

A-Engrossed
House Bill 2430

Ordered by the House May 5
Including House Amendments dated May 5

Sponsored by Representative SCHAUFLEER (at the request of Oregon State Building and Construction Trades Council, Associated General Contractors, Oregon Opportunity Network)

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.

Defines [*“building construction” and modifies definition of “residential construction”*] **and modifies certain terms** for purposes of applying prevailing rate of wage [*to projects that predominantly provide affordable housing*].

Exempts certain projects from imposition of prevailing rate of wage.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to application of prevailing rate of wage; creating new provisions; amending ORS 279C.810;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.810 is amended to read:

6 279C.810. [(1)] As used in this section **and section 2 of this 2009 Act:**

7 (1) **“Affordable housing” means housing that serves occupants whose incomes are not**
8 **greater than 60 percent of the state median income or the area median income or, if the**
9 **occupants are owners, whose incomes are not greater than 80 percent of the state median**
10 **income or the area median income.**

11 [(a)] (2) “Funds of a public agency” does not include:

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

15 [(B)] (b) Building and development permit fees paid or waived by the public agency;

16 [(C)] (c) Tax credits or tax abatements;

17 [(D)] (d) Land that a public agency sells to a private entity at fair market value;

18 [(E)] (e) The difference between:

19 [(i)] (A) The value of land that a public agency sells to a private entity as determined at the
20 time of the sale after taking into account any plan, requirement, covenant, condition, restriction or
21 other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the
22 development or use of the land; and

23 [(ii)] (B) The fair market value of the land if the land is not subject to the limitations described
24 in [*sub-subparagraph (i) of this subparagraph*] **subparagraph (A) of this paragraph;**

25 [(F)] (f) Staff resources of the public agency used to manage a project or to provide a principal
26 source of supervision, coordination or oversight of a project;

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 [(G)] (g) Staff resources of the public agency used to design or inspect one or more components
2 of a project;

3 [(H)] (h) Moneys derived from the sale of bonds that are loaned by a state agency to a private
4 entity, unless the moneys will be used for a public improvement;

5 [(I)] (i) Value added to land as a consequence of a public agency's site preparation, demolition
6 of real property or remediation or removal of environmental contamination, except for value added
7 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-
8 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to
9 279C.870; or

10 [(J)] (j) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289
11 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

12 [(b)] (3) "Nonprofit organization" means an organization or group of organizations described in
13 section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a)
14 of the Internal Revenue Code.

15 (4)(a) "Podium" means a structural frame or portion of a structural frame that is con-
16 structed with metal, concrete or reinforced masonry and that serves as the ground floor of
17 and a base or support for the other floors of a building.

18 (b) "Podium" does not include a concrete pad or foundation.

19 (5) "Predominantly" means 60 percent or more.

20 (6)(a) "Site work" means amenities or structures located near a building that are neces-
21 sary to make the building accessible or habitable, such as utilities, streets, sidewalks, park-
22 ing structures, underground parking or parking garages and similar amenities or structures.

23 (b) "Site work" does not include landscaping or surface parking areas.

24 (7) "Structural frame" means the columns and bracing members of a building that are
25 designed to carry gravity loads, and the girders, beams, trusses and spandrels that have a
26 direct connection to the columns.

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 individ-
31 uals 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 to
36 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 occupied or
41 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 provide
44 affordable housing. As used in this paragraph:]

45 [(A) "Affordable housing" means housing that serves occupants whose incomes are no greater than

1 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater
2 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 property
6 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 company
8 in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing
9 member and the housing authority is not a majority owner in the partnership, nonprofit corporation
10 or limited liability company.]

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

19 [(i) Exist in local ordinances or codes; or]

20 [(ii) Differ, in the prevailing practice of a particular trade or occupation, from the United States
21 Department of Labor's description of residential construction.]

22 **SECTION 2. (1) Except as provided in subsections (2) and (3) of this section, ORS 279C.800**
23 **to 279C.870 do not apply to:**

24 (a) A project for which the contract price does not exceed \$50,000. In determining the
25 contract price for a project, a public agency:

26 (A) May not include the value of donated materials or work performed on the project by
27 individuals volunteering to the public agency without pay; and

28 (B) Shall include the value of work performed by every person that a contractor or sub-
29 contractor paid in any manner for the person's work on the project.

30 (b) A project for which no funds of a public agency are used, directly or indirectly. In
31 accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries
32 shall adopt rules to carry out the provisions of this paragraph.

33 (c) A project:

34 (A) That is privately owned;

35 (B) That uses funds of a private entity;

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

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

39 (d)(A) A project that:

40 (i) Is privately owned;

41 (ii) Is a building that consists of not more than four floors; and

42 (iii) Predominantly provides affordable housing.

43 (B) As used in this paragraph, "privately owned" includes:

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

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

5 (2)(a) ORS 279C.800 to 279C.870 apply to a project described in subsection (1)(d) of this
6 section as provided in paragraph (b) of this subsection if, in addition to affordable housing,
7 the project provides space for commercial use.

8 (b) With respect to a project described in paragraph (a) of this subsection:

9 (A) ORS 279C.800 to 279C.870 apply to the construction of:

10 (i) The podium, in a project in which part of the structural frame consists of a podium.

11 (ii) The portion of the project that consists of space for commercial use, if the area
12 available for commercial use in the project is 20 percent or more of the entire square footage
13 of the project.

14 (iii) Site work for the project.

15 (B) ORS 279C.800 to 279C.870 do not apply to the construction of:

16 (i) The portions of the project that are above the podium, in a project in which part of
17 the structural frame consists of a podium.

18 (ii) The entire project, if the area available for commercial use in the project is less than
19 20 percent of the entire square footage of the project.

20 (3) ORS 279C.800 to 279C.870 apply to electrical work on the portions of a project de-
21 scribed in subsection (1)(d) of this section that are equivalent to the types of building or
22 dwelling unit described in ORS 479.630 (14) on which a person who has a limited residential
23 electrician's license may perform electrical work.

24 (4) The commissioner by rule shall adopt a definition of "floor" for use in applying the
25 provisions of this section that is consistent with the definition or description of "floor" that
26 the United States Department of Labor uses in applying the provisions of the Davis-Bacon
27 Act (40 U.S.C. 3141 et seq.) to determinations of construction types.

28 **SECTION 3.** Section 2 of this 2009 Act and the amendments to ORS 279C.810 by section
29 1 of this 2009 Act apply to contracts first advertised or otherwise solicited or, if not adver-
30 tised or solicited, first entered into on or after the effective date of this 2009 Act.

31 **SECTION 4.** This 2009 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
33 on its passage.

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