

Senate Bill 53

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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**.

Requires public agency to pay fee to Commissioner of Bureau of Labor and Industries when public agency notifies commissioner that public agency has awarded contract subject to prevailing wage law.

Removes provision requiring contract for public works to contain statement that fee must be paid to commissioner.

Requires contractor or subcontractor to pay all wages due and owing to workers on public works on contractor's or subcontractor's regular payday.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prevailing rates of wage; creating new provisions; amending ORS 279C.825, 279C.830,
3 279C.835, 279C.840 and 651.170; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.825 is amended to read:

6 279C.825. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish
7 a fee to be paid by the public agency that awards a public works contract subject to ORS 279C.800
8 to 279C.870. The fee shall be used to pay the costs of:

9 (A) Surveys to determine the prevailing rates of wage;

10 (B) Administering and providing investigations under and enforcement of ORS 279C.800 to
11 279C.870; and

12 (C) Providing educational programs on public contracting law under the Public Contracting
13 Code.

14 (b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee be
15 charged and collected that is more than \$5,000 or less than \$100.

16 (2) The commissioner shall pay moneys received under this section into the State Treasury. The
17 moneys shall be credited to the Prevailing Wage Education and Enforcement Account created by
18 ORS 651.185.

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

22 **SECTION 2.** ORS 279C.830 is amended to read:

23 279C.830. (1)(a) Except as provided in paragraph (d) of this subsection, the specifications for
24 every contract for public works shall contain a provision stating the existing state prevailing rate
25 of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act
26 (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the
27 public works employed in the performance of the contract either by the contractor or subcontractor

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 or other person doing or contracting to do the whole or any part of the work contemplated by the
 2 contract. When the prevailing rates of wage are available electronically or are accessible on the
 3 Internet, the rates may be incorporated into the specifications by referring to the electronically
 4 accessible or Internet-accessible rates and by providing adequate information about how to access
 5 the rates.

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

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

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

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

22 *[(3)]* (2) The specifications for every contract for public works shall contain a provision stating
 23 that the contractor and every subcontractor must have a public works bond filed with the Con-
 24 struction Contractors Board before starting work on the project, unless exempt under ORS 279C.836
 25 (4), (7), (8) or (9). Every contract awarded by a contracting agency shall contain a provision re-
 26 quiring the contractor:

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

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

32 **SECTION 3.** ORS 279C.835 is amended to read:

33 279C.835. Public agencies shall notify the Commissioner of the Bureau of Labor and Industries
 34 in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions
 35 of ORS 279C.800 to 279C.870 has been awarded. The notification shall be made within 30 days of the
 36 date that the contract is awarded. The notification shall include **payment of the fee required un-**
 37 **der ORS 279C.825 and** a copy of the disclosure of first-tier subcontractors that was submitted under
 38 ORS 279C.370.

39 **SECTION 4.** ORS 279C.840 is amended to read:

40 279C.840. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers
 41 upon all public works shall be not less than the prevailing rate of wage for an hour's work in the
 42 same trade or occupation in the locality where the labor is performed. The obligation of a contractor
 43 or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in
 44 cash, by the making of contributions of a type referred to in ORS 279C.800 (1)(a), or by the as-
 45 sumption of an enforceable commitment to bear the costs of a plan or program of a type referred

1 to in ORS 279C.800 (1)(b), or any combination thereof, where the aggregate of any such payments,
 2 contributions and costs is not less than the prevailing rate of wage. **The contractor or subcon-**
 3 **tractor shall pay all wages due and owing to the contractor's or subcontractor's workers**
 4 **upon public works on the regular payday established and maintained under ORS 652.120.**

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

8 (3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the
 9 amount required to be in the specifications of a contract for public works, or that there was an
 10 agreement between the employee and the employer to work at less than the wage rates required to
 11 be paid under this section.

12 (4) Every contractor or subcontractor engaged on a project for which there is a contract for a
 13 public works shall keep the prevailing rates of wage for that project posted in a conspicuous and
 14 accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries
 15 shall furnish without charge copies of the prevailing rates of wage to contractors and subcontrac-
 16 tors.

17 (5) Every contractor or subcontractor engaged on a project for which there is a contract for a
 18 public works to which the prevailing wage requirements apply that also provides or contributes to
 19 a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's employees
 20 on the project shall post a notice describing the plan in a conspicuous and accessible place in or
 21 about the project. The notice preferably shall be posted in the same place as the notice required
 22 under subsection (4) of this section. In addition to the description of the plan, the notice shall con-
 23 tain information on how and where to make claims and where to obtain further information.

24 (6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor
 25 or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the
 26 contractor or subcontractor to workers employed in the performance of a public works contract.

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

29 (c) This subsection is not intended to prohibit payments to a worker who is enrolled in any
 30 government-subsidized training or retraining program.

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

35 **SECTION 5.** ORS 651.170 is amended to read:

36 651.170. The Commissioner of the Bureau of Labor and Industries may incur such expense and
 37 employ such clerical aids as may be necessary to carry out ORS [279C.830 (2),] 651.030, 651.050,
 38 651.060 and 651.120. The Oregon Department of Administrative Services may draw warrants on the
 39 State Treasurer for the payment of such expense upon properly verified vouchers approved by the
 40 commissioner. However, such expense shall not exceed at any time the amount appropriated there-
 41 for.

42 **SECTION 6.** **The amendments to ORS 279C.825, 279C.830, 279C.835 and 279C.840 by**
 43 **sections 1 to 4 of this 2009 Act apply to contracts for public works awarded on or after the**
 44 **effective date of this 2009 Act.**

45 **SECTION 7.** **This 2009 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
2 **on its passage.**

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