

House Bill 2824

Sponsored by Representative BURLEY

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 **as introduced**.

Exempts contractors and subcontractors working on residential affordable housing project from requirement to file public works bond.

A BILL FOR AN ACT

1
2 Relating to public works bonds required for residential affordable housing projects; creating new
3 provisions; and amending ORS 279C.830 and 279C.836.

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

5 **SECTION 1.** ORS 279C.836 is amended to read:

6 279C.836. (1) Except as provided in subsection (7), [*or*] (8) **or** (9) of this section, before starting
7 work on a contract or subcontract for a public works project, a contractor or subcontractor shall
8 file with the Construction Contractors Board a public works bond with a corporate surety author-
9 ized to do business in this state in the amount of \$30,000. The bond must provide that the contractor
10 or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers per-
11 forming labor upon public works projects. The bond must be a continuing obligation, and the
12 surety's liability for the aggregate of claims that may be payable from the bond may not exceed the
13 penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid
14 under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by
15 giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau
16 of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for
17 work performed on contracts entered into after the cancellation. The cancellation does not limit the
18 surety's liability for work performed on contracts entered into before the cancellation.

19 (2) Before permitting a subcontractor to start work on a public works project, the contractor
20 shall verify that the subcontractor has filed a public works bond as required under this section or
21 has elected not to file a public works bond under subsection (7) of this section.

22 (3) A contractor or subcontractor is not required under this section to file a separate public
23 works bond for each public works project for which the contractor or subcontractor has a contract.

24 (4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of
25 wage on a public works project is not required to file a public works bond under this section.

26 (5) A public works bond required by this section is in addition to any other bond the contractor
27 or subcontractor is required to obtain.

28 (6) The board may, by rule, require a contractor or subcontractor to obtain a new public works
29 bond if a surety pays a claim out of an existing public works bond. The new bond must be in the
30 amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new
31 bond, a certification that the surety remains liable for the full penal sum of the existing bond,

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 notwithstanding payment by the surety on the claim.

2 (7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under
 3 ORS 200.055 may, for up to one year after certification, elect not to file a public works bond as re-
 4 quired under subsection (1) this section. If a business enterprise elects not to file a public works
 5 bond, the business enterprise shall give the board written verification of the certification and writ-
 6 ten notice that the business enterprise elects not to file the bond.

7 (b) A business enterprise that elects not to file a public works bond under this subsection shall
 8 notify the public agency for whose benefit the contract was awarded or, if the business enterprise
 9 is a subcontractor, the contractor of the election before starting work on a public works project.
 10 When a business enterprise elects not to file a public works bond under this subsection, a claim for
 11 unpaid wages may be made against the payment bond of the business enterprise or, if the business
 12 enterprise is a subcontractor, the payment bond of the contractor.

13 (c) An election not to file a public works bond expires one year after the date the business en-
 14 terprise is certified. After an election has expired and before starting or continuing work on a
 15 contract or subcontract for a public works project, the business enterprise shall file a public works
 16 bond with the board as required under subsection (1) of this section.

17 (8) In cases of emergency, or when the interest or property of the public agency for whose
 18 benefit the contract was awarded probably would suffer material injury by delay or other cause, the
 19 requirement for filing a public works bond may be excused, if a declaration of the emergency is
 20 made in accordance with rules adopted under ORS 279A.065.

21 **(9) This section does not apply to a contractor or subcontractor working on a public**
 22 **works project to develop residential affordable housing. As used in this subsection:**

23 **(a) “Affordable housing” means housing serving occupants whose incomes are no greater**
 24 **than 60 percent of the area median income or, if the occupants are owners, whose incomes**
 25 **are no greater than 80 percent of the area median income.**

26 **(b) “Residential” includes single family houses or apartment buildings of no more than**
 27 **four stories in height and all incidental items, such as site work, parking areas, utilities,**
 28 **streets and sidewalks pursuant to the United States Department of Labor’s “All Agency**
 29 **Memorandum No. 130 -- Application of the Standard of Comparison ‘Projects of a Character**
 30 **Similar’ Under the Davis-Bacon and Related Acts,” dated March 17, 1978. However, when the**
 31 **Commissioner of the Bureau of Labor and Industries determines that a different definition**
 32 **of residential construction has been adopted by local ordinance or code, or that the prevailing**
 33 **practice of a particular trade or occupation regarding what is considered residential con-**
 34 **struction differs from the United States Department of Labor description of residential con-**
 35 **struction, the commissioner may consider that information in determining whether a project**
 36 **is a residential construction project for purposes of this subsection.**

37 [(9)] (10) The board shall make available on a searchable public website information concerning
 38 public works bonds filed with the board, claims made on those bonds, elections made by certified
 39 business enterprises not to file those bonds and the expiration date of each election. The board may
 40 adopt rules necessary to perform the duties required of the board by this section.

41 [(10)] (11) The commissioner [*of the Bureau of Labor and Industries*], with approval of the board,
 42 shall adopt rules that establish language for public works bonds.

43 **SECTION 2.** ORS 279C.830 is amended to read:

44 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision
 45 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of

1 wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade
 2 or occupation required for the public works employed in the performance of the contract either by
 3 the contractor or subcontractor or other person doing or contracting to do the whole or any part
 4 of the work contemplated by the contract.

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

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

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

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

22 (a) To have a public works bond filed with the Construction Contractors Board before starting
 23 work on the project, unless exempt under ORS 279C.836 (7), [or] (8) **or** (9).

24 (b) To include in every subcontract a provision requiring the subcontractor to have a public
 25 works bond filed with the Construction Contractors Board before starting work on the project, un-
 26 less exempt under ORS 279C.836 (7), [or] (8) **or** (9).

27 **SECTION 3. The amendments to ORS 279C.830 and 279C.836 by sections 1 and 2 of this**
 28 **2007 Act apply only to public contracts first advertised, or if not advertised then entered into,**
 29 **on or after the effective date of this 2007 Act.**

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