

A-Engrossed
House Bill 2795

Ordered by the House April 20
Including House Amendments dated April 20

Sponsored by Representative HOLVEY; Representative SCHAUFLEER

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.

Requires Commissioner of Bureau of Labor and Industries to audit information used to determine prevailing wage rates. Increases fee paid by [*contractors on*] **public agencies that award public works contracts.**

Sunsets January 1, 2011.

A BILL FOR AN ACT

1
2 Relating to audits of information used to determine prevailing wage rates; creating new provisions;
3 and amending ORS 279C.800, 279C.815, 279C.825 and 279C.830.

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

5 **SECTION 1.** ORS 279C.800 is amended to read:

6 279C.800. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:

7 (1) "Fringe benefits" means the amount of:

8 (a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or
9 to a third person under a plan, fund or program; and

10 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
11 providing benefits to workers pursuant to an enforceable commitment to carry out a financially re-
12 sponsible plan or program that is committed in writing to the workers affected, for medical or hos-
13 pital care, pensions on retirement or death, compensation for injuries or illness resulting from
14 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life
15 insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for
16 defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits,
17 but only when the contractor or subcontractor is not required by other federal, state or local law
18 to provide any of these benefits.

19 (2) "Locality" means the following district in which the public works, or the major portion
20 thereof, is to be performed:

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

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

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

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

25 (e) District 5, composed of Lane County;

26 (f) District 6, composed of Douglas County;

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

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 (h) District 8, composed of Jackson and Josephine Counties;
- 2 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 3 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 4 (k) District 11, composed of Klamath and Lake Counties;
- 5 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 6 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 7 (n) District 14, composed of Harney and Malheur Counties.

8 (3) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits, paid
9 in the locality to the majority of workers employed on projects of similar character in the same
10 trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. [*In*
11 *making such determinations, the commissioner shall rely on an independent wage survey to be con-*
12 *ducted once each year. However, if it appears to the commissioner that the data derived from the survey*
13 *alone are insufficient to establish the rate, the commissioner also shall consider additional information*
14 *such as collective bargaining agreements, other independent wage surveys and the prevailing rates of*
15 *wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a ma-*
16 *majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including*
17 *all fringe benefits, paid in the locality to workers in the same trade or occupation shall be the pre-*
18 *vailing rate. If the wage paid by any contractor or subcontractor to workers on any public works is*
19 *based on some period of time other than an hour, the hourly wage shall be mathematically determined*
20 *by the number of hours worked in that period of time.*]

21 (4) "Public agency" means the State of Oregon or any political subdivision thereof or any
22 county, city, district, authority, public corporation or entity and any of their instrumentalities or-
23 ganized and existing under law or charter.

24 (5) "Public works" includes, but is not limited to, roads, highways, buildings, structures and
25 improvements of all types, the construction, reconstruction, major renovation or painting of which
26 is carried on or contracted for by any public agency to serve the public interest but does not include
27 the reconstruction or renovation of privately owned property that is leased by a public agency.

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

29 279C.815. (1) As used in this section, "person" includes any employer, labor organization or any
30 official representative of an employee or employer association.

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

35 **(b) In making the determinations, the commissioner shall rely on an independent wage**
36 **survey to be conducted once each year. However, if it appears to the commissioner that the**
37 **data derived from the survey alone are insufficient to establish the rate, the commissioner**
38 **also shall consider additional information such as collective bargaining agreements, other**
39 **independent wage surveys and the prevailing rates of wage determined by appropriate federal**
40 **agencies or agencies of adjoining states. If there is not a majority in the same trade or oc-**
41 **cupation paid at the same rate, the average rate of hourly wage, including all fringe benefits,**
42 **paid in the locality to workers in the same trade or occupation shall be the prevailing rate.**
43 **If the wage paid by any contractor or subcontractor to workers on any public works is based**
44 **on some period of time other than an hour, the hourly wage shall be mathematically deter-**
45 **mined by the number of hours worked in that period of time.**

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

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

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

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

21 **(6) The commissioner shall periodically audit the wage survey data collected and the re-**
 22 **ports and returns made under this section. The commissioner may audit the data, reports**
 23 **and returns on a random basis or when the commissioner has cause to question the accuracy**
 24 **or adequacy of the data or a report or return.**

25 **SECTION 3.** ORS 279C.815, as amended by section 2 of this 2007 Act, is amended to read:

26 279C.815. (1) As used in this section, "person" includes any employer, labor organization or any
 27 official representative of an employee or employer association.

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

32 (b) In making the determinations, the commissioner shall rely on an independent wage survey
 33 to be conducted once each year. However, if it appears to the commissioner that the data derived
 34 from the survey alone are insufficient to establish the rate, the commissioner also shall consider
 35 additional information such as collective bargaining agreements, other independent wage surveys
 36 and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining
 37 states. If there is not a majority in the same trade or occupation paid at the same rate, the average
 38 rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade
 39 or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to
 40 workers on any public works is based on some period of time other than an hour, the hourly wage
 41 shall be mathematically determined by the number of hours worked in that period of time.

42 (c) 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) and determine which rate is higher for workers in each trade or occupation in each
 45 locality. The commissioner shall make this information, showing which prevailing rate of wage is

1 higher for workers in each trade or occupation in each locality, available at the same time as the
2 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 *[(6) The commissioner shall periodically audit the wage survey data collected and the reports and*
18 *returns made under this section. The commissioner may audit the data, reports and returns on a ran-*
19 *dom basis or when the commissioner has cause to question the accuracy or adequacy of the data or a*
20 *report or return.]*

21 **SECTION 4.** ORS 279C.825 is amended to read:

22 279C.825. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish
23 a fee to be paid by the *[contractor to whom]* **public agency that awards** a public works contract
24 subject to ORS 279C.800 to 279C.870 *[has been awarded]*. The fee shall be used to pay the costs of:

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

26 **(B) Audits of wage survey data collected and reports and returns made under ORS**
27 **279C.815;**

28 *[(B)]* **(C)** Administering and providing investigations under and enforcement of ORS 279C.800 to
29 279C.870; and

30 *[(C)]* **(D)** Providing educational programs on public contracting law under the Public Contracting
31 Code.

32 (b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee be
33 charged and collected that is more than *[\$5,000]* **\$7,500** or less than *[\$100]* **\$250**.

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

37 *[(3) The contractor shall pay the fee at the time of the first progress payment or 60 days after work*
38 *on the contract has begun, whichever date is earlier.]*

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

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

43 **SECTION 5.** ORS 279C.825, as amended by section 4 of this 2007 Act, is amended to read:

44 279C.825. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish
45 a fee to be paid by the public agency that awards a public works contract subject to ORS 279C.800

1 to 279C.870. The fee shall be used to pay the costs of:

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

3 [(B) Audits of wage survey data collected and reports and returns made under ORS 279C.815;]

4 [(C)] (B) Administering and providing investigations under and enforcement of ORS 279C.800 to
5 279C.870; and

6 [(D)] (C) Providing educational programs on public contracting law under the Public Contracting
7 Code.

8 (b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee be
9 charged and collected that is more than [\$7,500] **\$5,000** or less than [\$250] **\$100**.

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

13 (3) The public agency shall pay the fee at the time the public agency enters into the public
14 works contract.

15 **SECTION 6.** ORS 279C.830 is amended to read:

16 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision
17 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of
18 wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade
19 or occupation required for the public works employed in the performance of the contract either by
20 the contractor or subcontractor or other person doing or contracting to do the whole or any part
21 of the work contemplated by the contract.

22 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
23 federal prevailing rates of wage in the specifications, the public agency also shall include in the
24 specifications information showing which prevailing rate of wage is higher for workers in each trade
25 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-
26 dustries under ORS 279C.815 [(2)(b)] **(2)(c)**.

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

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

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

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

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

43 **SECTION 7. The amendments to ORS 279C.815 and 279C.825 by sections 3 and 5 of this**
44 **2007 Act become operative on January 1, 2011.**

45 **SECTION 8. (1) The amendments to ORS 279C.825 by section 4 of this 2007 Act apply only**

1 **to public works contracts entered into on or after the effective date of this 2007 Act.**

2 **(2) The amendments to ORS 279C.825 by section 5 of this 2007 Act apply only to public**

3 **works contracts entered into on or after the operative date specified in section 7 of this 2007**

4 **Act.**

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