

House Bill 2194

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the application of a prevailing rate of wage to public works projects; creating new pro-
3 visions; amending ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and 279C.830; and de-
4 claring an emergency.

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

6 **SECTION 1.** ORS 279A.010 is amended to read:

7 279A.010. (1) As used in the Public Contracting Code[, *unless the context or a specifically appli-*
8 *cable definition requires otherwise*]:

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

10 (b)(A) "Contracting agency" means a public body **that is** authorized by law to conduct a
11 procurement[. "*Contracting agency*" includes, but is not limited to, the Director of the Oregon Depart-
12 *ment of Administrative Services and any person authorized by a contracting agency to conduct a pro-*
13 *curement on the contracting agency's behalf*] **or a person that the public body authorizes to**
14 **conduct a procurement on the public body's behalf.**

15 (B) "Contracting agency" does not include the judicial department or the legislative department.

16 (c) "Days" means calendar days.

17 [(d) "*Department*" means the Oregon Department of Administrative Services.]

18 [(e) "*Director*" means the Director of the Oregon Department of Administrative Services or a person
19 *designated by the director to carry out the authority of the director under the Public Contracting*
20 *Code.*]

21 [(f)] (d) "Emergency" means circumstances that:

22 (A) Could not have been reasonably foreseen;

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

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

26 [(g)] (e) "Energy savings performance contract" means a public contract, **including a design-**
27 **build contract**, between a contracting agency and a qualified energy service company for [*the*
28 *identification, evaluation, recommendation, design and construction of*] **identifying, evaluating, re-**
29 **commending, designing and constructing** energy conservation measures[, *including a design-build*

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 *contract,*] that guarantee energy savings or performance.

2 [(h)] (f) “Executive department” has the meaning given that term in ORS 174.112.

3 [(i)] (g) “Goods” [*includes*] **means:**

4 (A) Supplies, equipment, materials[,] **and tangible or intangible** personal property[, *including*
5 *any tangible, intangible and*];

6 (B) Intellectual property and rights and licenses [*in relation thereto,*] **connected with intellec-**
7 **tual property;** and

8 (C) Combinations of any of the items identified in **subparagraphs (A) and (B)** of this para-
9 graph.

10 [(j)] (h) “Goods and services” or “goods or services” [*includes combinations*] **means a combi-**
11 **nation** of any of the items identified in the definitions of “goods” and “services.”

12 [(k)(A)] (i)(A) “Grant” means:

13 (i) An agreement under which a contracting agency receives **from a grantor** moneys, property
14 or other assistance, including but not limited to federal assistance that [*is characterized as a grant*
15 *by*] federal law or regulations **characterize as a grant**, loans, loan guarantees, credit enhance-
16 ments, gifts, bequests, commodities or other assets[, *from a grantor*] for the purpose of supporting
17 or stimulating a program or activity of the contracting agency [*and in which no substantial in-*
18 *volvement by the grantor is anticipated in the program or activity other than involvement associated*
19 *with monitoring*] **in which the grantor is not anticipated to have substantial involvement other**
20 **than to monitor** compliance with the grant conditions; or

21 (ii) An agreement under which a contracting agency provides **to a recipient** moneys, property
22 or other assistance, including but not limited to federal assistance that [*is characterized as a grant*
23 *by*] federal law or regulations **characterize as a grant**, loans, loan guarantees, credit enhance-
24 ments, gifts, bequests, commodities or other assets[, *to a recipient*] for the purpose of supporting or
25 stimulating a program or activity of the recipient [*and in which no substantial involvement by the*
26 *contracting agency is anticipated in the program or activity other than involvement associated with*
27 *monitoring*] **in which the grantor is not anticipated to have substantial involvement other than**
28 **to monitor** compliance with the grant conditions.

29 (B) “Grant” does not include a public contract for a public improvement, for public works, as
30 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
31 nance necessary to preserve a public improvement, [*when*] **if** under the public contract a contracting
32 agency pays[,] **moneys the contracting agency received under a grant** in consideration for con-
33 tract performance intended to realize or to support the realization of the purposes for which grant
34 funds were provided to the contracting agency[, *moneys that the contracting agency has received un-*
35 *der a grant*].

36 [(L)] (j) “Industrial oil” means [*any*] compressor, turbine or bearing oil, hydraulic oil, metal-
37 working oil or refrigeration oil.

38 [(m)] (k) “Judicial department” has the meaning given that term in ORS 174.113.

39 [(n)] (L) “Legislative department” has the meaning given that term in ORS 174.114.

40 [(o)] (m) “Local contract review board” means a local contract review board described in ORS
41 279A.060.

42 [(p)] (n) “Local contracting agency” means a local government or special government body **that**
43 **is** authorized by law to conduct a procurement[. “*Local contracting agency*” *includes any*] **or a** person
44 [*authorized by a*] **that the** local contracting agency **authorizes** to conduct a procurement on [*behalf*
45 *of*] the local contracting [*agency*] **agency’s behalf**.

1 [(q)] (o) “Local government” has the meaning given that term in ORS 174.116.
 2 [(r)] (p) “Lowest responsible bidder” means the lowest bidder [who] **that**:
 3 (A) [Has substantially complied] **Complies substantially** with all prescribed public contracting
 4 procedures and requirements;
 5 (B) [Has met] **Meets** the standards of responsibility set forth in ORS 279B.110 or 279C.375;
 6 (C) [Has not been] **Is not** debarred or disqualified by the contracting agency under ORS 279B.130
 7 or 279C.440; and
 8 (D) [If the advertised contract is a public improvement contract,] Is not on the list [created by]
 9 **that** the Construction Contractors Board **created** under ORS 701.227, **if the advertised contract**
 10 **is a public improvement contract**.
 11 [(s)] (q) “Lubricating oil” means [any] oil intended for use in an internal combustion crankcase,
 12 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
 13 ment or machinery powered by an internal combustion engine.
 14 [(t)] (r) “Person” means a natural person capable of being legally bound, a sole proprietorship,
 15 a corporation, a partnership, a limited liability company or partnership, a limited partnership, a
 16 for-profit or nonprofit unincorporated association, a business trust, two or more persons having a
 17 joint or common economic interest, **a public body or** any other person with legal capacity to con-
 18 tract [or a public body].
 19 [(u)] (s)(A) “Post-consumer waste” means a finished material that **has completed a life cycle**
 20 **as a consumer item and** would normally be disposed of as solid waste[, *having completed its life*
 21 *cycle as a consumer item*].
 22 (B) “Post-consumer waste” does not include manufacturing waste.
 23 [(v)] (t) “Price agreement” means a public contract for [the procurement of] **procuring** goods or
 24 services at a set 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] **an obligation**
 27 **for a contractor to continue** to provide goods or services [in which], **but no corresponding ob-**
 28 **ligation for** the contracting agency [does not] **to** guarantee a minimum or maximum additional
 29 purchase.
 30 [(w)] (u) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring
 31 goods or services[. “Procurement” includes] **and** each function and procedure [undertaken or re-
 32 quired to be undertaken by] **that** a contracting agency **undertakes or must undertake** to enter into
 33 a public contract, administer a public contract and obtain the performance of a public contract un-
 34 der the Public Contracting Code.
 35 [(x)] (v) “Proposer” means a person that submits a proposal in response to a request for pro-
 36 posals.
 37 [(y)] (w) “Public body” has the meaning given that term in ORS 174.109.
 38 [(z)] (x)(A) “Public contract” means a **contracting agency’s** sale or other disposal[, or a] **or**
 39 purchase, lease, rental or other acquisition[, by a contracting agency] of:
 40 (i) Personal property[, services,];
 41 (ii) **Services**, including personal services[,];
 42 (iii) Public improvements[,];
 43 (iv) Public works[,]; **or**
 44 (v) Minor alterations, [or] ordinary repair or maintenance necessary to preserve a public im-
 45 provement.

1 (B) “Public contract” does not include grants.

2 [(aa)] (y) “Public contracting” means procurement activities described in the Public Contracting
3 Code [relating] **that are related** to obtaining, modifying or administering public contracts or price
4 agreements.

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

6 [(cc)] (aa)(A) “Public improvement” means a project [for construction, reconstruction or] **to**
7 **construct, reconstruct or perform a** major renovation on real property [by or for] **that** a con-
8 tracting agency **undertakes or contracts to have done**.

9 (B) “Public improvement” does not include:

10 [(A)] (i) Projects for which [no] funds of a contracting agency are **not** directly or indirectly used,
11 except for participation that is incidental or related primarily to project design or inspection; or

12 [(B)] (ii) Emergency work, minor [alteration] **alterations**, ordinary repair or maintenance nec-
13 essary to preserve a public improvement.

14 [(dd)] (bb)(A) “Public improvement contract” means a public contract for a public improvement.

15 (B) “Public improvement contract” does not include a public contract for emergency work, mi-
16 nor alterations, [or] ordinary repair or maintenance necessary to preserve a public improvement.

17 [(ee)] (cc) “Recycled material” means [any] material that would otherwise be [a] useless, un-
18 wanted or discarded [material except for the fact], **except** that the material still has useful physical
19 or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

20 [(ff)] (dd) “Recycled oil” means used oil that has been prepared for reuse as a petroleum product
21 by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or
22 use is operationally safe, environmentally sound and complies with all laws and regulations.

23 [(gg)] (ee) “Recycled paper” means a paper product [with] **in which** not less than:

24 (A) Fifty percent of [its] **the** fiber weight [consisting] **of the paper product consists** of sec-
25 ondary waste materials; or

26 (B) Twenty-five percent of [its] **the** fiber weight [consisting] **of the paper product consists** of
27 post-consumer waste.

28 [(hh)] (ff) “Recycled PETE” means post-consumer polyethylene terephthalate material.

29 [(ii)] (gg) “Recycled product” means [all] materials, goods and supplies, **of which** not less than
30 50 percent of the total weight [of which] consists of secondary and post-consumer waste [with] **and**
31 not less than 10 percent of [its] **the** total weight [consisting] **consists** of post-consumer waste[.
32 “Recycled product” includes], **and** any product that **has completed the product’s life cycle as a**
33 **consumer item and** could have been disposed of as solid waste[, *having completed its life cycle as*
34 *a consumer item, but otherwise*] **but** is refurbished for reuse without [substantial alteration of] **sub-**
35 **stantially altering** the product’s form.

36 [(jj)] (hh)(A) “Secondary waste materials” means **post-consumer waste and** fragments of pro-
37 ducts or finished products of a manufacturing process that has converted a virgin resource into a
38 commodity of real economic value. [“Secondary waste materials” includes post-consumer waste.]

39 (B) “Secondary waste materials” does not include excess virgin resources of the manufacturing
40 process[. *For paper, “secondary waste materials” does not include*] **or** fibrous waste generated [during
41 *the manufacturing process*] **in manufacturing paper**, such as fibers recovered from waste water or
42 trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from
43 a manufacturing process.

44 [(kk)] (ii) “Services” [mean] **means** services other than personal services designated under ORS
45 279A.055, except that, for state contracting agencies with procurement authority under ORS

1 279A.050 or 279A.140, “services” includes personal services as designated by the state contracting
 2 agencies.

3 [(LL)] (jj) “Special government body” has the meaning given that term in ORS 174.117.

4 [(mm)] (kk) “State agency” means the executive department, except the Secretary of State and
 5 the State Treasurer in [*the performance of*] **performing** the duties of [*their*] **the** constitutional offices
 6 **of the Secretary of State and the State Treasurer.**

7 [(nn)] (LL) “State contracting agency” means an executive department entity authorized by law
 8 to conduct a procurement.

9 [(oo)] (mm) “State government” has the meaning given that term in ORS 174.111.

10 [(pp)] (nn) “Used oil” has the meaning given that term in ORS 459A.555.

11 [(qq)] (oo) “Virgin oil” means oil that has been refined from crude oil and that has not been used
 12 or contaminated with impurities.

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

- 15
- 16 (a) “Adequate”ORS 279C.305
- 17 (b) “Administering contracting
 18 agency”ORS 279A.200
- 19 (c) “Affirmative action”ORS 279A.100
- 20 (d) “Architect”ORS 279C.100
- 21 (e) “Architectural,
 22 engineering, photogram-
 23 metric mapping,
 24 transportation planning
 25 or land surveying
 26 services”ORS 279C.100
- 27 (f) “Bid documents”ORS 279C.400
- 28 (g) “Bidder”ORS 279B.415
- 29 (h) “Bids”ORS 279C.400
- 30 (i) “Brand name”ORS 279B.405
- 31 (j) “Brand name or equal
 32 specification”ORS 279B.200
- 33 (k) “Brand name
 34 specification”ORS 279B.200
- 35 (L) “Class special
 36 procurement”ORS 279B.085
- 37 (m) “Consultant”ORS 279C.115
- 38 (n) “Contract-specific
 39 special procurement”ORS 279B.085
- 40 (o) “Cooperative
 41 procurement”ORS 279A.200
- 42 (p) “Cooperative procurement
 43 group”ORS 279A.200
- 44 (q) “Donee”ORS 279A.250
- 45 (r) “Engineer”ORS 279C.100

1 (s) "Findings"ORS 279C.330
2 (t) "Fire protection
3 equipment"ORS 279A.190
4 (u) "Fringe benefits"ORS 279C.800
5 (v) "Funds of a public
6 [agency]"ORS 279C.810]
7 **agency"ORS 279C.800**
8 (w) "Good cause"ORS 279C.585
9 (x) "Good faith dispute"ORS 279C.580
10 (y) "Goods"ORS 279B.115
11 (z) "Housing"ORS 279C.800
12 (aa) "Interstate cooperative
13 procurement"ORS 279A.200
14 (bb) "Invitation to bid"ORS 279B.005
15and 279C.400
16 (cc) "Joint cooperative
17 procurement"ORS 279A.200
18 (dd) "Labor dispute"ORS 279C.650
19 (ee) "Land surveyor"ORS 279C.100
20 (ff) "Legally flawed"ORS 279B.405
21 (gg) "Locality"ORS 279C.800
22 [(hh) "Nonprofit
23 organization"ORS 279C.810
24 (ii) "Nonresident bidder"ORS 279A.120
25 (jj) "Not-for-profit
26 organization"ORS 279A.250
27 (kk) "Original contract"ORS 279A.200
28 (LL) "Permissive cooperative
29 procurement"ORS 279A.200
30 (mm) "Person"ORS 279C.500
31and 279C.815
32 (nn) "Personal services"ORS 279C.100
33 (oo) "Photogrammetric
34 mapping"ORS 279C.100
35 (pp) "Photogrammetrist"ORS 279C.100
36 (qq) "Prevailing rate of
37 wage"ORS 279C.800
38 (rr) "Procurement
39 description"ORS 279B.005
40 (ss) "Property"ORS 279A.250
41 (tt) "Public agency"ORS 279C.800
42 (uu) "Public contract"ORS 279A.190
43 (vv) "Public works"ORS 279C.800
44 (ww) "Purchasing contracting
45 agency"ORS 279A.200

- 1 (vv) **“Purchasing contracting**
- 2 **agency”ORS 279A.200**
- 3 (ww) **“Regularly organized fire**
- 4 **department”ORS 279A.190**
- 5 (xx) **“Related services”ORS 279C.100**
- 6 (yy) **“Request for**
- 7 **proposals”ORS 279B.005**
- 8 (zz) **“Resident bidder”ORS 279A.120**
- 9 (aaa) **“Responsible bidder” ..ORS 279A.105**
- 10 **.....and 279B.005**
- 11 (bbb) **“Responsible**
- 12 **proposer”ORS 279B.005**
- 13 (ccc) **“Responsive bid”ORS 279B.005**
- 14 (ddd) **“Responsive**
- 15 **proposal”ORS 279B.005**
- 16 (eee) **“Retainage”ORS 279C.550**
- 17 (fff) **“Special**
- 18 **procurement”ORS 279B.085**
- 19 (ggg) **“Specification”ORS 279B.200**
- 20 (hhh) **“State agency”ORS 279A.250**
- 21 (iii) **“Substantial**
- 22 **completion”ORS 279C.465**
- 23 (jjj) **“Surplus property”ORS 279A.250**
- 24 (kkk) **“Transportation**
- 25 **planning services”ORS 279C.100**
- 26 (LLL) **“Unnecessarily**
- 27 **restrictive”ORS 279B.405**

SECTION 2. ORS 279A.128 is amended to read:

279A.128. (1) As used in this section, “services” means services as defined in ORS 279A.010 [(1)(kk)] and personal services designated under ORS 279A.055.

(2)(a) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procure goods or services for a public use under ORS chapter 279B may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.

(b) The contracting agency by order may set a higher percentage than the percentage set forth in paragraph (a) of this subsection if the contracting agency, in a written determination to support the order, finds good cause to set the higher percentage and explains the contracting agency’s reasons and evidence for the finding.

(3) Notwithstanding ORS 279C.320 (1), subsection (2) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other

1 construction contracts described in ORS 279C.320 (1).

2 **SECTION 3.** ORS 279C.800 is amended to read:

3 279C.800. As used in ORS 279C.800 to 279C.870:

4 (1) "Fringe benefits" means:

5 (a) Contributions that a contractor or subcontractor makes irrevocably to a trustee or to a third
6 person under a plan, fund or program; and

7 (b) Costs that a contractor or subcontractor may reasonably be anticipated to incur in providing
8 the following items, except for items that federal, state or local law requires the contractor or sub-
9 contractor to provide:

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

12 (i) Medical or hospital care;

13 (ii) Pensions on retirement or death; or

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

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

16 (C) Unemployment benefits;

17 (D) Life insurance;

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

19 (F) Vacation and holiday pay;

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

21 (H) Other bona fide fringe benefits.

22 **(2)(a) "Funds of a public agency" means moneys that a public agency uses to fund con-**
23 **struction, reconstruction, major renovation or painting for a project for public works, or a**
24 **tax credit or tax abatement that a contractor engaged in a project for public works receives**
25 **from this state in connection with the project for public works.**

26 **(b) "Funds of a public agency" does not include:**

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

31 **(B) Building and development permit fees that the public agency pays or waives;**

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

33 **(D) The difference between:**

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

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

40 **(E) Staff resources the public agency uses to:**

41 **(i) Manage a project or provide a principal source of supervision, coordination or over-**
42 **sight of a project; or**

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

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

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

6 (H) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter
 7 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improve-
 8 ment.

9 [(2)] (3) “Housing” has the meaning given that term in ORS 456.055.

10 [(3)] (4) “Locality” means the following district in which the public works, or the major portion
 11 of the public works, is to be performed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 [(4)] (5) “Prevailing rate of wage” means the rate of hourly wage, including all fringe benefits,
 27 that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to
 28 the majority of workers employed on projects of a similar character in the same trade or occupation.

29 [(5)] (6) “Public agency” means the State of Oregon or a political subdivision of the State of
 30 Oregon, or a county, city, district, authority, public corporation or public entity organized and ex-
 31 isting under law or charter or an instrumentality of the county, city, district, authority, public cor-
 32 poration or public entity.

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

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

37 (B) A project that uses \$750,000 or more of funds of a public agency for constructing, recon-
 38 structing, painting or performing a major renovation on a road, highway, building, structure or im-
 39 provement of any type;

40 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
 41 way, building, structure or improvement of any type in which a public agency will use or occupy
 42 25 percent or more of the square footage of the completed project;

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

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

1 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
2 structures or buildings that a public body, as defined in ORS 174.109, owns; [or]

3 (E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 [(2)(b) and (c)] **(2) and**
4 **(3)**, construction, reconstruction, painting or major renovation of a road, highway, building, struc-
5 ture or improvement of any type that occurs, with or without using funds of a public agency, on real
6 property that a public university listed in ORS 352.002 owns[.];

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

9 **(i) Is located in an enterprise zone, as defined in ORS 285C.050;**

10 **(ii) Consists of or is sited on real property for which a qualified business firm, as defined**
11 **in ORS 285C.050, has received or will receive an exemption from ad valorem taxation under**
12 **ORS 285C.170 or 285C.175 in connection with the project; and**

13 **(iii) Has a total project cost that the contracting agency that funds the project, or the**
14 **lead contracting agency, if more than one contracting agency participates in the project,**
15 **reasonably estimates will equal or exceed \$5 million; or**

16 **(G) A project of a character or nature similar to other projects described in this para-**
17 **graph.**

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

19 (A) Reconstructing or renovating privately owned property that a public agency leases; or

20 (B) A private nonprofit entity's renovation of publicly owned real property that is more than 75
21 years old if:

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

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

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

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

28 **SECTION 4.** ORS 279C.810 is amended to read:

29 279C.810. [(1) As used in this section:]

30 [(a) "Funds of a public agency" does not include:]

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

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

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

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

37 [(E) The difference between:]

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

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

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

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

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

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

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

11 [(b) "Nonprofit organization" means an organization or group of organizations described in section
12 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the
13 Internal Revenue Code.]

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

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

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

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

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

25 [(c) Projects:]

26 (3) **A project:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **SECTION 5.** ORS 279C.827 is amended to read:

13 279C.827. (1)(a) A public agency, **or a person that under ORS 279C.800 to 279C.870 must pay**
 14 **a prevailing rate of wage on public works**, may not divide a public works project into more than
 15 one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

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

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

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

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

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

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

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

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

31 (2) If a project is a public works of the type described in ORS 279C.800 *[(6)(a)(B)]* **(7)(a)(B)** or
 32 (C), the commissioner, **after applying the considerations set forth in subsection (1)(c) of this**
 33 **section**, shall divide the project, if appropriate, *[after applying the considerations set forth in sub-*
 34 *section (1)(c) of this section]* to separate the parts of the project that *[include]* **use** funds of a public
 35 agency or that **a public agency** will *[be occupied or used by a public agency]* **occupy or use** from
 36 the parts of the project that do not *[include]* **use** funds of a public agency and that **a public agency**
 37 will not *[be occupied or used by a public agency]* **occupy or use**. If the commissioner divides the
 38 project, any part of the project that does not *[include]* **use** funds of a public agency and that **a**
 39 **public agency** will not *[be occupied or used by a public agency]* **occupy or use** 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 **owns** and parts that *[are*
 42 *owned by]* a private entity **owns**, the commissioner, **after applying the considerations set forth**
 43 **in subsections (1)(c) and (2) of this section**, shall divide the project, if appropriate, *[after applying*
 44 *the considerations set forth in subsections (1)(c) and (2) of this section]* to separate the parts of the
 45 project that are public works from the parts of the project that are not public works. If the com-

1 missioner divides the project, parts of the project that are not public works are not subject to ORS
2 279C.800 to 279C.870.

3 **SECTION 6.** ORS 279C.830 is amended to read:

4 279C.830. (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for
5 [every] a contract for public works must contain a provision that states the existing state prevailing
6 rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon
7 Act (40 U.S.C. 3141 et seq.) that *[must be paid]* **a contractor or subcontractor or other person**
8 **that is a party to the contract must pay** to workers in each trade or occupation that the con-
9 tractor or subcontractor or other person *[who]* **that** is a party to the contract uses in performing
10 all or part of the contract. If the prevailing rates of wage are available electronically or are ac-
11 cessible on the Internet, the **public agency may incorporate the rates** *[may be incorporated]* into
12 the specifications by referring to the electronically accessible or Internet-accessible rates and by
13 providing adequate information about how to access the rates.

14 (b) If a public agency under paragraph (a) of this subsection must include the state and federal
15 prevailing rates of wage in the specifications, the public agency shall also require the contractor
16 **or subcontractor or other person that is a party to the contract** to pay the higher of the ap-
17 plicable state or federal prevailing rate of wage to all workers on the public works.

18 (c) Every contract and subcontract must provide that the **contractor or subcontractor or**
19 **other person that is a party to the contract must pay** workers *[must be paid]* not less than the
20 specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

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

25 (e) A public works project described in ORS 279C.800 [(6)(a)(B)] **(7)(a)(B)** or (C) is subject to the
26 existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required
27 under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement
28 with a private entity for the project. After that time, the specifications for a contract for the public
29 works must include the applicable prevailing rate of wage.

30 (2) The specifications for a contract for public works must provide that the contractor and every
31 subcontractor must have a public works bond filed with the Construction Contractors Board before
32 starting work on the project, unless **the contractor or subcontractor is** exempt under ORS
33 279C.836 (4), (7), (8) or (9). Every contract that a *[contracting]* **public** agency awards must require
34 the contractor to:

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

37 (b) Require, in every subcontract, that the subcontractor have a public works bond filed with
38 the Construction Contractors Board before starting work on the project, unless **the subcontractor**
39 **is** exempt under ORS 279C.836 (4), (7), (8) or (9).

40 **SECTION 7. The amendments to ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and**
41 **279C.830 by sections 1 to 6 of this 2017 Act apply to contracts for public works that a public**
42 **agency first advertises or otherwise solicits or, if the public agency does not advertise or**
43 **solicit the contract for public works, to a contract for public works that the public agency**
44 **first enters into on or after the operative date specified in section 8 of this 2017 Act.**

45 **SECTION 8. (1) The amendments to ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827**

1 and 279C.830 by sections 1 to 6 of this 2017 Act become operative 91 days after the effective
2 date of this 2017 Act.

3 (2) A public agency or the Commissioner of the Bureau of Labor and Industries may
4 adopt rules and take any action before the operative date specified in subsection (1) of this
5 section that is necessary to enable the public agency or the commissioner to exercise, on and
6 after the operative date specified in subsection (1) of this section, all of the duties, functions
7 and powers conferred on the public agency or the commissioner by the amendments to ORS
8 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and 279C.830 by sections 1 to 6 of this 2017
9 Act.

10 SECTION 9. This 2017 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
12 on its passage.
13
