

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2140

By COMMITTEE ON EDUCATION AND GENERAL GOVERNMENT

June 4

- 1 On page 1 of the printed A-engrossed bill, line 5, after “279C.460,” insert “279C.800, 279C.810,
- 2 279C.815.”.
- 3 In line 6, delete the second “and”.
- 4 In line 7, after “2003” insert “; and declaring an emergency”.
- 5 On page 5, after line 31, insert:
- 6 “(z) ‘Housing’ORS 279C.800”.
- 7 In line 32, restore “(aa)” and delete “(z)”.
- 8 In line 34, restore “(bb)” and delete “(aa)”.
- 9 In line 36, restore “(cc)” and delete “(bb)”.
- 10 In line 38, restore “(dd)” and delete “(cc)”.
- 11 In line 39, restore “(ee)” and delete “(dd)”.
- 12 In line 40, restore “(ff)” and delete “(ee)”.
- 13 In line 41, restore “(gg)” and delete “(ff)”.
- 14 In line 42, restore “(hh)” and delete “(gg)”.
- 15 In line 44, restore “(ii)” and delete “(hh)”.
- 16 In line 45, restore “(jj)” and delete “(ii)”.
- 17 On page 6, line 2, restore “(kk)” and delete “(jj)”.
- 18 In line 3, restore “(LL)” and delete “(kk)”.
- 19 In line 5, restore “(mm)” and delete “(LL)”.
- 20 In line 7, restore “(nn)” and delete “(mm)”.
- 21 In line 8, restore “(oo)” and delete “(nn)”.
- 22 In line 10, restore “(pp)” and delete “(oo)”.
- 23 In line 12, restore “(qq)” and delete “(pp)”.
- 24 In line 13, restore “(rr)” and delete “(qq)”.
- 25 In line 14, restore “(ss)” and delete “(rr)”.
- 26 In line 17, delete “(ss)” and insert “(tt)”.
- 27 In line 18, delete “(tt)” and insert “(uu)”.
- 28 In line 20, delete “(uu)” and insert “(vv)”.
- 29 In line 22, delete “(vv)” and insert “(ww)”.
- 30 In line 23, delete “(ww)” and insert “(xx)”.
- 31 In line 24, delete “(xx)” and insert “(yy)”.
- 32 In line 25, delete “(yy)” and insert “(zz)”.
- 33 In line 27, delete “(zz)” and insert “(aaa)”.
- 34 In line 28, delete “(aaa)” and insert “(bbb)”.
- 35 In line 29, delete “(bbb)” and insert “(ecc)”.

1 In line 30, delete “(ccc)” and insert “(ddd)”.

2 In line 31, delete “(ddd)” and insert “(eee)”.

3 In line 32, delete “(eee)” and insert “(fff)”.

4 In line 33, delete “(fff)” and insert “(ggg)”.

5 In line 34, delete “(ggg)” and insert “(hhh)”.

6 In line 36, delete “(hhh)” and insert “(iii)”.

7 In line 37, delete “(iii)” and insert “(jjj)”.

8 On page 35, after line 42, insert:

9 **“SECTION 34.** ORS 279C.800 is amended to read:

10 “279C.800. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:

11 “(1) ‘Fringe benefits’ means the amount of:

12 “(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or

13 to a third person under a plan, fund or program; and

14 “(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in

15 providing benefits to workers pursuant to an enforceable commitment to carry out a financially re-

16 sponsible plan or program that is committed in writing to the workers affected, for medical or hos-

17 pital care, pensions on retirement or death, compensation for injuries or illness resulting from

18 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life

19 insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for

20 defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits,

21 but only when the contractor or subcontractor is not required by other federal, state or local law

22 to provide any of these benefits.

23 **“(2) ‘Housing’ has the meaning given that term in ORS 456.055.**

24 “[2] (3) ‘Locality’ means the following district in which the public works, or the major portion

25 thereof, is to be performed:

26 “(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

27 “(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

28 “(c) District 3, composed of Marion, Polk and Yamhill Counties;

29 “(d) District 4, composed of Benton, Lincoln and Linn Counties;

30 “(e) District 5, composed of Lane County;

31 “(f) District 6, composed of Douglas County;

32 “(g) District 7, composed of Coos and Curry Counties;

33 “(h) District 8, composed of Jackson and Josephine Counties;

34 “(i) District 9, composed of Hood River, Sherman and Wasco Counties;

35 “(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

36 “(k) District 11, composed of Klamath and Lake Counties;

37 “(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

38 “(m) District 13, composed of Baker, Union and Wallowa Counties; and

39 “(n) District 14, composed of Harney and Malheur Counties.

40 “[3] (4) ‘Prevailing rate of wage’ means the rate of hourly wage, including all fringe benefits,

41 paid in the locality to the majority of workers employed on projects of similar character in the same

42 trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. *[In*

43 *making such determinations, the commissioner shall rely on an independent wage survey to be con-*

44 *ducted once each year. However, if it appears to the commissioner that the data derived from the survey*

45 *alone are insufficient to establish the rate, the commissioner also shall consider additional information*

1 such as collective bargaining agreements, other independent wage surveys and the prevailing rates of
2 wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a ma-
3 jority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including
4 all fringe benefits, paid in the locality to workers in the same trade or occupation shall be the pre-
5 vailing rate. If the wage paid by any contractor or subcontractor to workers on any public works is
6 based on some period of time other than an hour, the hourly wage shall be mathematically determined
7 by the number of hours worked in that period of time.]

8 “[4] (5) ‘Public agency’ means the State of Oregon or any political subdivision thereof or any
9 county, city, district, authority, public corporation or entity and any [of their instrumentalities]
10 **instrumentality thereof** organized and existing under law or charter.

11 “[5] (6)(a) ‘Public works’ includes, but is not limited to,]:

12 “(A) Roads, highways, buildings, structures and improvements of all types, the construction,
13 reconstruction, major renovation or painting of which is carried on or contracted for by any public
14 agency to serve the public interest; [but does not include the reconstruction or renovation of privately
15 owned property that is leased by a public agency.]

16 “(B) **A project for the construction, reconstruction, major renovation or painting of a**
17 **privately owned road, highway, building, structure or improvement of any type that uses**
18 **funds of a private entity and \$750,000 or more of funds of a public agency; or**

19 “(C) **A project for the construction of a privately owned road, highway, building, struc-**
20 **ture or improvement of any type that uses funds of a private entity and in which 25 percent**
21 **or more of the square footage of the completed project will be occupied or used by a public**
22 **agency.**

23 “(b) ‘Public works’ does not include:

24 “(A) **The reconstruction or renovation of privately owned property that is leased by a**
25 **public agency; or**

26 “(B) **The renovation of publicly owned real property that is more than 75 years old by a**
27 **private nonprofit entity if:**

28 “(i) **The real property is leased to the private nonprofit entity for more than 25 years;**

29 “(ii) **Funds of a public agency used in the renovation do not exceed 15 percent of the total**
30 **cost of the renovation; and**

31 “(iii) **Contracts for the renovation were advertised or, if not advertised, were entered into**
32 **before July 1, 2003, but the renovation has not been completed on or before the effective date**
33 **of this 2007 Act.**

34 “**SECTION 35.** ORS 279C.810 is amended to read:

35 “279C.810. (1) As used in this section:

36 “(a) ‘Funds of a public agency’ does not include:

37 “(A) Funds provided in the form of a government grant to a nonprofit organization, unless the
38 government grant is issued for the purpose of construction, **reconstruction, major renovation or**
39 **painting;**

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

41 “(C) **Tax credits or tax abatements;**

42 “(D) **Land that a public body sells to a private entity at fair market value;**

43 “[C] (E) Staff resources of the public agency used to manage a project or to provide a principal
44 source of supervision, coordination or oversight of a project; [or]

45 “[D] (F) Staff resources of the public agency used to design or inspect one or more components

1 of a project[.]; or

2 **“(G) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter**
3 **289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement**
4 **as defined in ORS 279A.010.**

5 “(b) ‘Nonprofit organization’ means an organization or group of organizations described in sec-
6 tion 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of
7 the Internal Revenue Code.

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

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

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

13 “(B) Shall include the value of work performed by every person paid by a contractor or sub-
14 contractor in any manner for the person’s work on the project.

15 “(b) Projects for which no funds of a public agency are directly or indirectly used. In accordance
16 with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules
17 to carry out the provisions of this paragraph.

18 **“(c) Projects:**

19 **“(A) That are privately owned;**

20 **“(B) That use funds of a private entity;**

21 **“(C) In which less than 25 percent of the square footage of a completed project will be**
22 **occupied or used by a public agency; and**

23 **“(D) For which less than \$750,000 of funds of a public agency are used.**

24 **“(d) Projects for residential construction that are privately owned and that predomi-**
25 **nantly provide affordable housing. As used in this paragraph:**

26 **“(A) ‘Affordable housing’ means housing that serves occupants whose incomes are no**
27 **greater than 60 percent of the area median income or, if the occupants are owners, whose**
28 **incomes are no greater than 80 percent of the area median income.**

29 **“(B) ‘Predominantly’ means 60 percent or more.**

30 **“(C) ‘Privately owned’ includes:**

31 **“(i) Affordable housing provided on real property owned by a public agency if the real**
32 **property and related structures are leased to a private entity for 50 or more years; and**

33 **“(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability**
34 **company in which a housing authority, as defined in ORS 456.005, is a general partner, di-**
35 **rector or managing member and the housing authority is not a majority owner in the part-**
36 **nership, nonprofit corporation or limited liability company.**

37 **“(D) ‘Residential construction’ includes the construction, reconstruction, major reno-**
38 **vation or painting of single-family houses or apartment buildings not more than four stories**
39 **in height and all incidental items, such as site work, parking areas, utilities, streets and**
40 **sidewalks, pursuant to the United States Department of Labor’s ‘All Agency Memorandum**
41 **No. 130: Application of the Standard of Comparison ‘Projects of a Character Similar’ Under**
42 **Davis-Bacon and Related Acts,’ dated March 17, 1978. However, the commissioner may**
43 **consider different definitions of residential construction in determining whether a project is**
44 **a residential construction project for purposes of this paragraph, including definitions that:**

45 **“(i) Exist in local ordinances or codes; or**

1 “(ii) Differ, in the prevailing practice of a particular trade or occupation, from the United
2 States Department of Labor’s description of residential construction.

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

5 “[(b) When the commissioner determines that a public agency has divided a public works project
6 for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue
7 an order compelling compliance.]

8 “[(c) In making determinations under this subsection, the commissioner shall consider:]

9 “[(A) The physical separation of the project structures;]

10 “[(B) The timing of the work on project phases or structures;]

11 “[(C) The continuity of project contractors and subcontractors working on project parts or phases;
12 and]

13 “[(D) The manner in which the public agency and the contractors administer and implement the
14 project.]

15 “**SECTION 36.** ORS 279C.815 is amended to read:

16 “279C.815. (1) As used in this section, ‘person’ includes any employer, labor organization or any
17 official representative of an employee or employer association.

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

22 “**(b) If it appears to the commissioner that the data derived only from the survey de-**
23 **scribed in paragraph (a) of this subsection are insufficient to determine the prevailing rate**
24 **of wage, the commissioner also shall consider additional information such as collective bar-**
25 **gaining agreements, other independent wage surveys and the prevailing rates of wage de-**
26 **termined by appropriate federal agencies or agencies of adjoining states. If there is not a**
27 **majority in the same trade or occupation paid at the same rate, the average rate of hourly**
28 **wage, including all fringe benefits, paid in the locality to workers in the same trade or oc-**
29 **cupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor**
30 **to workers on any public works is based on some period of time other than an hour, the**
31 **hourly wage shall be mathematically determined by the number of hours worked in that pe-**
32 **riod of time.**

33 “[(b)] (c) The commissioner shall compare the prevailing rate of wage determined under para-
34 graph (a) of this subsection with the federal prevailing rate of wage required under the Davis-Bacon
35 Act (40 U.S.C. 276a) and determine which rate is higher for workers in each trade or occupation in
36 each locality. The commissioner shall make this information, showing which prevailing rate of wage
37 is higher for workers in each trade or occupation in each locality, available at the same time as the
38 commissioner makes information available under paragraph (a) of this subsection.

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

44 “(4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information pro-
45 vided to the commissioner under this section are confidential and not available for inspection by the

1 public.

2 “(5) In order to assist the commissioner in making determinations of the prevailing rates of
3 wage, the commissioner may enter into contracts with public or private parties to obtain relevant
4 data and information. Any such contract may include provisions for the manner and extent of the
5 market review of affected trades and occupations and such other requirements regarding timelines
6 of reports, accuracy of data and information and supervision and review as the commissioner may
7 prescribe.”.

8 In line 43, delete “34” and insert “37”.

9 In line 44, after “(1)(a)” insert “Except as provided in paragraph (d) of this subsection,”.

10 On page 36, line 9, delete “(2)(b)” and insert “(2)(c)”.

11 After line 11, insert:

12 “(d) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing
13 state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the
14 Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a pri-
15 vate entity for the project. After that time, the specifications for any contract for the public works
16 shall include the applicable prevailing rate of wage.”.

17 In line 27, delete “35” and insert “38”.

18 On page 37, line 36, delete “36” and insert “39”.

19 On page 38, line 14, delete “37” and insert “40” and delete “38” and insert “41”.

20 In line 16, delete “38” and insert “41”.

21 After line 33, insert:

22 **“SECTION 42. Sections 43, 44 and 45 of this 2007 Act are added to and made a part of**
23 **ORS 279C.800 to 279C.870.**

24 **“SECTION 43. (1) The Commissioner of the Bureau of Labor and Industries shall, upon**
25 **the request of a public agency or other interested person, make a determination about**
26 **whether a project or proposed project is or would be a public works on which payment of the**
27 **prevailing rate of wage is or would be required under ORS 279C.840.**

28 **“(2) The requester shall provide the commissioner with information necessary to enable**
29 **the commissioner to make the determination.**

30 **“(3) The commissioner shall make the determination within 60 days after receiving the**
31 **request or 60 days after the requester has provided the commissioner with the information**
32 **necessary to enable the commissioner to make the determination, whichever is later. The**
33 **commissioner may take additional time to make the determination if the commissioner and**
34 **the requester mutually agree that the commissioner may do so.**

35 **“(4) The commissioner shall afford the requester or a person adversely affected or**
36 **aggrieved by the commissioner’s determination a hearing in accordance with ORS 183.413 to**
37 **183.470. An order the commissioner issues under ORS 183.413 to 183.470 is subject to judicial**
38 **review as provided in ORS 183.482.**

39 **“(5) The commissioner shall adopt rules establishing the process for requesting and**
40 **making the determinations described in this section.**

41 **“SECTION 44. (1)(a) A public agency may not divide a public works project into more**
42 **than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.**

43 **“(b) When the Commissioner of the Bureau of Labor and Industries determines that a**
44 **public agency has divided a public works project into more than one contract for the purpose**
45 **of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order**

1 **compelling compliance.**

2 **“(c) In making determinations under this subsection, the commissioner shall consider:**

3 **“(A) The physical separation of the project structures;**

4 **“(B) The timing of the work on project phases or structures;**

5 **“(C) The continuity of project contractors and subcontractors working on project parts**
6 **or phases;**

7 **“(D) The manner in which the public agency and the contractors administer and imple-**
8 **ment the project;**

9 **“(E) Whether a single public works project includes several types of improvements or**
10 **structures; and**

11 **“(F) Whether the combined improvements or structures have an overall purpose or**
12 **function.**

13 **“(2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C),**
14 **the commissioner shall divide the project, if appropriate, after applying the considerations**
15 **set forth in subsection (1)(c) of this section to separate the parts of the project that include**
16 **funds of a public agency or that will be occupied or used by a public agency from the parts**
17 **of the project that do not include funds of a public agency and that will not be occupied or**
18 **used by a public agency. If the commissioner divides the project, any part of the project that**
19 **does not include funds of a public agency and that will not be occupied or used by a public**
20 **agency is not subject to ORS 279C.800 to 279C.870.**

21 **“(3) If a project includes parts that are owned by a public agency and parts that are**
22 **owned by a private entity, the commissioner shall divide the project, if appropriate, after**
23 **applying the considerations set forth in subsections (1)(c) and (2) of this section to separate**
24 **the parts of the project that are public works from the parts of the project that are not**
25 **public works. If the commissioner divides the project, parts of the project that are not public**
26 **works are not subject to ORS 279C.800 to 279C.870.**

27 **“SECTION 45. In accordance with applicable provisions of ORS chapter 183, the Com-**
28 **missioner of the Bureau of Labor and Industries shall adopt rules necessary to administer**
29 **ORS 279C.800 to 279C.870.”.**

30 In line 34, delete “39” and insert “46”.

31 In line 35, delete “40.” and insert “47. (1)” and delete “Section 38” and insert “Sections 41, 43
32 and 44”.

33 In line 38, after “279C.460,” insert “279C.800, 279C.810, 279C.815,”.

34 In line 39, delete “36” and insert “39”.

35 In line 40, delete “39” and insert “46”.

36 After line 42, insert:

37 **“(2) Sections 43 and 44 of this 2007 Act and the amendments to ORS 279C.800, 279C.810,**
38 **279C.815 and 279C.830 by sections 34, 35, 36 and 37 of this 2007 Act do not apply to development**
39 **and disposition agreements signed by an urban renewal agency before the effective date of this 2007**
40 **Act in connection with public-private projects for which no contracts for construction are adver-**
41 **tised.**

42 **“(3) Sections 43 and 44 of this 2007 Act and the amendments to ORS 279C.800, 279C.810,**
43 **279C.815 and 279C.830 by sections 34, 35, 36 and 37 of this 2007 Act do not apply to projects funded**
44 **in whole or in part by bonds issued by the State of Oregon if the State Treasurer issues the bonds**
45 **for the project before the effective date of this 2007 Act.**

1 **“SECTION 48. This 2007 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
3 **July 1, 2007.”.**

4
