

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2699 – Minority Report **STATUS:** A-Engrossed
SUBJECT: Expansion of the definition of “public works” and fees set by BOLI
GOVERNMENT UNIT AFFECTED: Bureau of Labor and Industries, counties, cities, Department of Administrative Services – State Procurement Office, state agencies
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DATE: April 29, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES:		
<u>Bureau of Labor and Industries</u>		
Personal Services – Other Funds	\$ 122,393	\$ 122,393
Services and Supplies – Other Funds	\$ 24,479	\$ 24,479
Total	\$ 146,872	\$ 146,872
POSITIONS / FTE:	1/1.00	1/1.00
<u>Cities and Counties</u>		
PWR Fees	\$ 100,000- 225,000	\$ 100,000- 225,000
REVENUES:		
<u>Bureau of Labor and Industries</u>		
PWR Fees – Other Funds	\$ 100,000- 225,000	\$ 100,000- 225,000

EFFECTIVE DATE: On passage.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: This measure expands the current definition of “public works” to include projects for the construction, reconstruction or major renovation of a privately owned road, highway, building, structure or improvement of any type that is (a) located in an enterprise zone (one of the areas designated by the Governor or the Director of the Economic and Community Development Department); (b) consists of or is sited on real property for which a qualified business firm has received an exemption from ad valorem property taxation; and (c) has a projected cost of \$5 million or more. The measure requires the sponsor(s) of the enterprise zone in which a public works is or will be located to pay a fee that is set in rule by the Bureau of Labor and Industries (BOLI). The measure specifies that contractors or subcontractors in enterprise zones are exempted from the requirement to pay prevailing wage rates if they have in place a first-source hiring agreement under which the contractor or subcontractor hires workers for the public works. A first source hiring agreement is an agreement that can be put in place with a publically funded job placement agency which screens for qualified workers and passes them on to the contractor or subcontractor who agrees to hire them through the agency.

Currently there are 59 designated enterprise zones in Oregon. The sponsor of the enterprise zone can be a city, county, port, or tribal government. The local government entities which sponsor the enterprise zones in which public works projects are or will be located will be required to pay a fee ranging from \$5,000 to \$7,500 to BOLI. The fiscal impact to these local government entities is the fee paid to BOLI. Although the number of projects within existing enterprise zones that will be subject to the requirements of the bill is unknown, the Association of Oregon Counties estimates that 12-15 projects annually will be subject to the fee requirements. BOLI's estimate is slightly less at 10 additional projects per year. These projects will fall under prevailing wage laws which are administered and regulated by the Bureau of Labor and Industries (BOLI).

There is a fiscal impact to BOLI. This measure adds certain projects constructed in enterprise zones to the definition of "public works". Public works projects are generally covered by prevailing wage rate law which is administered by BOLI. BOLI anticipates that 10 additional projects will be subject to the requirements under the prevailing wage rate law which is administered and enforced by BOLI. The workload of BOLI's current Prevailing Wage Rate Unit would increase as the projects that would fall into the expanded definition of "public works" are not typical of other prevailing wage rate projects and would require a special focus on enforcement, additional rulemaking, public education, and the development of new forms and publications. These new projects would differ from the projects that BOLI currently administers and enforces the PWR law over in that public agencies contract for the construction of current projects and these new projects would lack the public entity and instead BOLI would be dealing with a private contractor. BOLI estimates that it would require one full-time Compliance Specialist 2 position to enforce the requirements and provide technical support of the prevailing wage rate law on the new projects. The total cost of the position is \$146,872 for the 2009-11 biennium and \$146,872 for the 2011-13 biennium.

The measure also allows BOLI to set a fee by rule. BOLI estimates that 10 projects will fall into the expanded definition of "public works" and meet the other criteria in the bill and generate an estimated \$100,000-\$150,000 in Other Funds revenue per biennium assuming the fee is set at \$5,000-\$7,500 for all of the projects. BOLI reports it would assume a fee set in rule of between \$5,000-\$7,500 per project covered by PWR law. BOLI reports it would likely set the fee amount in rule following the same formula applied in statute, which is .001 of the total contract/project value, with a minimum fee of \$250 and a maximum of \$7,500. Since BOLI assumes all projects would be over a \$5 million dollar project cost, all would have a fee of at least \$5,000 and some may potentially reach the cap of \$7,500. BOLI reports that it would try and maintain consistency in rule with fees applied to other PWR covered projects in statute and established minimum and maximum amounts.

Finally, there is a minimal fiscal impact to the Department of Administrative Services (DAS) – State Procurement Office. DAS will incur minimal legal costs to draft the appropriate solicitation and contract document language for state agencies that are subject to DAS procurement authority. DAS will also require some rulemaking, training courses and material revision, and some upgrades to its current solicitation and contract documents. Agencies that have independent procurement authority from DAS would be required to address the requirement in their own procurement rules, training and solicitation materials, and contract documents; these costs are expected to be minimal.