



March 1, 2017

Testimony to Senate Workforce Committee  
Provided by: Paloma Sparks, Legislative Director  
Oregon Bureau of Labor and Industries

The Bureau of Labor and Industries (BOLI) appreciates the opportunity to testify in support of Senate Bill 416, which makes several housekeeping changes to Oregon's prevailing wage rate (PWR) laws.

Prevailing wage rate laws are designed to ensure that contractors compete on their ability to perform work competently and efficiently while maintaining community established compensation standards, to encourage the training and education of workers in industry skill standards and to encourage employers to use the funds required by the prevailing wage rate law for fringe benefits for the actual purchase of such benefits. The Bureau of Labor and Industries is responsible for administering and enforcing the PWR law and for educating contractors, subcontractors and public agencies about its requirements.

BOLI has brought forward this legislation to make Oregon's PWR laws more consistent and efficient. SB 416 makes a number of clarifications to existing PWR laws around bond requirements and responsibilities for paying wages to workers. A section-by-section summary of the bill is provided below.

## Section 1

Currently, ORS 279C.827(1) prohibits a *public agency* from dividing a PWR project into more than one contract to avoid the prevailing wage rate laws.

In order to address the fact that public works projects are increasingly contracted for and carried out by private entities using \$750,000 or more in funds of a public agency, SB 416 would prohibit *anyone* from dividing a project to avoid the prevailing wage rate laws.

ORS 279C.827(2) lists several factors BOLI should consider in determining whether a public agency has *intentionally* divided a project. Public agencies often ask BOLI for assistance when they have multiple related contracts and need to know which of those contracts should be grouped together as a single "project." BOLI uses the same factors listed in ORS 279C.827(2) for those questions. The change in SB 416 clarifies that BOLI may use the same factors to make determinations about whether contracts should be grouped together as a single project, regardless of whether a public agency has *intentionally* divided a project.

## Section 2

ORS 279C.830(2)(a)(b) includes certain language that must be included in specifications, contracts and subcontracts. The bill divides the language requirements for these three documents into subsections,

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making it easier to read and understand. This change makes the structure of such language requirements consistent with similar requirements in ORS 279C.830(1).

PWR law requires that, unless otherwise exempt, every contractor and subcontractor file a public works bond with the Construction Contractors Board prior to beginning work on a public works project. The public works bond helps BOLI collect wages owed to workers on PWR projects when the employer fails or refuses to pay wages. When a subcontractor has a public works bond, this also provides a certain amount of protection to the prime contractor who may be required to pay prevailing wages owed to the subcontractor's employees. Not all subcontractors are aware of the public works bond requirements. The change in section 2 requires all subcontracts to include the public works bond language, thereby alerting all subcontractors of the requirement.

### Section 3

ORS 279C.836(7)(a) provides an exemption from the public works bond requirement for certified disadvantaged business enterprises, minority-owned businesses, women-owned businesses, businesses owned by service-disabled veterans or emerging small businesses (DBE/MWESB) for the first four years of certification. When a DBE/MWESB contractor who does not have a public works bond fails to pay prevailing wages owed to its employees, the responsibility generally falls to the project's prime contractor. The change in section 3 would amend the exemption so that a DBE/MWESB that BOLI has investigated and found is unable or unwilling to pay its employees the required prevailing wage would no longer be exempt from the public works bond requirement.

### Section 4

ORS 279C.840(6) prohibits persons other than the responsible contractor or subcontractor from paying or contributing to any portion of the prevailing wages owed by the contractor. The change in section 4 clarifies that the contractor or subcontractor liable for the wages commits a violation of the PWR law if another person pays part or all of the wages owed by the contractor or subcontractor.

The prohibition in ORS 279C.840(6) against persons other than the responsible contractor or subcontractor paying the required prevailing wages is not intended to prohibit a surety or a public agency from paying the prevailing wage owed to workers. Section 4 clarifies existing language to that effect.

### Section 5

Current law allows BOLI to add a contractor or subcontractor to the list of contractors who are ineligible to work on public works projects (i.e., "debar" the contractor or subcontractor) for certain violations of the PWR law. ORS 279C.860(1)(b) as currently written allows BOLI to debar a subcontractor when the "subcontractor has failed to pay the subcontractor's employees amounts required under ORS 279C.840 and the *contractor* has paid the amounts on the subcontractor's behalf." (Emphasis added). Because most subcontractors are required to have a public works bond, when the subcontractor fails to pay its employees, BOLI is generally able to collect the wages owed from the surety holding the public works bond. This change would add clarity to the existing law and allow BOLI to debar a subcontractor when the contractor, the surety holding the public works bond, or another party pays the subcontractor's

employees because of the subcontractor's failure or refusal to pay prevailing wages. Similarly, section 5 would allow BOLI to debar a prime contractor if the prime contractor fails or refuses to pay the required prevailing wages to its employees, and the surety holding the prime contractor's public works bond or payment bond, or another party, pays the prime contractor's employees.

#### Section 6

BOLI is currently unable to assess separate civil penalties against contractors failing to furnish or pay fringe benefits as required in addition to failing to pay regular wages due under PWR law. These often occur as separate violations on PWR projects. Because the definition of "prevailing rate of wage" in ORS 279C.800 includes fringe benefits as part of the prevailing rate of wage, the Bureau is currently limited in effective enforcement where a contractor has both failed to pay the applicable prevailing wage and has also failed to provide or pay fringe benefits as required. BOLI believes these are and should be separate violations and civil penalties should be authorized as such.

#### Section 7

The changes in sections 1 to 6 apply to contracts for public works that an agency first advertises or otherwise solicits on or after January 1, 2018. If the public agency does not advertise or otherwise solicit the contract for public works, the changes in sections 1 to 6 apply to contracts for public works into which a public agency enters on or after January 1, 2018.

#### Section 8

Sections 1 to 6 become operative on January 1, 2018 but the Bureau may engage in rulemaking prior to that date in preparation.

#### Section 9

Emergency clause to permit rulemaking.

SB 416 provides greater clarity to our prevailing wage laws. The bill will assist all parties in compliance with and enforcement of existing laws. Thank you for the opportunity to testify in support of SB 416.