

House Bill 3497

Sponsored by Representative CONGER; Representative PARRISH, Senator TELFER

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 state laws related to prevailing rates of wage are not operative on and after January 1, 2012, and until January 1, 2016. Provides that other provisions that incorporate, rely upon, implement or depend upon state laws are not operative to extent of incorporation, reliance, implementation or dependence.

Requires Commissioner of Bureau of Labor and Industries to determine prevailing rate of wage by means of survey. Requires contracting agencies to pay fee to pay costs of survey and determination.

Requires agency that conducts procurement for public works project to compare contract price that would result from paying prevailing rate of wage with contract price that would result from not paying prevailing wage and to report results to Legislative Assembly. Requires agency to segregate from appropriation for project amount equivalent to 25 percent of difference, for transfer to Oregon Rainy Day Fund.

Becomes operative January 1, 2012.

Sunset January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prevailing rates of wage; and declaring an emergency.

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

4 **SECTION 1. Sections 2 to 5 of this 2011 Act are added to and made a part of ORS chapter**
5 **279C.**

6 **SECTION 2. As used in sections 2 to 5 of this 2011 Act:**

7 (1) "Locality" means the following district in which a public works, or the major portion
8 thereof, is to be performed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (2)(a) "Public works" includes, but is not limited to:

24 (A) Roads, highways, buildings, structures and improvements of all types, the con-

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 **struction, reconstruction, major renovation or painting of which is carried on or contracted**
 2 **for by any public agency to serve the public interest;**

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

6 **(C) A project that uses funds of a private entity for constructing a privately owned road,**
 7 **highway, building, structure or improvement of any type in which a public agency will use**
 8 **or occupy 25 percent or more of the square footage of the completed project; or**

9 **(D) A device, structure or mechanism, or a combination of devices, structures or mech-**
 10 **anisms, that:**

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

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

14 **(b) "Public works" does not include:**

15 **(A) The reconstruction or renovation of privately owned property that a public agency**
 16 **leases; or**

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

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

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

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

24 **SECTION 3. (1) On and after January 1, 2012, and until January 1, 2016, ORS 279C.800 to**
 25 **279C.870 are not operative.**

26 **(2)(a) On and after January 1, 2012, and until January 1, 2016, if a provision of law or an**
 27 **ordinance, rule or policy of a public body, as defined in ORS 174.109, incorporates, relies**
 28 **upon, implements or otherwise depends upon a provision of ORS 279C.800 to 279C.870, the**
 29 **provision of law, ordinance, rule or policy is not operative to the extent of the incorporation,**
 30 **reliance, implementation or dependence.**

31 **(b) Except to the extent set forth in paragraph (a) of this subsection, this section does**
 32 **not otherwise affect a provision of law, ordinance, rule or policy described in paragraph (a)**
 33 **of this subsection.**

34 **SECTION 4. (1) The Commissioner of the Bureau of Labor and Industries once each year**
 35 **shall determine the prevailing rate of wage for workers in each locality by means of an in-**
 36 **dependent wage survey. The commissioner shall make the results of the determination**
 37 **available to contracting agencies for the purposes set forth in section 5 of this 2011 Act.**

38 **(2) If the data the commissioner derives from the survey described in subsection (1) of**
 39 **this section appear to the commissioner to be insufficient to determine the prevailing rate**
 40 **of wage, the commissioner shall consider additional information such as collective bargaining**
 41 **agreements, other independent wage surveys and the prevailing rates of wage determined by**
 42 **appropriate federal agencies or agencies of adjoining states. If a majority of the workers in**
 43 **the same trade or occupation are not paid at the same rate, the average rate of hourly wage,**
 44 **including all fringe benefits, that is paid to workers in the locality in the same trade or oc-**
 45 **cupation is the prevailing rate of wage. If a contractor or subcontractor pays workers on a**

1 public works project a wage that is based on a period of time other than an hour, the com-
 2 missioner shall derive the hourly wage mathematically from the number of hours worked in
 3 the period of time on which the contractor bases the pay.

4 (3) A person shall make reports and returns to the Bureau of Labor and Industries that
 5 the commissioner requires to determine the prevailing rate of wage using forms the bureau
 6 provides and within the time the commissioner prescribes. The person or an authorized
 7 representative of the person shall certify to the accuracy of the reports and returns.

8 (4) Notwithstanding ORS 192.410 to 192.505, reports and returns or other information
 9 provided to the commissioner under this section are confidential and not available for in-
 10 spection by the public.

11 (5) The commissioner by order shall establish a fee that a contracting agency that awards
 12 a contract for public works shall pay to the bureau in an amount that the commissioner
 13 determines is necessary, when aggregated with other fees that other contracting agencies
 14 pay under this subsection, to pay the costs of conducting the survey and making the deter-
 15 mination described in this section.

16 **SECTION 5.** (1) A contracting agency that conducts a procurement for a public works
 17 project shall compare the contract price for the procurement that would result from paying
 18 workers on the public works project a prevailing rate of wage with the contract price that
 19 would result from paying workers at the lower of:

20 (a) The rate of wage that the lowest bidder for the public works project pays the bidder's
 21 workers in each trade or occupation used for the public works project; or

22 (b) A market rate of wage for workers in the same trades or occupations used for the
 23 public works project.

24 (2) The contracting agency each year shall compile and aggregate the results of each
 25 comparison described in subsection (1) of this section and each year shall report the results
 26 to the Legislative Assembly on the date of the convening of the regular session of the Leg-
 27 islative Assembly as specified in ORS 171.010.

28 (3) The contracting agency shall segregate from amounts appropriated to the contracting
 29 agency for the purpose of the public works procurement an amount equivalent to 25 percent
 30 of the difference that the contracting agency identified in the comparison the contracting
 31 agency conducted under subsection (1) of this section. The contracting agency shall transfer
 32 the amount identified and segregated under this subsection to the Oregon Rainy Day Fund
 33 established by ORS 293.144.

34 **SECTION 6.** Sections 2 to 5 of this 2011 Act apply to a contract for public works that a
 35 contracting agency first advertises or otherwise solicits on or after the operative date set
 36 forth in section 7 of this 2011 Act or, if the contracting agency does not advertise or solicit
 37 the contract for public works, to a contract for public works that the contracting agency
 38 enters into on or after the operative date set forth in section 7 of this 2011 Act.

39 **SECTION 7.** (1) Sections 1 to 5 of this 2011 Act become operative on January 1, 2012.

40 (2) The Director of the Oregon Department of Administrative Services, the Attorney
 41 General, the Commissioner of the Bureau of Labor and Industries and a contracting agency
 42 that adopts rules under ORS 279A.065 may take any action before the operative date specified
 43 in subsection (1) of this section that is necessary to enable the director, the Attorney Gen-
 44 eral, the commissioner or the contracting agency to exercise, on and after the operative date
 45 specified in subsection (1) of this section, all of the duties, functions and powers conferred

1 on the director, the Attorney General, the commissioner and the contracting agency by
2 sections 1 to 5 of this 2011 Act.

3 SECTION 8. Sections 1 to 5 of this 2011 Act are repealed on January 1, 2016.

4 SECTION 9. This 2011 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
6 on its passage.

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