

# House Bill 2430

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 **as introduced**.

Defines "building construction" and modifies definition of "residential construction" for purposes of applying prevailing rate of wage to projects that predominantly provide affordable housing. 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:

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

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

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

12 (C) Tax credits or tax abatements;

13 (D) Land that a public agency sells to a private entity at fair market value;

14 (E) The difference between:

15 (i) The value of land that a public agency sells to a private entity as determined at the time of  
16 the sale after taking into account any plan, requirement, covenant, condition, restriction or other  
17 limitation, exclusive of zoning or land use regulations, that the public agency imposes on the de-  
18 velopment or use of the land; and

19 (ii) The fair market value of the land if the land is not subject to the limitations described in  
20 subparagraph (i) of this paragraph;

21 (F) Staff resources of the public agency used to:

22 (i) Manage a project or to provide a principal source of supervision, coordination or oversight  
23 of a project; **or**

24 [(G)] **ii** [*Staff resources of the public agency used to*] Design or inspect one or more components  
25 of a project;

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

28 [(I)] (H) Value added to land as a consequence of a public agency's site preparation, demolition  
29 of real property or remediation or removal of environmental contamination, except for value added  
30 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-

**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 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to  
2 279C.870; or

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

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

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

9 (a) [Projects] **A project** for which the contract price does not exceed \$50,000. In determining the  
10 **contract price [of] for** a project, a public agency:

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

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

15 (b) [Projects] **A project** for which no funds of a public agency are **used**, directly or indirectly  
16 [used]. In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Indus-  
17 tries shall adopt rules to carry out the provisions of this paragraph.

18 (c) [Projects] **A project**:

19 (A) That [are] **is** privately owned;

20 (B) That [use] **uses** funds of a private entity;

21 (C) In which less than 25 percent of the square footage of [a] **the** completed project will be oc-  
22 cupied or used by a public agency; and

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

24 (d) [Projects for residential construction that are] **A project that is** privately owned and that  
25 predominantly [provide] **provides** affordable housing. **A project that predominantly provides af-**  
26 **fordable housing may consist of residential construction or a combination of residential**  
27 **construction and building construction in which not more than 20 percent of the cost of the**  
28 **project is devoted to building construction. In a project that consists of a combination of**  
29 **residential construction and building construction, ORS 279C.800 to 279C.870 apply to the**  
30 **portion of the project that consists of building construction.** As used in this paragraph:

31 (A) "Affordable housing" means housing that serves occupants whose incomes are no greater  
32 than 60 percent of the area median income or, if the occupants are owners, whose incomes are no  
33 greater than 80 percent of the area median income.

34 (B) "**Building construction**" means a sheltered enclosure with walk-in access used to  
35 house people, machinery, equipment or supplies or for other nonresidential purposes and  
36 utilities, equipment or paving installed in connection with the enclosure, both above and be-  
37 low grade level, that together fall within the range of examples shown in the United States  
38 Department of Labor's "All Agency Memorandum No. 130: Application of the Standard of  
39 Comparison "Projects of a Character Similar" Under the Davis-Bacon and Related Acts,"  
40 dated March 17, 1978, as supplemented by "All Agency Memorandum No. 131: Clarification  
41 of All Agency Memorandum No. 130," dated July 14, 1978.

42 [(B)] (C) "Predominantly" means 60 percent or more.

43 [(C)] (D) "Privately owned" includes:

44 (i) Affordable housing provided on real property owned by a public agency if the real property  
45 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 com-  
 2 pany in which a housing authority, as defined in ORS 456.005, is a general partner, director or  
 3 managing member and the housing authority is not a majority owner in the partnership, nonprofit  
 4 corporation or limited liability company.

5 [(D)] (E) “Residential construction” [*includes*] **means** the construction, reconstruction, major  
 6 renovation or painting of a single-family [*houses*] **house** or apartment [*buildings*] **building** not more  
 7 than four stories in height and [*all incidental*] items **incidental to the house or apartment build-**  
 8 **ing**, such as site work, parking areas, utilities, streets and sidewalks, [*pursuant to*] **that together**  
 9 **fall within the range of examples shown in** the United States Department of Labor’s “All Agency  
 10 Memorandum No. 130: Application of the Standard of Comparison “Projects of a Character  
 11 Similar” Under **the** Davis-Bacon and Related Acts,” dated March 17, 1978, **as supplemented by**  
 12 **“All Agency Memorandum No. 131: Clarification of All Agency Memorandum No. 130,” dated**  
 13 **July 14, 1978.** However, the commissioner may consider different definitions of residential con-  
 14 struction [*in determining whether a project is a residential construction project*] for purposes of this  
 15 paragraph, including definitions that:

16 (i) Exist in local ordinances or codes; or

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

19 **SECTION 2. The amendments to ORS 279C.810 by section 1 of this 2009 Act apply to**  
 20 **contracts first advertised or, if not advertised, first entered into on or after the effective**  
 21 **date of this 2009 Act.**

22 **SECTION 3. This 2009 Act being necessary for the immediate preservation of the public**  
 23 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
 24 **on its passage.**

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