

2007 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2021 **Conference Committee Report** **STATUS:** B-Engrossed*
SUBJECT: Public contract specifications for prevailing wage rate information; contracting agency liability; worker diversity on projects subject to prevailing wage law
GOVERNMENT UNIT AFFECTED: Public works contracting agencies, Bureau of Labor and Industries
PREPARED BY: Adrienne Sexton
REVIEWED BY: Dallas Weyand, Robin LaMonte
DATE: June 21, 2007

	<u>2007-2009</u>	<u>2009-2011</u>
EXPENDITURES: See Comments.		

REVENUES:
See Comments.

EFFECTIVE DATE: January 1, 2008

GOVERNOR'S BUDGET: This bill is not anticipated by the Governor's recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

COMMENTS: The measure would have no direct impact on expenditures of agencies subject to the requirement to include the appropriate state and federal prevailing wage rate information in specifications for a public works contract. If found to be not in compliance, agencies would be liable for workers' unpaid minimum wages and fringe benefits, and an additional amount as liquidated damages. It cannot be determined whether, or when, the Commissioner of the Bureau of Labor and Industries (BOLI) would enforce the provisions for failure to provide the information, but the agency assumes the number of cases would not be material. The level of awarded damages paid by a contracting agency cannot be predicted.

The measure would shift the requirement for payment of a fee to BOLI from the contractor to the public agency that awards a public works contract. The current law fee level of not less than \$100 and not more than \$5,000 (calculated at 0.1 percent of the contract price) would be restored after an increase to not more than \$7,500 or less than \$250 for the period between January 1, 2008 and January 1, 2011. BOLI estimates an Other Funds revenue increase for both 2007-09 and 2009-11 to be approximately \$372,229. With the fee increase, total revenue from this source is anticipated to be \$2.17 million in both 2007-09 and 2009-11.

For the purpose of fiscal impact statements, the Legislative Fiscal Office (LFO) considers each measure as a single possible enactment. However, LFO notes that as of the date of this fiscal statement, HB 2140 B-Engrossed redefines "public works" to include certain projects that use both public agency and private funds. HB 2140 B-Engrossed has been reported out by a Senate committee with an amendment that excludes from its provisions for public works, projects that are funded with moneys from the sale of bonds that are then loaned by a state agency to a private entity, unless the funds are used for a public

improvement. If both HB 2140 B-Engrossed and HB 2021 B-Engrossed* were to be enacted, the combined effect could have an impact on agencies that provide project loan financing through grants from bonds, and direct funding, including Lottery proceeds, but not Lottery bonds. These would be primarily programs at the Housing and Community Services Department and the Oregon Economic and Community Development Department.

The Department of Administrative Services State Procurement Office (SPO) also assumes that the prevailing wage rate law will apply to those agencies, which would require new administrative actions and record-keeping to assure compliance. LFO anticipates that the impact would be dependent on the timing and volume of program activity. It is not known whether there would be a budget impact across agencies in 2007-09. If necessary, an agency could seek additional expenditure limitation or position resources through the Emergency Board or the Legislative Assembly in session. The SPO projects the need for additional staff in this division (one position at 0.31 FTE at \$45,572) in 2007-09 plus \$5,623 in associated services and supplies, and one-time Attorney General services (approximately \$7,100). Continuing costs in 2009-2011 are estimated at \$34,002 for personal services (one position at 0.23 FTE), and \$4,219 for services and supplies.

BOLI would be required to conduct a statewide process in order to develop and adopt a plan to increase the worker diversity on projects subject to the prevailing wage law. Annual reports would be presented to the Legislative Assembly or interim committee on progress stemming from the adopted plan, beginning January 1, 2009. Until the scope and timing of the work related to the statewide process is more clearly defined, the fiscal impact on BOLI cannot be determined with precision. However, it is reasonable to assume that two staff would be required to support the effort in the 2007-09 biennium. If a full-time Program Representative 2 and a half-time Administrative Specialist 2 were utilized, Personal Services costs would be approximately \$163,692. BOLI reports that there may be an opportunity to partner with the Portland Development Commission through inter-agency agreement on this project. If needed, BOLI could seek an increase in expenditure limitation and position authority from the Emergency Board or the Legislative Assembly in session to accommodate the increased workload.