

Senate Bill 886

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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**.

Modifies definition of "public works." Requires payment of prevailing rate of wage in connection with public works for which funds of public agency are used, including funds received in form of tax credit or abatement.

Exempts from prevailing wage requirements projects that are privately owned, that are on private land and that use private funds and not more than certain amount of funds of public agency.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the application of prevailing wage rates; creating new provisions; amending ORS
3 279C.800, 279C.810, 279C.827 and 279C.830; and declaring an emergency.

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

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

7 279C.800. As used in ORS 279C.800 to 279C.870:

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

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

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

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

16 (i) Medical or hospital care;

17 (ii) Pensions on retirement or death; or

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

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

20 (C) Unemployment benefits;

21 (D) Life insurance;

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

23 (F) Vacation and holiday pay;

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

25 (H) Other bona fide fringe benefits.

26 (2) "Housing" has the meaning given that term in ORS 456.055.

27 (3) "Locality" means the following district in which the public works, or the major portion
28 *[thereof, is to]* **of the public works, will** be performed:

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

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) District 2, composed of Clackamas, Multnomah and Washington Counties;
- 2 (c) District 3, composed of Marion, Polk and Yamhill Counties;
- 3 (d) District 4, composed of Benton, Lincoln and Linn Counties;
- 4 (e) District 5, composed of Lane County;
- 5 (f) District 6, composed of Douglas County;
- 6 (g) District 7, composed of Coos and Curry Counties;
- 7 (h) District 8, composed of Jackson and Josephine Counties;
- 8 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 9 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 10 (k) District 11, composed of Klamath and Lake Counties;
- 11 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 12 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 13 (n) District 14, composed of Harney and Malheur Counties.

14 (4) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits, that
 15 the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to the
 16 majority of workers employed on projects of a similar character in the same trade or occupation.

17 (5) "Public agency" means the State of Oregon or a political subdivision of the State of Oregon,
 18 or a county, city, district, authority, public corporation or public entity organized and existing under
 19 law or charter or an instrumentality of the county, city, district, authority, public corporation or
 20 public entity.

21 (6)(a) "Public works" includes, but is not limited to:

22 (A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
 23 construction, major renovation or painting of which is carried on or contracted for by *[any]* a public
 24 agency to serve the public interest **or occurs on land that a public agency owns; or**

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

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

31 *[(D)]* (B) Notwithstanding the provisions of ORS 279C.810 (2)(a)[, (b) and (c)], a device, structure
 32 or mechanism, or a combination of devices, structures or mechanisms, that:

- 33 (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and
- 34 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
 35 structures or buildings that a public body, as defined in ORS 174.109, owns.

36 (b) "Public works" does not include:

37 (A) *[The reconstruction or renovation of]* **Reconstructing or renovating** privately owned prop-
 38 erty that a public agency leases **unless the property is on land that a public agency owns;** or

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

- 41 (i) The real property is leased to the private nonprofit entity for more than 25 years;
- 42 (ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost
 43 of the renovation; and
- 44 (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before
 45 July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

1 **SECTION 2.** ORS 279C.810 is amended to read:

2 279C.810. (1) As used in this section:

3 (a) “Funds of a public agency” [*does not include:*] **includes, but is not limited to, the amount**
4 **of a tax credit or tax abatement that is provided in connection with a project or in con-**
5 **nection with an enterprise zone as designated by the Director of the Oregon Business De-**
6 **velopment Department under ORS 285C.080 or 285C.250.**

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

14 [*(E)*] (D) 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 sub-subparagraph (i) of this subparagraph;

21 [*(F)*] (E) Staff resources [*of*] the public agency [*used*] **uses to:**

22 (i) Manage a project or to provide a principal source of supervision, coordination or oversight
23 of a project; **or**

24 [*(G)*] (ii) [*Staff resources of the public agency used to*] Design or inspect one or more components
25 of a project;

26 [*(H)*] (F) Moneys derived from the sale of bonds that [*are loaned by*] a state agency **loans** to a
27 private entity, **the entirety of which the private entity must repay with interest**, unless the
28 moneys will be used for a public improvement;

29 [*(I)*] (G) Value added to land as a consequence of a public agency’s site preparation, demolition
30 of real property or remediation or removal of environmental contamination, except for value added
31 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-
32 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to
33 279C.870; or

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

36 [*(b)*] (c) “Nonprofit organization” means an organization or group of organizations described in
37 section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a)
38 of the Internal Revenue Code.

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

40 (a) [*Projects*] **A project that a public agency carries on for a public purpose in** [*for*] which
41 the contract price does not exceed \$50,000. In determining the price of a project, a public agency:

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

44 (B) Shall include the value of work [*performed by*] **that** every person [*paid by*] **performs on the**
45 **project for which** a contractor or subcontractor **pays the person** in any manner [*for the person’s*]

1 *work on the project].*

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

5 *[(c) (b) [Projects] A project that:*

6 (A) *[That are privately owned;] Constructs, reconstructs, renovates or paints a privately*
 7 **owned road, highway, building, structure or improvement on privately owned land;**

8 (B) *[That use] Uses funds of a private entity; and*

9 *[(C) In which less than 25 percent of the square footage of a completed project will be occupied or*
 10 *used by a public agency; and]*

11 *[(D)] (C) [For which] Uses less than [\$750,000] \$50,000 of funds of a public agency [are used].*

12 *[(d)] (c) Projects for residential construction that are privately owned and that predominantly*
 13 *provide affordable housing. As used in this paragraph:*

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

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

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

19 (i) Affordable housing provided on real property *[owned by] that* a public agency **owns** if the
 20 real property and related structures are leased to a private entity for 50 or more years; and

21 (ii) Affordable housing *[owned by] that* a partnership, nonprofit corporation or limited liability
 22 company **owns** in which a housing authority, as defined in ORS 456.005, is a general partner, di-
 23 rector or managing member and the housing authority is not a majority owner in the partnership,
 24 nonprofit corporation or limited liability company.

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

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

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

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

37 279C.827. (1)(a) A public agency may not divide a public works project into more than one con-
 38 tract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

39 (b) *[When] If* the Commissioner of the Bureau of Labor and Industries determines that a public
 40 agency has divided a public works project into more than one contract for the purpose of avoiding
 41 compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order *[compelling] to*
 42 **compel** compliance.

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

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

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

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

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

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

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

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

14 [(3)] (2) If a project includes parts that [*are owned by*] a public agency **owns** and parts that [*are*
15 *owned by*] a private entity **owns**, the commissioner shall divide the project, if appropriate, after
16 applying the considerations set forth in [*subsections*] **subsection** (1)(c) [*and (2)*] of this section to
17 separate the parts of the project that are public works from the parts of the project that are not
18 public works. If the commissioner divides the project, parts of the project that are not public works
19 are not subject to ORS 279C.800 to 279C.870.

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

21 279C.830. (1)(a) [*Except as provided in paragraph (d) of this subsection,*] The specifications for
22 [*every*] a contract for public works shall contain a provision [*stating*] **that states** the existing state
23 prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the
24 Davis-Bacon Act (40 U.S.C. 3141 et seq.) that [*may*] **must** be paid to workers in each trade or oc-
25 cupation required for the public works employed in the performance of the contract either by the
26 contractor or subcontractor or other person doing or contracting to do the whole or any part of the
27 work contemplated by the contract. [*When*] **If** the prevailing rates of wage are available electron-
28 ically or are accessible on the Internet, the rates may be incorporated into the specifications by
29 referring to the electronically accessible or Internet-accessible rates and by providing adequate in-
30 formation about how to access the rates.

31 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
32 federal prevailing rates of wage in the specifications, the public agency also shall include in the
33 specifications information [*showing*] **that shows** which prevailing rate of wage is higher for workers
34 in each trade or occupation in each locality, as [*determined by*] the Commissioner of the Bureau of
35 Labor and Industries **determines** under ORS 279C.815 (2)(c).

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

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

44 (2) The specifications for [*every*] a contract for public works [*shall*] **must** contain a provision
45 stating that the contractor and every subcontractor must have a public works bond filed with the

1 Construction Contractors Board before starting work on the project, unless exempt under ORS
2 279C.836 (4), (7), (8) or (9). [Every] A contract awarded by a contracting agency [shall] **must** contain
3 a provision [requiring] **that requires** the contractor to:

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

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

9 **SECTION 5. The amendments to ORS 279C.800, 279C.810, 279C.827 and 279C.830 by**
10 **sections 1 to 4 of this 2011 Act apply to contracts first advertised or otherwise solicited or,**
11 **if not advertised or solicited, first entered into on or after the effective date of this 2011 Act.**

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

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