

House Bill 4045

Sponsored by Representative SMITH G (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**.

Includes within definition of "public works" project for constructing, reconstructing or performing major renovation of privately owned road, highway, building, structure or improvement that is located in certain economic development zones or for which qualified business firm received or will receive exemption from ad valorem property taxation and has total project cost estimated as equaling or exceeding \$25 million.

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.

Requires contractor or contractor's surety to file certified statements with public agency that awarded contract for public works or public agency that granted exemption from taxation.

Provides that business firm or contractor that commences project for public works in nonurban county shall either pay prevailing wage or employ apprentices for specified portion of total work hours that workers in apprenticeable occupations perform on public works.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public works projects in sponsored zones; 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. Section 2 of this 2020 Act is added to and made a part of ORS 279C.800 to**
6 **279C.870.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Apprentice" has the meaning given that term in ORS 660.010.

9 (b) "Apprenticeable occupation" has the meaning given that term in ORS 660.010.

10 (c) "Apprenticeship agreement" has the meaning given that term in ORS 660.010.

11 (d) "Apprenticeship training program" has the meaning given that term in ORS 279C.533.

12 (e) "Business firm" means:

13 (A) An authorized business firm, as defined in ORS 285C.050;

14 (B) A business firm, as defined in ORS 285C.050; or

15 (C) A qualified business firm, as defined in ORS 285C.050.

16 (f) "Nonurban county" has the meaning given that term in ORS 653.026.

17 (2)(a) If, in accordance with provisions of ORS chapter 285C, a business firm receives
18 from a public agency an exemption from ad valorem property taxation in connection with a
19 project for public works in a sponsored zone located in a nonurban county, the business firm
20 or any contractor that the business firm engages to perform work on the public works shall
21 either:

22 (A) Pay the prevailing rate of wage to workers on the project for public works; or

23 (B) Employ apprentices to perform 10 percent or more of the work hours that workers
24 in apprenticeable occupations perform on the public works and require in each subcontract

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 for which the contract price exceeds \$200,000 that the subcontractor employ apprentices to
2 perform 10 percent or more of the work hours that workers in apprenticeable occupations
3 perform on the subcontract.

4 (b) A business firm or contractor that elects to comply with paragraph (a)(B) of this
5 subsection shall:

6 (A) Pay an apprentice to perform work on the public works at the hourly rate to which
7 the apprentice is entitled under an apprenticeship agreement or that the apprenticeship
8 training program specifies; and

9 (B) Report the extent of the business firm's or contractor's compliance with paragraph
10 (a)(B) of this subsection to the public agency from which the business firm received an ex-
11 emption from ad valorem property taxation on forms and with contents that the public
12 agency specifies, and at regular intervals that the public agency specifies. The forms and
13 contents that the public agency specifies must include, at a minimum, a report in which the
14 business firm or contractor provides a detailed accounting of the total number of work hours
15 each month, and the cumulative total number of work hours since the term of the contract
16 for public works began, in which workers in apprenticeable occupations performed work on
17 the public works and apprentices performed work on the public works.

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

19 279C.800. As used in ORS 279C.800 to 279C.870:

20 (1) "Fringe benefits" means:

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

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

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

28 (i) Medical or hospital care;

29 (ii) Pensions on retirement or death; or

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

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

32 (C) Unemployment benefits;

33 (D) Life insurance;

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

35 (F) Vacation and holiday pay;

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

37 (H) Other bona fide fringe benefits.

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

39 (3) "Locality" means the following district in which the public works, or the major portion of
40 the public works, is to be performed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 34 **(i) Is located in a sponsored zone;**
- 35 **(ii) Consists of or is sited on real property for which an authorized business firm, quali-**
 36 **fied business firm or business firm, all as defined in ORS 285C.050, has received or will re-**
 37 **ceive in connection with the project an exemption from ad valorem property taxation under**
 38 **ORS 285C.170, 285C.175, 285C.362, 285C.409 or 307.123; and**
- 39 **(iii) Has a total project cost that the public agency that provides the exemption for ad**
 40 **valorem property taxes in connection with the project reasonably estimates will equal or**
 41 **exceed \$25 million; or**

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

(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.

(7) "Sponsored zone" means:

(a) An enterprise zone that the Governor designated or redesignated under ORS 284.160 (1987 Replacement Part) before October 3, 1989;

(b) An enterprise zone that the Director of the Oregon Business Development Department designated under ORS 285C.080 before October 5, 2015;

(c) An enterprise zone designated under ORS 285C.065;

(d) An enterprise zone designated or redesignated under ORS 285C.250;

(e) A rural enterprise zone, as defined in ORS 285C.050 (18)(a);

(f) An urban enterprise zone, as defined in ORS 285C.050;

(g) A rural renewable energy development zone that the Director of the Oregon Business Development Department designates under ORS 285C.353; or

(h) A strategic investment zone, as defined in ORS 285C.600.

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

279C.810. (1) 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 painting;

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

(C) Tax credits or tax abatements, **except for exemptions from ad valorem property taxation allowed under ORS 285C.170, 285C.175, 285C.362, 285C.409 or 307.123;**

(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*] a public agency [*used*] **uses to:**

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

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

[(H)] (G) Moneys derived from the sale of bonds that [*are loaned by*] a state agency **loans** to a

1 private entity, unless the moneys will be used for a public improvement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (D) “Residential construction” [includes] **means** the construction, reconstruction, major reno-
 43 vation or painting of single-family houses or apartment buildings not more than four stories in
 44 height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks,
 45 pursuant to the United States Department of Labor’s “All Agency Memorandum No. 130: Applica-

tion 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, including definitions that:

(i) Exist in local ordinances or codes; or

(ii) 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 **or a person that under ORS 279C.800 to 279C.870 must pay a prevailing rate of wage on public works** 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 **or a person that under ORS 279C.800 to 279C.870 must pay a prevailing rate of wage on public works** 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]* **to compel** compliance.

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

(A) The physical separation of the project structures;

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

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

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

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

(F) 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, *[after applying the considerations set forth in subsection (1)(c) of this section]* to separate the parts of the project that *[include]* **use** funds of a public agency or that *[will be occupied or used by]* 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 *[will not be occupied or used by]* 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 *[will not be occupied or used by]* 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, *[after applying the considerations set forth in subsections (1)(c) and (2)(b) of this section]* 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

1 279C.800 to 279C.870.

2 **SECTION 6.** ORS 279C.845 is amended to read:

3 279C.845. (1) *[The]* **A** contractor or *[the]* **a** contractor’s surety and *[every]* **each** subcontractor
 4 or *[the]* subcontractor’s surety shall file certified statements *[with the public agency]* in writing, on
 5 a form *[prescribed by]* the Commissioner of the Bureau of Labor and Industries, *[certifying:]* **pre-**
 6 **scribes, with one of the following, as appropriate:**

7 **(a) The public agency that awarded the contract for public works to which the contractor**
 8 **is a party. If the project is a public works as defined in ORS 279C.800 (6)(a)(B) or (C), the**
 9 **contractor shall submit the certified statements to the public agency that provided public**
 10 **funds for the project or that will occupy or use 25 percent or more of the square footage of**
 11 **the completed project. If more than one public agency provided public funds for the project**
 12 **or will occupy or use 25 percent or more of the square footage of the completed project, the**
 13 **public agencies involved shall agree upon which public agency will receive the certified**
 14 **statements.**

15 **(b) The public agency that granted an exemption from ad valorem property taxation in**
 16 **connection with a project located in a sponsored zone. If more than one public agency par-**
 17 **ticipated in granting an exemption from ad valorem property taxation in connection with the**
 18 **project, the participating public agencies shall agree upon which public agency will receive**
 19 **the certified statements.**

20 **(2) The certified statements must certify:**

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

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

25 *[(2)]* **(3) [The certified statement shall be verified by the oath of]** The contractor or the contractor’s
 26 surety or **the** subcontractor or the subcontractor’s surety **shall verify certified statements by**
 27 **oath, attesting** that the contractor or subcontractor has read the certified *[statement]*
 28 **statements**, that the contractor or subcontractor knows the contents of the certified *[statement]*
 29 **statements** and that to the contractor or subcontractor’s knowledge the certified *[statement is]*
 30 **statements are** true.

31 *[(3)]* **(4)** The certified statements *[shall]* **must** set out accurately and completely the contractor’s
 32 or subcontractor’s payroll records, including the name and address of each worker, the worker’s
 33 correct classification, rate of pay, daily and weekly number of hours worked and the gross wages
 34 the worker earned upon the public works during each week identified in the certified statement.

35 *[(4)]* **(5)** The contractor or subcontractor shall deliver or mail *[each]* **the** certified *[statement]*
 36 **statements** required by subsection (1) of this section to the **appropriate** public agency. Certified
 37 statements for each week during which the contractor or subcontractor employs a worker upon the
 38 public works *[shall]* **must** be submitted once a month, by the fifth business day of the following
 39 month. Information submitted on certified statements may be used only to ensure compliance with
 40 the provisions of ORS 279C.800 to 279C.870.

41 *[(5)]* **(6)** Each contractor or subcontractor shall preserve the certified statements for a period
 42 of three years from the date of completion of the contract.

43 *[(6)]* **(7)** Certified statements *[received by]* **that** a public agency **receives** are public records
 44 subject to the provisions of ORS 192.311 to 192.478.

45 *[(7)]* **(8)** Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor *[is required to]* **must** file

1 certified statements **with a public agency** under this section, the public agency shall retain 25
 2 percent of any amount *[earned by]* the contractor **earns** on the public works until the contractor
 3 has filed with the public agency certified statements as required by this section. The public agency
 4 shall pay the contractor the amount retained under this subsection within 14 days after the con-
 5 tractor files the certified statements as required by this section, regardless of whether a subcon-
 6 tractor has failed to file certified statements as required by this section. *[The public agency is not*
 7 *required to verify the truth of the contents of certified statements filed by the contractor under this*
 8 *section.]*

9 *[(8)]* **(9)** Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount
 10 *[earned by]* a first-tier subcontractor **earns** on a public works until the subcontractor has filed with
 11 the public agency certified statements as required by this section. The contractor shall verify that
 12 the first-tier subcontractor has filed the certified statements before the contractor may pay the
 13 subcontractor any amount **the contractor** retained under this subsection. The contractor shall pay
 14 the first-tier subcontractor the amount retained under this subsection within 14 days after the sub-
 15 contractor files the certified statements as required by this section. *[Neither the public agency nor*
 16 *the contractor is required to verify the truth of the contents of certified statements filed by a first-tier*
 17 *subcontractor under this section.]*

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

19 **(a) A public agency to verify the truth of the contents of a contractor’s certified state-**
 20 **ments; or**

21 **(b) A public agency or a contractor to verify the contents of a subcontractor’s certified**
 22 **statements.**

23 **SECTION 7.** Section 2 of this 2020 Act and the amendments to ORS 279C.800, 279C.810,
 24 279C.827 and 279C.845 by sections 3 to 6 of this 2020 Act apply to contracts for public works
 25 that a public agency or business firm first advertises or otherwise solicits or, if the public
 26 agency or business firm does not advertise or solicit the contract for public works, to a
 27 contract for public works into which the public agency or business firm first enters on or
 28 after the operative date specified in section 8 of this 2020 Act.

29 **SECTION 8.** (1) Section 2 of this 2020 Act and the amendments to ORS 279C.800, 279C.810,
 30 279C.827 and 279C.845 by sections 3 to 6 of this 2020 Act become operative 91 days after the
 31 effective date of this 2020 Act.

32 **(2) A public agency that adopts rules under ORS 279A.065 or 279A.070 and the Commis-**
 33 **sioner of the Bureau of Labor and Industries may take any action before the operative date**
 34 **specified in subsection (1) of this section that is necessary to enable the public agency or the**
 35 **commissioner to exercise or undertake, on and after the operative date specified in sub-**
 36 **section (1) of this section, all of the duties, functions and powers conferred on the public**
 37 **agency or the commissioner by section 2 of this 2020 Act and the amendments to ORS**
 38 **279C.800, 279C.810, 279C.827 and 279C.845 by sections 3 to 6 of this 2020 Act.**

39 **SECTION 9.** This 2020 Act being necessary for the immediate preservation of the public
 40 peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect
 41 on its passage.