the implementation date under Section 6 of this Act], a contractor or subcontractor may satisfy the craft training requirement under this section by making a payment in the amount established under § 204(b)(2)b.2. of Title 19, for the craft into the Apprenticeship and Training Fund of the Department Labor.

(d)(1) All contracts that require a craft training program under subsection (a) of this section must contain a penalty provision against the successful bidder for the failure to comply with the requirements under this section. The penalty provision must require all of the following:

a. The contractor must pay the amount of the payment required under subsection (c) of this section to the Apprenticeship and Training Fund.

b. An amount that does not exceed 10 percent of the payment under paragraph (d)(1)a. of this section.

(2) A penalty assessed under paragraph (d)(1) of this section may be fully or partially remitted or refunded by the agency awarding the contract only if the contractor establishes compliance within 60 days of the notice of the penalty. A claim for remission or refund of a penalty may only be granted if an application for the remission or refund is filed within 1 year of the notice of the penalty.

(3) All money received from penalties under paragraph (d)(1)b. of this section, that is not remitted or refunded, reverts to the government entity under the contract for which the penalty was imposed.

Section 5. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6962. Large public works contract procedures.

(c) *Bidder prequalification requirements.*

(13)~~a.~~ If there is a craft training program requirement for a craft in the project, project under § 6960A of this title, a contractor must commit to that the contractor and all subcontractors will provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract if all of the following apply:
contract.

1. ~~A project meets the prevailing wage requirement under § 6960 of this title.~~

2. ~~The contractor employs 10 or more total employees.~~

3. ~~The project is not a federal highway project, except for the project under paragraph (c)(11) of this~~

~~section.~~

b. If there is a craft training program for a craft in the project, a contractor must commit that all subcontractors must provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract if all of the following apply:

1. A project meets the prevailing wage requirement under § 6960 of this title.

2. The subcontractor employs 10 or more total employees.

3. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

e. The craft training required under paragraphs (c)(13)a. and (c)(13)b. of this section may be provided by any of the following:

1. The contractor.

2. The subcontractor.

3. A program registered under CDR 19-1000-1101-4.0. [Repealed.]

(d) *Bid specifications and plans requirements.*

(13) *Bid evaluation, contract award and execution procedure.* —

i. *Craft training requirement.* —

1. A public works contract must include a requirement that the contractor provide craft training for journeyman and apprentice levels if all of the following apply:

A. A project meets the prevailing wage requirement under § 6960 of this title.

B. The contractor employs 10 or more total employees.

C. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

2. A public works contract must include a requirement that a subcontractor provide craft training for journeyman and apprentice levels for each craft in the contract, if all of the following apply:

A. A project meets the prevailing wage requirement under § 6960 of this title.

B. The subcontractor employs 10 or more total employees.

C. The project is not a federal highway project, except for the project under paragraph (c)(11) of this section.

3. The craft training required under paragraphs (d)(13)i.1. and (d)(13)i.2. of this section may be provided by any of the following:

A. The contractor.

141 ~~B. The subcontractor.~~

142 ~~C. A program registered under CDR 19-1000-1101-4.0. [Repealed.]~~

143 (14)a. *Suspension and debarment.* —

144 a.1. Any contractor who fails to perform a public works contract or complete a public works project
145 within the time schedule established by the agency in the invitation to bid, may be subject to suspension or
146 debarment for 1 or more of the following reasons:

147 A. Failure to supply the adequate labor supply ratio for the project.

148 B. Inadequate financial resources.

149 C. Poor performance on the project.

150 D. Failure to provide required craft training under ~~paragraph (d)(13)i. of this section.~~ § 6960A of
151 this title.

152 2. Any subcontractor who fails to provide required craft training under ~~paragraph (d)(13)i. of this~~
153 ~~section~~ § 6960A of this title may be subject to suspension or debarment.

154 b. If a contractor fails to perform a public works contract or complete a public works project under
155 paragraph (d)(14)a. of this section or a subcontractor fails to provide required craft training under paragraph
156 ~~paragraph (d)(13)i. of this section,~~ § 6960A of this title, the agency that contracted for the public works project
157 may petition the Director of the Office of Management and Budget for suspension or debarment of the contractor.
158 The agency shall send a copy of the petition to the contractor within 3 working days of filing with the Director. If
159 the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine
160 whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of
161 proving, by a preponderance of the evidence, that either the subcontractor failed to provide required craft training
162 under ~~paragraph (d)(13)i. of this section~~ § 6960A of this title or the contractor failed to perform or complete the
163 public works project within the time schedule established by the agency by failing to do so for 1 or more of the
164 following reasons:

165 1. Failure to supply the adequate labor supply ratio for the project.

166 2. Inadequate financial resources.

167 3. Poor performance on the project.

168 4. Failure to provide required craft training under ~~paragraph (d)(13)i. of this section.~~ § 6960A of this
169 title.

170 c. 1. Upon a finding in favor of the agency under paragraph (d)(14)b. of this section because a contractor
171 failed to perform a public works contract or complete a public works project, the Director may suspend a
172 contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first
173 offense, up to 3 years for a second offense and permanently debar the contractor for a third offense.

174 2. Notwithstanding the penalties under paragraph (d)(14)c.1, of this section, upon a finding in favor
175 of the agency that a contractor or subcontractor failed to perform the requirements under ~~paragraph (d)(13)i-~~
176 ~~of this section, § 6960A of this title,~~ the Director shall suspend a contractor or subcontractor who fails to
177 perform the requirements under ~~paragraph (d)(13)i- of this section~~ § 6960A of this title and shall debar the
178 contractor or subcontractor from bidding on any project funded, in whole or in part, with public funds for up
179 to 5 years.

180 d. The Director shall issue a written decision and shall send a copy to the contractor and the agency. Such
181 decision may be appealed to the Superior Court within 30 days for a review on the record.

182 Section 6. This Act is effective immediately, but Section 2 of this Act is to be implemented the earlier of the
183 following:

184 (1) Notice by the Secretary of Labor published in the Register of Regulations that final regulations to
185 implement this Act have been promulgated.

186 (2) One year from the date of the Act's enactment.

SYNOPSIS

Senate Substitute No. 1 for Senate Bill No. 48 (SS 1 for SB 48) of the 150th General Assembly enacted a requirement that contractors bidding for large public works contracts provide craft training of apprentices and journeymen. This Act clarifies the craft training requirement and increases options for how contractors can satisfy this requirement.

This Act clarifies when craft training is required as follows:

1. Moves the requirement that the Department of Labor maintain a list of crafts for which there are approved and registered training programs to Chapter 2 of Title 19.
2. Revises the definition of "craft training" in § 6902 of Title 29 to mean a program on the list of approved and registered training programs required under Chapter 2 of Title 19.
3. Clarifies the craft training requirement by creating a new statute for the craft training requirement that establishes when craft training must be included in a large public works contract, that the requirement applies to each craft included in the contract, and when the list of crafts for which there are approved programs in Delaware must be updated each year.
4. Makes corresponding revisions to the penalty section of § 6962 of Title 29 to reference the new location of the craft training program requirement.

As enacted by SS 1 for SB 48, contractors can satisfy this craft training requirement by providing the craft training themselves or through agreement with other organizations. This Act clarifies and expands the ways that contractors can satisfy the craft training requirement. Under this Act, a contractor can satisfy the craft training requirement by doing any of the following for each craft in the contract for which craft training is required:

1. Having at least 1 active apprentice in a craft training program approved by and registered with any state apprenticeship agency or the United States Department of Labor for the duration of the project.
2. Having at least 1 active apprentice who completes an approved and registered craft training program within the 6 months before the contract was executed.

3. Making a payment for the craft into a new Apprenticeship and Training Fund. The amount of the payment will be established for each craft in an amount that is equal to 4 times the average annual cost of the vocational-technical programs providing craft training for 1 individual for the craft. The Apprenticeship and Training Fund will be used to expand and promote adult trade extension and apprenticeship programs.

This Act also creates a penalty for failing to comply with the craft training requirement. Contractors who comply with the craft training requirement by making the payment to the Apprenticeship and Training Fund must make the payment before the contract is executed. For contracts where the craft training requirement will be satisfied through having an apprentice participating in or who has recently completed a craft training program, a contractor who fails to comply with this requirement must make the payment due for the craft to the Apprenticeship and Training Fund and pay a penalty in an amount that does not exceed 10% of that payment.

This Act requires a greater than majority vote for passage because § 11(a) of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose a fee.

Author: Senator Walsh