

Enrolled
Senate Bill 493

Sponsored by Senators WAGNER, TAYLOR; Representatives CAMPOS, DEXTER, FAHEY,
GRAYBER, HOLVEY, RUIZ, SCHOUTEN (Presession filed.)

CHAPTER

AN ACT

Relating to determinations of the prevailing rate of wage in a locality; creating new provisions;
amending ORS 279C.800 and 279C.815; and prescribing an effective date.

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

SECTION 1. ORS 279C.800 is amended to read:
279C.800. As used in ORS 279C.800 to 279C.870:

(1) "Fringe benefits" means:

(a) Contributions that a contractor or subcontractor makes irrevocably to a trustee or to a third person under a plan, fund or program; and

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

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

- (i) Medical or hospital care;
- (ii) Pensions on retirement or death; or
- (iii) Compensation for injuries or illness that result from occupational activity;
- (B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;
- (C) Unemployment benefits;
- (D) Life insurance;
- (E) Disability and sickness insurance or accident insurance;
- (F) Vacation and holiday pay;
- (G) Costs of apprenticeship or other similar programs; or
- (H) Other bona fide fringe benefits.

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

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

- (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- (c) District 3, composed of Marion, Polk and Yamhill Counties;
- (d) District 4, composed of Benton, Lincoln and Linn Counties;
- (e) District 5, composed of Lane County;
- (f) District 6, composed of Douglas County;
- (g) District 7, composed of Coos and Curry Counties;

- (h) District 8, composed of Jackson and Josephine Counties;
- (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- (k) District 11, composed of Klamath and Lake Counties;
- (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- (m) District 13, composed of Baker, Union and Wallowa Counties; and
- (n) District 14, composed of Harney and Malheur Counties.

(4) "Prevailing rate of wage" means the rate of [hourly] wage, including all fringe benefits, that the Commissioner of the Bureau of Labor and Industries determines [is paid in the locality to the majority of workers employed on projects of a similar character in the same trade or occupation] **in accordance with ORS 279C.815.**

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

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

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

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

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

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

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

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

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

(b) "Public works" does not include:

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

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

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

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

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

SECTION 2. ORS 279C.815 is amended to read:

279C.815. (1) As used in this section, "person" means an employer, a labor organization or an official representative of an employee or employer association.

(2)(a) The Commissioner of the Bureau of Labor and Industries at least once each year shall determine **in accordance with paragraph (b) of this subsection** the prevailing rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800 [by means of an independent wage survey] and shall make this information available at least twice each year. The commissioner may amend the rate at any time.

(b) **The prevailing rate of wage for a trade or occupation in a locality is the rate of wage set forth in the collective bargaining agreement for the trade or occupation in the locality or, if more than one collective bargaining agreement covers a trade or occupation in the locality, the highest rate of wage among the collective bargaining agreements for the trade or occupation in the locality.**

[(b)] (c) [If the data derived only from the survey described in paragraph (a) of this subsection appear to the commissioner to be insufficient to determine the prevailing rate of wage, the commissioner shall] If a collective bargaining agreement does not exist for a trade or occupation in a locality, the commissioner shall determine the prevailing rate of wage by conducting an independent wage survey in the locality. The commissioner may also consider additional information such as [collective bargaining agreements,] other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If [there is not] a wage survey under this paragraph does not show that a majority in the same trade or occupation is paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation is the prevailing rate. If the wage a contractor or subcontractor pays to workers on a public works is based on a period of time other than an hour, the hourly wage must be mathematically determined by the number of hours worked in that period of time.

(3) A person shall make reports and returns to the Bureau of Labor and Industries that the commissioner requires to determine the prevailing rates of wage, using forms the bureau provides and within the time the commissioner prescribes. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.311 to 192.478, reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) The commissioner may enter into a contract with a public or private party to obtain data and information the commissioner needs to determine the prevailing rate of wage. The contract may provide for the manner and extent of the *[market]* review of affected trades and occupations and for other requirements regarding timelines of reports, accuracy of data and information and supervision and review as the commissioner prescribes.

SECTION 3. The amendments to ORS 279C.800 and 279C.815 by sections 1 and 2 of this 2021 Act apply to public works procurements that a public agency advertises or otherwise solicits or, if the public agency does not advertise or otherwise solicit the procurement, to contracts for public works into which the public agency enters on or after the operative date specified in section 4 of this 2021 Act.

SECTION 4. (1) The amendments to ORS 279C.800 and 279C.815 by sections 1 and 2 of this 2021 Act become operative January 1, 2022.

(2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the commissioner, on and after the operative date specified in subsection (1) of this section, to exercise or undertake all of the duties, functions and powers conferred on the commissioner by the amendments to ORS 279C.800 and 279C.815 by sections 1 and 2 of this 2021 Act.

SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate March 31, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 18, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State