

# House Bill 2414

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**.

Adds to definition of "public works" project to build or repair ship that public agency owns or for which using funds of public agency serves public interest, maintenance of building that public agency owns or occupies and fabricating or manufacturing custom item under contract and specifically for use in public works.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to projects that constitute public works projects; creating new provisions; amending ORS  
3 279C.800 and 279C.838; 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 third  
9 person under a plan, fund or program; and

10 (b) Costs that a contractor or subcontractor may reasonably be anticipated to incur in providing  
11 the following items, except for items that federal, state or local law requires the contractor or sub-  
12 contractor to provide:

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

15 (i) Medical or hospital care;

16 (ii) Pensions on retirement or death; or

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

18 (B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;

19 (C) Unemployment benefits;

20 (D) Life insurance;

21 (E) Disability and sickness insurance or accident insurance;

22 (F) Vacation and holiday pay;

23 (G) Costs of apprenticeship or other similar programs; or

24 (H) Other bona fide fringe benefits.

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

26 (3) "Locality" means the following district in which the public works, or the major portion of  
27 the public works, is to be performed:

28 (a) District 1, composed of Clatsop, Columbia and Tillamook 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.

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

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

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

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

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

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

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

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

- 33 (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and
- 34 (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises,  
 35 structures or buildings that a public body, as defined in ORS 174.109, owns; [or]

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

40 **(F) A project to build or repair a ship that a public agency owns or for which using funds**  
 41 **of a public agency serves the public interest;**

42 **(G) Maintenance for buildings that a public agency owns or occupies; or**

43 **(H) Fabricating or manufacturing a custom item under contract and specifically for a**  
 44 **project described in subparagraphs (A) to (F) of this paragraph.**

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

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

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

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

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

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

9 **SECTION 2.** ORS 279C.838 is amended to read:

10 279C.838. [*When*] **If a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et**  
11 **seq.):**

12 (1) [*If the state prevailing rate of wage is higher than the federal prevailing rate of wage, the*] **A**  
13 **contractor and every subcontractor on [the] a project shall pay at least the state prevailing rate of**  
14 **wage as determined under ORS 279C.815, if the state prevailing rate of wage is higher than the**  
15 **federal prevailing rate of wage;**

16 [(2) *The Commissioner of the Bureau of Labor and Industries shall determine the site of the project*  
17 *in a manner consistent with the term "site of the work" as that term is used in federal law and in*  
18 *regulations adopted or guidelines issued in accordance with the Davis-Bacon Act;]*

19 [(3) *The commissioner shall determine in a manner that is consistent with federal law and regu-*  
20 *lations adopted or guidelines issued in accordance with the Davis-Bacon Act whether workers trans-*  
21 *porting materials and supplies to and from the site of the project are subject to the Davis-Bacon Act*  
22 *and are entitled to be paid the prevailing rate of wage;]*

23 [(4)] (2) Except as provided in subsection (1) of this section, the commissioner, in consultation  
24 with the advisory committee appointed under ORS 279C.820, may administer and enforce ORS  
25 279C.800 to 279C.870 in a manner that is consistent with federal law and regulations adopted or  
26 guidelines issued in accordance with the Davis-Bacon Act. The commissioner may provide a waiver  
27 from a requirement set forth in ORS 279C.800 to 279C.870 if necessary to achieve consistency with  
28 the Davis-Bacon Act and to further the purposes of ORS 279C.805; and

29 [(5)] (3) ORS 279C.800 to 279C.870 do not apply to workers enrolled in skill training programs  
30 that are certified by the United States Secretary of Transportation under the Federal-Aid Highway  
31 Act (23 U.S.C. 113(c)).

32 **SECTION 3. The amendments to ORS 279C.800 and 279C.838 by sections 1 and 2 of this**  
33 **2019 Act apply to contracts for public works that a public agency advertises or otherwise**  
34 **solicits or, if the public agency does not advertise or otherwise solicit the contract for public**  
35 **works, to a contract for public works into which the public agency enters on or after the**  
36 **operative date specified in section 4 of this 2019 Act.**

37 **SECTION 4. (1) The amendments to ORS 279C.800 and 279C.838 by sections 1 and 2 of this**  
38 **2019 Act become operative January 1, 2020.**

39 (2) **The Attorney General, the Director of the Oregon Department of Administrative**  
40 **Services, the Director of Transportation and a public agency that adopts rules under ORS**  
41 **279A.065 or 279A.070 may adopt rules and take any other action before the operative date**  
42 **specified in subsection (1) of this section that is necessary to enable the Attorney General,**  
43 **the director or the public agency, on and after the operative date specified in subsection (1)**  
44 **of this section, to exercise all of the duties, functions and powers conferred on the Attorney**  
45 **General, the director or the public agency by the amendments to ORS 279C.800 and 279C.838**

1 by sections 1 and 2 of this 2019 Act.

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

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