House Bill 2408

Introduced and printed pursuant to House Rule 12.00. Presession 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 public works project receives from state in connection with project.


Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to the application of a prevailing rate of wage to public works projects; creating new provisions; amending ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and 279C.830; and prescribing an effective date.

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

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

279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically applicable definition requires otherwise:

(a) “Bidder” means a person that submits a bid in response to an invitation to bid.

(b)(A) “Contracting agency” means a public body that is authorized by law to conduct a procurement. “Contracting agency” includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency’s behalf or a person that the public body authorizes to conduct a procurement on the public body’s behalf.

(B) “Contracting agency” does not include the judicial department or the legislative department.

(c) “Days” means calendar days.

[(d) “Department” means the Oregon Department of Administrative Services.]

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

[(f)] (d) “Emergency” means circumstances that:

(A) Could not have been reasonably foreseen;

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

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

[(g)] (e) “Energy savings performance contract” means a public contract, including a design-build contract, between a contracting agency and a qualified energy service company for identifying, evaluating, recommending, designing and constructing energy conservation measures, including a design-build contract.

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.

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contract,] that guarantee energy savings or performance.

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

[(i)] (g) “Goods” [includes] means:

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

(B) Intellectual property and rights and licenses [in relation thereto,] connected with intellectual property; and

(C) Combinations of any of the items identified in subparagraphs (A) and (B) of this paragraph.

[(j)] (h) “Goods and services” or “goods or services” [includes combinations] means a combination of any of the items identified in the definitions of “goods” and “services.”

[(k)(A)] (i)(A) “Grant” means:

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

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

[(L)] (j) “Industrial oil” means any compressor, turbine or bearing oil, hydraulic oil, metalworking oil or refrigeration oil.

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

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

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

[(p)] (n) “Local contracting agency” means a local government or special government body that is authorized by law to conduct a procurement. “Local contracting agency” includes any or a person authorized by a] that the local contracting agency authorizes to conduct a procurement on behalf of the local contracting agency.
“Local government” has the meaning given that term in ORS 174.116.

“Lowest responsible bidder” means the lowest bidder [who] that:

(A) [Has substantially complied] Complies substantially with all prescribed public contracting procedures and requirements;

(B) [Has met] Meets the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(C) [Has not been] Is not debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and

(D) [If the advertised contract is a public improvement contract.] Is not on the list [created by] that the Construction Contractors Board created under ORS 701.227, if the advertised contract is a public improvement contract.

“Lubricating oil” means [any] oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

“Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, a public body or any other person with legal capacity to contract [or a public body].

“Post-consumer waste” means a finished material that has completed a life cycle as a consumer item and would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(B) Post-consumer waste does not include manufacturing waste.

“Price agreement” means a public contract for [the procurement of] procuring goods or services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with [a continuing contractor] an obligation for a contractor to continue to provide goods or services [in which], but no corresponding obligation for the contracting agency [does not] to guarantee a minimum or maximum additional purchase.

“Procurement” means the act of purchasing, leasing, renting or otherwise acquiring goods or services. “Procurement” includes each function and procedure [undertaken or required to be undertaken by] that a contracting agency undertakes or must undertake to enter into a public contract, administer a public contract and obtain the performance of a public contract under the Public Contracting Code.

“Proposer” means a person that submits a proposal in response to a request for proposals.

“Public body” has the meaning given that term in ORS 174.109.

“Public contract” means a contracting agency’s sale or other disposal, or purchase, lease, rental or other acquisition, by a contracting agency of:

(i) Personal property;

(ii) Services, including personal services;

(iii) Public improvements;

(iv) Public works; or

(v) Minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.
(B) “Public contract” does not include grants.

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

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

[(cc)] (aa)(A) “Public improvement” means a project for construction, reconstruction or major renovation on real property by or for a contracting agency.

(B) “Public improvement” does not include:

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

[(ii)] Emergency work, minor [alteration] alterations, ordinary repair or maintenance necessary to preserve a public improvement.

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

(B) “Public improvement contract” does not include a public contract for emergency work, minor alterations, [or] ordinary repair or maintenance necessary to preserve a public improvement.

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

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

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

(A) Fifty percent of [its] the fiber weight [consisting] of the paper product consists of secondary waste materials; or

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

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

[(ii)] (gg) “Recycled product” means [all] materials, goods and supplies, of which not less than 50 percent of the total weight [of which] consists of secondary and post-consumer waste [with] and not less than 10 percent of [its] the total weight [consisting] consists of post-consumer waste.

“Recycled product” includes, and any product that has completed the product’s life cycle as a consumer item and could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.

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

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

[(kk)] (ii) “Services” [mean] means services other than personal services designated under ORS 279A.055, except that, for state contracting agencies with procurement authority under ORS
279A.050 or 279A.140, “services” includes personal services as designated by the state contracting agencies.

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

[kkk] (mm) "State agency" means the executive department, except the Secretary of State and the State Treasurer in [the performance of] performing the duties of [their] the constitutional offices of the Secretary of State and the State Treasurer.

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

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

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

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

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

(a) “Administering contracting agency” ..................ORS 279A.200
(b) “Affirmative action” ......ORS 279A.100
(c) “Architect” ................ORS 279C.100
(d) “Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services” ................ORS 279C.100
(e) “Bid documents” ........ORS 279C.400
(f) “Bidder” ................ORS 279B.415
(g) “Bids” ................ORS 279C.400
(h) “Brand name” ..........ORS 279B.405
(i) “Brand name or equal specification” ........ORS 279B.200
(j) “Brand name specification” ........ORS 279B.200
(k) “Class special procurement” ........ORS 279B.085
(l) “Consultant” ........ORS 279C.115
(m) “Contract-specific special procurement” ....ORS 279B.085
(n) “Cooperative procurement” ..........ORS 279A.200
(o) “Cooperative procurement group” ........ORS 279A.200
(p) “Donee” ........ORS 279A.250
(q) “Engineer” ..........ORS 279C.100
(r) “Findings” ........ORS 279C.330
(s) “Fire protection” ..................ORS 279A.190
(t) “Fringe benefits” ..........ORS 279C.800
(u) “Funds of a public agency” ..................ORS 279C.800
(v) “Good cause” ..................ORS 279C.585
(w) “Good faith dispute” ........ORS 279C.580
(x) “Goods” ..................ORS 279B.115
(y) “Housing” ..................ORS 279C.800
(z) “Interstate cooperative procurement” ..................ORS 279A.200
(aa) “Invitation to bid” ..........ORS 279B.005
..............................................and 279C.400
(bb) “Joint cooperative procurement” ..................ORS 279A.200
(cc) “Labor dispute” ..................ORS 279C.650
(dd) “Land surveyor” ..................ORS 279C.100
(ee) “Legally flawed” ..................ORS 279B.405
(ff) “Locality” ..................ORS 279C.800
(gg) “Nonprofit organization” ..................ORS 279C.810
(hh) “Nonresident bidder” ..........ORS 279A.120
(ii) “Not-for-profit organization” ..................ORS 279A.250
(jj) “Original contract” ........ORS 279A.200
(kk) “Permissive cooperative procurement” ..................ORS 279A.200
(ll) “Person” ..................ORS 279C.500
..............................................and 279C.815
(mm) “Personal services” ..........ORS 279C.100
(nn) “Photogrammetric mapping” ..................ORS 279C.100
(oo) “Photogrammetrist” ..........ORS 279C.100
(pp) “Prevailing rate of wage” ..................ORS 279C.800
(qq) “Procurement description” ..................ORS 279B.005
(rr) “Property” ..................ORS 279A.250
(ss) “Public agency” ..................ORS 279C.800
(tt) “Public contract” ..................ORS 279A.190
(uu) “Public works” ........ORS 279C.800
(vv) “Purchasing contracting agency” ..................ORS 279A.200
ww) “Regularly organized fire
department” .................... ORS 279A.190

“Related services” ............... ORS 279C.100

“Request for

proposals” ...................... ORS 279B.005

“Resident bidder” .......... ORS 279A.120

“Responsible bidder” ....... ORS 279A.105

.................................. and 279B.005

“Responsible

proposer” ...................... ORS 279B.005

“Responsive bid” ............ ORS 279B.005

“Responsive

proposal” ...................... ORS 279B.005

“Retainage” ................ ORS 279C.550

“Special

procurement” ................ ORS 279B.085

“Specification” ................ ORS 279B.200

“State agency” ............... ORS 279A.250

“Substantial

completion” .................. ORS 279C.465

“Surplus property” ........ ORS 279A.250

“Transportation

planning services” ........ ORS 279C.100

“Unnecessarily

restrictive” .................. ORS 279B.405

“Nonresident bidder” .... ORS 279A.120

“Not-for-profit

organization” ............... ORS 279A.250

“Original contract” ...... ORS 279A.200

“Permissive cooperative

procurement” .............. ORS 279A.200

“Person” .................... ORS 279C.500

.................................. and 279C.815

“Personal services” ...... ORS 279C.100

“Photogrammetric

mapping” .................... ORS 279C.100

“Photogrammetrist” ..... ORS 279C.100

“Prevailing rate of

wage” ...................... ORS 279C.800

“Procurement

description” .............. ORS 279B.005

“Property” .................. ORS 279A.250

“Public agency” ......... ORS 279C.800

“Public contract” ...... ORS 279A.190

“Public works” .......... ORS 279C.800

“Purchasing contracting
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 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 construction contracts described in ORS 279C.320 (1).
SECTION 3. ORS 279C.800 is amended to read:

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

(1) “Fringe benefits” means:

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

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

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

(i) Medical or hospital care;

(ii) Pensions on retirement or death; or

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

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

(C) Unemployment benefits;

(D) Life insurance;

(E) Disability and sickness insurance or accident insurance;

(F) Vacation and holiday pay;

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

(H) Other bona fide fringe benefits.

(2)(a) “Funds of a public agency” means moneys that a public agency uses to fund construction, reconstruction, major renovation or painting for a public works project, or a tax credit or tax abatement that a contractor engaged in a public works project receives from this state in connection with the public works project.

(b) “Funds of a public agency” does not include:

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

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

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

(D) The difference between:

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

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

(E) Staff resources the public agency uses to:

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

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

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

(G) Value added to land as a consequence of a public agency’s site preparation, demolition
of real property or remediation or removal of environmental contamination, except for value
added in excess of the expenses the public agency incurred in the site preparation, demolition
or remediation or removal when the land is sold for use in a project otherwise subject to
ORS 279C.800 to 279C.870; or
(H) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter
289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improve-
ment.

[(2)] (3) “Housing” has the meaning given that term in ORS 456.055.
[(3)] (4) “Locality” means the following district in which the public works, or the major portion
of the public works, is to be performed:
(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
(b) District 2, composed of Clackamas, Multnomah and Washington Counties;
(c) District 3, composed of Marion, Polk and Yamhill Counties;
(d) District 4, composed of Benton, Lincoln and Linn Counties;
(e) District 5, composed of Lane County;
(f) District 6, composed of Douglas County;
(g) District 7, composed of Coos and Curry Counties;
(h) District 8, composed of Jackson and Josephine Counties;
(i) District 9, composed of Hood River, Sherman and Wasco Counties;
(j) District 10, composed of Crook, Deschutes and Jefferson Counties;
(k) District 11, composed of Klamath and Lake Counties;
(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
(m) District 13, composed of Baker, Union and Wallowa Counties; and
(n) District 14, composed of Harney and Malheur Counties.

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

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

[(6)(a)] (7)(a) “Public works” [includes, but is not limited to] means:
(A) Roads, highways, buildings, structures and improvements of all types, the construction, re-
construction, major renovation or painting of which is carried on or contracted for by any public
agency to serve the public interest;
(B) A project that uses $750,000 or more of funds of a public agency for constructing, recon-
structing, painting or performing a major renovation on a road, highway, building, structure or im-
provement of any type;
(C) A project that uses funds of a private entity for constructing a privately owned road, high-
way, building, structure or improvement of any type in which a public agency will use or occupy
25 percent or more of the square footage of the completed project;
(D) Notwithstanding the provisions of ORS 279C.810 [(2)(a), (b) and (c)] (1), (2) and (3), a device,
structure or mechanism, or a combination of devices, structures or mechanisms, that:
(i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and
(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
structures or buildings that a public body, as defined in ORS 174.109, owns; [or]

(E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 [(2)(b) and (c)] (1),
(2) and (3), construction, reconstruction, painting or major renovation of a road, highway, building,
structure or improvement of any type that occurs, with or without using funds of a public agency,
on real property that a public university listed in ORS 352.002 owns[,] or

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

(b) “Public works” does not include:

(A) Reconstructing or renovating privately owned property that a public agency leases; or
(B) A private nonprofit entity’s renovation of publicly owned real property that is more than 75
years old if:

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

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

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

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

279C.810. [(a) As used in this section:] 
[(a) “Funds of a public agency” does not include:] 
[(A) Funds provided in the form of a government grant to a nonprofit organization, unless the
government grant is issued for the purpose of construction, reconstruction, major renovation or paint-
ing;]

[(B) Building and development permit fees paid or waived by the public agency;]
[(C) Tax credits or tax abatements;]
[(D) Land that a public agency sells to a private entity at fair market value;]
[(E) The difference between:]
[(i) The value of land that a public agency sells to a private entity as determined at the time of the
sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation,
exclusive of zoning or land use regulations, that the public agency imposes on the development or use
of the land; and]

[(ii) The fair market value of the land if the land is not subject to the limitations described in
sub-subparagraph (i) of this subparagraph;]
[(F) Staff resources of the public agency used to manage a project or to provide a principal source
of supervision, coordination or oversight of a project;]
[(G) Staff resources of the public agency used to design or inspect one or more components of a
project;]
[(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity,
unless the moneys will be used for a public improvement;]
[(J) Value added to land as a consequence of a public agency’s site preparation, demolition of real
property or remediation or removal of environmental contamination, except for value added in excess
of the expenses the public agency incurred in the site preparation, demolition or remediation or removal
when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or]
[(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289 or
ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.]

[(b) “Nonprofit organization” means an organization or group of organizations described in section]
ORS 279C.827 is amended to read:

501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

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

[(a) (1) [Projects] A project for which the contract price does not exceed $50,000. In determining the price of a project, a public agency:

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

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

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

[(c) Projects:] (3) A project:

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

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

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

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

[(d)] (4) [Projects] A project for residential construction that [are] is privately owned and that predominantly [provide] provides affordable housing. As used in this [paragraph] subsection:

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

[(B)] (b) “Predominantly” means 60 percent or more.

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

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

[(iii)] (B) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

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

[(ii)] (A) Exist in local ordinances or codes; or

[(iii)] (B) Differ, in the prevailing practice of a particular trade or occupation, from the United States Department of Labor’s description of residential construction.

SECTION 5. ORS 279C.827 is amended to read:
279C.827. (1)(a) A person or public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

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

(c) In making determinations under this subsection, the commissioner shall consider:
1. The physical separation of the project structures;
2. The timing of the work on project phases or structures;
3. The continuity of project contractors and subcontractors working on project parts or phases;
4. The manner in which the public agency and the contractors administer and implement the project;
5. Whether a single public works project includes several types of improvements or structures; and
6. Whether the combined improvements or structures have an overall purpose or function.

(2)(a) The commissioner may apply the considerations set forth in subsection (1)(c) of this section to determine whether to divide a public works project into more than one contract, regardless of whether the commissioner believes that a person or public agency divided the public works project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(b) If a project is a public works project of the type described in ORS 279C.800 (6)(a)(B) or (C), the commissioner, after applying the considerations set forth in subsection (1)(c) of this section, shall divide the project, if appropriate, to separate the parts of the project that [include] use funds of a public agency or that a public agency will [occupy or use] from the parts of the project that do not [include] use funds of a public agency and that a public agency will not [occupy or use]. If the commissioner divides the project, any part of the project that does not [include] use funds of a public agency and that a public agency will not [occupy or use] is not subject to ORS 279C.800 to 279C.870.

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

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

279C.830. (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for every contract for public works must state 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 must be paid to workers in each trade or occupation that the contractor or subcontractor or other person [who] that is a party to the contract uses in performing all or part of the contract. If the prevailing rates of wage are available electronically or are accessible on the Internet, the specifications may incorporate the rates 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 under paragraph (a) of this subsection must state the state and federal prevailing rates of wage in the specifications, the public agency 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 must provide that the workers 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.

(e) A public works project described in ORS 279C.800 [(6)(a)(B)] (7)(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 a contract for the public works must state the applicable prevailing rate of wage.

(2)(a) The specifications for a contract for public works 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 the contractor or subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) Every contract that a [contracting] public agency awards must require the contractor to:

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

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

(c) Every subcontract that a contractor or subcontractor awards in connection with a public works contract between a contractor and a public agency must require any subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9).

SECTION 7. The amendments to ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and 279C.830 by sections 1 to 6 of this 2019 Act apply to contracts for public works that a public agency first advertises or otherwise solicits or, if the public agency does not advertise or solicit the contract for public works, to a contract for public works that the public agency first enters into on or after the operative date specified in section 8 of this 2019 Act.


(2) A public agency or the Commissioner of the Bureau of Labor and Industries may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the public agency or the commissioner to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the public agency or the commissioner by the amendments to ORS 279A.010, 279A.128, 279C.800, 279C.810, 279C.827 and 279C.830 by sections 1 to 6 of this 2019 Act.

SECTION 9. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.