

House Bill 2699

Sponsored by Representative HOLVEY

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**.

Modifies definition of "public works." Requires payment of prevailing rate of wage in connection with public works for which funds of public agency are used, including funds received in form of tax credit or tax abatement.

Exempts projects that are privately owned and that use private funds and not more than certain amount of funds of public agency from prevailing wage requirements.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the application of prevailing wage rates; creating new provisions; amending ORS
3 279C.800, 279C.810, 279C.827 and 279C.830; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.800 is amended to read:

6 279C.800. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:

7 (1) "Fringe benefits" means the amount of:

8 (a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or
9 to a third person under a plan, fund or program; and

10 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
11 providing benefits to workers pursuant to an enforceable commitment to carry out a financially re-
12 sponsible plan or program that is committed in writing to the workers affected, for medical or hos-
13 pital care, pensions on retirement or death, compensation for injuries or illness resulting from
14 occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life
15 insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for
16 defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits,
17 but only when the contractor or subcontractor is not required by other federal, state or local law
18 to provide any of these benefits.

19 (2) "Housing" has the meaning given that term in ORS 456.055.

20 (3) "Locality" means the following district in which the public works, or the major portion
21 thereof, is to be performed:

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

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

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

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

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

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

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

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

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 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 2 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 3 (k) District 11, composed of Klamath and Lake Counties;
- 4 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 5 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 6 (n) District 14, composed of Harney and Malheur Counties.

7 (4) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits, paid
 8 in the locality to the majority of workers employed on projects of similar character in the same
 9 trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

10 (5) "Public agency" means the State of Oregon or any political subdivision thereof or any
 11 county, city, district, authority, public corporation or entity and any instrumentality thereof organ-
 12 ized and existing under law or charter.

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

14 [(A)] roads, highways, buildings, structures and improvements of all types, the construction, re-
 15 construction, major renovation or painting of which **uses funds of a public agency.** [*is carried on*
 16 *or contracted for by any public agency to serve the public interest;*]

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

20 [(C) A project for the construction of a privately owned road, highway, building, structure or im-
 21 provement of any type that uses funds of a private entity and in which 25 percent or more of the square
 22 footage of the completed project will be occupied or used by a public agency.]

23 (b) "Public works" does not include:

24 (A) The reconstruction or renovation of privately owned property that is leased by a public
 25 agency; or

26 (B) The renovation of publicly owned real property that is more than 75 years old by a private
 27 nonprofit entity if:

28 (i) The real property is leased to the private nonprofit entity for more than 25 years;

29 (ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost
 30 of the renovation; and

31 (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before
 32 July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

33 **SECTION 2.** ORS 279C.810 is amended to read:

34 279C.810. (1) As used in this section:

35 (a) "Funds of a public agency" [*does not include:*] **includes, but is not limited to, the amount**
 36 **of a tax credit or tax abatement that is provided in connection with a project or in con-**
 37 **nection with an enterprise zone as designated by the Director of the Economic and Commu-**
 38 **nity Development Department under ORS 285C.080 or 285C.250.**

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

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

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

44 [(C) Tax credits or tax abatements;]

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

- 1 ~~[(E)]~~ **(D)** The difference between:
- 2 (i) The value of land that a public agency sells to a private entity as determined at the time of
- 3 the sale after taking into account any plan, requirement, covenant, condition, restriction or other
- 4 limitation, exclusive of zoning or land use regulations, that the public agency imposes on the de-
- 5 velopment or use of the land; and
- 6 (ii) The fair market value of the land if the land is not subject to the limitations described in
- 7 subparagraph (i) of this paragraph;
- 8 ~~[(F)]~~ **(E)** Staff resources of the public agency used to:
- 9 (i) Manage a project or to provide a principal source of supervision, coordination or oversight
- 10 of a project; **or**
- 11 ~~[(G)]~~ **(ii)** ~~[Staff resources of the public agency used to]~~ Design or inspect one or more components
- 12 of a project;
- 13 ~~[(H)]~~ **(F)** Moneys derived from the sale of bonds that are loaned by a state agency to a private
- 14 entity, **the entirety of which the private entity must repay with interest**, unless the moneys
- 15 will be used for a public improvement;
- 16 ~~[(I)]~~ **(G)** Value added to land as a consequence of a public agency's site preparation, demolition
- 17 of real property or remediation or removal of environmental contamination, except for value added
- 18 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-
- 19 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to
- 20 279C.870; or
- 21 ~~[(J)]~~ **(H)** Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289
- 22 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.
- 23 ~~[(b)]~~ **(c)** "Nonprofit organization" means an organization or group of organizations described in
- 24 section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a)
- 25 of the Internal Revenue Code.
- 26 (2) ORS 279C.800 to 279C.870 do not apply to:
- 27 (a) Projects for which the contract price does not exceed \$50,000. In determining the price of a
- 28 project, a public agency:
- 29 (A) May not include the value of donated materials or work performed on the project by indi-
- 30 viduals volunteering to the public agency without pay; and
- 31 (B) Shall include the value of work performed by every person paid by a contractor or subcon-
- 32 tractor in any manner for the person's work on the project.
- 33 (b) Projects for which no funds of a public agency are directly or indirectly used. In accordance
- 34 with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules to
- 35 carry out the provisions of this paragraph.
- 36 (c) Projects:
- 37 (A) That are privately owned;
- 38 (B) That use funds of a private entity; **and**
- 39 ~~[(C)]~~ *In which less than 25 percent of the square footage of a completed project will be occupied or*
- 40 *used by a public agency; and]*
- 41 ~~[(D)]~~ **(C)** For which less than ~~[\$750,000]~~ **\$2,000** of funds of a public agency are used.
- 42 (d) Projects for residential construction that are privately owned and that predominantly provide
- 43 affordable housing. As used in this paragraph:
- 44 (A) "Affordable housing" means housing that serves occupants whose incomes are no greater
- 45 than 60 percent of the area median income or, if the occupants are owners, whose incomes are no

1 greater than 80 percent of the area median income.

2 (B) "Predominantly" means 60 percent or more.

3 (C) "Privately owned" includes:

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

6 (ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability com-
7 pany in which a housing authority, as defined in ORS 456.005, is a general partner, director or
8 managing member and the housing authority is not a majority owner in the partnership, nonprofit
9 corporation or limited liability company.

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

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

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

21 **SECTION 3.** ORS 279C.827 is amended to read:

22 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-
23 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

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

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 (D) The manner in which the public agency and the contractors administer and implement the
33 project;

34 (E) Whether a single public works project includes several types of improvements or structures;
35 and

36 (F) Whether the combined improvements or structures have an overall purpose or function.

37 *[(2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C), the
38 commissioner shall divide the project, if appropriate, after applying the considerations set forth in
39 subsection (1)(c) of this section to separate the parts of the project that include funds of a public agency
40 or that will be occupied or used by a public agency from the parts of the project that do not include
41 funds of a public agency and that will not be occupied or used by a public agency. If the commissioner
42 divides the project, any part of the project that does not include funds of a public agency and that will
43 not be occupied or used by a public agency is not subject to ORS 279C.800 to 279C.870.]*

44 *[(3)]* (2) 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 the

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

5 **SECTION 4.** ORS 279C.830 is amended to read:

6 279C.830. (1)(a) Except as provided in paragraph (d) of this subsection, the specifications for
 7 [every] a contract for public works shall contain a provision [stating] **that states** the existing state
 8 prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the
 9 Davis-Bacon Act (40 U.S.C. 3141 et seq.) that [may] **must** be paid to workers in each trade or oc-
 10 cupation required for the public works employed in the performance of the contract either by the
 11 contractor or subcontractor or other person doing or contracting to do the whole or any part of the
 12 work contemplated by the contract. When the prevailing rates of wage are available electronically
 13 or are accessible on the Internet, the rates may be incorporated into the specifications by referring
 14 to the electronically accessible or Internet-accessible rates and by providing adequate information
 15 about how to access the rates.

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

21 (c) Every contract and subcontract **for public works must** [shall] contain a provision that the
 22 workers [shall] **must** be paid not less than the specified minimum hourly rate of wage in accordance
 23 with ORS 279C.838 and 279C.840.

24 [(d) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing
 25 state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the
 26 Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private
 27 entity for the project. After that time, the specifications for any contract for the public works shall in-
 28 clude the applicable prevailing rate of wage.]

29 (2) The specifications for [every] a contract for public works between a public agency and a
 30 contractor [shall] **must** contain a provision stating that a fee [is required to] **must** be paid to the
 31 Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract
 32 shall contain a provision that the fee [shall] **must** be paid to the commissioner under the adminis-
 33 trative rule of the commissioner.

34 (3) The specifications for [every] a contract for public works [shall] **must** contain a provision
 35 stating that the contractor and every subcontractor must have a public works bond filed with the
 36 Construction Contractors Board before starting work on the project, unless exempt under ORS
 37 279C.836 (4), (7), (8) or (9). [Every] **A** contract awarded by a contracting agency [shall] **must** contain
 38 a provision requiring the contractor **to**:

39 (a) [To] Have a public works bond filed with the Construction Contractors Board before starting
 40 work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

41 (b) [To] Include in every subcontract a provision requiring the subcontractor to have a public
 42 works bond filed with the Construction Contractors Board before starting work on the project, un-
 43 less exempt under ORS 279C.836 (4), (7), (8) or (9).

44 **SECTION 5. The amendments to ORS 279C.800, 279C.810, 279C.827 and 279C.830 by**
 45 **sections 1 to 4 of this 2009 Act apply to contracts first advertised or, if not advertised, first**

1 entered into on or after the effective date of this 2009 Act.

2 SECTION 6. This 2009 Act being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
4 on its passage.

5
