

Minority Report
B-Engrossed
Senate Bill 493

Ordered by the House May 13
Including Senate Amendments dated March 23 and House Minority
Report Amendments dated May 13

Sponsored by nonconcurring members of the House Committee on Rules: Representatives BONHAM, ZIKA

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.

[Provides that prevailing rate of wage for trade or occupation in locality is rate of wage set forth in collective bargaining agreement for trade or occupation in locality or, if more than one collective bargaining agreement covers trade or occupation in locality, highest rate of wage among collective bargaining agreements for trade or occupation in locality.]

Provides that prevailing rate of wage for trade or occupation in Region 1 is bona fide rate of wage set forth in collective bargaining agreement for trade or occupation in locality or average of bona fide rate of wage if more than one collective bargaining agreement covers trade or occupation in locality. Provides that prevailing rate of wage in Region 2 is 85 percent of bona fide rate of wage in collective bargaining agreement for trade or occupation in locality or 85 percent of average of bona fide rate of wage if more than one collective bargaining agreement covers trade or occupation in locality.

Defines "bona fide rate of wage" as rate of wage that labor organization certifies to Commissioner of the Bureau of Labor and Industries as applicable to at least 50 percent of labor organization's membership in each trade or occupation within locality. Defines "Region 1" as Clackamas, Lane, Marion, Multnomah and Washington Counties and "Region 2" as all other counties in this state.

Provides that if collective bargaining agreement does not exist for trade or occupation in locality, commissioner *[of Bureau of Labor and Industries]* shall conduct wage survey and may consider other information in order to determine prevailing rate of wage.

Requires commissioner to report not later than September 1, 2023, to Legislative Assembly concerning implementation of prevailing wage determinations, including discussion of difficulties of implementation and effects of implementation on wage rates.

Becomes operative January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to determinations of the prevailing rate of wage in a locality; creating new provisions;
3 amending ORS 279C.800 and 279C.815; 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

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 out a financially responsible plan or program for:

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

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

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

- 15 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
- 16 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;
- 17 (c) District 3, composed of Marion[, *Polk and Yamhill Counties*] **County**;
- 18 (d) District 4, composed of Benton, Lincoln [*and Linn*], **Linn, Polk and Yamhill** Counties;
- 19 (e) District 5, composed of Lane County;
- 20 (f) District 6, composed of Douglas County;
- 21 (g) District 7, composed of Coos and Curry Counties;
- 22 (h) District 8, composed of Jackson and Josephine Counties;
- 23 (i) District 9, composed of Hood River, Sherman and Wasco Counties;
- 24 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;
- 25 (k) District 11, composed of Klamath and Lake Counties;
- 26 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
- 27 (m) District 13, composed of Baker, Union and Wallowa Counties; and
- 28 (n) District 14, composed of Harney and Malheur Counties.

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

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

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

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

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

44 (C) A project that uses funds of a private entity for constructing a privately owned road, high-
45 way, building, structure or improvement of any type in which a public agency will use or occupy

1 25 percent or more of the square footage of the completed project;

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

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

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

7 (E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (2)(b) and (c), con-
8 struction, reconstruction, painting or major renovation of a road, highway, building, structure or
9 improvement of any type that occurs, with or without using funds of a public agency, on real prop-
10 erty 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 agency leases; or

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

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

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

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

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

21 279C.815. (1) As used in this section[,]:

22 (a) **"Bona fide rate of wage" means a rate of wage that a labor organization certifies in**
23 **writing to the Commissioner of the Bureau of Labor and Industries is applicable to at least**
24 **50 percent of the labor organization's membership in each trade or occupation within a lo-**
25 **cality.**

26 (b) "Person" means an employer, a labor organization or an official representative of an em-
27 ployee or employer association.

28 (c) **"Region 1" means a locality that is within District 2, District 3 or District 5.**

29 (d) **"Region 2" means a locality that is outside District 2, District 3 or District 5.**

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

35 (b) **The prevailing rate of wage for a trade or occupation in a locality is:**

36 (A) **In Region 1, the bona fide rate of wage set forth in the collective bargaining agree-**
37 **ment for the trade or occupation in the locality or, if more than one collective bargaining**
38 **agreement covers a trade or occupation in the locality, the average of the bona fide rate of**
39 **wage set forth in the collective bargaining agreements for the trade or occupation in the**
40 **locality; and**

41 (B) **In Region 2, 85 percent of the bona fide rate of wage set forth in the collective bar-**
42 **gaining agreement for the trade or occupation in the locality or, if more than one collective**
43 **bargaining agreement covers a trade or occupation in the locality, 85 percent of the average**
44 **of the bona fide rate of wage set forth in the collective bargaining agreements for the trade**
45 **or occupation in the locality.**

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

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

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

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

26 **(6) The commissioner may adopt rules to implement the provisions of this section after**
 27 **notifying, and seeking participation in the rulemaking process from, persons the rulemaking**
 28 **will affect, local governments and other participants the commissioner deems necessary.**

29 **SECTION 3. The Commissioner of the Bureau of Labor and Industries shall report not**
 30 **later than September 1, 2023, to the Legislative Assembly in accordance with ORS 192.245**
 31 **concerning the implementation of the determinations of prevailing rate of wage under the**
 32 **amendments to ORS 279C.815 by section 2 of this 2021 Act. In the report, the commissioner**
 33 **at a minimum shall discuss and explain any effect on wage rates that the commissioner did**
 34 **not anticipate, any difficulties or problems in implementation and any unintended conse-**
 35 **quences of the implementation.**

36 **SECTION 4. Section 3 of this 2021 Act is repealed on January 2, 2024.**

37 **SECTION 5. The amendments to ORS 279C.800 and 279C.815 by sections 1 and 2 of this**
 38 **2021 Act apply to public works procurements that a public agency advertises or otherwise**
 39 **solicits or, if the public agency does not advertise or otherwise solicit the procurement, to**
 40 **contracts for public works into which the public agency enters on or after the operative date**
 41 **specified in section 6 of this 2021 Act.**

42 **SECTION 6. (1) The amendments to ORS 279C.800 and 279C.815 by sections 1 and 2 of this**
 43 **2021 Act become operative January 1, 2022.**

44 **(2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take**
 45 **any other action before the operative date specified in subsection (1) of this section that is**

1 **necessary to enable the commissioner, on and after the operative date specified in subsection**
2 **(1) of this section, to exercise or undertake all of the duties, functions and powers conferred**
3 **on the commissioner by the amendments to ORS 279C.800 and 279C.815 by sections 1 and 2**
4 **of this 2021 Act.**

5 **SECTION 7. This 2021 Act takes effect on the 91st day after the date on which the 2021**
6 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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