

Enrolled Senate Bill 178

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CHAPTER

AN ACT

Relating to prevailing rate of wage applicable to public works contracts; creating new provisions; amending ORS 279C.815, 279C.830 and 279C.855; and declaring an emergency.

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

SECTION 1. ORS 279C.815 is amended to read:

279C.815. (1) As used in this section, "person" *[includes any]* **means an** employer, a labor organization or *[any]* **an** official representative of an employee or employer association.

(2)(a) The Commissioner of the Bureau of Labor and Industries **at least once each year** shall determine the prevailing rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800 *[at least once each year]* by means of an independent wage survey and **shall** make this information available at least twice each year. The commissioner may amend the rate at any time.

(b) If *[it appears to the commissioner that]* the data derived only from the survey described in paragraph (a) of this subsection *[are]* **appear to the commissioner to be** insufficient to determine the prevailing rate of wage, the commissioner *[also]* shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation *[shall be]* **is** the prevailing rate. If the wage *[paid by any]* **a** contractor or subcontractor **pays** to workers on *[any]* **a** public works is based on *[some]* **a** period of time other than an hour, the hourly wage *[shall]* **must** be mathematically determined by the number of hours worked in that period of time.

[(c) The commissioner shall compare the prevailing rate of wage determined under paragraph (a) of this subsection with the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and determine which rate is higher for workers in each trade or occupation in each locality. The commissioner shall make this information, showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, available at the same time as the commissioner makes information available under paragraph (a) of this subsection.]

(3) A person shall make *[such]* reports and returns to the Bureau of Labor and Industries *[as]* **that** the commissioner *[may require]* **requires** to determine the prevailing rates of wage. *The reports and returns shall be made upon forms furnished by,* **using forms** the bureau **provides** and

within the time [*prescribed by*] the commissioner **prescribes**. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.410 to 192.505, [*all*] reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) [*In order to assist the commissioner in making determinations of the prevailing rates of wage,*] The commissioner may enter into [*contracts*] **a contract** with a public or private [*parties*] **party** to obtain [*relevant*] data and information **the commissioner needs to determine the prevailing rate of wage**. [*Any such*] **The** contract may [*include provisions*] **provide** for the manner and extent of the market review of affected trades and occupations and [*such*] **for** other requirements regarding timelines of reports, accuracy of data and information and supervision and review as the commissioner [*may prescribe*] **prescribes**.

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

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

(b) If a public agency [*is required*] under paragraph (a) of this subsection [*to*] **must** include the state and federal prevailing rates of wage in the specifications, the public agency [*also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815 (2)(c).*] **shall also require the contractor to pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works**.

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

(d) **If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, every contract and subcontract must provide that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage.**

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

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

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

(b) [*To include in*] **Require, in** every subcontract, [*a provision requiring the subcontractor to*] **that the subcontractor** have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

SECTION 3. ORS 279C.855 is amended to read:

279C.855. (1) *[Any]* **A** contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of *[their]* **the workers'** unpaid minimum wages, including all fringe benefits, and in an additional amount equal to the unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279C.610.

(3) If a public agency fails to *[include a provision that the contractor and any subcontractor shall comply with ORS 279C.840]* **provide** in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents **that the contractor and any subcontractor must comply with ORS 279C.840**, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several with *[any]* **a** contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840.

(4) *[When]* **If** a public works project is subject to the Davis-Bacon Act, *[(140 U.S.C. 3141 et seq.)]*, and a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract for public works as required under ORS 279C.830 (1)(a), or fails to *[include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality as required under ORS 279C.830 (1)(b)]* **provide in the contract that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage as required under ORS 279C.830 (1)(d)**, the public agency is liable to each affected worker for:

(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for each hour worked, the difference between the applicable higher rate of wage and the lower rate of wage; and

(b) An additional amount, equal to the amount of unpaid minimum wages due under paragraph (a) of this subsection, as liquidated damages.

(5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of subsections (3) and (4) of this section by a civil action under ORS 279C.850 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332.

SECTION 4. The amendments to ORS 279C.830 and 279C.855 by sections 2 and 3 of this 2011 Act apply to contracts for public works that a contracting agency first advertises or solicits on or after the effective date of this 2011 Act or, if the contracting agency does not advertise or solicit the contract, to a contract that the contracting agency enters into on or after the effective date of this 2011 Act.

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

Passed by Senate March 21, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 25, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State