

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	9 - 0 - 1
Yeas:	Barton, Cameron, Edwards C., Esquivel, Holvey, Kennemer, Matthews, Thatcher, Schaufler
Nays:	0
Exc.:	Witt
Prepared By:	Theresa Van Winkle, Administrator
Meeting Dates:	4/29

WHAT THE MEASURE DOES: Changes the time at which a contracting agency must pay the required prevailing wage fee to the Bureau of Labor and Industries (BOLI) from the time the agency enters into the contract to the time BOLI has been notified of the contract being awarded. Removes the current requirement that reference to the required fee be included in a public works contract. Specifies that contractors and subcontractors must pay all wages due on the regularly established payday. Declares an emergency, effective upon passage.

ISSUES DISCUSSED:

- Provisions of the measure

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: SB 53 clarifies two technical issues that emerged after the enactment of HB 2140 (2007). A fee must be paid to the Bureau of Labor and Industries (BOLI) for every public works contract, which is used to fund surveys that are used to determine prevailing wage rates as well as the education and enforcement of prevailing wage rate (PWR) laws. The amount of the fee varies on the size of the project and is generally one-tenth of one percent of the contract's price. Prior to HB 2140, the contractor was required to pay the prevailing wage fee to BOLI, and the law required a reference to the fee in the contract. HB 2140 made the contracting agency responsible for paying the fee. SB 53 removes the requirement for the fee to be included in a contract's provisions, and clarifies when the contracting agency must pay the fee.

The measure also specifies that PWR wages must be paid to workers on the contractor's regularly established payday. The Oregon State Court decision of *North Marion School District v. Acstar* established that the existence of regular payroll records as required under the state's PWR law does not imply an obligation, separate from or independent of ORS chapter 652 (wage and hour law), to pay wages at a particular time. Because of this, a contractor may not be considered to have violated PWR and is not liable for liquidated damages as long as the contractor eventually pays the correct amount of wages owed to the worker. Under SB 53, BOLI could assess a penalty if the contractor fails to pay wages on its regular payday.