

House Bill 2646

Sponsored by Representative DOHERTY (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**.

Applies provisions of prevailing wage law to agreement under terms of which private entity constructs, reconstructs, renovates or paints improvement on real property that Oregon University System or institution in Oregon University System owns or will use, occupy or ultimately own.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to applying a prevailing rate of wage to projects for the Oregon University System; amending ORS 279C.800 and 351.086; and declaring an emergency.

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

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

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

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

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

(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated 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) "Housing" has the meaning given that term in ORS 456.055.

(3) "Locality" means the following district in which the public works, or the major portion thereof, 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;

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.

(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) "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) "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 existing under law or charter or an instrumentality of the county, city, district, authority, public corporation or public entity.

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

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, 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 funds of a private entity and \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a privately owned road, highway, building, structure or improvement of any type;

(C) A project that uses funds of a private entity for constructing a privately owned road, highway, 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; [or]

(D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), 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), 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 the Oregon University System or an institution in the Oregon University System owns or will use, occupy or ultimately own.

(b) "Public works" does not include:

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

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity 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

1 of the renovation; and

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

4 **SECTION 2.** ORS 351.086, as amended by section 48, chapter 104, Oregon Laws 2012, is
5 amended to read:

6 351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions
7 of ORS chapters 182, 240, 270, 273, 276, 278, 279A, 279B, 279C, 282, 283, 291 and 292 and ORS
8 180.060, 180.160, 180.210, 180.220, 180.225 and 180.230 do not apply to the Oregon University System.

9 (2)(a) Notwithstanding subsection (1) of this section, the provisions of ORS 182.100, 182.109,
10 240.167, 276.073 to 276.090, 279A.065 (2), 279B.055 (3), 279C.380 (1)(a) and (3), 279C.600 to 279C.625,
11 279C.800[, 279C.810, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860,
12 279C.865,] to 279C.870, 283.085 to 283.092, 291.200, 291.201 to 291.222, 291.223, 291.224 (2) and (6),
13 291.226, 291.272 to 291.278, 291.322 to 291.334, 291.405, 291.407, 291.445, 292.043 and 292.044 apply to
14 the Oregon University System.

15 **(b) ORS 279C.800 to 279C.870 apply to an agreement under the terms of which a private**
16 **entity constructs, reconstructs, renovates or paints an improvement on real property that**
17 **the Oregon University System or an institution in the Oregon University System owns or**
18 **will use, occupy or ultimately own.**

19 (3) Notwithstanding subsection (1) of this section, ORS 273.413 to 273.456 apply to any structure,
20 equipment or asset [owned by] the Oregon University System **owns and** that is encumbered by a
21 certificate of participation.

22 (4) Notwithstanding subsection (6) of this section:

23 (a) The provisions of ORS chapters 35, 190, 192, 244 and 297 and ORS 30.260 to 30.460, 184.480,
24 184.483, 184.486, 184.488, 200.005 to 200.025, 200.045 to 200.090, 200.100 to 200.120, 200.160 to 200.200,
25 236.605 to 236.640, 243.650 to 243.782, 243.800, 243.820, 243.830, 243.850, 243.910 to 243.945, 307.090
26 and 307.112 apply to the Oregon University System under the same terms as they apply to other
27 public bodies other than the State of Oregon.

28 (b) The provisions of ORS chapter 286A and ORS 293.115, 293.117, 293.130, 293.169, 293.171,
29 293.205 to 293.225, 293.250, 293.265 to 293.280, 293.285, 293.295, 293.321, 293.353, 293.375, 293.406,
30 293.465 to 293.485, 293.490, 293.495, 293.525, 293.701 to 293.820, 293.875, 293.880 and 293.990 apply to
31 the Oregon University System under the same terms as they apply to state agencies with moneys
32 held by the State Treasurer, to the Oregon University System Fund established in ORS 351.506 and
33 to any other moneys deposited with or held by the State Treasurer for the Oregon University Sys-
34 tem.

35 (5) Notwithstanding subsections (1) and (6) of this section, the Oregon University System and
36 [its] **the agents and employees of the Oregon University System** remain subject to all statutes and
37 administrative rules of this state that create rights, benefits or protections in favor of military vet-
38 erans, service members and families of service members to the same extent as an agency of this
39 state would be subject to such statutes and administrative rules.

40 (6)(a) Except as provided by paragraph (b) of this subsection, the Oregon University System, as
41 a distinct governmental entity, is not subject to any provision of law enacted after January 1, 2011,
42 with respect to any governmental entity, that is unique to governmental entities, unless the pro-
43 vision specifically provides that [it] **the provision** applies to the Oregon University System.

44 (b) To the same extent as state agencies that borrow through the State Treasurer or that have
45 moneys held in the State Treasury, the Oregon University System is subject to any provision of law

1 enacted after January 1, 2011, that relates to or affects the borrowings of the Oregon University
 2 System through the State Treasurer or the deposit, payment or investment of moneys held in the
 3 Oregon University System Fund or any other moneys held for the Oregon University System in the
 4 State Treasury.

5 (7) In carrying out the duties, functions and powers imposed by law upon the Oregon University
 6 System, the State Board of Higher Education or the Chancellor of the Oregon University System
 7 may contract with any public agency [*for the performance of such*] **to perform** duties, functions and
 8 powers [*as*] **that** the board or chancellor considers appropriate.

9 **SECTION 3. The amendments to ORS 279C.800 and 351.086 by sections 1 and 2 of this 2013**
 10 **Act apply to contracts or other agreements that the Oregon University System or an insti-**
 11 **tution in the Oregon University System advertises or otherwise solicits or, if the Oregon**
 12 **University System or an institution in the Oregon University System does not advertise or**
 13 **otherwise solicit the contract or agreement, to contracts or agreements into which the**
 14 **Oregon University System or an institution in the Oregon University System enters on or**
 15 **after the operative date specified in section 4 of this 2013 Act.**

16 **SECTION 4. (1) The amendments to ORS 279C.800 and 351.086 by sections 1 and 2 of this**
 17 **2013 Act become operative January 1, 2014.**

18 (2) The Chancellor of the Oregon University System and the presiding officer of an in-
 19 stitution in the Oregon University System that is authorized by law or rule to conduct a
 20 procurement may take any action before the operative date specified in subsection (1) of this
 21 section that is necessary to enable the chancellor or the presiding officer to exercise, on and
 22 after the operative date specified in subsection (1) of this section, the duties, functions and
 23 powers conferred on the chancellor or the presiding officer by the amendments to ORS
 24 279C.800 and 351.086 by sections 1 and 2 of this 2013 Act.

25 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
 26 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 27 **on its passage.**