

A-Engrossed
House Bill 2944

Ordered by the House April 11
Including House Amendments dated April 11

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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, upon request, to determine whether project is public works on which payment of prevailing wage rates is required. **Modifies definition of "public works." Exempts certain projects from prevailing wage provisions. Declares emergency, effective July 1, 2007.**

A BILL FOR AN ACT

1
2 Relating to determination of applicability of prevailing wage rates; creating new provisions; amend-
3 ing ORS 279C.800, 279C.810, 279C.815 and 279C.830; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 279C.800 to**
6 **279C.870.**

7 **SECTION 2. (1) The Commissioner of the Bureau of Labor and Industries shall, upon the**
8 **request of a public agency or other interested person, make a determination about whether**
9 **a project or proposed project is or would be a public works on which payment of the pre-**
10 **valing rate of wage is or would be required under ORS 279C.840.**

11 **(2) The requester shall provide the commissioner with information necessary to enable**
12 **the commissioner to make the determination.**

13 **(3) The commissioner shall make the determination within 60 days after receiving the**
14 **request or 60 days after the requester has provided the commissioner with the information**
15 **necessary to enable the commissioner to make the determination, whichever is later. The**
16 **commissioner, for good cause shown, may take additional time to make the determination.**

17 **(4) The commissioner shall afford the requester or a person adversely affected or**
18 **aggrieved by the commissioner's determination a hearing in accordance with ORS 183.413 to**
19 **183.470. An order the commissioner issues under ORS 183.413 to 183.470 is subject to judicial**
20 **review as provided in ORS 183.482.**

21 **(5) The commissioner shall adopt rules establishing the process for requesting and mak-**
22 **ing the determinations described in this section.**

23 **SECTION 3. ORS 279C.800 is amended to read:**

24 **279C.800. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:**

25 **(1) "Fringe benefits" means the amount of:**

26 **(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or**
27 **to a third person under a plan, fund or program; 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 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
2 providing benefits to workers pursuant to an enforceable commitment to carry out a financially re-
3 sponsible plan or program that is committed in writing to the workers affected, for medical or hos-
4 pital care, pensions on retirement or death, compensation for injuries or illness resulting from
5 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life
6 insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for
7 defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits,
8 but only when the contractor or subcontractor is not required by other federal, state or local law
9 to provide any of these benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (4) "Public agency" means the State of Oregon or any political subdivision thereof or any
40 county, city, district, authority, public corporation or entity and any *[of their instrumentalities]*
41 **instrumentality thereof** organized and existing under law or charter.

42 (5)(a) "Public works" includes, but is not limited to[,]:

43 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
44 construction, major renovation or painting of which is carried on or contracted for by any public
45 agency to serve the public interest; *[but does not include the reconstruction or renovation of privately*

1 *owned property that is leased by a public agency.]*

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

5 **(C) A project for the construction of a privately owned road, highway, building, structure**
6 **or improvement of any type that uses funds of a private entity and in which 25 percent or**
7 **more of the square footage of the completed project will be occupied or used by a public**
8 **agency.**

9 **(b) "Public works" does not include the reconstruction or renovation of privately owned**
10 **property that is leased by a public agency.**

11 **SECTION 4.** ORS 279C.810 is amended to read:

12 279C.810. (1) As used in this section:

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

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

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

18 (C) **Tax credits or tax abatements;**

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

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

22 [(D)] (F) Staff resources of the public agency used to design or inspect one or more components
23 of a project.

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

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

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

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

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

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

37 **(c) Projects:**

38 **(A) That are privately owned;**

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

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

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

43 **(d) Projects for residential construction that are privately owned and that predominantly**
44 **provide affordable housing. As used in this paragraph:**

45 **(A) "Affordable housing" means housing that serves occupants whose incomes are no**

1 **greater than 60 percent of the area median income or, if the occupants are owners, whose**
2 **incomes are no greater than 80 percent of the area median income.**

3 **(B) “Predominantly” means 60 percent or more.**

4 **(C) “Privately owned” includes:**

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

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

11 **(D) “Residential construction” includes the construction, reconstruction, major reno-**
12 **vation or painting of single-family houses or apartment buildings not more than four stories**
13 **in height and all incidental items, such as site work, parking areas, utilities, streets and**
14 **sidewalks, pursuant to the United States Department of Labor’s “All Agency Memorandum**
15 **No. 130: Application of the Standard of Comparison ““Projects of a Character Similar”” Un-**
16 **der the Davis-Bacon and Related Acts,” dated March 17, 1978. However, the commissioner**
17 **may consider different definitions of residential construction in determining whether a**
18 **project is a residential construction project for purposes of this paragraph, including defi-**
19 **initions that:**

20 **(i) Exist in local ordinances or codes; or**

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

23 *[(3)(a) A public agency may not divide a public works project into more than one contract for the*
24 *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 for*
26 *the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an*
27 *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 5.** 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) If it appears to the commissioner that the data derived only from the survey de-**
43 **scribed in paragraph (a) of this subsection are insufficient to determine the prevailing rate**
44 **of wage, the commissioner also shall consider additional information such as collective bar-**
45 **gaining agreements, other independent wage surveys and the prevailing rates of wage de-**

1 **terminated by appropriate federal agencies or agencies of adjoining states. If there is not a**
 2 **majority in the same trade or occupation paid at the same rate, the average rate of hourly**
 3 **wage, including all fringe benefits, paid in the locality to workers in the same trade or oc-**
 4 **cupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor**
 5 **to workers on any public works is based on some period of time other than an hour, the**
 6 **hourly wage shall be mathematically determined by the number of hours worked in that pe-**
 7 **riod of time.**

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

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

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

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

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

29 279C.830. (1)(a) **Except as provided in paragraph (d) of this subsection,** the specifications for
 30 every contract for public works shall contain a provision stating the existing state prevailing rate
 31 of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act
 32 (40 U.S.C. 276a) that may be paid to workers in each trade or occupation required for the public
 33 works employed in the performance of the contract either by the contractor or subcontractor or
 34 other person doing or contracting to do the whole or any part of the work contemplated by the
 35 contract.

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

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

43 **(d) A public works project described in ORS 279C.800 (5)(a)(B) or (C) is subject to the**
 44 **existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage**
 45 **required under the Davis-Bacon Act that is in effect at the time a public agency enters into**

1 **an agreement with a private entity for the project. After that time, the specifications for any**
2 **contract for the public works shall include the applicable prevailing rate of wage.**

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 7. Sections 8 and 9 of this 2007 Act are added to and made a part of ORS**
18 **279C.800 to 279C.870.**

19 **SECTION 8. (1)(a) A public agency may not divide a public works project into more than**
20 **one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.**

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

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

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

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

28 **(C) The continuity of project contractors and subcontractors working on project parts**
29 **or phases;**

30 **(D) The manner in which the public agency and the contractors administer and imple-**
31 **ment the project;**

32 **(E) Whether a single public works project includes several types of improvements or**
33 **structures; and**

34 **(F) Whether the combined improvements or structures have an overall purpose or func-**
35 **tion.**

36 **(2) If a project is a public works of the type described in ORS 279C.800 (5)(a)(B) or (C),**
37 **the commissioner shall divide the project, if appropriate, after applying the considerations**
38 **set forth in subsection (1)(c) of this section to separate the parts of the project that include**
39 **funds of a public agency or that will be occupied or used by a public agency from the parts**
40 **of the project that do not include funds of a public agency and that will not be occupied or**
41 **used by a public agency. If the commissioner divides the project, any part of the project that**
42 **does not include funds of a public agency and that will not be occupied or used by a public**
43 **agency is not subject to ORS 279C.800 to 279C.870.**

44 **(3) If a project includes parts that are owned by a public agency and parts that are owned**
45 **by a private entity, the commissioner shall divide the project, if appropriate, after applying**

1 the considerations set forth in subsections (1)(c) and (2) of this section to separate the parts
2 of the project that are public works from the parts of the project that are not public works.
3 If the commissioner divides the project, parts of the project that are not public works are
4 not subject to ORS 279C.800 to 279C.870.

5 **SECTION 9.** In accordance with applicable provisions of ORS chapter 183, the Commis-
6 sioner of the Bureau of Labor and Industries shall adopt rules necessary to administer ORS
7 279C.800 to 279C.870.

8 **SECTION 10.** (1) Sections 2 and 8 of this 2007 Act and the amendments to ORS 279C.800,
9 279C.810, 279C.815 and 279C.830 by sections 3 to 6 of this 2007 Act apply to contracts for
10 projects first advertised, or if not advertised then first entered into, on or after the effective
11 date of this 2007 Act.

12 (2) Sections 2 and 8 of this 2007 Act and the amendments to ORS 279C.800, 279C.810,
13 279C.815 and 279C.830 by sections 3 to 6 of this 2007 Act do not apply to development and
14 disposition agreements signed by an urban renewal agency before the effective date of this
15 2007 Act in connection with public-private projects for which no contracts for construction
16 are advertised.

17 **SECTION 11.** This 2007 Act being necessary for the immediate preservation of the public
18 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
19 July 1, 2007.
20
