

HB 2408-5
(LC 2498)
4/5/19 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Representative
Jeff Barker)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2408**

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the
2 line and line 4 and insert “279C.800, 279C.810, 279C.827 and 279C.845; and
3 declaring an emergency.”.

4 Delete lines 6 through 29 and delete pages 2 through 14 and insert:

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
9 to a trustee or to a third person under a plan, fund or program; and

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

13 “(A) Benefits to workers pursuant to an enforceable written commitment
14 to the workers to carry 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
18 activity;

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

21 “(C) Unemployment benefits;

1 “(D) Life insurance;

2 “(E) Disability and sickness insurance or accident insurance;

3 “(F) Vacation and holiday pay;

4 “(G) Costs of apprenticeship or other similar programs; or

5 “(H) Other bona fide fringe benefits.

6 “(2) ‘Housing’ has the meaning given that term in ORS 456.055.

7 “(3) ‘Locality’ means the following district in which the public works, or

8 the major portion of the public works, is to be performed:

9 “(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

10 “(b) District 2, composed of Clackamas, Multnomah and Washington

11 Counties;

12 “(c) District 3, composed of Marion, Polk and Yamhill Counties;

13 “(d) District 4, composed of Benton, Lincoln and Linn Counties;

14 “(e) District 5, composed of Lane County;

15 “(f) District 6, composed of Douglas County;

16 “(g) District 7, composed of Coos and Curry Counties;

17 “(h) District 8, composed of Jackson and Josephine Counties;

18 “(i) District 9, composed of Hood River, Sherman and Wasco Counties;

19 “(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

20 “(k) District 11, composed of Klamath and Lake Counties;

21 “(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and

22 Wheeler Counties;

23 “(m) District 13, composed of Baker, Union and Wallowa Counties; and

24 “(n) District 14, composed of Harney and Malheur Counties.

25 “(4) ‘Prevailing rate of wage’ means the rate of hourly wage, including

26 all fringe benefits, that the Commissioner of the Bureau of Labor and In-

27 dustries determines is paid in the locality to the majority of workers em-

28 ployed on projects of a similar character in the same trade or occupation.

29 “(5) ‘Public agency’ means the State of Oregon or a political subdivision

30 of the State of Oregon, or a county, city, district, authority, public corpo-

1 ration or public entity organized and existing under law or charter or an
2 instrumentality of the county, city, district, authority, public corporation or
3 public entity.

4 “(6)(a) ‘Public works’ includes, but is not limited to:

5 “(A) Roads, highways, buildings, structures and improvements of all types,
6 the construction, reconstruction, major renovation or painting of which is
7 carried on or contracted for by any public agency to serve the public inter-
8 est;

9 “(B) A project that uses \$750,000 or more of funds of a public agency for
10 constructing, reconstructing, painting or performing a major renovation on
11 a road, highway, building, structure or improvement of any type;

12 “(C) A project that uses funds of a private entity for constructing a pri-
13 vately owned road, highway, building, structure or improvement of any type
14 in which a public agency will use or occupy 25 percent or more of the square
15 footage of the completed project;

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

19 “(i) Uses solar radiation as a source for generating heat, cooling or elec-
20 trical energy; and

21 “(ii) Is constructed or installed, with or without using funds of a public
22 agency, on land, premises, structures or buildings that a public body, as de-
23 fined in ORS 174.109, owns; [or]

24 “(E) **A project for constructing, reconstructing or performing a**
25 **major renovation of a privately owned road, highway, building, struc-**
26 **ture or improvement of any type that:**

27 “(i) **Is located in an enterprise zone, as defined in ORS 285C.050;**

28 “(ii) **Consists of or is sited on real property for which a qualified**
29 **business firm, as defined in ORS 285C.050, has received or will receive**
30 **an exemption from ad valorem property taxation under ORS 285C.170**

1 or 285C.175 in connection with the project; and

2 “(iii) Has a total project cost that the public agency that funds the
3 project, or the lead public agency, if more than one public agency
4 participates in the project, reasonably estimates will equal or exceed
5 \$30 million; or

6 “[*E*] (F) Notwithstanding paragraph (b)(A) of this subsection and ORS
7 279C.810 (2)(b) and (c), construction, reconstruction, painting or major reno-
8 vation of a road, highway, building, structure or improvement of any type
9 that occurs, with or without using funds of a public agency, on real property
10 that a public university listed in ORS 352.002 owns.

11 “(b) ‘Public works’ does not include:

12 “(A) Reconstructing or renovating privately owned property that a public
13 agency leases; or

14 “(B) A private nonprofit entity’s renovation of publicly owned real prop-
15 erty that is more than 75 years old if:

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

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

20 “(iii) Contracts for the renovation were advertised or, if not advertised,
21 were entered into before July 1, 2003, but the renovation has not been com-
22 pleted on or before July 13, 2007.

23 “(7) ‘Sponsor’ has the meaning given that term in ORS 285C.050.

24 “**SECTION 2.** ORS 279C.810 is amended to read:

25 “279C.810. (1) As used in this section:

26 “(a) ‘Funds of a public agency’ does not include:

27 “(A) Funds provided in the form of a government grant to a nonprofit
28 organization, unless the government grant is issued for the purpose of con-
29 struction, reconstruction, major renovation or painting;

30 “(B) Building and development permit fees [*paid or waived by the*] **that**

1 a public agency **pays or waives**;

2 “(C) Tax credits or tax abatements, **except for exemptions from ad**
3 **valorem property taxation allowed under ORS 285C.170 or 285C.175**;

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

6 “(E) The difference between:

7 “(i) The value of land that a public agency sells to a private entity as
8 determined at the time of the sale after taking into account any plan, re-
9 quirement, covenant, condition, restriction or other limitation, exclusive of
10 zoning or land use regulations, that the public agency imposes on the de-
11 velopment or use of the land; and

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

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

15 “(i) Manage a project or to provide a principal source of supervision,
16 coordination or oversight of a project; **or**

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

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

22 “[*I*] (H) Value added to land as a consequence of a public agency’s site
23 preparation, demolition of real property or remediation or removal of envi-
24 ronmental contamination, except for value added in excess of the expenses
25 the public agency incurred in the site preparation, demolition or remediation
26 or removal when the land is sold for use in a project otherwise subject to
27 ORS 279C.800 to 279C.870; or

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

1 “(b) ‘Nonprofit organization’ means an organization or group of organ-
2 izations described in section 501(c)(3) of the Internal Revenue Code that is
3 exempt from income tax under section 501(a) of the Internal Revenue Code.

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

5 “(a) [*Projects*] **A project** for which the contract price does not exceed
6 \$50,000. In determining the price of a project, a public agency:

7 “(A) May not include the value of donated materials or work [*performed*
8 *on the project by*] **that** individuals [*volunteering*] **who volunteer** to the
9 public agency **perform on the project** without pay; and

10 “(B) Shall include the value of work [*performed by every person paid by*]
11 **for which** a contractor or subcontractor **pays a person** in any manner for
12 the person’s work on the project.

13 “(b) Projects for which [*no*] funds of a public agency are **not** directly or
14 indirectly used. In accordance with ORS chapter 183, the Commissioner of
15 the Bureau of Labor and Industries shall adopt rules to carry out the pro-
16 visions of this paragraph.

17 “(c) [*Projects*] **A project**:

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

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

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

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

24 “(d) [*Projects*] **A project** for residential construction that [*are*] **is** pri-
25 vately owned and that predominantly [*provide*] **provides** affordable housing.
26 As used in this paragraph:

27 “(A) ‘Affordable housing’ means housing that serves occupants whose in-
28 comes are [*no*] **not** greater than 60 percent of the area median income or, if
29 the occupants are owners, whose incomes are [*no*] **not** greater than 80 per-
30 cent of the area median income.

1 “(B) ‘Predominantly’ means 60 percent or more.

2 “(C) ‘Privately owned’ [*includes*] **means:**

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

6 “(ii) Affordable housing owned by a partnership, nonprofit corporation or
7 limited liability company in which a housing authority, as defined in ORS
8 456.005, is a general partner, director or managing member and the housing
9 authority is not a majority owner in the partnership, nonprofit corporation
10 or limited liability company.

11 “(D) ‘Residential construction’ [*includes*] **means** the construction, recon-
12 struction, major renovation or painting of single-family houses or apartment
13 buildings not more than four stories in height and all incidental items, such
14 as site work, parking areas, utilities, streets and sidewalks, pursuant to the
15 United States Department of Labor’s ‘All Agency Memorandum No. 130:
16 Application of the Standard of Comparison ‘Projects of a Character Similar’
17 Under Davis-Bacon and Related Acts,’ dated March 17, 1978. However, the
18 commissioner may consider different definitions of residential construction
19 in determining whether a project is a residential construction project for
20 purposes of this paragraph, including definitions that:

21 “(i) Exist in local ordinances or codes; or

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

25 **“SECTION 3.** ORS 279C.827 is amended to read:

26 “279C.827. (1)(a) A [*person or*] public agency **or a person that under**
27 **ORS 279C.800 to 279C.870 must pay a prevailing rate of wage on public**
28 **works** may not divide a public works project into more than one contract
29 for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

30 “(b) If the Commissioner of the Bureau of Labor and Industries deter-

1 mines that a [*person or*] public agency **or person that under ORS 279C.800**
2 **to 279C.870 must pay a prevailing rate of wage on public works** has di-
3 vided a public works project into more than one contract for the purpose of
4 avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall
5 issue an order [*compelling*] **to compel** compliance.

6 “(c) In making determinations under this subsection, the commissioner
7 shall consider:

8 “(A) The physical separation of the project structures;

9 “(B) The timing of the work on project phases or structures;

10 “(C) The continuity of project contractors and subcontractors working on
11 project parts or phases;

12 “(D) The manner in which the public agency, **or the person that under**
13 **ORS 279C.800 to 279C.870 must pay a prevailing rate of wage on public**
14 **works**, and the contractors administer and implement the project;

15 “(E) Whether a single public works project includes several types of im-
16 provements or structures; and

17 “(F) Whether the combined improvements or structures have an overall
18 purpose or function.

19 “(2)(a) The commissioner may apply the considerations set forth in sub-
20 section (1)(c) of this section to determine whether to divide a public works
21 project into more than one contract, regardless of whether the commissioner
22 believes that a person or public agency divided the public works project for
23 the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

24 “(b) If a project is a public works project of the type described in ORS
25 279C.800 (6)(a)(B) or (C), the commissioner, **after applying the consider-**
26 **ations set forth in subsection (1)(c) of this section**, shall divide the
27 project, if appropriate, [*after applying the considerations set forth in sub-*
28 *section (1)(c) of this section*] to separate the parts of the project that
29 [*include*] **use** funds of a public agency or that [*will be occupied or used by*]
30 a public agency **will occupy or use** from the parts of the project that do

1 not *[include]* **use** funds of a public agency and that *[will not be occupied or*
2 *used by]* a public agency **will not occupy or use**. If the commissioner divides
3 the project, any part of the project that does not *[include]* **use** funds of a
4 public agency and that *[will not be occupied or used by]* a public agency **will**
5 **not occupy or use** is not subject to ORS 279C.800 to 279C.870.

6 “(3) If a project includes parts that *[are owned by]* a public agency **owns**
7 and parts that *[are owned by]* a private entity **owns**, the commissioner, **after**
8 **applying the considerations set forth in subsections (1)(c) and (2) of**
9 **this section**, shall divide the project, if appropriate, *[after applying the*
10 *considerations set forth in subsections (1)(c) and (2)(b) of this section]* to sep-
11 arate the parts of the project that are public works from the parts of the
12 project that are not public works. If the commissioner divides the project,
13 parts of the project that are not public works are not subject to ORS
14 279C.800 to 279C.870.

15 **“SECTION 4.** ORS 279C.845 is amended to read:

16 “279C.845. (1) *[The]* **A** contractor or *[the]* **a** contractor’s surety and
17 *[every]* **each** subcontractor or *[the]* subcontractor’s surety shall file certified
18 statements *[with the public agency]* in writing, on a form *[prescribed by]* the
19 Commissioner of the Bureau of Labor and Industries^[, certifying:] **prescribes,**
20 **with one of the following, as appropriate:**

21 **“(a) The public agency that awarded the contract for public works**
22 **to which the contractor is a party. If the project is a public works as**
23 **defined in ORS 279C.800 (6)(a)(B) or (C), the contractor shall submit**
24 **the certified statements to the public agency that provided public**
25 **funds for the project or that will occupy or use 25 percent or more of**
26 **the square footage of the completed project. If more than one public**
27 **agency provided public funds for the project or will occupy or use 25**
28 **percent or more of the square footage of the completed project, the**
29 **public agencies involved shall agree upon which public agency will re-**
30 **ceive the certified statements.**

1 “(b) The sponsor of the enterprise zone in which the public works
2 project is located. If more than one sponsor participated in designating
3 the enterprise zone, the participating sponsors shall agree upon which
4 sponsor shall receive the certified statements.

5 “(2) The certified statements must certify:

6 “(a) The hourly rate of wage paid each worker whom the contractor or
7 the subcontractor has employed upon the public works; and

8 “(b) That no worker employed upon the public works has been paid less
9 than the prevailing rate of wage or less than the minimum hourly rate of
10 wage specified in the contract.

11 “[(2)] (3) [*The certified statement shall be verified by the oath of*] The
12 contractor or the contractor’s surety or **the** subcontractor or the
13 subcontractor’s surety **shall verify certified statements by oath, attest-**
14 **ing** that the contractor or subcontractor has read the certified [*statement*]
15 **statements**, that the contractor or subcontractor knows the contents of the
16 certified [*statement*] **statements** and that to the contractor or
17 subcontractor’s knowledge the certified [*statement is*] **statements are** true.

18 “[(3)] (4) The certified statements shall set out accurately and completely
19 the contractor’s or subcontractor’s payroll records, including the name and
20 address of each worker, the worker’s correct classification, rate of pay, daily
21 and weekly number of hours worked and the gross wages the worker earned
22 upon the public works during each week identified in the certified statement.

23 “[(4)] (5) The contractor or subcontractor shall deliver or mail [*each*] **the**
24 certified [*statement*] **statements** required by subsection (1) of this section to
25 the public agency **or to the sponsor**. Certified statements for each week
26 during which the contractor or subcontractor employs a worker upon the
27 public works [*shall*] **must** be submitted once a month, by the fifth business
28 day of the following month. Information submitted on certified statements
29 may be used only to ensure compliance with the provisions of ORS 279C.800
30 to 279C.870.

1 “[5] (6) Each contractor or subcontractor shall preserve the certified
2 statements for a period of three years from the date of completion of the
3 contract.

4 “[6] (7) Certified statements *[received by]* **that** a public agency **or a**
5 **sponsor receives** are public records subject to the provisions of ORS 192.311
6 to 192.478.

7 “[7] (8) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor
8 *[is required to]* **must** file certified statements **with a public agency** under
9 this section, the public agency shall retain 25 percent of any amount *[earned*
10 *by]* the contractor **earns** on the public works until the contractor has filed
11 with the public agency certified statements as required by this section. The
12 public agency shall pay the contractor the amount retained under this sub-
13 section within 14 days after the contractor files the certified statements as
14 required by this section, regardless of whether a subcontractor has failed to
15 file certified statements as required by this section. *[The public agency is not*
16 *required to verify the truth of the contents of certified statements filed by the*
17 *contractor under this section.]*

18 “[8] (9) Notwithstanding ORS 279C.555, the contractor shall retain 25
19 percent of any amount *[earned by]* a first-tier subcontractor **earns** on a
20 public works until the subcontractor has filed with the public agency certi-
21 fied statements as required by this section. The contractor shall verify that
22 the first-tier subcontractor has filed the certified statements before the con-
23 tractor may pay the subcontractor any amount **the contractor** retained un-
24 der this subsection. The contractor shall pay the first-tier subcontractor the
25 amount retained under this subsection within 14 days after the subcontractor
26 files the certified statements as required by this section. *[Neither the public*
27 *agency nor the contractor is required to verify the truth of the contents of*
28 *certified statements filed by a first-tier subcontractor under this section.]*

29 “(10) **This section does not require:**

30 “(a) **A public agency or sponsor to verify the truth of the contents**

1 of a contractor's certified statements; or

2 “(b) A public agency, a sponsor or a contractor to verify the truth
3 of the contents of a subcontractor's certified statements.

4 **“SECTION 5.** The amendments to ORS 279C.800, 279C.810, 279C.827
5 and 279C.845 by sections 1 to 4 of this 2019 Act apply to contracts for
6 public works that a public agency first advertises or otherwise solicits
7 or, if the public agency does not advertise or solicit the contract for
8 public works, to a contract for public works into which the public
9 agency first enters on or after the operative date specified in section
10 6 of this 2019 Act.

11 **“SECTION 6.** (1) The amendments to ORS 279C.800, 279C.810,
12 279C.827 and 279C.845 by sections 1 to 4 of this 2019 Act become opera-
13 tive 91 days after the effective date of this 2019 Act.

14 **“(2)** A sponsor, as defined in ORS 285C.050, a public agency that
15 adopts rules under ORS 279A.065 or 279A.070 or the Commissioner of
16 the Bureau of Labor and Industries may take any action before the
17 operative date specified in subsection (1) of this section that is neces-
18 sary to enable the sponsor, the public agency or the commissioner to
19 exercise or undertake, on and after the operative date specified in
20 subsection (1) of this section, all of the duties, functions and powers
21 conferred on the sponsor, the public agency or the commissioner by
22 the amendments to ORS 279C.800, 279C.810, 279C.827 and 279C.845 by
23 sections 1 to 4 of this 2019 Act.

24 **“SECTION 7.** This 2019 Act being necessary for the immediate
25 preservation of the public peace, health and safety, an emergency is
26 declared to exist, and this 2019 Act takes effect on its passage.”.

27