

B-Engrossed
House Bill 2021

Ordered by the Senate June 6
Including House Amendments dated May 16 and Senate Amendments
dated June 6

Sponsored by Representative SCHAUFLEER (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.]

Directs Commissioner of Bureau of Labor and Industries, for purposes of public works projects subject to Davis-Bacon Act, to make determinations regarding site of project and payment of workers transporting materials and supplies to site.

Requires public agency that awards public works contracts to pay specified fees.

Directs Bureau of Labor and Industries to develop and adopt plan to increase diversity statewide among workers employed on public works projects.

A BILL FOR AN ACT

1
2 Relating to prevailing rates of wage; creating new provisions; and amending ORS 279C.360, 279C.365,
3 279C.815, 279C.825, 279C.830, 279C.838 and 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;

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

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

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

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

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

8 279C.365. (1) A contracting agency preparing solicitation documents for a public improvement
9 contract shall, at a minimum, include:

10 (a) The public improvement project;

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

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

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

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

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

19 (g) A statement that, if the contract is for a public works subject to ORS 279C.800 to 279C.870
20 or the Davis-Bacon Act (40 U.S.C. [276a] **3141 et seq.**), no bid will be received or considered by the
21 contracting agency unless the bid contains a statement by the bidder that ORS 279C.840 or 40 U.S.C.
22 [276a] **3141 et seq.** will be complied with;

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

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

28 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
29 468A.720; and

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

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

34 (a) In writing;

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

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

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

39 (4) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS
40 706.008, cashier's check or certified check of each bidder shall be submitted with or posted for all
41 bids as bid security unless the contract for which a bid is submitted has been exempted from this
42 requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the
43 contract.

44 (5) Subsection (4) of this section applies only to public improvement contracts with a value, es-
45 timated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,

1 bridges and other transportation projects, more than \$50,000.

2 **SECTION 3.** ORS 279C.815 is amended to read:

3 279C.815. (1) As used in this section, “person” includes any employer, labor organization or any
4 official representative of an employee or employer association.

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

9 (b) The commissioner shall compare the prevailing rate of wage determined under paragraph (a)
10 of this subsection with the federal prevailing rate of wage required under the Davis-Bacon Act (40
11 U.S.C. [276a] **3141 et seq.**) and determine which rate is higher for workers in each trade or occu-
12 pation in each locality. The commissioner shall make this information, showing which prevailing
13 rate of wage is higher for workers in each trade or occupation in each locality, available at the
14 same time as the commissioner makes information available under paragraph (a) of this subsection.

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

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

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

29 **SECTION 4.** ORS 279C.830 is amended to read:

30 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision
31 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of
32 wage required under the Davis-Bacon Act [(40 U.S.C. 276a)] (**40 U.S.C. 3141 et seq.**) that may be
33 paid to workers in each trade or occupation required for the public works employed in the per-
34 formance of the contract either by the contractor or subcontractor or other person doing or con-
35 tracting to do the whole or any part of the work contemplated by the contract. **When the**
36 **prevailing rates of wage are available electronically or are accessible on the Internet, the**
37 **rates may be incorporated into the specifications by referring to the electronically accessible**
38 **or Internet-accessible rates and by providing adequate information about how to access the**
39 **rates.**

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

45 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not

1 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 **and**
2 **279C.840.**

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

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

12 (a) To have a public works bond filed with the Construction Contractors Board before starting
13 work on the project, unless exempt under ORS 279C.836 (7) or (8).

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

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

18 279C.838. (1) When a public works project is subject to [ORS 279C.800 to 279C.870 and] the
19 Davis-Bacon Act (40 U.S.C. [276a] **3141 et seq.**):

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

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

26 (b) **The Commissioner of the Bureau of Labor and Industries shall determine the site of**
27 **the project in a manner consistent with the term “site of the work” as that term is used in**
28 **federal law and in regulations adopted or guidelines issued in accordance with the Davis-**
29 **Bacon Act;**

30 (c) **The commissioner shall determine in a manner that is consistent with federal law and**
31 **regulations adopted or guidelines issued in accordance with the Davis-Bacon Act whether**
32 **workers transporting materials and supplies to and from the site of the project are subject**
33 **to the Davis-Bacon Act and are entitled to be paid the prevailing rate of wage;**

34 (d) **Except as provided in paragraph (a) of this subsection, the commissioner, in consul-**
35 **tation with the advisory committee appointed under ORS 279C.820, may administer and en-**
36 **force ORS 279C.800 to 279C.870 in a manner that is consistent with federal law and**
37 **regulations adopted or guidelines issued in accordance with the Davis-Bacon Act. The com-**
38 **missioner may provide a waiver from a requirement set forth in ORS 279C.800 to 279C.870 if**
39 **necessary to achieve consistency with the Davis-Bacon Act and to further the purposes of**
40 **ORS 279C.805; and**

41 (e) **ORS 279C.800 to 279C.870 do not apply to workers enrolled in apprenticeship and skill**
42 **training programs that are certified by the United States Secretary of Transportation under**
43 **the Federal-Aid Highway Act (23 U.S.C. 113(c)).**

44 (2) **When a public works project is not subject to the Davis-Bacon Act, the commissioner**
45 **may administer and enforce ORS 279C.800 to 279C.870 in a manner that is not consistent with**

1 **federal law and regulations adopted or guidelines issued in accordance with the Davis-Bacon**
2 **Act.**

3 **SECTION 6.** ORS 279C.855 is amended to read:

4 279C.855. (1) Any contractor or subcontractor or contractor's or subcontractor's surety that vi-
5 olates the provisions of ORS 279C.840 is liable to the workers affected in the amount of their unpaid
6 minimum wages, including all fringe benefits [*as defined in ORS 279C.800*], and in an additional
7 amount equal to the unpaid wages as liquidated damages.

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

10 (3) If [*the*] a public agency fails to include a provision that the contractor and any subcontractor
11 shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract
12 specifications, the accepted bid or elsewhere in the contract documents, the liability of the public
13 agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several
14 with any contractor or subcontractor that had notice of the requirement to comply with ORS
15 279C.840.

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

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

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

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

31 **SECTION 7.** ORS 279C.825 is amended to read:

32 279C.825. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish
33 a fee to be paid by the [*contractor to whom*] **public agency that awards** a public works contract
34 subject to ORS 279C.800 to 279C.870[*has been awarded*]. The fee shall be used to pay the costs of:

35 (A) Surveys to determine the prevailing rates of wage;

36 (B) Administering and providing investigations under and enforcement of ORS 279C.800 to
37 279C.870; and

38 (C) Providing educational programs on public contracting law under the Public Contracting
39 Code.

40 (b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee be
41 charged and collected that is more than \$5,000 or less than \$100.

42 (2) The commissioner shall pay moneys received under this section into the State Treasury. The
43 moneys shall be credited to the Prevailing Wage Education and Enforcement Account created by
44 ORS 651.185.

45 [*(3) The contractor shall pay the fee at the time of the first progress payment or 60 days after work*

1 *on the contract has begun, whichever date is earlier.]*

2 *[(4) Failure to make timely payment under subsection (3) of this section shall subject the contractor*
3 *to a civil penalty under ORS 279C.865 in such amount as the commissioner, by rule, shall specify.]*

4 **(3) The public agency shall pay the fee at the time the public agency enters into the**
5 **public works contract.**

6 **SECTION 8. Notwithstanding the maximum and minimum fee amounts set forth in ORS**
7 **279C.825 (1)(b), for public works contracts entered into on or after the effective date of this**
8 **2007 Act and before January 1, 2011, the fee charged and collected may not be more than**
9 **\$7,500 or less than \$250.**

10 **SECTION 9. (1) The Bureau of Labor and Industries shall develop and adopt a plan to**
11 **increase diversity statewide among workers employed on projects subject to ORS 279C.800**
12 **to 279C.870. The bureau shall develop the plan after conducting a statewide public process**
13 **to solicit proposals to increase diversity and shall adopt the plan after considering proposals**
14 **submitted to the bureau.**

15 **(2) The bureau shall report each year to the Legislative Assembly or to the appropriate**
16 **legislative interim committee concerning progress that results from the plan adopted under**
17 **this section and may submit recommendations for legislation or other measures that will**
18 **improve diversity among workers employed on projects subject to ORS 279C.800 to 279C.870.**
19 **The bureau shall submit the first report no later than January 1, 2009.**

20 **SECTION 10. Section 8 of this 2007 Act and the amendments to ORS 279C.360, 279.365,**
21 **279C.815, 279C.825, 279C.830, 279C.838 and 279C.855 by sections 1 to 7 of this 2007 Act apply**
22 **only to public contracts for public works, including public works subject to the Davis-Bacon**
23 **Act (40 U.S.C. 3141 et. seq.), first advertised or solicited on or after the effective date of this**
24 **2007 Act.**

25