

House Bill 2213

Sponsored by Representatives SMITH DB, MORGAN (Pre-session 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**.

Changes minimum contract price at which prevailing rate of wage applies to public works projects from \$50,000 to amount Commissioner of Bureau of Labor and Industries specifies by rule. Provides that commissioner shall set contract price at \$100,000 for year ending on December 31, 2024, and each year by March 31 must specify new contract price that reflects percentage change in U.S. City Average Consumer Price Index for previous calendar year.

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;

13 (C) Tax credits or tax abatements;

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

15 (E) The difference between:

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

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

22 (F) Staff resources of the public agency used to manage a project or to provide a principal
23 source of supervision, coordination or oversight of a project;

24 (G) Staff resources of the public agency used to design or inspect one or more components of
25 a project;

26 (H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity,
27 unless the moneys will be used for a public improvement;

28 (I) Value added to land as a consequence of a public agency's site preparation, demolition of real
29 property or remediation or removal of environmental contamination, except for value added in ex-

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 cess of the expenses the public agency incurred in the site preparation, demolition or remediation
 2 or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870;
 3 or

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

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

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

10 (a)(A) *[Projects]* **A project** for which the contract price does not exceed *[\$50,000]* **an amount**
 11 **that the Commissioner of the Bureau of Labor and Industries specifies by rule. For purposes**
 12 **of specifying the contract price in accordance with this subparagraph, the commissioner**
 13 **shall set the price at \$100,000 for the calendar year that ends on December 31, 2024. Each**
 14 **year, not later than March 31, the commissioner shall calculate a new contract price, the**
 15 **percentage change in which must reflect the percentage of change during the previous cal-**
 16 **endar year in the U.S. City Average Consumer Price Index, rounded to the nearest dollar.**

17 (B) In determining the **contract** price of a project, a public agency:

18 *[(A)]* (i) May not include the value of donated materials or work performed on the project by
 19 individuals volunteering to the public agency without pay; and

20 *[(B)]* (ii) Shall include the value of work performed by every person paid by a contractor or
 21 subcontractor in any manner for the person’s work on the project.

22 (b) *[Projects]* **A project** for which no funds of a public agency are directly or indirectly used.
 23 In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall
 24 adopt rules to carry out the provisions of this paragraph.

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

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

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

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

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

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

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

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

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

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

40 (ii) Affordable housing *[owned by]* **that** a partnership, nonprofit corporation or limited liability
 41 company **owns** in which a housing authority, as defined in ORS 456.005, is a general partner, di-
 42 rector or managing member and the housing authority is not a majority owner in the partnership,
 43 nonprofit corporation or limited liability company.

44 (D) “Residential construction” *[includes]* **means** the construction, reconstruction, major reno-
 45 vation or painting of single-family houses or apartment buildings not more than four stories in

1 height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks,
 2 pursuant to the United States Department of Labor’s “All Agency Memorandum No. 130: Applica-
 3 tion of the Standard of Comparison “Projects of a Character Similar” Under Davis-Bacon and Re-
 4 lated Acts,” dated March 17, 1978. However, the commissioner may consider different definitions of
 5 residential construction in determining whether a project is a residential construction project for
 6 purposes of this paragraph, including definitions that:

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

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

10 **SECTION 2. The amendments to ORS 279C.810 by section 1 of this 2023 Act apply to**
 11 **procurements that a public agency advertises or otherwise solicits or, if the public agency**
 12 **does not advertise or solicit the procurement, to public contracts into which the public**
 13 **agency enters on or after the operative date specified in section 3 of this 2023 Act.**

14 **SECTION 3. (1) The amendments to ORS 279C.810 by section 1 of this 2023 Act become**
 15 **operative on January 1, 2024.**

16 **(2) The Commissioner of the Bureau of Labor and Industries, the Attorney General, the**
 17 **Director of the Oregon Department of Administrative Services, the Director of Transporta-**
 18 **tion and a contracting agency that adopts rules under ORS 279A.065 or 279A.070 may adopt**
 19 **rules and take any other action before the operative date specified in subsection (1) of this**
 20 **section that is necessary to enable the commissioner, the Attorney General, the director or**
 21 **the contracting agency to undertake and exercise, on and after the operative date specified**
 22 **in subsection (1) of this section, all of the duties, functions and powers conferred on the**
 23 **commissioner, the Attorney General, the director or the contracting agency by the amend-**
 24 **ments to ORS 279C.810 by section 1 of this 2023 Act.**

25 **SECTION 4. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 26 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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