

House Bill 2410

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor)

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**.

Requires contractors and subcontractors that employ workers on a public works project to directly incur costs of providing fringe benefits or contribute to trustee or third person under plan, fund or program that provides fringe benefits. Requires contractor and subcontractor to submit certified statements to public agency that specify amounts contractor or subcontractor incurred as costs of providing fringe benefits or contributions contractor or subcontractor made to trustee or third person that provided fringe benefits.

Becomes operative on January 1, 2020.

Takes effect on 91st day after adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to payments of fringe benefits required under contracts for public works; creating new
3 provisions; amending ORS 279C.800, 279C.840 and 279C.845; and prescribing an effective date.

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

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

6 279C.800. As used in ORS 279C.800 to 279C.870:

7 (1) "Fringe benefits" means[:]

8 [(a)] contributions that a contractor or subcontractor makes irrevocably to a trustee or to a
9 third person under a plan, fund or program[; and],

10 [(b)] or costs that [a] **the** contractor or subcontractor [*may reasonably be anticipated to incur*]
11 **assumes and actually incurs**, in providing the following items, except for items that federal, state
12 or local law requires the contractor or subcontractor to provide:

13 [(A)] (a) Benefits to workers pursuant to an enforceable written commitment to the workers to
14 carry out a financially responsible plan or program for:

15 [(i)] (A) Medical or hospital care;

16 [(ii)] (B) Pensions on retirement or death; or

17 [(iii)] (C) Compensation for injuries or illness that result from occupational activity;

18 [(B)] (b) Insurance to provide the benefits described in [*subparagraph (A)*] **paragraph (a)** of this
19 [*paragraph*] **subsection**;

20 [(C)] (c) Unemployment benefits;

21 [(D)] (d) Life insurance;

22 [(E)] (e) Disability and sickness insurance or accident insurance;

23 [(F)] (f) Vacation and holiday pay;

24 [(G)] (g) Costs of apprenticeship or other similar programs; or

25 [(H)] (h) Other bona fide fringe benefits.

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

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

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 the public works, is to be performed:

- 2 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- 3 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- 4 (c) District 3, composed of Marion, Polk and Yamhill Counties;
- 5 (d) District 4, composed of Benton, Lincoln and Linn Counties;
- 6 (e) District 5, composed of Lane County;
- 7 (f) District 6, composed of Douglas County;
- 8 (g) District 7, composed of Coos and Curry Counties;
- 9 (h) District 8, composed of Jackson and Josephine Counties;
- 10 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 11 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 12 (k) District 11, composed of Klamath and Lake Counties;
- 13 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 14 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 15 (n) District 14, composed of Harney and Malheur Counties.

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

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

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

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

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

30 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
31 way, building, structure or improvement of any type in which a public agency will use or occupy
32 25 percent or more of the square footage of the completed project;

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

35 (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

36 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,
37 structures or buildings that a public body, as defined in ORS 174.109, owns; or

38 (E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (2)(b) and (c), con-
39 struction, reconstruction, painting or major renovation of a road, highway, building, structure or
40 improvement of any type that occurs, with or without using funds of a public agency, on real prop-
41 erty that a public university listed in ORS 352.002 owns.

42 (b) "Public works" does not include:

43 (A) Reconstructing or renovating privately owned property that a public agency leases; or

44 (B) A private nonprofit entity's renovation of publicly owned real property that is more than 75
45 years old if:

1 (i) The real property is leased to the private nonprofit entity for more than 25 years;

2 (ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost
3 of the renovation; and

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

6 **SECTION 2.** ORS 279C.840 is amended to read:

7 279C.840. (1) *[The hourly rate of wage that]* A contractor or subcontractor *[must]* **may not** pay
8 to workers *[upon all]* **that the contractor or subcontractor employs under a contract for** public
9 works *[may not be]* less than the prevailing rate of wage for an hour's work in the same trade or
10 occupation in the locality where *[the labor is performed]* **the workers perform the work on the**
11 **public works.** A contractor or subcontractor may discharge the obligation to pay the prevailing rate
12 of wage, **other than fringe benefits,** by making the payments in cash, *[by making contributions of*
13 *a type described in ORS 279C.800 (1)(a), or by assuming an enforceable commitment to bear the costs*
14 *of fringe benefits of a type described in ORS 279C.800 (1)(b), or any combination of payments, contri-*
15 *butions and assumption of costs, where].* **The contractor or subcontractor shall discharge the**
16 **obligation to provide fringe benefits by directly assuming and incurring the costs of providing**
17 **the fringe benefits or by making irrevocable contributions to a trustee or third person under**
18 **a plan, fund or program that provides the benefits to workers who perform work on the**
19 **public works.** The aggregate of *[any such]* payments, contributions and *[assumption of]* costs *[is*
20 *not]* **the contractor or subcontractor assumes and incurs may not be** less than the prevailing
21 rate of wage. The contractor or subcontractor shall pay all wages due and owing to the contractor's
22 or subcontractor's workers upon public works on the regular payday established and maintained
23 under ORS 652.120.

24 (2) After a **contractor executes a** contract for public works *[is executed with any contractor or*
25 *work is commenced]* **or begins work** upon any public works, *[a]* **the** contractor or subcontractor
26 may not subject the amount of the prevailing rate of wage to attack in any legal proceeding in
27 connection with that contract.

28 (3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the
29 amount required to be in the specifications of a contract for public works, or that the employee
30 agreed with the employer to work at less than the wage rates required to be paid under this section.

31 (4) Every contractor or subcontractor engaged on a **public works** project *[for which there is a*
32 *contract for a public works]* shall keep the prevailing rates of wage for that project posted in a
33 conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor
34 and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and
35 subcontractors.

36 (5) Every contractor or subcontractor engaged on a **public works** project *[for which there is a*
37 *contract for a public works to which the prevailing wage requirements apply that also provides or*
38 *contributes to a health and welfare plan or a pension plan, or both, for the contractor or*
39 *subcontractor's employees on the project]* shall post a notice describing the *[plan]* **fringe benefits the**
40 **contractor or subcontractor provides, or the plan, fund or program to which the contractor**
41 **or subcontractor contributes to provide fringe benefits,** in a conspicuous and accessible place
42 in or about the project. The *[notice preferably shall be posted]* **contractor or subcontractor shall**
43 **preferably post the notice** in the same place as the notice required under subsection (4) of this
44 section. In addition to the description of the **fringe benefits or the plan, fund or program,** the
45 notice *[shall]* **must** contain information on how and where to make claims and where to obtain

1 further information.

2 (6)(a) Except as provided in paragraph (d) of this subsection, a person other than the contractor
 3 or subcontractor may not pay or contribute any portion of the prevailing rate of wage *[paid by*
 4 *the]* **that a** contractor or subcontractor **must pay** to workers employed in *[the performance of]*
 5 **performing** a public works contract.

6 (b) A contractor or subcontractor violates paragraph (a) of this subsection if a person other than
 7 the contractor or subcontractor pays or contributes any portion of the prevailing rate of wage that
 8 the contractor or subcontractor owes or *[pays]* **must pay** to workers who perform labor on a public
 9 works project or **if** the person *[assumes an enforceable commitment to bear the costs of]* **assumes and**
 10 **actually incurs the costs of, or contributes to a plan, fund or program that provides,** fringe
 11 benefits *[of a type described in ORS 279C.800 (1)(b) that]* **for which** the contractor or subcontractor
 12 *[provides]* **must have assumed and actually incurred costs or to which the contractor or**
 13 **subcontractor must have contributed.**

14 (c) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage
 15 specified in the contract.

16 (d) This subsection does not prohibit:

17 (A) Payments to a worker who is enrolled in any government-subsidized training or retraining
 18 program; or

19 (B) A surety or public agency from paying the prevailing rate of wage.

20 (7) A person may not take any action that circumvents the payment of the prevailing rate of
 21 wage to workers employed on a public works contract, including, but not limited to, reducing an
 22 employee's regular rate of pay on any project that is not subject to ORS 279C.800 to 279C.870 in a
 23 manner that has the effect of offsetting the prevailing rate of wage on a public works project.

24 **SECTION 3.** ORS 279C.845 is amended to read:

25 279C.845. (1) *[The]* **A** contractor or the contractor's surety and every subcontractor or the
 26 subcontractor's surety shall file **in writing** certified statements with the public agency **that**
 27 **awarded a contract for public works to the contractor or subcontractor** *[in writing]*, on a form
 28 *[prescribed by]* the Commissioner of the Bureau of Labor and Industries, *[certifying]* **specifies,**
 29 **that:**

30 (a) **Lists** the hourly rate of wage **the contractor or subcontractor** paid each worker whom the
 31 contractor or the subcontractor has employed upon the public works; *[and]*

32 (b) **Lists the amount the contractor or subcontractor assumed and actually incurred as**
 33 **costs to provide fringe benefits or the amount the contractor or subcontractor contributed**
 34 **to a trustee or third person as part of a plan, fund or program that provided fringe benefits**
 35 **to each worker the contractor or subcontractor has employed upon the public works;**

36 (c) **Identifies the trustee, person, plan, fund or program that provided fringe benefits to**
 37 **workers the contractor or subcontractor has employed upon the public works; and**

38 *[(b)]* (d) **States** that no worker employed upon the public works has been paid less than the
 39 prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

40 (2) *[The certified statement shall be verified by the oath of the]* **A** contractor or the contractor's
 41 surety or **a** subcontractor or the subcontractor's surety **shall verify certified statements by oath,**
 42 **attesting** that the contractor or subcontractor has read the certified *[statement]* **statements,** that
 43 the contractor or subcontractor knows the contents of the certified *[statement]* **statements** and that
 44 to the contractor or subcontractor's knowledge the certified *[statement is]* **statements are** true.

45 (3) *[The certified statements shall]* **Each certified statement must** set out accurately and com-

1 pletely the contractor’s or subcontractor’s payroll records, including the name and address of each
 2 worker, the worker’s correct classification, rate of pay, daily and weekly number of hours worked,
 3 [and] the gross wages the worker earned upon the public works **and the amount of fringe benefits**
 4 **the worker received** during each week identified in the certified statement.

5 (4) [The] A contractor or subcontractor shall deliver or mail each certified statement required
 6 by subsection (1) of this section to the public agency. Certified statements for each week during
 7 which the contractor or subcontractor employs a worker upon the public works [shall] **must** be
 8 submitted once a month, by the fifth business day of the following month. Information submitted on
 9 certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to
 10 279C.870.

11 (5) Each contractor or subcontractor shall preserve the certified statements for a period of three
 12 years from the date of completion of the contract.

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

15 (7) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor [is required to] **must** file
 16 certified statements under this section, the public agency shall retain 25 percent of any amount
 17 [earned by] the contractor **earns** on the public works until the contractor has filed [with the public
 18 agency] **the** certified statements [as] required by this section **with the public agency**. The public
 19 agency shall pay the contractor the amount retained under this subsection within 14 days after the
 20 contractor files the certified statements [as] required by this section, regardless of whether a sub-
 21 contractor has failed to file certified statements [as] required by this section. The public agency is
 22 not required to verify the truth of the contents of certified statements [filed by the] contractor **files**
 23 under this section.

24 (8) Notwithstanding ORS 279C.555, [the] a contractor shall retain 25 percent of any amount
 25 [earned by] **that** a first-tier subcontractor **earns** on a public works until the subcontractor has filed
 26 with the public agency certified statements [as] required by this section. The contractor shall verify
 27 that the first-tier subcontractor has filed the certified statements before the contractor may pay the
 28 subcontractor any amount **the contractor** retained under this subsection. The contractor shall pay
 29 the first-tier subcontractor the amount retained under this subsection within 14 days after the sub-
 30 contractor files the certified statements [as] required by this section. [Neither] The public agency
 31 [nor] **and** the contractor [is] **are not** required to verify the truth of the contents of certified state-
 32 ments [filed by] **that** a first-tier subcontractor **files** under this section.

33 **SECTION 4. The amendments to ORS 279C.800, 279C.840 and 279C.845 by sections 1 to 3**
 34 **of this 2019 Act apply to procurements for public works that a public agency first advertises**
 35 **or otherwise solicits or, if the public agency does not advertise or solicit the procurement,**
 36 **to contracts for public works that a public agency enters into on or after the operative date**
 37 **specified in section 5 of this 2019 Act.**

38 **SECTION 5. (1) The amendments to ORS 279C.800, 279C.840 and 279C.845 by sections 1 to**
 39 **3 of this 2019 Act become operative on January 1, 2020.**

40 (2) **The Attorney General, the Commissioner of the Bureau of Labor and Industries, the**
 41 **Director of the Oregon Department of Administrative Services, the Director of Transporta-**
 42 **tion and a contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt**
 43 **rules and take any other action before the operative date specified in subsection (1) of this**
 44 **section that will enable the Attorney General, the commissioner, the directors or the con-**
 45 **tracting agency, on and after the operative date specified in subsection (1) of this section,**

1 to exercise or undertake all of the duties, functions and powers conferred on the Attorney
2 General, the commissioner, the directors or the contracting agency by the amendments to
3 ORS 279C.800, 279C.840 and 279C.845 by sections 1 to 3 of this 2019 Act.

4 SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019
5 regular session of the Eightieth Legislative Assembly adjourns sine die.

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