

House Bill 2540

Sponsored by Representative WITT (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**.

Modifies definition of "public works." Classifies exemption from ad valorem property taxation as funds of public agency for purpose of requiring payment of prevailing rate of wage.

Requires public agency that procured contract for public works or sponsor of enterprise zone in which public works is located, as appropriate, to receive certified statements.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the application of prevailing rates of wage; creating new provisions; amending ORS
3 279C.800, 279C.810, 279C.827 and 279C.845; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.800 is amended to read:

6 279C.800. As used in ORS 279C.800 to 279C.870:

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

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

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

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

15 (i) Medical or hospital care;

16 (ii) Pensions on retirement or death; or

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

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

19 (C) Unemployment benefits;

20 (D) Life insurance;

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

22 (F) Vacation and holiday pay;

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

24 (H) Other bona fide fringe benefits.

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

26 (3) "Locality" means the following district in which the public works, or the major portion
27 thereof, is to be performed:

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

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

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

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

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

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

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

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

26 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
 27 way, building, structure or improvement of any type in which a public agency will use or occupy
 28 25 percent or more of the square footage of the completed project;

29 (D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), a device, structure or
 30 mechanism, or a combination of devices, structures or mechanisms, that:

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

34 (E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (2)(b) and (c), con-
 35 struction, reconstruction, painting or major renovation of a road, highway, building, structure or
 36 improvement of any type that occurs, with or without using funds of a public agency, on real prop-
 37 erty that the Oregon University System or an institution in the Oregon University System owns[.];

38 **or**

39 **(F) A project for constructing, reconstructing, painting or performing a major renovation**
 40 **of a privately owned road, highway, building, structure or improvement of any type that:**

- 41 **(i) Is located in an enterprise zone, as defined in ORS 285C.050;**
- 42 **(ii) Consists of or is sited on real property for which a qualified business firm, as defined**
 43 **in ORS 285C.050, has received or will receive an exemption from ad valorem property taxation**
 44 **under ORS 285C.170 or 285C.175 in connection with the project; and**
- 45 **(iii) Has a total project cost that the contracting agency that funds the project, or the**

1 **lead contracting agency, if more than one contracting agency participates in the project,**
2 **reasonably estimates will equal or exceed \$5 million.**

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

4 (A) The reconstruction or renovation of privately owned property that a public agency leases;
5 or

6 (B) *[The]* **A private nonprofit entity's** renovation of publicly owned real property that is more
7 than 75 years old *[by a private nonprofit entity]* if:

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

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

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

13 **(7) "Sponsor" has the meaning given that term in ORS 285C.050.**

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

15 279C.810. (1) As used in this section:

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

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

20 (B) Building and development permit fees *[paid or waived by the]* **that a public agency pays or**
21 **waives;**

22 (C) Tax credits or tax abatements, **except for exemptions from ad valorem property taxation**
23 **allowed under ORS 285C.170 or 285C.175;**

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

25 (E) The difference between:

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

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

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

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

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

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

39 *[(I)]* (H) Value added to land as a consequence of a public agency's site preparation, demolition
40 of real property or remediation or removal of environmental contamination, except for value added
41 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-
42 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to
43 279C.870; or

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

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

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

5 (a) [Projects] **A project** for which the contract price does not exceed \$50,000. In determining the
 6 price of a project, a public agency:

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

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

12 (b) Projects for which [no] funds of a public agency are **not** directly or indirectly used. In ac-
 13 cordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt
 14 rules to carry out the provisions of this paragraph.

15 (c) [Projects] **A project**:

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

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

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

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

21 (d) [Projects] **A project** for residential construction that [are] **is** privately owned and that pre-
 22 dominantly [provide] **provides** affordable housing. As used in this paragraph:

23 (A) “Affordable housing” means housing that serves occupants whose incomes are [no] **not**
 24 greater than 60 percent of the area median income or, if the occupants are owners, whose incomes
 25 are [no] **not** greater than 80 percent of the area median income.

26 (B) “Predominantly” means 60 percent or more.

27 (C) “Privately owned” [includes] **means**:

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

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

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

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

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

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

1 279C.827. (1)(a) A public agency **or a person that under ORS 279C.800 to 279C.870 must pay**
 2 **a prevailing rate of wage on public works** may not divide a public works project into more than
 3 one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

4 (b) [When] **If** the Commissioner of the Bureau of Labor and Industries determines that a public
 5 agency **or a person that under ORS 279C.800 to 279C.870 must pay a prevailing rate of wage**
 6 **on public works** has divided a public works project into more than one contract for the purpose
 7 of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order [*com-*
 8 *PELLING*] **to compel** compliance.

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

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

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

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

13 (D) The manner in which the public agency **or person that under ORS 279C.800 to 279C.870**
 14 **must pay a prevailing rate of wage on public works** and the contractors administer and imple-
 15 ment the project;

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

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

19 (2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C), the
 20 commissioner, **after applying the considerations set forth in subsection (1)(c) of this section**,
 21 shall divide the project, if appropriate, [*after applying the considerations set forth in subsection (1)(c)*
 22 *of this section*] to separate the parts of the project that [*include*] **use** funds of a public agency or that
 23 **a public agency** will [*be occupied or used by a public agency*] **occupy or use** from the parts of the
 24 project that do not [*include*] **use** funds of a public agency and that **a public agency** will not [*be*
 25 *occupied or used by a public agency*] **occupy or use**. If the commissioner divides the project, any part
 26 of the project that does not [*include*] **use** funds of a public agency and that **a public agency** will
 27 not [*be occupied or used by a public agency*] **occupy or use** is not subject to ORS 279C.800 to
 28 279C.870.

29 (3) If a project includes parts that [*are owned by*] a public agency **owns** and parts that [*are*
 30 *owned by*] a private entity **owns**, the commissioner, **after applying the considerations set forth**
 31 **in subsections (1)(c) and (2) of this section**, shall divide the project, if appropriate, [*after applying*
 32 *the considerations set forth in subsections (1)(c) and (2) of this section*] to separate the parts of the
 33 project that are public works from the parts of the project that are not public works. If the com-
 34 missioner divides the project, parts of the project that are not public works are not subject to ORS
 35 279C.800 to 279C.870.

36 **SECTION 4.** ORS 279C.845 is amended to read:

37 279C.845. (1) [*The*] **A** contractor or the contractor's surety and every subcontractor or the
 38 subcontractor's surety shall file certified statements [*with the public agency*] in writing, on a form
 39 [*prescribed by*] the Commissioner of the Bureau of Labor and Industries[, *certifying:*] **prescribes**,
 40 **with one of the following, as appropriate:**

41 (a) **The public agency that awarded the contract for public works to which the contractor**
 42 **is a party. If the project is a public works as defined in ORS 279C.800 (6)(a)(B) or (C), the**
 43 **contractor shall submit the certified statements to the public agency that provided public**
 44 **funds for the project or that will use or occupy 25 percent or more of the square footage of**
 45 **the completed project. If more than one public agency provided public funds for the project**

1 or will use or occupy 25 percent or more of the square footage of the completed project, the
 2 public agencies involved shall agree upon which public agency will receive the certified
 3 statements.

4 (b) The sponsor of the enterprise zone, as defined in ORS 285C.050, in which the public
 5 works project is located. If more than one sponsor participated in designating the enterprise
 6 zone, the participating sponsors shall agree upon which sponsor shall receive the certified
 7 statements.

8 (2) The certified statements must certify:

9 (a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has
 10 employed upon the public works; and

11 (b) That no worker employed upon the public works has been paid less than the prevailing rate
 12 of wage or less than the minimum hourly rate of wage specified in the contract.

13 [(2)] (3) *[The certified statement shall be verified by the oath of]* The contractor or the contractor's
 14 surety or subcontractor or the subcontractor's surety **shall verify certified statements by oath,**
 15 **attesting** that the contractor or subcontractor has read the certified *[statement]* **statements,** that
 16 the contractor or subcontractor knows the contents of the certified *[statement]* **statements** and that
 17 to the contractor or subcontractor's knowledge the certified *[statement is]* **statements are** true.

18 [(3)] (4) The certified statements shall set out accurately and completely the contractor's or
 19 subcontractor's payroll records, including the name and address of each worker, the worker's cor-
 20 rect classification, rate of pay, daily and weekly number of hours worked and the gross wages the
 21 worker earned upon the public works during each week identified in the certified statement.

22 [(4)] (5) The contractor or subcontractor shall deliver or mail *[each]* **the** certified *[statement]*
 23 **statements** required by subsection (1) of this section to the public agency **or to the sponsor.**
 24 Certified statements for each week during which the contractor or subcontractor employs a worker
 25 upon the public works *[shall]* **must** be submitted once a month, by the fifth business day of the fol-
 26 lowing month. Information submitted on certified statements may be used only to ensure compliance
 27 with the provisions of ORS 279C.800 to 279C.870.

28 [(5)] (6) Each contractor or subcontractor shall preserve the certified statements for a period
 29 of three years from the date of completion of the contract.

30 [(6)] (7) Certified statements *[received by]* **that** a public agency **or a sponsor receives** are public
 31 records subject to the provisions of ORS 192.410 to 192.505.

32 [(7)] (8) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor *[is required to]* **must** file
 33 certified statements **with a public agency** under this section, the public agency shall retain 25
 34 percent of any amount *[earned by]* the contractor **earns** on the public works until the contractor
 35 has filed with the public agency certified statements as required by this section. The public agency
 36 shall pay the contractor the amount retained under this subsection within 14 days after the con-
 37 tractor files the certified statements as required by this section, regardless of whether a subcon-
 38 tractor has failed to file certified statements as required by this section. *[The public agency is not*
 39 *required to verify the truth of the contents of certified statements filed by the contractor under this*
 40 *section.]*

41 [(8)] (9) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount
 42 *[earned by]* a first-tier subcontractor **earns** on a public works until the subcontractor has filed with
 43 the public agency certified statements as required by this section. The contractor shall verify that
 44 the first-tier subcontractor has filed the certified statements before the contractor may pay the
 45 subcontractor *[any]* **an** amount **the contractor** retained under this subsection. The contractor shall

1 pay the first-tier subcontractor the amount **the contractor** retained under this subsection within
2 14 days after the subcontractor files the certified statements as required by this section. [*Neither the*
3 *public agency nor the contractor is required to verify the truth of the contents of certified statements*
4 *filed by a first-tier subcontractor under this section.*]

5 **(10) This section does not require:**

6 **(a) A public agency or sponsor to verify the truth of the contents of a contractor's cer-**
7 **tified statements; or**

8 **(b) A public agency, a sponsor or a contractor to verify the truth of the contents of a**
9 **subcontractor's certified statements.**

10 **SECTION 5. The amendments to ORS 279C.800, 279C.810, 279C.827 and 279C.845 by**
11 **sections 1 to 4 of this 2015 Act apply to contracts for public works that are first advertised**
12 **or otherwise solicited or, if the contract for public works is not advertised or solicited, to a**
13 **contract for public works that is first entered into on or after the operative date specified**
14 **in section 6 of this 2015 Act.**

15 **SECTION 6. (1) The amendments to ORS 279C.800, 279C.810, 279C.827 and 279C.845 by**
16 **sections 1 to 4 of this 2013 Act become operative 91 days after the effective date of this 2015**
17 **Act.**

18 **(2) A sponsor, as defined in ORS 285C.050, a public agency that adopts rules under ORS**
19 **279A.065 or the Commissioner of the Bureau of Labor and Industries may take any action**
20 **before the operative date specified in subsection (1) of this section that is necessary to enable**
21 **the sponsor, the public agency or the commissioner to exercise, on and after the operative**
22 **date specified in subsection (1) of this section, all of the duties, functions and powers con-**
23 **ferred on the sponsor, the public agency or the commissioner by the amendments to ORS**
24 **279C.800, 279C.810, 279C.827 and 279C.845 by sections 1 to 4 of this 2015 Act.**

25 **SECTION 7. This 2015 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
27 **on its passage.**