

SB 493 A -A3, -A4 STAFF MEASURE SUMMARY

House Committee On Rules

Prepared By: Jan Nordlund

Meeting Dates: 4/27, 5/4, 5/7

WHAT THE MEASURE DOES:

Provides that prevailing wage rate (PWR) for a trade or occupation in a locality is the wage set forth in the collective bargaining agreement (CBA) for the trade or occupation in the locality. Establishes that PWR for a trade or occupation in a locality with more than one CBA is the highest rate of wage among applicable CBAs. Requires Commissioner of the Bureau of Labor and Industries, if no CBA exists for a trade or occupation in a locality, to determine PWR by conducting an independent wage survey. Applies to public works procurements advertised and contracts entered into on or after operative date of January 1, 2022. Takes effect on 91st day following adjournment *sine die*.

Revenue Impact: None

Fiscal Impact: Statement has been issued

Senate vote: 16-11 (Nays: Anderson, Findley, Girod, Hansell, Heard, Johnson, Kennemer, Knopp, Linthicum, Robinson, Thatcher)

ISSUES DISCUSSED:

- Resources required to complete construction industry survey
- Whether collection of data for four peak weeks accurately reflects work performed
- Impact to signatory contractors and their employees when prevailing wage rate is lower than collectively bargained rate
- Whether weighted average of collectively bargained rates should prevail
- Comparison to enacted legislation in Washington (Senate Bill 5493 (2018))
- Impact of prevailing wage rate on affordable housing construction costs
- Frequency with which collectively bargained rates prevail

EFFECT OF AMENDMENT:

-A3 (Rep. Bonham) Reconfigures counties within 14 districts. Establishes Region 1 as including districts 2, 3, and 5 (counties: Clackamas, Lane, Marion, Multnomah, and Washington) and Region 2 as all remaining districts. Defines bona fide rate of wage (BFRW) as the rate certified by a labor organization as being applicable to at least 50 percent of its membership in the trade within a locality. Establishes that prevailing wage rate (PWR) for a trade in Region 1 is the BFRW unless more than one collective bargaining agreement is in effect, in which case the PWR is the average of the BFRWs. For Region 2, the PWR is 85 percent of the BFRW; if more than one CBA is in effect, the PWR is 85 percent of the BFRWs. Authorizes Commissioner of Labor and Industries to adopt rules to implement these provisions after seeking stakeholder participation. Directs Commissioner to report to Legislative Assembly by September 1, 2023, concerning implementation, impacts, and unintended consequences.

-A4 (Rep. Bonham) Reconfigures the 14 districts into five regions. Defines bona fide rate of wage (BFRW) as the rate certified by a labor organization as being applicable to at least 50 percent of its membership in the trade within a locality. Establishes that prevailing wage rate (PWR) for a trade in Region 1 is the BFRW unless more than one collective bargaining agreement is in effect, in which case the PWR is the average of the BFRWs. For Region 2, the PWR is 90 percent of the BFRW; if more than one CBA is in effect, the PWR is 90 percent of the BFRWs. Accordingly, for Region 3, the adjustment is 85 percent; Region 4, the adjustment is 80 percent; and Region 5, the

adjustment is 75 percent. Authorizes Commissioner of Labor and Industries to adopt rules to implement these provisions after seeking stakeholder participation. Directs Commissioner to report to Legislative Assembly by September 1, 2023, concerning implementation, impacts, and unintended consequences.

BACKGROUND:

The prevailing wage rate (PWR) is the hourly wage, including all fringe benefits, that the Commissioner of the Bureau of Labor and Industries (BOLI) determines is paid in the locality to the majority of workers employed in a specified trade or occupation. Contractors and subcontractors must pay the PWR to workers on certain public works projects. Oregon is one of 26 states, along with the District of Columbia and the federal government, that adopt and administer PWR requirements for certain public projects. The intent of the PWR requirements, as provided in ORS 279C.805, are to:

- Ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community-established compensation standards.
- Recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.
- Encourage training and education of workers to industry skills standards.
- Encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits.

Current law requires BOLI to annually calculate the PWR for each trade or occupation in 14 localities using an independent wage survey. If the Commissioner determines that data from the survey is insufficient to determine the PWR, the Commissioner must consider additional information such as collective bargaining agreements (CBAs), other independent wage surveys, and the PWR determined by appropriate federal agencies or adjoining states. If there is not a majority of hours paid at the same rate, then the prevailing wage is the average paid to the workers in same trade or occupation in the locality.

The independent wage survey is conducted annually by the Oregon Employment Department under a contract with BOLI. All non-residential contractors are required to respond to the survey regardless of whether they have performed work on public works projects; the information they provide is confidential and not available for inspection by the public. The wage and benefit information is collected for four selected weeks of the year. The cost of the survey is covered through a 0.1 percent assessment on the contract price of all public works projects, paid by the public contracting agency. The assessment on any project must not be less than \$250 or more than \$7,500. The assessment also supports the Commissioner's administration and enforcement of prevailing wage rate laws as well as education programs on public contracting law.

Legislation enacted in 1977 established the 14 localities for which a prevailing wage rate is to be determined for each trade or occupation. The number and configuration of localities have remained unchanged since 1977.

Public works projects are generally covered by the state's prevailing wage if the total project cost exceeds \$50,000 and the project is for construction, reconstruction, major renovation, or painting projects. Private projects for construction, reconstruction, major renovation, or painting that use at least \$750,000 in public funds are subject to prevailing wage rate requirements. Also subject to prevailing wage requirements are private projects in which one or more public agencies will occupy or use at least 25 percent of the project's square footage. Projects on real property owned by a public university and solar projects on property owned by a public body are also subject. Projects for residential construction that are privately owned and that predominantly provide affordable housing are exempt from PWR requirements; these projects include single-family houses and apartment buildings not exceeding four stories.

Senate Bill 493-A provides that the PWR for a trade or occupation is the wage established in a CBA for that locality. If there is more than one collective bargaining agreement (CBA) in a locality, then the highest wage rate

SB 493 A -A3, -A4 STAFF MEASURE SUMMARY

among the CBAs prevails. If a CBA does not exist for a given trade or occupation in a locality, the Commissioner must determine the PWR using an independent wage survey. The measure applies to all public works procurements advertised and contracts entered into on or after January 1, 2022.

PRELIMINARY