

House Bill 2628

Sponsored by Representative SCHAUFLER (Presession filed.)

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 "funds of a public agency," for purposes of applying prevailing rate of wage to projects for public works, to include tax credits or tax abatements that contractor engaged in project for public works receives from state in connection with project.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to application of a prevailing rate of wage to public works projects; creating new pro-
3 visions; amending ORS 279A.010, 279C.800, 279C.810, 279C.827 and 279C.830; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 279C.800, as amended by section 1, chapter 45, Oregon Laws 2010, is amended
7 to read:

8 279C.800. As used in ORS 279C.800 to 279C.870:

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

10 (a) The rate of contribution a contractor or subcontractor makes irrevocably to a trustee or to
11 a third person under a plan, fund or program; and

12 (b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in
13 providing the following items, except for items that federal, state or local law requires the con-
14 tractor or subcontractor to provide:

15 (A) Benefits to workers pursuant to an enforceable written commitment to the workers to carry
16 out a financially responsible plan or program for:

17 (i) Medical or hospital care;

18 (ii) Pensions on retirement or death; or

19 (iii) Compensation for injuries or illness that result from occupational activity;

20 (B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;

21 (C) Unemployment benefits;

22 (D) Life insurance;

23 (E) Disability and sickness insurance or accident insurance;

24 (F) Vacation and holiday pay;

25 (G) Costs of apprenticeship or other similar programs; or

26 (H) Other bona fide fringe benefits.

27 **(2)(a) "Funds of a public agency" means moneys that a contracting agency uses to fund**
28 **construction, reconstruction, major renovation or painting for a project for public works, or**
29 **a tax credit or tax abatement that a contractor engaged in a project for public works re-**
30 **ceives from this state in connection with the project for public works.**

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 (b) “Funds of a public agency” does not include:

2 (A) Funds provided in the form of a government grant to an organization or group of
3 organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from
4 income tax under section 501(a) of the Internal Revenue Code, unless the government grant
5 is issued for the purpose of construction, reconstruction, major renovation or painting;

6 (B) Building and development permit fees the public agency pays or waives;

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

8 (D) The difference between:

9 (i) The value of land that a public agency sells to a private entity as determined at the
10 time of the sale after taking into account any plan, requirement, covenant, condition, re-
11 striction or other limitation, exclusive of zoning or land use regulations, that the public
12 agency imposes on the development or use of the land; and

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

15 (E) Staff resources the public agency uses to:

16 (i) Manage a project or to provide a principal source of supervision, coordination or
17 oversight of a project; or

18 (ii) Design or inspect one or more components of a project;

19 (F) Moneys derived from the sale of bonds that a state agency lends to a private entity,
20 unless the moneys will be used for a public improvement;

21 (G) Value added to land as a consequence of a public agency’s site preparation, demolition
22 of real property or remediation or removal of environmental contamination, except for value
23 added in excess of the expenses the public agency incurred in the site preparation, demolition
24 or remediation or removal when the land is sold for use in a project otherwise subject to
25 ORS 279C.800 to 279C.870; or

26 (H) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter
27 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improve-
28 ment.

29 [(2)] (3) “Housing” has the meaning given that term in ORS 456.055.

30 [(3)] (4) “Locality” means the following district in which the public works, or the major portion
31 thereof, is to be performed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 [(4)] (5) “Prevailing rate of wage” means the rate of hourly wage, including all fringe benefits,
 2 that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to
 3 the majority of workers employed on projects of a similar character in the same trade or occupation.

4 [(5)] (6) “Public agency” means the State of Oregon or a political subdivision of the State of
 5 Oregon, or a county, city, district, authority, public corporation or public entity organized and ex-
 6 isting under law or charter or an instrumentality of the county, city, district, authority, public cor-
 7 poration or public entity.

8 [(6)(a)] (7)(a) “Public works” includes, but is not limited to:

9 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
 10 construction, major renovation or painting of which is carried on or contracted for by any public
 11 agency to serve the public interest;

12 (B) A project that uses funds of a private entity and \$750,000 or more of funds of a public agency
 13 for constructing, reconstructing, painting or performing a major renovation on a privately owned
 14 road, highway, building, structure or improvement of any type;

15 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
 16 way, building, structure or improvement of any type in which a public agency will use or occupy
 17 25 percent or more of the square footage of the completed project; or

18 (D) Notwithstanding the provisions of ORS 279C.810 [(2)(a), (b) and (c)] (1), (2) and (3), a device,
 19 structure or mechanism, or a combination of devices, structures or mechanisms, that:

20 (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

21 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
 22 structures or buildings that a public body, as defined in ORS 174.109, owns.

23 (b) “Public works” does not include:

24 (A) The reconstruction or renovation of privately owned property that a public agency leases;
 25 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:]

36 [(A) Funds provided in the form of a government grant to a nonprofit organization, unless the
 37 government grant is issued for the purpose of construction, reconstruction, major renovation or paint-
 38 ing;]

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

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

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

42 [(E) The difference between.:]

43 [(i) The value of land that a public agency sells to a private entity as determined at the time of the
 44 sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation,
 45 exclusive of zoning or land use regulations, that the public agency imposes on the development or use

1 of the land; and]

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

4 [(F) Staff resources of the public agency used to manage a project or to provide a principal source
5 of supervision, coordination or oversight of a project;]

6 [(G) Staff resources of the public agency used to design or inspect one or more components of a
7 project;]

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

10 [(I) Value added to land as a consequence of a public agency's site preparation, demolition of real
11 property or remediation or removal of environmental contamination, except for value added in excess
12 of the expenses the public agency incurred in the site preparation, demolition or remediation or removal
13 when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or]

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

16 [(b) "Nonprofit organization" means an organization or group of organizations described in section
17 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the
18 Internal Revenue Code.]

19 [(2)] ORS 279C.800 to 279C.870 do not apply to:

20 [(a)] (1) [Projects] **A project** for which the contract price does not exceed \$50,000. In determin-
21 ing the price of a project, a public agency:

22 [(A)] (a) May not include the value of donated materials or work [performed on the project by]
23 **that** individuals volunteering to the public agency **perform** without pay; and

24 [(B)] (b) Shall include the value of work [performed by every person paid by] **for which** a con-
25 tractor or subcontractor **pays a person** in any manner for the person's work on the project.

26 [(b)] (2) [Projects] **A project** for which [no] funds of a public agency are **not** directly or indi-
27 rectly used. In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and
28 Industries shall adopt rules to carry out the provisions of this [paragraph] **subsection.**

29 [(c) Projects:]

30 (3) **A project:**

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

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

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

36 [(D)] (d) [For] **In** which less than \$750,000 of funds of a public agency are used.

37 [(d)] (4)(a) [Projects] **A project** for residential construction that [are] **is** privately owned and
38 that predominantly [provide] **provides** affordable housing.

39 (b) As used in this [paragraph] **subsection:**

40 (A) "Affordable housing" means housing that serves occupants whose incomes are [no] **not**
41 greater than 60 percent of the area median income or, if the occupants are owners, whose incomes
42 are [no] **not** greater than 80 percent of the area median income.

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

44 (C) "Privately owned" [includes] **means:**

45 (i) Affordable housing provided on real property [owned by] **that** a public agency **owns** if the

1 real property and related structures are leased to a private entity for 50 or more years; and

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

6 (D) “Residential construction” [*includes*] **means** the construction, reconstruction, major reno-
 7 vation or painting of single-family houses or apartment buildings not more than four stories in
 8 height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks,
 9 pursuant to the United States Department of Labor’s “All Agency Memorandum No. 130: Applica-
 10 tion of the Standard of Comparison “Projects of a Character Similar” Under Davis-Bacon and Re-
 11 lated Acts,” dated March 17, 1978. However, the commissioner may consider different definitions of
 12 “residential construction” in determining whether a project is a residential construction project for
 13 purposes of this [*paragraph*] **subsection**, including definitions that:

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

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

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

18 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-
 19 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

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

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

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

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

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

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

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

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

33 (2) If a project is a public works of the type described in ORS 279C.800 [(6)(a)(B)] **(7)(a)(B)** or
 34 (C), the commissioner shall divide the project, if appropriate, after applying the considerations set
 35 forth in subsection (1)(c) of this section to separate the parts of the project that include funds of a
 36 public agency or that will be occupied or used by a public agency from the parts of the project that
 37 do not include funds of a public agency and that will not be occupied or used by a public agency.
 38 If the commissioner divides the project, any part of the project that does not include funds of a
 39 public agency and that will not be occupied or used by a public agency is not subject to ORS
 40 279C.800 to 279C.870.

41 (3) If a project includes parts that are owned by a public agency and parts that are owned by
 42 a private entity, the commissioner shall divide the project, if appropriate, after applying the con-
 43 siderations set forth in subsections (1)(c) and (2) of this section to separate the parts of the project
 44 that are public works from the parts of the project that are not public works. If the commissioner
 45 divides the project, parts of the project that are not public works are not subject to ORS 279C.800

1 to 279C.870.

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

3 279C.830. (1)(a) Except as provided in paragraph (d) of this subsection, the specifications for
 4 every contract for public works shall contain a provision stating the existing state prevailing rate
 5 of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act
 6 (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the
 7 public works employed in the performance of the contract either by the contractor or subcontractor
 8 or other person doing or contracting to do the whole or any part of the work contemplated by the
 9 contract. When the prevailing rates of wage are available electronically or are accessible on the
 10 Internet, the rates may be incorporated into the specifications by referring to the electronically
 11 accessible or Internet-accessible rates and by providing adequate information about how to access
 12 the rates.

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

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

20 (d) A public works project described in ORS 279C.800 [(6)(a)(B)] **(7)(a)(B)** or (C) is subject to the
 21 existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required
 22 under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement
 23 with a private entity for the project. After that time, the specifications for any contract for the
 24 public works shall include the applicable prevailing rate of wage.

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

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

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

35 **SECTION 5.** ORS 279A.010 is amended to read:

36 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
 37 plicable definition requires otherwise:

38 (a) "Bidder" means a person that submits a bid in response to an invitation to bid.

39 (b) "Contracting agency" means a public body authorized by law to conduct a procurement.
 40 "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Ad-
 41 ministrative Services and any person authorized by a contracting agency to conduct a procurement
 42 on the contracting agency's behalf. "Contracting agency" does not include the judicial department
 43 or the legislative department.

44 (c) "Days" means calendar days.

45 (d) "Department" means the Oregon Department of Administrative Services.

1 (e) "Director" means the Director of the Oregon Department of Administrative Services or a
 2 person designated by the director to carry out the authority of the director under the Public Con-
 3 tracting Code.

4 (f) "Emergency" means circumstances that:

5 (A) Could not have been reasonably foreseen;

6 (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat
 7 to property, public health, welfare or safety; and

8 (C) Require prompt execution of a contract to remedy the condition.

9 (g) "Energy savings performance contract" means a public contract between a contracting
 10 agency and a qualified energy service company for the identification, evaluation, recommendation,
 11 design and construction of energy conservation measures, including a design-build contract, that
 12 guarantee energy savings or performance.

13 (h) "Executive department" has the meaning given that term in ORS 174.112.

14 (i) "Goods" includes supplies, equipment, materials, personal property, including any tangible,
 15 intangible and intellectual property and rights and licenses in relation thereto, and combinations
 16 of any of the items identified in this paragraph.

17 (j) "Goods and services" or "goods or services" includes combinations of any of the items iden-
 18 tified in the definitions of "goods" and "services."

19 (k)(A) "Grant" means:

20 (i) An agreement under which a contracting agency receives moneys, property or other assist-
 21 ance, including but not limited to federal assistance that is characterized as a grant by federal law
 22 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
 23 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
 24 contracting agency and in which no substantial involvement by the grantor is anticipated in the
 25 program or activity other than involvement associated with monitoring compliance with the grant
 26 conditions; or

27 (ii) An agreement under which a contracting agency provides moneys, property or other assist-
 28 ance, including but not limited to federal assistance that is characterized as a grant by federal law
 29 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
 30 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-
 31 cipient and in which no substantial involvement by the contracting agency is anticipated in the
 32 program or activity other than involvement associated with monitoring compliance with the grant
 33 conditions.

34 (B) "Grant" does not include a public contract for a public improvement, for public works, as
 35 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
 36 nance necessary to preserve a public improvement, when under the public contract a contracting
 37 agency pays, in consideration for contract performance intended to realize or to support the real-
 38 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
 39 the contracting agency has received under a grant.

40 (L) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working
 41 oil or refrigeration oil.

42 (m) "Judicial department" has the meaning given that term in ORS 174.113.

43 (n) "Legislative department" has the meaning given that term in ORS 174.114.

44 (o) "Local contract review board" means a local contract review board described in ORS
 45 279A.060.

1 (p) “Local contracting agency” means a local government or special government body authorized
 2 by law to conduct a procurement. “Local contracting agency” includes any person authorized by a
 3 local contracting agency to conduct a procurement on behalf of the local contracting agency.

4 (q) “Local government” has the meaning given that term in ORS 174.116.

5 (r) “Lowest responsible bidder” means the lowest bidder who:

6 (A) Has substantially complied with all prescribed public contracting procedures and require-
 7 ments;

8 (B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

9 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
 10 279C.440; and

11 (D) If the advertised contract is a public improvement contract, is not on the list created by the
 12 Construction Contractors Board under ORS 701.227.

13 (s) “Lubricating oil” means any oil intended for use in an internal combustion crankcase,
 14 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
 15 ment or machinery powered by an internal combustion engine.

16 (t) “Person” means a natural person capable of being legally bound, a sole proprietorship, a
 17 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
 18 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
 19 or common economic interest, any other person with legal capacity to contract or a public body.

20 (u) “Post-consumer waste” means a finished material that would normally be disposed of as solid
 21 waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not include
 22 manufacturing waste.

23 (v) “Price agreement” means a public contract for the procurement of goods or services at a set
 24 price with:

25 (A) No guarantee of a minimum or maximum purchase; or

26 (B) An initial order or minimum purchase combined with a continuing contractor obligation to
 27 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
 28 mum additional purchase.

29 (w) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring goods
 30 or services. “Procurement” includes each function and procedure undertaken or required to be
 31 undertaken by a contracting agency to enter into a public contract, administer a public contract and
 32 obtain the performance of a public contract under the Public Contracting Code.

33 (x) “Proposer” means a person that submits a proposal in response to a request for proposals.

34 (y) “Public body” has the meaning given that term in ORS 174.109.

35 (z) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other ac-
 36 quisition, by a contracting agency of personal property, services, including personal services, public
 37 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-
 38 serve a public improvement. “Public contract” does not include grants.

39 (aa) “Public contracting” means procurement activities described in the Public Contracting Code
 40 relating to obtaining, modifying or administering public contracts or price agreements.

41 (bb) “Public Contracting Code” or “code” means ORS chapters 279A, 279B and 279C.

42 (cc) “Public improvement” means a project for construction, reconstruction or major renovation
 43 on real property by or for a contracting agency. “Public improvement” does not include:

44 (A) Projects for which no funds of a contracting agency are directly or indirectly used, except
 45 for participation that is incidental or related primarily to project design or inspection; or

1 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a
2 public improvement.

3 (dd) "Public improvement contract" means a public contract for a public improvement. "Public
4 improvement contract" does not include a public contract for emergency work, minor alterations,
5 or ordinary repair or maintenance necessary to preserve a public improvement.

6 (ee) "Recycled material" means any material that would otherwise be a useless, unwanted or
7 discarded material except for the fact that the material still has useful physical or chemical prop-
8 erties after serving a specific purpose and can, therefore, be reused or recycled.

9 (ff) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by
10 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use
11 is operationally safe, environmentally sound and complies with all laws and regulations.

12 (gg) "Recycled paper" means a paper product with not less than:

13 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or

14 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

15 (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.

16 (ii) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the
17 total weight of which consists of secondary and post-consumer waste with not less than 10 percent
18 of its total weight consisting of post-consumer waste. "Recycled product" includes any product that
19 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but
20 otherwise is refurbished for reuse without substantial alteration of the product's form.

21 (jj) "Secondary waste materials" means fragments of products or finished products of a manu-
22 facturing process that has converted a virgin resource into a commodity of real economic value.
23 "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not
24 include excess virgin resources of the manufacturing process. For paper, "secondary waste
25 materials" does not include fibrous waste generated during the manufacturing process such as fibers
26 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
27 sawdust or other wood residue from a manufacturing process.

28 (kk) "Services" mean services other than personal services designated under ORS 279A.055, ex-
29 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
30 279A.140, "services" includes personal services as designated by the state contracting agencies.

31 (LL) "Special government body" has the meaning given that term in ORS 174.117.

32 (mm) "State agency" means the executive department, except the Secretary of State and the
33 State Treasurer in the performance of the duties of their constitutional offices.

34 (nn) "State contracting agency" means an executive department entity authorized by law to
35 conduct a procurement.

36 (oo) "State government" has the meaning given that term in ORS 174.111.

37 (pp) "Used oil" has the meaning given that term in ORS 459A.555.

38 (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been used or
39 contaminated with impurities.

40 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
41 appear are:

- 42
- 43 (a) "Adequate"ORS 279C.305
- 44 (b) "Administering contracting
- 45 agency"ORS 279A.200

1	(c)	“Affirmative action”.....ORS 279A.100
2	(d)	“Architect”ORS 279C.100
3	(e)	“Architectural, engineering
4		and land surveying
5		services”ORS 279C.100
6	(f)	“Bid documents”.....ORS 279C.400
7	(g)	“Bidder”.....ORS 279B.415
8	(h)	“Bids”.....ORS 279C.400
9	(i)	“Brand name”ORS 279B.405
10	(j)	“Brand name or equal
11		specification”ORS 279B.200
12	(k)	“Brand name
13		specification”ORS 279B.200
14	(L)	“Class special
15		procurement”ORS 279B.085
16	(m)	“Consultant”ORS 279C.115
17	(n)	“Contract-specific
18		special procurement”.....ORS 279B.085
19	(o)	“Cooperative
20		procurement”ORS 279A.200
21	(p)	“Cooperative procurement
22		group”ORS 279A.200
23	(q)	“Donee”ORS 279A.250
24	(r)	“Engineer”ORS 279C.100
25	(s)	“Findings”ORS 279C.330
26	(t)	“Fire protection
27		equipment”ORS 279A.190
28	(u)	“Fringe benefits”ORS 279C.800
29	(v)	“Funds of a public
30		agency”ORS [279C.810] 279C.800
31	(w)	“Good cause”ORS 279C.585
32	(x)	“Good faith dispute”.....ORS 279C.580
33	(y)	“Goods”ORS 279B.115
34	(z)	“Housing”.....ORS 279C.800
35	(aa)	“Interstate cooperative
36		procurement”ORS 279A.200
37	(bb)	“Invitation to bid”ORS 279B.005
38	and 279C.400
39	(cc)	“Joint cooperative
40		procurement”ORS 279A.200
41	(dd)	“Labor dispute”ORS 279C.650
42	(ee)	“Land surveyor”.....ORS 279C.100
43	(ff)	“Legally flawed”.....ORS 279B.405
44	(gg)	“Locality”.....ORS 279C.800
45	[(hh)	“Nonprofit

1 *organization*ORS 279C.810]
2 [(ii) (hh) “Nonresident bidder”ORS 279A.120
3 [(jj) (ii) “Not-for-profit
4 *organization*ORS 279A.250
5 [(kk) (jj) “Original contract”ORS 279A.200
6 [(LL) (kk) “Permissive cooperative
7 *procurement*ORS 279A.200
8 [(mm) (LL) “Person”ORS 279C.500
9 and 279C.815
10 [(nn) (mm) “Personal services”ORS 279C.100
11 [(oo) (nn) “Prevailing rate of
12 *wage*”ORS 279C.800
13 [(pp) (oo) “Procurement
14 *description*”ORS 279B.005
15 [(qq) (pp) “Property”ORS 279A.250
16 [(rr) (qq) “Public agency”ORS 279C.800
17 [(ss) (rr) “Public contract”ORS 279A.190
18 [(tt) (ss) “Public works”ORS 279C.800
19 [(uu) (tt) “Purchasing contracting
20 *agency*”ORS 279A.200
21 [(vv) (uu) “Regularly organized fire
22 *department*”ORS 279A.190
23 [(ww) (vv) “Related services”ORS 279C.100
24 [(xx) (ww) “Request for proposals”ORS 279B.005
25 [(yy) (xx) “Resident bidder”ORS 279A.120
26 [(zz) (yy) “Responsible bidder”ORS 279A.105
27 and 279B.005
28 [(aaa) (zz) “Responsible proposer”ORS 279B.005
29 [(bbb) (aaa) “Responsive bid”ORS 279B.005
30 [(ccc) (bbb) “Responsive proposal”ORS 279B.005
31 [(ddd) (ccc) “Retainage”ORS 279C.550
32 [(eee) (ddd) “Special procurement”ORS 279B.085
33 [(fff) (eee) “Specification”ORS 279B.200
34 [(ggg) (fff) “State agency”ORS 279A.250
35 [(hhh) (ggg) “Substantial
36 *completion*”ORS 279C.465
37 [(iii) (hhh) “Surplus property”ORS 279A.250
38 [(jjj) (iii) “Unnecessarily
39 *restrictive*”ORS 279B.405

40 **SECTION 6. The amendments to ORS 279A.010, 279C.800, 279C.810, 279C.827 and 279C.830**
41 **by sections 1 to 5 of this 2011 Act apply to contracts for public works that a contracting**
42 **agency advertises or otherwise solicits on or after the operative date specified in section 7**
43 **of this 2011 Act or, if the contracting agency does not advertise or solicit the contract, to a**
44 **contract that a contracting agency enters into on or after the operative date specified in**
45 **section 7 of this 2011 Act.**

1 **SECTION 7.** (1) The amendments to ORS 279A.010, 279C.800, 279C.810, 279C.827 and
2 279C.830 by sections 1 to 5 of this 2011 Act become operative 91 days after the effective date
3 of this 2011 Act.

4 (2) The Commissioner of the Bureau of Labor and Industries, the Director of the Oregon
5 Department of Administrative Services, the Attorney General and a contracting agency that
6 adopts rules under ORS 279A.065 may take any action before the operative date specified in
7 subsection (1) of this section that is necessary to enable the commissioner, the director, the
8 Attorney General or the contracting agency to exercise, on or after the operative date
9 specified in subsection (1) of this section, all the duties, functions and powers conferred on
10 the commissioner, the director, the Attorney General and the contracting agency by the
11 amendments to ORS 279A.010, 279C.800, 279C.810, 279C.827 and 279C.830 by sections 1 to 5 of
12 this 2011 Act.

13 **SECTION 8.** This 2011 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
15 on its passage.
16
