

**Minority Report**  
**A-Engrossed**  
**House Bill 2699**

Ordered by the House April 30  
Including House Minority Report Amendments dated April 30

Sponsored by nonconcurring members of the House Committee on Business and Labor: Representatives ESQUIVEL, THATCHER

**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.

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.*]

**Classifies exemption from ad valorem property taxation as funds of public agency for purpose of imposing prevailing rate of wage. Requires city, county or other sponsor of enterprise zone to notify Commissioner of Bureau of Labor and Industries of any exemption from ad valorem property taxation connected with public works located in sponsor's enterprise zone.**

**Directs commissioner to establish fee for sponsor of enterprise zone in which public works is located. Creates procedures by which multiple public agencies that award contract for public works or multiple sponsors that designate enterprise zone in which public works is located must apportion fees.**

**Allows contractor to file certified statement with sponsor of enterprise zone in which public works is located.**

**Provides that contractor or subcontractor of certain public works is not required to pay prevailing rate of wage if contractor or subcontractor hires workers for public works under first-source hiring agreement.**

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.825, 279C.827, 279C.830, 279C.835, 279C.840, 279C.845 and 651.170 and  
4 section 8, chapter 844, Oregon Laws 2007; and declaring an emergency.

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

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

7 279C.800. As used in ORS 279C.800 to 279C.870[ *unless the context requires otherwise*]:

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

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

11 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in  
12 providing **the following items, exclusive of items that federal, state or local law requires the**  
13 **contractor or subcontractor to provide:**

14 (A) Benefits to workers pursuant to an enforceable **written** commitment **to the workers** to  
15 carry out a financially responsible plan or program [*that is committed in writing to the workers af-*

**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 *fected,*] for:

2 (i) Medical or hospital care[,];

3 (ii) Pensions on retirement or death[,]; **or**

4 (iii) Compensation for injuries or illness [*resulting*] **that result** from occupational activity[,  
5 *or*];

6 (B) Insurance to provide [*any of the foregoing,*] **the benefits described in subparagraph (A)**  
7 **of this paragraph;**

8 (C) [*for*] Unemployment benefits[,];

9 (D) Life insurance[,];

10 (E) Disability and sickness insurance or accident insurance[,];

11 (F) [*for*] Vacation and holiday pay[,];

12 (G) [*for defraying*] Costs **or a portion of the costs** of apprenticeship or other similar  
13 programs; **or**

14 (H) [*or for*] Other bona fide fringe benefits[, *but only when the contractor or subcontractor is not*  
15 *required by other federal, state or local law to provide any of these benefits*].

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

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

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

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

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

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

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

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

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

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

27 (i) District 9, composed of Hood River, Sherman and Wasco Counties;

28 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;

29 (k) District 11, composed of Klamath and Lake Counties;

30 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

31 (m) District 13, composed of Baker, Union and Wallowa Counties; and

32 (n) District 14, composed of Harney and Malheur Counties.

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

36 (5) "Public agency" means the State of Oregon or [*any*] a political subdivision [*thereof*] **of the**  
37 **State of Oregon** or [*any*] a county, city, district, authority, public corporation or **public** entity  
38 [*and*] **or any instrumentality [*thereof*] of a county, city, district, authority, public corporation**  
39 **or public entity** organized and existing under law or charter.

40 (6)(a) "Public works" includes, but is not limited to:

41 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-  
42 construction, major renovation or painting of which [*is carried on or contracted for by any*] a public  
43 agency **carries on or contracts for in order** to serve the public interest;

44 (B) A project for the construction, reconstruction, major renovation or painting of a privately  
45 owned road, highway, building, structure or improvement of any type that uses funds of a private

1 entity and \$750,000 or more of funds of a public agency; *or*

2 (C) A project for the construction of a privately owned road, highway, building, structure or  
3 improvement of any type that uses funds of a private entity and in which 25 percent or more of the  
4 square footage of the completed project will be occupied or used by a public agency[.]; **or**

5 **(D) A project for the construction, reconstruction or major renovation of a privately**  
6 **owned road, highway, building, structure or improvement of any type that:**

7 (i) **Is located in an enterprise zone, as defined in ORS 285C.050;**

8 (ii) **Consists of or is sited on real property for which a qualified business firm, as defined**  
9 **in ORS 285C.050, has received an exemption from ad valorem property taxation under ORS**  
10 **285C.170 or 285C.175; and**

11 (iii) **Has a projected cost of \$5 million or more.**

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

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

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

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

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

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

22 **(7) "Sponsor" has the meaning given that term in ORS 285C.050.**

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

24 279C.810. (1) As used in this section:

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

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

29 (B) Building and development permit fees [*paid or waived by*] **that the public agency pays or**  
30 **waives;**

31 (C) Tax credits or tax abatements, **except for exemptions from ad valorem property taxation**  
32 **allowed under ORS 285C.170 or 285C.175;**

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

34 (E) The difference between:

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

39 (ii) The fair market value of the land if the land is not subject to the limitations described in  
40 sub-subparagraph (i) of this subparagraph;

41 (F) Staff resources [*of*] the public agency [*used*] **uses to:**

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

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

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

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

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

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

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

14        (a) Projects for which the contract price does not exceed \$50,000. In determining the price of a  
15 project, a public agency:

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

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

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

23        (c) Projects:

24        (A) That are privately owned;

25        (B) That use funds of a private entity;

26        (C) In which **a public agency will occupy or use** less than 25 percent of the square footage  
27 of *[a] the* completed project *[will be occupied or used by a public agency]*; and

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

29        (d) Projects for residential construction that are privately owned and that predominantly provide  
30 affordable housing. 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) "Predominantly" means 60 percent or more.

35        (C) "Privately owned" includes:

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

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

42        (D) "Residential construction" includes the construction, reconstruction, major renovation or  
43 painting of single-family houses or apartment buildings not more than four stories in height and all  
44 incidental items, such as site work, parking areas, utilities, streets and sidewalks, pursuant to the  
45 United States Department of Labor's "All Agency Memorandum No. 130: Application of the Standard

1 of Comparison "Projects of a Character Similar" Under Davis-Bacon and Related Acts," dated  
2 March 17, 1978. However, the commissioner may consider different definitions of residential con-  
3 struction in determining whether a project is a residential construction project for purposes of this  
4 paragraph, including definitions that:

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

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

8 **SECTION 3.** ORS 279C.825 is amended to read:

9 279C.825. [(1)(a)] (1) The Commissioner of the Bureau of Labor and Industries[,] by rule[,] shall  
10 establish a fee to be paid by:

11 (a) The public agency **or public agencies** that [awards] **award** a public works contract subject  
12 to ORS 279C.800 to 279C.870[.]; **or**

13 (b) **The sponsor or sponsors of the enterprise zone in which a project subject to ORS**  
14 **279C.800 to 279C.870 is or will be located.**

15 (2)(a) **If more than one public agency is involved in awarding a contract for public works**  
16 **subject to ORS 279C.800 to 279C.870, the public agencies involved shall agree which public**  
17 **agencies shall pay the fee and in what amounts. If the public agencies do not agree, the**  
18 **public agencies involved shall pay a proportional share of the fee based on the amount of**  
19 **public funds each public agency provides for the contract or the amount of space each public**  
20 **agency occupies or uses in the public works.**

21 (b) **If more than one sponsor has participated in the designation of an enterprise zone in**  
22 **which a public works subject to ORS 279C.800 to 279C.870 is located, the participating spon-**  
23 **sors shall agree which sponsors shall pay the fee and in what amounts. If the sponsors do**  
24 **not agree, the sponsors are jointly and severally liable for paying the fee.**

25 (3) The **commissioner shall use the proceeds of the fee** [*shall be used*] to pay the costs of:

26 [(A)] (a) Surveys to determine the prevailing rates of wage;

27 [(B)] (b) Administering and providing investigations under and enforcement of ORS 279C.800 to  
28 279C.870; and

29 [(C)] (c) Providing educational programs on public contracting law under the Public Contracting  
30 Code.

31 [(b)] (4) The fee [*shall be*] **is** 0.1 percent of the contract price[. *However, in no event may*], **except**  
32 **that** a fee **may not** be charged and collected that is more than \$5,000 or less than \$100.

33 [(2)] (5) The commissioner shall pay moneys received under this section into the State Treasury.  
34 The moneys shall be credited to the Prevailing Wage Education and Enforcement Account created  
35 by ORS 651.185.

36 [(3)] (6)(a) [*The*] **A public agency shall pay the fee at the time the public agency** [*enters into the*  
37 *public works contract*] **notifies the commissioner under ORS 279C.835 that a contract subject**  
38 **to the provisions of ORS 279C.800 to 279C.870 has been awarded.**

39 (b) **A sponsor shall pay the fee at the time the sponsor notifies the commissioner under**  
40 **ORS 279C.835 that the sponsor approved, under ORS 285C.140, an eligible business firm's ap-**  
41 **plication to have qualified property in the sponsor's enterprise zone exempted from ad**  
42 **valorem property taxation.**

43 **SECTION 4.** Section 8, chapter 844, Oregon Laws 2007, is amended to read:

44 **Sec. 8.** Notwithstanding the maximum and minimum fee amounts set forth in ORS 279C.825  
45 [(1)(b)] (4), for public works contracts entered into on or after [*the effective date of this 2007 Act*]

1 **January 1, 2008**, and before January 1, 2011, the fee charged and collected may not be more than  
 2 \$7,500 or less than \$250.

3 **SECTION 5.** ORS 279C.827 is amended to read:

4 279C.827. (1)(a) A public agency **or a person that is required under ORS 279C.800 to 279C.870**  
 5 **to pay a prevailing rate of wage on a public works project** may not divide a public works project  
 6 into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

7 (b) When the Commissioner of the Bureau of Labor and Industries determines that a public  
 8 agency **or a person that is required under ORS 279C.800 to 279C.870 to pay a prevailing rate**  
 9 **of wage on a public works project** has divided a public works project into more than one contract  
 10 for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue  
 11 an order compelling compliance.

12 (c) In making determinations under this subsection, the commissioner shall consider:

13 (A) The physical separation of the project structures;

14 (B) The timing of the work on project phases or structures;

15 (C) The continuity of project contractors and subcontractors working on project parts or phases;

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

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

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

21 (2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C), the  
 22 commissioner **after applying the considerations set forth in subsection (1)(c) of this section**  
 23 shall divide the project, if appropriate, [*after applying the considerations set forth in subsection (1)(c)*  
 24 *of this section*] to separate the parts of the project that [*include*] **use** funds of a public agency or that  
 25 [*will be occupied or used by*] a public agency **will occupy or use** from the parts of the project that  
 26 do not [*include*] **use** funds of a public agency and that **a public agency will not occupy or use** [*be*  
 27 *occupied or used by a public agency*]. If the commissioner divides the project, any part of the project  
 28 that does not [*include*] **use** funds of a public agency and that [*will not be occupied or used by*] a  
 29 public agency **will not occupy or use** is not subject to ORS 279C.800 to 279C.870.

30 (3) If a project includes parts that [*are owned by*] a public agency **owns** and parts that [*are*  
 31 *owned by*] a private entity **owns**, the commissioner **after applying the considerations set forth**  
 32 **in subsections (1)(c) and (2) of this section** shall divide the project, if appropriate, [*after applying*  
 33 *the considerations set forth in subsections (1)(c) and (2) of this section*] to separate the parts of the  
 34 project that are public works from the parts of the project that are not public works. If the com-  
 35 missioner divides the project, parts of the project that are not public works are not subject to ORS  
 36 279C.800 to 279C.870.

37 **SECTION 6.** ORS 279C.830 is amended to read:

38 279C.830. (1)(a) Except as provided in [*paragraph (d)*] **paragraphs (d) and (e)** of this subsection,  
 39 the specifications for every contract for public works shall contain a provision stating the existing  
 40 state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under  
 41 the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that [*may*] **must** be paid to workers in each trade or  
 42 occupation required for the public works employed in the performance of the contract either by the  
 43 contractor or subcontractor or other person doing or contracting to do the whole or any part of the  
 44 work contemplated by the contract. [*When*] **If** the prevailing rates of wage are available electron-  
 45 ically or are accessible on the Internet, the rates may be incorporated into the specifications by

1 referring to the electronically accessible or Internet-accessible rates and by providing adequate in-  
2 formation about how to access the rates.

3 (b) If a public agency is required under paragraph (a) of this subsection to include the state and  
4 federal prevailing rates of wage in the specifications, the public agency also shall include in the  
5 specifications information *[showing]* **that shows** which prevailing rate of wage is higher for workers  
6 in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of  
7 Labor and Industries under ORS 279C.815 (2)(c).

8 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not  
9 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

10 (d) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing  
11 state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the  
12 Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a pri-  
13 vate entity for the project. After that time, the specifications for *[any]* a contract for the public  
14 works shall include the applicable prevailing rate of wage.

15 **(e) If the public works is a project described in ORS 279C.800 (6)(a)(D), the specifications**  
16 **for a contract for the public works must state that the requirement to pay the prevailing**  
17 **rate of wage does not apply to a contractor or subcontractor if the contractor or subcon-**  
18 **tractor has in place a first-source hiring agreement, as defined in ORS 285C.050, under which**  
19 **the contractor or subcontractor hires workers for the public works.**

20 *[(2) The specifications for every contract for public works between a public agency and a contractor*  
21 *shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau*  
22 *of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that*  
23 *the fee shall be paid to the commissioner under the administrative rule of the commissioner.]*

24 *[(3)]* **(2)** The specifications for every contract for public works shall contain a provision stating  
25 that the contractor and every subcontractor must have a public works bond filed with the Con-  
26 struction Contractors Board before starting work on the project, unless **the contractor or sub-**  
27 **contractor is** exempt under ORS 279C.836 (4), (7), (8) or (9). Every contract *[awarded by a*  
28 *contracting agency]* **for public works** shall contain a provision requiring the contractor:

29 (a) To have a public works bond filed with the Construction Contractors Board before starting  
30 work on the project, unless **the contractor is** exempt under ORS 279C.836 (4), (7), (8) or (9).

31 (b) To include in every subcontract a provision requiring the subcontractor to have a public  
32 works bond filed with the Construction Contractors Board before starting work on the project, un-  
33 less **the subcontractor is** exempt under ORS 279C.836 (4), (7), (8) or (9).

34 **SECTION 7.** ORS 279C.835 is amended to read:

35 279C.835. **(1)(a)** *[Public agencies]* **A public agency** shall notify the Commissioner of the Bureau  
36 of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract  
37 subject to the provisions of ORS 279C.800 to 279C.870 has been awarded.

38 **(b) A sponsor shall notify the commissioner in writing, on a form prescribed by the**  
39 **commissioner, whenever the sponsor approves, under ORS 285C.140, an eligible business**  
40 **firm's application to have qualified property in the sponsor's enterprise zone exempted from**  
41 **ad valorem property taxation.**

42 **(2)(a)** *[The]* **A notification under subsection (1)(a) of this section** shall be made within 30 days  
43 *[of]* **after** the date *[that]* **on which** the contract is awarded.

44 **(b) A notification under subsection (1)(b) of this section shall be made within 30 days af-**  
45 **ter the date on which the sponsor approves, under ORS 285C.140, an eligible business firm's**

1 **application to have qualified property exempted from ad valorem property taxation.**

2 (c) *[The]* A notification **under subsection (1) of this subsection** shall include **payment of the**  
 3 **fee required under ORS 279C.825. A notification under subsection (1)(a) of this section shall**  
 4 **also include** a copy of the disclosure of first-tier subcontractors that was submitted under ORS  
 5 279C.370.

6 **SECTION 7a.** ORS 279C.840 is amended to read:

7 279C.840. (1)(a) **Except as provided in paragraph (b) of this subsection,** the hourly rate of  
 8 wage to be paid by any contractor or subcontractor to workers upon all public works *[shall be*  
 9 *not]* **may not be** less than the prevailing rate of wage for an hour's work in the same trade or oc-  
 10 cupation in the locality where the labor is performed. *[The obligation of]* A contractor or subcon-  
 11 tractor **may discharge the contractor's or subcontractor's obligation** to pay the prevailing rate  
 12 of wage *[may be discharged]* by making the payments in cash, by *[the]* making *[of]* contributions of  
 13 a type *[referred to]* **described** in ORS 279C.800 (1)(a), or by *[the assumption of]* **assuming** an en-  
 14 forceable commitment to bear the costs of a plan or program of a type *[referred to]* **described** in  
 15 ORS 279C.800 (1)(b), or any combination *[thereof]* **of the payments, contributions or costs set**  
 16 **forth in this paragraph,** where the aggregate of *[any such]* **the payments, contributions and costs**  
 17 is not less than the prevailing rate of wage.

18 (b) **A contractor or subcontractor does not have an obligation to pay the prevailing rate**  
 19 **of wage described in paragraph (a) of this subsection if the public works is a project de-**  
 20 **scribed in ORS 279C.800 (6)(a)(D) and the contractor or subcontractor has in place a first-**  
 21 **source hiring agreement, as defined in ORS 285C.050, under which the contractor or**  
 22 **subcontractor hires workers for the public works.**

23 (2) After a contract for public works is executed with *[any]* a contractor or work is commenced  
 24 upon any public works, the amount of the prevailing rate of wage is not subject to attack in *[any]*  
 25 a legal proceeding by *[any]* a contractor or subcontractor in connection with *[that]* **the** contract.

26 (3) It is not a defense in *[any]* a legal proceeding that the prevailing rate of wage is less than  
 27 the amount required to be in the specifications of a contract for public works, or that *[there was*  
 28 *an agreement between]* the employee and the employer **agreed that the employee would [to]** work  
 29 at less than the wage rates required to be paid under this section.

30 (4) *[Every]* A contractor or subcontractor engaged on a project for which there is a contract for  
 31 a public works shall keep the prevailing rates of wage for *[that]* **the** project posted in a conspicuous  
 32 and accessible place in or about the project. The Commissioner of the Bureau of Labor and Indus-  
 33 tries shall furnish without charge copies of the prevailing rates of wage to contractors and subcon-  
 34 tractors.

35 (5) *[Every]* A contractor or subcontractor engaged on a project for which there is a contract for  
 36 a public works to which the prevailing wage requirements apply that also provides or contributes  
 37 to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's em-  
 38 ployees on the project shall post a notice describing the plan in a conspicuous and accessible place  
 39 in or about the project. The notice preferably shall be posted in the same place as the notice re-  
 40 quired under subsection (4) of this section. In addition to the description of the plan, the notice shall  
 41 contain information on how and where to make claims and where to obtain further information.

42 (6)(a) Except as provided in paragraph (c) of this subsection, *[no]* a person other than the con-  
 43 tractor or subcontractor may **not** pay or contribute any portion of the prevailing rate of wage *[paid*  
 44 *by]* the contractor or subcontractor **pays** to workers employed in the performance of a public works  
 45 contract.



1 (b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage  
2 specified in the contract.

3 (c) This subsection *[is not intended to]* **does not** prohibit payments to a worker who is enrolled  
4 in any government-subsidized training or retraining program.

5 (7) A person may not take *[any]* **an** action that circumvents the payment of the prevailing rate  
6 of wage to workers employed on a public works contract, including, but not limited to, reducing an  
7 employee's regular rate of pay on *[any]* **a** project **that is** not subject to ORS 279C.800 to 279C.870  
8 in a manner that has the effect of offsetting the prevailing rate of wage on a public works project.

9 **SECTION 8.** ORS 279C.845 is amended to read:

10 279C.845. (1) *[The]* **A** contractor or *[the]* contractor's surety and every subcontractor or *[the]*  
11 subcontractor's surety shall file certified statements **in writing** with the public agency *[in writing]*  
12 **that awarded the contract for public works to which the contractor is a party or with the**  
13 **sponsor of the enterprise zone in which the public works project is located**, on a form pre-  
14 scribed by the Commissioner of the Bureau of Labor and Industries<sup>]</sup>, *certifying*. **The statements**  
15 **must certify:**

16 (a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has  
17 employed upon the public works; and

18 (b) That no worker employed upon the public works has been paid less than the prevailing rate  
19 of wage or less than the minimum hourly rate of wage specified in the contract.

20 (2) The certified *[statement]* **statements** shall be verified by the oath of the contractor or the  
21 contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcon-  
22 tractor has read the certified *[statement]* **statements** and knows the contents *[thereof]* **of the cer-**  
23 **tified statements** and that the *[same]* **certified statements** *[is]* **are** true to the contractor or  
24 subcontractor's knowledge.

25 (3) The certified statements shall set out accurately and completely the payroll records for the  
26 prior week, including the name and address of each worker, the worker's correct classification, rate  
27 of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

28 (4) The contractor or subcontractor shall deliver or mail *[each]* **the** certified *[statement]* **state-**  
29 **ments** required by subsection (1) of this section to the public agency **or to the sponsor**. Certified  
30 statements for each week during which the contractor or subcontractor employs a worker upon the  
31 public works shall be submitted once a month, by the fifth business day of the following month. In-  
32 formation submitted on certified statements may be used only to ensure compliance with the pro-  
33 visions of ORS 279C.800 to 279C.870.

34 (5) Each contractor or subcontractor shall preserve the certified statements for a period of three  
35 years from the date of completion of the contract.

36 (6) Certified statements received by a public agency **or a sponsor** are public records subject to  
37 the provisions of ORS 192.410 to 192.505.

38 (7) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor is required to file certified  
39 statements **with a public agency** under this section, the public agency shall retain 25 percent of  
40 any amount earned by the contractor on the public works until the contractor has filed with the  
41 public agency certified statements as required by this section. The public agency shall pay the  
42 contractor the amount retained under this subsection within 14 days after the contractor files the  
43 certified statements as required by this section, regardless of whether a subcontractor has failed to  
44 file certified statements as required by this section. *[The public agency is not required to verify the*  
45 *truth of the contents of certified statements filed by the contractor under this section.]*

1 (8) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount earned  
2 by a first-tier subcontractor on a public works until the subcontractor has filed with the public  
3 agency certified statements as required by this section. The contractor shall verify that the first-tier  
4 subcontractor has filed the certified statements before the contractor may pay the subcontractor any  
5 amount retained under this subsection. The contractor shall pay the first-tier subcontractor the  
6 amount retained under this subsection within 14 days after the subcontractor files the certified  
7 statements as required by this section. *[Neither the public agency nor the contractor is required to*  
8 *verify the truth of the contents of certified statements filed by a first-tier subcontractor under this sec-*  
9 *tion.]*

10 (9) **This section does not require:**

11 (a) **A public agency or a sponsor to verify the truth of the contents of a contractor's**  
12 **certified statements; or**

13 (b) **A public agency, sponsor or contractor to verify the truth of the contents of a sub-**  
14 **contractor's certified statements.**

15 **SECTION 9.** ORS 651.170 is amended to read:

16 651.170. The Commissioner of the Bureau of Labor and Industries may incur *[such expense]* **ex-**  
17 **penses** and employ *[such]* clerical aids as *[may be]* necessary to carry out ORS *[279C.830 (2),]*  
18 651.030, 651.050, 651.060 and 651.120. The Oregon Department of Administrative Services may draw  
19 warrants on the State Treasurer *[for the payment of such expense]* **to pay the expenses** upon prop-  
20 erly verified vouchers approved by the commissioner. However, *[such expense shall]* **the expenses**  
21 **may not exceed at any time the amount appropriated** *[therefor]* **for the expenses.**

22 **SECTION 10.** **The amendments to ORS 279C.800, 279C.810, 279C.825, 279C.827, 279C.830,**  
23 **279C.835, 279C.840, 279C.845 and 651.170 and section 8, chapter 844, Oregon Laws 2007, by**  
24 **sections 1 to 9 of this 2009 Act apply to contracts for public works first advertised or oth-**  
25 **erwise solicited or, if not advertised or solicited, first entered into on or after the operative**  
26 **date set forth in section 11 (1) of this 2009 Act.**

27 **SECTION 11.** (1) **The amendments to ORS 279C.800, 279C.810, 279C.825, 279C.827, 279C.830,**  
28 **279C.835, 279C.840, 279C.845 and 651.170 and section 8, chapter 844, Oregon Laws 2007, by**  
29 **sections 1 to 9 of this 2009 Act become operative 90 days after the effective date of this 2009**  
30 **Act.**

31 (2) **The Commissioner of the Bureau of Labor and Industries may take any action before**  
32 **the operative date set forth in subsection (1) of this section that is necessary to enable the**  
33 **commissioner to exercise, on and after the operative date set forth in subsection (1) of this**  
34 **section, all the duties, functions and powers conferred on the commissioner by the amend-**  
35 **ments to ORS 279C.800, 279C.810, 279C.825, 279C.827, 279C.830, 279C.835, 279C.840, 279C.845 and**  
36 **651.170 and section 8, chapter 844, Oregon Laws 2007, by sections 1 to 9 of this 2009 Act.**

37 **SECTION 12.** **This 2009 Act being necessary for the immediate preservation of the public**  
38 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
39 **on its passage.**

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