

History of Oregon's PWR Legislation

- 1959 Oregon enacts a State prevailing wage rate law to cover public works that are not covered by Davis-Bacon regulations. Stated objectives are:
1. To assure quality workmanship on public works;
 2. To discourage exploitation of workers; and
 3. To encourage competition for contracts at the management skills level.
- 1969 Oregon's prevailing wage rate law is amended to include fringe benefits.
- 1977 Oregon's prevailing wage rate law undergoes a major revision, which, among other changes, expands subject workers to include those paid on a salary or per diem basis, and provides debarment for employers who willfully violate the prevailing wage rate statutes.
- 1981 Oregon's prevailing wage rate law is amended to require public agencies to notify the Bureau of Labor and Industries (BOLI) of awarded contracts, and to allow the commissioner to seek injunctions against employers without first receiving a wage claim.
- 1983 Oregon's prevailing wage rate law is amended to include a provision that the public agency may be held exclusively liable for unpaid prevailing wages in certain circumstances. In addition, the law now provides that contractors may be debarred for intentional failure to post the prevailing wage rates on the job site.
- 1991 Oregon's prevailing wage rate law is amended to allow the losing bidder to recover at least \$5,000 from the winning bidder if it can be established that the winner has willfully violated any one of several laws, including the prevailing wage rate law.
- 1994 Oregon voters reject Measure 12, which would have repealed Oregon's prevailing wage rate law.
- 1995 Oregon's prevailing wage rate law is substantially amended by the 1995 legislature. The statutes now include a declaration by the Legislative Assembly that the purposes of the prevailing wage rate law are:
- To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community established compensation standards;
 - To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards;
 - To encourage training and education of workers to industry skills standards; and
 - To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits.

Changes to the law include an increase in the threshold for coverage from \$10,000 to \$25,000; a prohibition against dividing public works projects to avoid compliance with the PWR law; and the addition of a prevailing wage fee payable by contractors who contract directly with a public agency. Fees are to be used to pay the costs of:

- State-conducted prevailing wage rate surveys,
- Educational programs, and
- Investigation and enforcement of the prevailing wage rate law.

Other changes to the law include the requirement that contract specifications and contracts for public works include a provision stating the PWR fee shall be paid to BOLI; the addition of an advisory committee to assist in administration of the PWR law; civil penalty authority up to \$5,000 for each violation of the prevailing wage rate law; contractors are no longer

required to submit copies of their certified payroll statements to BOLI (however, they are still required to submit these reports to the public agency); and debarment of subcontractors who fail to pay workers when workers' wages are paid by the prime contractor.

- 1997 Oregon's prevailing wage rate law is amended making public agencies' liability joint and several with any contractor or subcontractor for unpaid prevailing wages when the agency fails to include required prevailing wage rate language in the advertisement for bids, request for bids, contractor specifications, accepted bids, or elsewhere in the contract documents.

Other changes to the law include the amendment to the daily overtime statute to allow employers to adopt work schedules of four ten-hour days on public works projects; liquidated damages may be for an additional amount of wages equal to twice the unpaid overtime wages if contractors have falsified the payroll records; and contractors must adopt a written work schedule on public projects prior to the beginning of work.

The statute (ORS 279C.305) that requires public agencies to prepare and submit a list of their planned public improvement projects to BOLI is amended.

The estimated project cost threshold for least cost comparison requirements when an agency considers using its own employees as workers on a public works is increased from \$50,000 to \$125,000.

ORS 279C.815 (formerly 279.359) is amended to require that BOLI rely on the annual wage survey in determining prevailing wage rates. It allows the commissioner to consider additional information if it appears that the data derived from the wage survey alone is insufficient to establish the prevailing wage rates.

- 1999 Oregon's PWR law is amended to reapply portions of the PWR law to Oregon University System contracts.

The notice of claim requirement against public works contractors' bond is modified to allow BOLI to include unidentified workers.

School district contracts with community foundations or nonprofit corporations are exempt from prevailing wage rate law requirements under certain and specific conditions; sunsets January 1, 2006.

Prevailing wage rate fees are allowed to be used for education programs on public contracting and purchasing laws in addition to the prevailing wage rate law.

- 2001 Oregon's prevailing wage rate law is amended to require contractors and subcontractors on public works projects to prepare weekly certified payroll statements and submit them to the public agency monthly, by the fifth business day of the month.

Public agencies are required to include a copy of the contractor's disclosure of first-tier subcontractors with the Notice of Public Works form submitted to BOLI.

ORS 279C.810 is amended by adding an exemption. Public work projects for which no funds of a public agency are directly or indirectly used are exempt from the PWR law. BOLI is required to adopt rules to carry out these provisions. The amendment specifies that "funds of a public agency" does not include funds provided in the form of a government grant to a nonprofit organization, unless the grant is issued for the purpose of construction; "nonprofit

organization” is defined.

- 2003 Oregon’s prevailing wage rate law is amended to exempt Oregon Youth Conservation Corps (OYCC) members.

HB 2341 establishes a Public Contracting Code for public agencies within Oregon. The new Code establishes three separate chapters to modernize and clarify public contracting processes. The first chapter, ORS 279A, establishes an overarching policy for all contracting activities. The second chapter, ORS 279B, covers most types of procurements, except for public improvements, public works and architectural, engineering and related services, which are covered in the third chapter, ORS 279C. The entire prevailing wage rate law is contained within ORS 279C.

- 2005 Oregon’s PWR law is substantially amended by the 2005 legislature. Changes to the law include an increase in the PWR threshold for coverage from \$25,000 to \$50,000; contractors must pay the higher of state or federal rates on projects subject to both the state PWR law and the federal Davis-Bacon Act; BOLI must compare state and federal prevailing wage rates, determine which is higher for workers in each trade or occupation in each locality, and make this information available twice each year; and public agencies must include in their project specifications information showing which prevailing rate of wage, either state or federal, is higher.

Other changes to the law include the requirement that all contracts, including subcontracts, must contain a provision that workers shall be paid not less than the specified minimum hourly rate of wage on projects subject to the PWR law; and all contractors and subcontractors working on a public works project must file a \$30,000 “public works bond” with the Construction Contractors Board. This bond is to be used exclusively for unpaid wages determined due by BOLI. Some exemptions from the requirement are provided for certified disadvantaged, minority, women or emerging small business enterprises. In addition, general contractors must verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.

Project price is now defined to include, but is not limited to, the value of work performed by persons paid by a contractor as part of the project. Project price does not include the value of donated materials or work performed on a project by individuals volunteering to a public agency. “Funds of a public agency” does not include building and development fees waived or paid by the public agency, staff resources used for project oversight or coordination, or staff resources used for the design or inspection of the project.

Finally, public agencies and general contractors must withhold 25 percent of amounts earned by contractors if certified payroll reports are not submitted as required.

- 2007 The definition of “public works” in ORS 279C.800(6)(a) is amended to include in addition to 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:
- A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or
 - A project for construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

The definition of “funds of a public agency” is amended to exclude, among other things, tax credits or tax abatements, or money from the sale of bonds that are loaned by a state agency to a private entity, unless the money will be used for a public improvement.

If a public works project is of the type described in ORS 279C.800(6)(a)(B) or (C) (a privately owned project with \$750,000 or more of funds of a public agency or in which 25 percent or more of the square footage will be occupied or used by a public agency), the Commissioner of the Bureau of Labor and Industries will divide the project if appropriate so that any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency will not be subject to the PWR law. If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner will divide the parts of the project that are not public works from those that are subject to the PWR law if appropriate.

Projects for residential construction that are privately owned and that predominately provide affordable housing are exempted from the PWR law.

BOLI is required to make coverage determinations upon request about whether projects or proposed projects are or would be subject to the PWR law. The requestor or anyone adversely affected or aggrieved by the determination may request a hearing.

The applicable prevailing rates of wage for a public works project may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates, and by providing adequate information about how to access the rates.

When a public works project is subject to the Davis-Bacon Act, if the public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract, or fails to include in the specifications information showing which prevailing rate of wage is higher, the public agency will be liable to each affected worker for any unpaid difference between the applicable higher rate of wage and the lower rate of wage. The public agency will also be liable for an additional amount equal to the amount of unpaid wages as liquidated damages.

When a public works project is subject to the Davis-Bacon Act, BOLI must:

- Use the federal definition and interpretation of “site of work;”
- Use the federal guidelines for whether workers transporting materials and supplies to and from the site of the project are due the prevailing rate of wage;
- Apply the federal standard to workers enrolled in skill training programs that are certified by the U.S. Secretary of Transportation under the Federal-Aid Highway Act.

The PWR fee, previously required to be paid by contractors, is now required to be paid by public agencies. The minimum fee is increased to \$250 and the maximum fee is increased to \$7,500. The increased minimum and maximum amounts sunset on January 1, 2011.

BOLI is required to develop and adopt a plan to increase diversity statewide among workers employed on public works projects.

Certified disadvantaged, minority, women or emerging small business enterprises may elect not to file a public works bond with Construction Contractors Board (CCB) for up to four years after certification.

Contractors and subcontractors may elect not to file a public works bond with CCB when working on a public works project for which the total project cost does not exceed \$100,000.

- 2009 Oregon's prevailing wage rate law is amended to include a provision that a contractor or subcontractor may be debarred (ineligible to receive public works contracts or subcontracts for three years) if BOLI determines the contractor intentionally falsified certified payroll statements.

The bond Notice of Claim deadline is extended from 120 days to 180 days after the person last performed labor or furnished materials. The bond Notice of Claim deadline for fringe benefit claims is extended to 200 days.

Employers are required to pay PWR wages on the employer's regularly established and maintained paydays.

Public agencies are prohibited from entering into an agreement with another state, or a political subdivision of another state, that allows a contractor or subcontractor to pay less than the prevailing rate of wage on a public works project.

The amount of the PWR fee is permanently adjusted to 0.1 percent (one-tenth of one percent) of the contract price, with a minimum fee of \$250 and a maximum fee of \$7,500. The PWR fee is due at the time the Notice of Public Works form is submitted to BOLI.

The requirement for certified payroll reports is amended to include the gross amount of wages *earned* per week, rather than the gross amount of wages *paid* per week, as not all employers pay wages on a weekly basis.

- 2010 The 2010 Special Legislative Session amends the definition of "public works" so that effective January 1, 2011, the construction or installation of solar radiation devices on publicly-owned property will be subject to the prevailing wage rate laws, regardless of the total project cost or whether funds of a public agency are used on the project.

- 2011 Oregon's prevailing wage rate law is amended to remove the requirement that BOLI compare state and federal prevailing wage rates and publish information showing which prevailing rate of wage is higher for use on projects subject to both the state PWR law and the federal Davis-Bacon Act.

The required language provisions are modified for projects subject to both Oregon's PWR law and the federal Davis-Bacon Act. For such projects, the specifications and every contract and subcontract must provide that the workers must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

- 2013 Oregon's prevailing wage rate law is amended to allow a member or manager of a limited liability company that commits certain violations of the PWR regulations to be added to the list of those persons ineligible to receive a public works contract.

The definition of "public works" is amended to include the construction, reconstruction, major renovation or painting of a road, highway, building, structure or improvement of any type that occurs on Oregon University System property or on property an institution within the Oregon University System owns, regardless of whether the project uses funds of a public agency.

- 2015 The definition of "public works" in Oregon's prevailing wage rate law is amended so that a project that uses \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a road, highway, building,

structure or improvement of any type will be subject to the prevailing wage rate law, regardless of whether the project is privately owned, or whether the project uses funds of a private entity.

The statutes regarding public universities listed in ORS 352.002 (ORS 352.138) are amended so that the prevailing wage rate law will apply to an agreement under the terms of which a private entity constructs, reconstructs, renovates or paints an improvement on real property owned by a public university listed in ORS 352.002, or by a not-for-profit organization or other entity that a public university listed in ORS 352.002 owns or controls exclusively.

2016 The 2016 Special Legislative Session amends the prevailing wage rate law so that, effective January 1, 2017, a contractor or subcontractor, or an agent of a contractor or subcontractor, may not intentionally:

- Fail to pay an employee the appropriate prevailing wage rate;
- Reduce an employee's regular wage rate to offset the prevailing wage rate;
- Unlawfully withhold, deduct, or divert any portion of an employee's wages;
- Enter into an agreement with an employee under the terms of which the employee performs work on a public works project at less than the prevailing rate of wage; or
- Otherwise deprive an employee, permanently or indefinitely, of prevailing wages due in an amount that equals or exceeds 25 percent of wages due or \$1000 in a single pay period, whichever is greater.

Any intentional violation of the above would constitute a Class C felony for which the Commissioner of the Bureau of Labor and Industries may pursue through a civil action or referral to a district attorney or the Attorney General for prosecution.

2017 Oregon's prevailing wage rate law is amended to require a business that is within its first four years of certification as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business to have a public works bond on file with the Construction Contractors Board before starting work on a public works project if the Bureau of Labor and Industries finds that the business has violated the PWR laws.

The required language provisions are modified so that every subcontract awarded in connection with a public works contract must require the subcontractor to have a public works bond on file with the Construction Contractors Board, unless the subcontractor is exempt from the public works bond requirement.

Oregon prevailing wage rate law is amended to clarify factors BOLI may consider in determining whether a public works should be divided and prohibits anyone, not just public agencies, from dividing a public works project into more than one contract to avoid prevailing wage rate laws.

New legislation establishes that failure to pay fringe benefits and failure to pay the prevailing wage rate are separate violations.

ORS 279C.305, part of the public contracting code, is modified. Contracting agencies are required to perform a least-cost analysis on projects when the estimated value of the contracting agency's own equipment or personnel exceeds \$200,000 (or exceeds \$125,000 if the public improvement is to resurface highways, roads or streets at a depth of two or more inches). The contracting agency must file the analysis with BOLI not later than 180 days before construction begins on the public improvement. Construction contractors, or trade

associations that represent construction contractors, may file a complaint with BOLI alleging a contracting agency has violated ORS 279C.305 with respect to a public improvement that a contractor was eligible to construct. A filing fee of \$250 is required in order to submit a complaint. BOLI may impose a civil penalty up to \$5,000 for a violation, or up to \$20,000 if BOLI finds the contracting agency willfully violated ORS 279C.305.