

# Senate Bill 178

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## 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**.

Removes requirement for Commissioner of Bureau of Labor and Industries to compare state and federal prevailing rates of wage and make results of comparison available when commissioner determines state prevailing rate of wage.

Requires public agency to require in specifications and contracts for public works requirement that contractor and subcontractor pay higher of applicable state or federal prevailing rate of wage.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to prevailing rate of wage applicable to public works contracts; creating new provisions;  
3 amending ORS 279C.815, 279C.830 and 279C.855; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.815 is amended to read:

6 279C.815. (1) As used in this section, "person" [*includes any*] **means an** employer, a labor or-  
7 ganization or [*any*] **an** official representative of an employee or employer association.

8 (2)(a) The Commissioner of the Bureau of Labor and Industries **at least once each year** shall  
9 determine the prevailing rate of wage for workers in each trade or occupation in each locality de-  
10 scribed in ORS 279C.800 [*at least once each year*] by means of an independent wage survey and **shall**  
11 make this information available at least twice each year. The commissioner may amend the rate at  
12 any time.

13 (b) If [*it appears to the commissioner that*] the data derived only from the survey described in  
14 paragraph (a) of this subsection [*are*] **appear to the commissioner to be** insufficient to determine  
15 the prevailing rate of wage, the commissioner [*also*] shall consider additional information such as  
16 collective bargaining agreements, other independent wage surveys and the prevailing rates of wage  
17 determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority  
18 in the same trade or occupation paid at the same rate, the average rate of hourly wage, including  
19 all fringe benefits, paid in the locality to workers in the same trade or occupation [*shall be*] **is** the  
20 prevailing rate. If the wage [*paid by any*] **a** contractor or subcontractor **pays** to workers on [*any*]  
21 **a** public works is based on [*some*] **a** period of time other than an hour, the hourly wage [*shall*] **must**  
22 be mathematically determined by the number of hours worked in that period of time.

23 [*(c) The commissioner shall compare the prevailing rate of wage determined under paragraph (a)*  
24 *of this subsection with the federal prevailing rate of wage required under the Davis-Bacon Act (40*  
25 *U.S.C. 3141 et seq.) and determine which rate is higher for workers in each trade or occupation in each*  
26 *locality. The commissioner shall make this information, showing which prevailing rate of wage is*  
27 *higher for workers in each trade or occupation in each locality, available at the same time as the*  
28 *commissioner makes information available under paragraph (a) of this subsection.]*

**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 (3) A person shall make *[such]* reports and returns to the Bureau of Labor and Industries *[as]*  
 2 **that** the commissioner *[may require]* **requires** to determine the prevailing rates of wage. *The re-*  
 3 *ports and returns shall be made upon forms furnished by*, **using forms** the bureau **provides** and  
 4 within the time *[prescribed by]* the commissioner **prescribes**. The person or an authorized repre-  
 5 sentative of the person shall certify to the accuracy of the reports and returns.

6 (4) Notwithstanding ORS 192.410 to 192.505, *[all]* reports and returns or other information pro-  
 7 vided to the commissioner under this section are confidential and not available for inspection by the  
 8 public.

9 (5) *[In order to assist the commissioner in making determinations of the prevailing rates of*  
 10 *wage,]* The commissioner may enter into *[contracts]* **a contract** with a public or private *[parties]*  
 11 **party** to obtain *[relevant]* data and information **the commissioner needs to determine the pre-**  
 12 **valing rate of wage.** *[Any such]* **The** contract may *[include provisions]* **provide** for the manner and  
 13 extent of the market review of affected trades and occupations and *[such]* **for** other requirements  
 14 regarding timelines of reports, accuracy of data and information and supervision and review as the  
 15 commissioner *[may prescribe]* **prescribes**.

16 **SECTION 2.** ORS 279C.830 is amended to read:

17 279C.830. (1)(a) Except as provided in paragraph *[(d)]* **(e)** of this subsection, the specifications  
 18 for every contract for public works *[shall]* **must** contain a provision *[stating]* **that states** the ex-  
 19 isting state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required  
 20 under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that *[may]* **must** be paid to workers in each trade  
 21 or occupation *[required for the public works employed in the performance of the contract either by]*  
 22 **that** the contractor or subcontractor or other person **who is a party to the contract uses in**  
 23 **performing all or part of the contract.** *[doing or contracting to do the whole or any part of the*  
 24 *work contemplated by the contract. When]* **If** the prevailing rates of wage are available electronically  
 25 or are accessible on the Internet, the rates may be incorporated into the specifications by referring  
 26 to the electronically accessible or Internet-accessible rates and by providing adequate information  
 27 about how to access the rates.

28 (b) If a public agency *[is required]* under paragraph (a) of this subsection *[to]* **must** include the  
 29 state and federal prevailing rates of wage in the specifications, the public agency *[also shall include*  
 30 *in the specifications information showing which prevailing rate of wage is higher for workers in each*  
 31 *trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and*  
 32 *Industries under ORS 279C.815 (2)(c).]* **shall also require the contractor to pay the higher of the**  
 33 **applicable state or federal prevailing rate of wage to all workers on the public works.**

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

37 **(d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the**  
 38 **Davis-Bacon Act, every contract and subcontract must provide that workers on the public**  
 39 **works must be paid not less than the higher of the applicable state or federal prevailing rate**  
 40 **of wage.**

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

1 (2) The specifications for *[every]* a contract for public works *[shall contain a provision stating]*  
 2 **must provide** that the contractor and every subcontractor must have a public works bond filed with  
 3 the Construction Contractors Board before starting work on the project, unless exempt under ORS  
 4 279C.836 (4), (7), (8) or (9). Every contract *[awarded by]* **that** a contracting agency **awards must**  
 5 **require** *[shall contain a provision requiring]* the contractor **to**:

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

8 (b) *[To include in]* **Require, in** every subcontract, *[a provision requiring the subcontractor to]*  
 9 **that the subcontractor** have a public works bond filed with the Construction Contractors Board  
 10 before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

11 **SECTION 3.** ORS 279C.855 is amended to read:

12 279C.855. (1) *[Any]* **A** contractor or subcontractor or contractor's or subcontractor's surety that  
 13 violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of *[their]* **the**  
 14 **workers'** unpaid minimum wages, including all fringe benefits, and in an additional amount equal  
 15 to the unpaid wages as liquidated damages.

16 (2) Actions to enforce liability to workers under subsection (1) of this section may be brought  
 17 as actions on contractors' bonds as provided for in ORS 279C.610.

18 (3) If a public agency fails to *[include a provision that the contractor and any subcontractor shall*  
 19 *comply with ORS 279C.840]* **provide** in the advertisement for bids, the request for bids, the contract  
 20 specifications, the accepted bid or elsewhere in the contract documents **that the contractor and**  
 21 **any subcontractor must comply with ORS 279C.840**, the liability of the public agency for unpaid  
 22 minimum wages, as described in subsection (1) of this section, is joint and several with *[any]* **a**  
 23 contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840.

24 (4) *[When]* **If** a public works project is subject to the Davis-Bacon Act, *[(140 U.S.C. 3141 et*  
 25 *seq.)]*, and a public agency fails to include the state and federal prevailing rates of wage in the  
 26 specifications for the contract for public works as required under ORS 279C.830 (1)(a), or fails to  
 27 *[include in the specifications information showing which prevailing rate of wage is higher for workers*  
 28 *in each trade or occupation in each locality as required under ORS 279C.830 (1)(b)]* **provide in the**  
 29 **contract that workers on the public works must be paid not less than the higher of the ap-**  
 30 **licable state or federal prevailing rate of wage as required under ORS 279C.830 (1)(d)**, the  
 31 public agency is liable to each affected worker for:

32 (a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for  
 33 each hour worked, the difference between the applicable higher rate of wage and the lower rate of  
 34 wage; and

35 (b) An additional amount, equal to the amount of unpaid minimum wages due under paragraph  
 36 (a) of this subsection, as liquidated damages.

37 (5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of sub-  
 38 sections (3) and (4) of this section by a civil action under ORS 279C.850 (4), by a civil action on an  
 39 assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage  
 40 claim under ORS 652.332.

41 **SECTION 4.** **The amendments to ORS 279C.830 and 279C.855 by sections 2 and 3 of this**  
 42 **2011 Act apply to contracts for public works that a contracting agency first advertises or**  
 43 **solicits on or after the effective date of this 2011 Act or, if the contracting agency does not**  
 44 **advertise or solicit the contract, to a contract that the contracting agency enters into on**  
 45 **or after the effective date of this 2011 Act.**

1        **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**  
2        **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
3        **on its passage.**

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