

A-Engrossed
House Bill 2021

Ordered by the House May 16
Including House Amendments dated May 16

Sponsored by Representative SCHAUFLER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Makes public agency liable for workers' unpaid wages, fringe benefits and liquidated damages when public agency fails to include certain information about prevailing rates of wage in specifications for public works contract.

Modifies provisions relating to prevailing wage when public contracts for public works are subject to Davis-Bacon Act.

A BILL FOR AN ACT

1
2 Relating to prevailing rates of wage; creating new provisions; and amending 279C.360, 279C.365,
3 279C.810, 279C.815, 279C.830, 279C.838 and ORS 279C.855.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279C.360 is amended to read:

6 279C.360. (1) An advertisement for public improvement contracts must be published at least once
7 in at least one newspaper of general circulation in the area where the contract is to be performed
8 and in as many additional issues and publications as the contracting agency may determine. The
9 Director of the Oregon Department of Administrative Services, a local contract review board or, for
10 contracts described in ORS 279A.050 (3)(b), the Director of Transportation, by rule or order, may
11 authorize advertisements for public improvement contracts to be published electronically instead of
12 in a newspaper of general circulation if the director or board determines that electronic advertise-
13 ments are likely to be cost-effective. If the public improvement contract has an estimated cost in
14 excess of \$125,000, the advertisement must be published in at least one trade newspaper of general
15 statewide circulation. The Director of the Oregon Department of Administrative Services, the Di-
16 rector of Transportation or the local contract review board may, by rule or order, require an ad-
17 vertisement to be published more than once or in one or more additional publications.

18 (2) All advertisements for public improvement contracts must state:

19 (a) The public improvement project;

20 (b) The office where the specifications for the project may be reviewed;

21 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
22 or classes of work for which bidders must be prequalified if prequalification is a requirement;

23 (d) The date and time after which bids will not be received, which must be at least five days
24 after the date of the last publication of the advertisement;

25 (e) The name and title of the person designated for receipt of bids;

26 (f) The date, time and place that the contracting agency will publicly open the bids; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon
2 Act (40 U.S.C. [276a] **3141 et seq.**).

3 **SECTION 2.** ORS 279C.365 is amended to read:

4 279C.365. (1) A contracting agency preparing solicitation documents for a public improvement
5 contract shall, at a minimum, include:

6 (a) The public improvement project;

7 (b) The office where the specifications for the project may be reviewed;

8 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
9 or classes of work for which bidders must be prequalified if prequalification is a requirement;

10 (d) The date and time after which bids will not be received, which must be at least five days
11 after the date of the last publication of the advertisement, and may, in the sole discretion of the
12 contracting agency, direct or permit the submission and receipt of bids by electronic means;

13 (e) The name and title of the person designated for receipt of bids;

14 (f) The date, time and place that the contracting agency will publicly open the bids;

15 (g) A statement that, if the contract is for a public works subject to ORS 279C.800 to 279C.870
16 or the Davis-Bacon Act (40 U.S.C. [276a] **3141 et seq.**), no bid will be received or considered by the
17 contracting agency unless the bid contains a statement by the bidder that ORS 279C.840 or 40 U.S.C.
18 [276a] **3141 et seq.** will be complied with;

19 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined
20 in ORS 279A.120;

21 (i) A statement that the contracting agency may reject any bid not in compliance with all pre-
22 scribed public contracting procedures and requirements and may reject for good cause all bids upon
23 a finding of the agency that it is in the public interest to do so;

24 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
25 468A.720; and

26 (k) A statement that a bid for a public improvement contract may not be received or considered
27 by the contracting agency unless the bidder is licensed by the Construction Contractors Board or
28 the State Landscape Contractors Board.

29 (2) All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:

30 (a) In writing;

31 (b) Filed with the person designated for receipt of bids by the contracting agency; and

32 (c) Opened publicly by the contracting agency immediately after the deadline for submission of
33 bids.

34 (3) After having been opened, the bids must be made available for public inspection.

35 (4) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS
36 706.008, cashier's check or certified check of each bidder shall be submitted with or posted for all
37 bids as bid security unless the contract for which a bid is submitted has been exempted from this
38 requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the
39 contract.

40 (5) Subsection (4) of this section applies only to public improvement contracts with a value, es-
41 timated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,
42 bridges and other transportation projects, more than \$50,000.

43 **SECTION 3.** ORS 279C.810 is amended to read:

44 279C.810. (1) As used in this section:

45 (a) "Funds of a public agency" does not include:

1 (A) Funds provided in the form of a government grant to a nonprofit organization, unless the
2 government grant is issued for the purpose of construction;

3 (B) Building and development permit fees paid or waived by the public agency;

4 (C) Staff resources of the public agency used to manage a project or to provide a principal
5 source of supervision, coordination or oversight of a project; or

6 (D) Staff resources of the public agency used to design or inspect one or more components of
7 a project.

8 (b) "Nonprofit organization" means an organization or group of organizations described in sec-
9 tion 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of
10 the Internal Revenue Code.

11 (2) ORS 279C.800 to 279C.870 do not apply to:

12 (a) Projects for which the contract price does not exceed \$50,000. In determining the price of a
13 project, a public agency:

14 (A) May not include the value of donated materials or work performed on the project by indi-
15 viduals volunteering to the public agency without pay; and

16 (B) Shall include the value of work performed by every person paid by a contractor or subcon-
17 tractor in any manner for the person's work on the project.

18 (b) Projects for which no funds of a public agency are directly or indirectly used. In accordance
19 with ORS chapter 183, the commissioner shall adopt rules to carry out the provisions of this para-
20 graph.

21 **(c) Projects regulated under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), except that**
22 **ORS 279C.838 does apply to these projects.**

23 (3)(a) A public agency may not divide a public works project into more than one contract for
24 the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

25 (b) When the commissioner determines that a public agency has divided a public works project
26 for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue
27 an order compelling compliance.

28 (c) In making determinations under this subsection, the commissioner shall consider:

29 (A) The physical separation of the project structures;

30 (B) The timing of the work on project phases or structures;

31 (C) The continuity of project contractors and subcontractors working on project parts or phases;
32 and

33 (D) The manner in which the public agency and the contractors administer and implement the
34 project.

35 **SECTION 4.** ORS 279C.815 is amended to read:

36 279C.815. (1) As used in this section, "person" includes any employer, labor organization or any
37 official representative of an employee or employer association.

38 (2)(a) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing
39 rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800
40 at least once each year by means of an independent wage survey and make this information avail-
41 able at least twice each year. The commissioner may amend the rate at any time.

42 (b) The commissioner shall compare the prevailing rate of wage determined under paragraph (a)
43 of this subsection with the federal prevailing rate of wage required under the Davis-Bacon Act (40
44 U.S.C. [276a] 3141 et seq.) and determine which rate is higher for workers in each trade or occu-
45 pation in each locality. The commissioner shall make this information, showing which prevailing

1 rate of wage is higher for workers in each trade or occupation in each locality, available at the
2 same time as the commissioner makes information available under paragraph (a) of this subsection.

3 (3) A person shall make such reports and returns to the Bureau of Labor and Industries as the
4 commissioner may require to determine the prevailing rates of wage. The reports and returns shall
5 be made upon forms furnished by the bureau and within the time prescribed by the commissioner.
6 The person or an authorized representative of the person shall certify to the accuracy of the reports
7 and returns.

8 (4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information pro-
9 vided to the commissioner under this section are confidential and not available for inspection by the
10 public.

11 (5) In order to assist the commissioner in making determinations of the prevailing rates of wage,
12 the commissioner may enter into contracts with public or private parties to obtain relevant data and
13 information. Any such contract may include provisions for the manner and extent of the market
14 review of affected trades and occupations and such other requirements regarding timelines of re-
15 ports, accuracy of data and information and supervision and review as the commissioner may pre-
16 scribe.

17 **SECTION 5.** ORS 279C.830 is amended to read:

18 279C.830. (1)(a) The specifications for every contract for public works, **including public works**
19 **subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.),** shall contain a provision stating the
20 existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required
21 under the Davis-Bacon Act [(40 U.S.C. 276a)] that may be paid to workers in each trade or occupa-
22 tion required for the public works employed in the performance of the contract either by the con-
23 tractor or subcontractor or other person doing or contracting to do the whole or any part of the
24 work contemplated by the contract. **When the prevailing rates of wage are available electron-**
25 **ically or are accessible on the Internet, the rates may be incorporated into the specifications**
26 **by referring to the electronically accessible or Internet-accessible rates and by providing**
27 **adequate information about how to access the rates.**

28 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
29 federal prevailing rates of wage in the specifications, the public agency also shall include in the
30 specifications information showing which prevailing rate of wage is higher for workers in each trade
31 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-
32 dustries under ORS 279C.815 (2)(b).

33 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not
34 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 **and**
35 **279C.840.**

36 (2) The specifications for every contract for public works between a public agency and a con-
37 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the
38 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-
39 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-
40 sioner.

41 (3) The specifications for every contract for public works shall contain a provision stating that
42 the contractor and every subcontractor must have a public works bond filed with the Construction
43 Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (7) or (8).
44 Every contract awarded by a contracting agency shall contain a provision requiring the contractor:

45 (a) To have a public works bond filed with the Construction Contractors Board before starting

1 work on the project, unless exempt under ORS 279C.836 (7) or (8).

2 (b) To include in every subcontract a provision requiring the subcontractor to have a public
3 works bond filed with the Construction Contractors Board before starting work on the project, un-
4 less exempt under ORS 279C.836 (7) or (8).

5 **SECTION 6.** ORS 279C.838 is amended to read:

6 279C.838. When a public works project is subject to [ORS 279C.800 to 279C.870 and] the Davis-
7 Bacon Act (40 U.S.C. [276a]:) **3141 et seq.**,

8 [(1)] if the state prevailing rate of wage is higher than the federal prevailing rate of wage, the
9 contractor and every subcontractor on the project shall pay at least the state prevailing rate of
10 wage **determined under ORS 279C.815.** [as required by ORS 279C.800 to 279C.870; and]

11 [(2) If the federal prevailing rate of wage is higher than the state prevailing rate of wage, the
12 contractor and every subcontractor on the project shall pay at least the federal prevailing rate of wage
13 as required by the Davis-Bacon Act.]

14 **SECTION 7.** ORS 279C.855 is amended to read:

15 279C.855. (1) Any contractor or subcontractor or contractor's or subcontractor's surety that vi-
16 olates the provisions of ORS 279C.840 is liable to the workers affected in the amount of their unpaid
17 minimum wages, including all fringe benefits [as defined in ORS 279C.800], and in an additional
18 amount equal to the unpaid wages as liquidated damages.

19 (2) Actions to enforce liability to workers under subsection (1) of this section may be brought
20 as actions on contractors' bonds as provided for in ORS 279C.610.

21 (3) If [the] a public agency fails to include a provision that the contractor and any subcontractor
22 shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract
23 specifications, the accepted bid or elsewhere in the contract documents, the liability of the public
24 agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several
25 with any contractor or subcontractor that had notice of the requirement to comply with ORS
26 279C.840.

27 **(4) When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.)**
28 **and a public agency fails to include the state and federal prevailing rates of wage in the**
29 **specifications for the contract for public works as required under ORS 279C.830 (1)(a), or fails**
30 **to include in the specifications information showing which prevailing rate of wage is higher**
31 **for workers in each trade or occupation in each locality as required under ORS 279C.830**
32 **(1)(b), the public agency is liable to each affected worker for:**

33 **(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that**
34 **equals, for each hour worked, the difference between the applicable higher rate of wage and**
35 **the lower rate of wage; and**

36 **(b) An additional amount, equal to the amount of unpaid minimum wages due under**
37 **paragraph (a) of this subsection, as liquidated damages.**

38 (5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of [this
39 subsection] **subsections (3) and (4) of this section** by a civil action under ORS 279C.850 (4), by a
40 civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on
41 an assigned wage claim under ORS 652.332.

42 **SECTION 8.** The amendments to ORS 279C.360, 279C.365, 279C.810, 279C.815, 279C.830,
43 279C.838 and 279C.855 by sections 1 to 7 of this 2007 Act apply only to public contracts for
44 public works, including public works subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.),
45 first advertised or solicited on or after the effective date of this 2007 Act.

