

House Bill 2443

Sponsored by Representative BARRETO (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**.

Raises threshold at which prevailing rate of wage applies to projects for public works by amount Commissioner of Bureau of Labor and Industries specifies by rule. Prescribes method by which commissioner must adjust threshold amount.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to an increase in the contract price at which the prevailing rate of wage applies to a
3 contract for public works; creating new provisions; amending ORS 279C.810; and prescribing an
4 effective date.

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

6 **SECTION 1.** ORS 279C.810 is amended to read:

7 279C.810. (1) As used in this section:

8 (a) "Funds of a public agency" does not include:

9 (A) Funds provided in the form of a government grant to a nonprofit organization, unless the
10 government grant is issued for the purpose of construction, reconstruction, major renovation or
11 painting;

12 (B) Building and development permit fees [*paid or waived by the public agency*] **that the public**
13 **agency pays or waives;**

14 (C) Tax credits or tax abatements;

15 (D) Land that a public agency sells to a private entity at fair market value;

16 (E) The difference between:

17 (i) The value of land that a public agency sells to a private entity as determined at the time of
18 the sale after taking into account any plan, requirement, covenant, condition, restriction or other
19 limitation, exclusive of zoning or land use regulations, that the public agency imposes on the de-
20 velopment or use of the land; and

21 (ii) The fair market value of the land if the land is not subject to the limitations described in
22 sub-subparagraph (i) of this subparagraph;

23 (F) Staff resources [*of*] the public agency [*used*] **uses to:**

24 (i) Manage a project or to provide a principal source of supervision, coordination or oversight
25 of a project; **or**

26 [*(G)*] (ii) [*Staff resources of the public agency used to*] Design or inspect one or more components
27 of a project;

28 [*(H)*] (G) Moneys derived from the sale of bonds that [*are loaned by*] a state agency **lends** to a
29 private entity, unless the moneys will be used for a public improvement;

30 [*(I)*] (H) Value added to land as a consequence of a public agency's site preparation, demolition

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 of real property or remediation or removal of environmental contamination, except for value added
 2 in excess of the expenses the public agency incurred in the site preparation, demolition or remedi-
 3 ation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to
 4 279C.870; or

5 [(J)] (I) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289
 6 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

7 (b) “Nonprofit organization” means an organization or group of organizations described in sec-
 8 tion 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of
 9 the Internal Revenue Code.

10 (2) ORS 279C.800 to 279C.870 do not apply to:

11 (a)(A) [Projects] **A project** for which the contract price does not exceed [\$50,000.] **\$100,000.**
 12 **After the operative date specified in section 2 of this 2019 Act, the Commissioner of the Bu-**
 13 **reau of Labor and Industries shall specify the contract price by rule, calculating each year**
 14 **not later than September 30 a new contract price, the percentage change in which must re-**
 15 **fect the percentage of change during the previous 12 months in the U.S. City Average Con-**
 16 **sumer Price Index for All Urban Consumers for All Items, as prepared by the Bureau of**
 17 **Labor Statistics of the United States Department of Labor, rounded to the nearest \$1,000.**
 18 **The new contract price becomes effective on January 1 of the following calendar year.**

19 (B) In determining the price of a project, a public agency:

20 [(A)] (i) May not include the value of donated materials or work performed on the project [by]
 21 **that** individuals [volunteering] **who provide volunteer services** to the public agency **provide**
 22 without pay; and

23 [(B)] (ii) Shall include the value of work [performed by every person paid by] **for which** a con-
 24 tractor or subcontractor **pays a person** in any manner for the person’s work on the project.

25 (b) Projects for which [no] funds of a public agency are **not** directly or indirectly used. In ac-
 26 cordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt
 27 rules to carry out the provisions of this paragraph.

28 (c) [Projects] **A project:**

29 (A) That [are] **is** privately owned;

30 (B) That [use] **uses** funds of a private entity;

31 (C) In which **a public agency will occupy or use** less than 25 percent of the square footage
 32 of [a] **the** completed project [will be occupied or used by a public agency]; and

33 (D) For which less than \$750,000 of funds of a public agency are used.

34 (d) [Projects] **A project** for residential construction that [are] **is** privately owned and that pre-
 35 dominantly [provide] **provides** affordable housing. As used in this paragraph:

36 (A) “Affordable housing” means housing that serves occupants whose incomes are no greater
 37 than 60 percent of the area median income or, if the occupants are owners, whose incomes are no
 38 greater than 80 percent of the area median income.

39 (B) “Predominantly” means 60 percent or more.

40 (C) “Privately owned” [includes] **means:**

41 (i) Affordable housing provided on real property owned by a public agency if the real property
 42 and related structures are leased to a private entity for 50 or more years; and

43 (ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability com-
 44 pany in which a housing authority, as defined in ORS 456.005, is a general partner, director or
 45 managing member and the housing authority is not a majority owner in the partnership, nonprofit

1 corporation or limited liability company.

2 (D) “Residential construction” [*includes*] **means** the construction, reconstruction, major reno-
 3 vation or painting of single-family houses or apartment buildings not more than four stories in
 4 height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks,
 5 pursuant to the United States Department of Labor’s “All Agency Memorandum No. 130: Applica-
 6 tion of the Standard of Comparison “Projects of a Character Similar” Under Davis-Bacon and Re-
 7 lated Acts,” dated March 17, 1978. However, the commissioner may consider different definitions of
 8 residential construction in determining whether a project is a residential construction project for
 9 purposes of this paragraph, including definitions that:

10 (i) Exist in local ordinances or codes; or

11 (ii) Differ, in the prevailing practice of a particular trade or occupation, from the United States
 12 Department of Labor’s description of residential construction.

13 **SECTION 2. (1) The amendments to ORS 279C.810 by section 1 of this 2019 Act become**
 14 **operative on January 1, 2020.**

15 **(2) The Commissioner of the Bureau of Labor and Industries, the Attorney General, the**
 16 **Director of the Oregon Department of Administrative Services, the Director of Transporta-**
 17 **tion and a contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt**
 18 **rules and take any other action before the operative date specified in subsection (1) of this**
 19 **section that is necessary to enable the commissioner, the Attorney General, the director or**
 20 **the contracting agency, on and after the operative date specified in subsection (1) of this**
 21 **section, to exercise all of the duties, functions and powers the amendments to ORS 279C.810**
 22 **by section 1 of this section confer on the commissioner, the Attorney General, the director**
 23 **or the contracting agency.**

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

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