

Senate Bill 967

Sponsored by Senator GIROD, Representative SPRENGER; Senators ATKINSON, BOQUIST, WHITSETT, Representatives BENTZ, BERGER, ESQUIVEL, FREEMAN, HANNA, HUFFMAN, MAURER, OLSON, WEIDNER, WINGARD

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**.

Provides that prevailing wage laws do not apply to certain public works projects funded by or through school districts. Sunsets June 30, 2013.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the application of prevailing wages to projects funded by school districts; creating new
3 provisions; amending ORS 279C.810; 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 manage a project or to provide a principal
22 source of supervision, coordination or oversight of a project;

23 (G) Staff resources of the public agency used to design or inspect one or more components of
24 a project;

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

27 (I) Value added to land as a consequence of a public agency's site preparation, demolition of real
28 property or remediation or removal of environmental contamination, except for value added in ex-
29 cess of the expenses the public agency incurred in the site preparation, demolition or remediation
30 or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870;

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

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

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

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

8 (a) Projects for which the contract price does not exceed \$50,000 **or, if the project is a public**
9 **works funded by or through a school district as defined in ORS 330.003, \$100,000.** In determin-
10 ing the price of 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 for which no funds of a public agency are directly or indirectly used. In accordance
16 with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules to
17 carry out the provisions of this paragraph.

18 (c) Projects:

19 (A) That are privately owned;

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

21 (C) In which less than 25 percent of the square footage of a completed project will be occupied
22 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 privately owned and that predominantly provide
25 affordable housing. As used in this paragraph:

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

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

30 (C) "Privately owned" includes:

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

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

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

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

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

3 **SECTION 2.** ORS 279C.810, as amended by section 1 of this 2009 Act, is amended to read:
4 279C.810. (1) As used in this section:

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

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

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

10 (C) Tax credits or tax abatements;

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

12 (E) The difference between:

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

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

19 (F) Staff resources of the public agency used to manage a project or to provide a principal
20 source of supervision, coordination or oversight of a project;

21 (G) Staff resources of the public agency used to design or inspect one or more components of
22 a project;

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

25 (I) Value added to land as a consequence of a public agency's site preparation, demolition of real
26 property or remediation or removal of environmental contamination, except for value added in ex-
27 cess of the expenses the public agency incurred in the site preparation, demolition or remediation
28 or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870;
29 or

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

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

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

36 (a) Projects for which the contract price does not exceed \$50,000 [*or, if the project is a public*
37 *works funded by or through a school district as defined in ORS 330.003, \$100,000*]. In determining the
38 price of a project, a public agency:

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

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

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

1 (c) Projects:

2 (A) That are privately owned;

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

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

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

7 (d) Projects for residential construction that are privately owned and that predominantly provide
8 affordable housing. As used in this paragraph:

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

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

13 (C) "Privately owned" includes:

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

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

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

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

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

31 **SECTION 3. The amendments to ORS 279C.810 by section 1 of this 2009 Act apply to**
32 **contracts first advertised or otherwise solicited or, if not advertised or solicited, first en-**
33 **tered into on or after the effective date of this 2009 Act.**

34 **SECTION 4. (1) The amendments to ORS 279C.810 by section 2 of this 2009 Act become**
35 **operative July 1, 2013.**

36 **(2) The amendments to ORS 279C.810 by section 2 of this 2009 Act apply to contracts first**
37 **advertised or otherwise solicited or, if not advertised or solicited, first entered into on or**
38 **after July 1, 2013.**

39 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
40 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
41 **on its passage.**