

## Removing OR Public Works Exemptions: Demolition & Hazardous Waste Removal

### BACKGROUND & PROBLEM

- Oregon statute requires contractors bidding on public works projects that meet certain criteria to pay area standard prevailing wages to their workforces.
  - State prevailing wage (PWR) law exists to ensure local participation and that contractors compete on the ability to perform the work competently, while maintaining community established pay standards on publicly funded projects.
- While ORS 279C.800 defines the types of projects included under “public works”, it does not specify either demolition or hazardous waste removal as being applicable for related prevailing wage requirements, when not otherwise connected to new construction, reconstruction, or renovation.
- Structural demolition and hazardous waste removal are scopes of work that construction craft laborers and other trades workers are trained to perform with a high degree of skill and this work can be exceedingly strenuous and at times dangerous. The exemption of these stand-alone projects from being considered public works can place some area contractors at a competitive disadvantage, as bidders have no obligation to pay area standard wages and benefits, which can undercut local firms and a fair economic return to the communities they operate in.
- This carve out also presents a concerning loophole enabling the *possibility* for certain publicly funded projects to be divided up arbitrarily, through awarding distinct contracts with no prevailing requirements for these exempt scopes of work (demolition or hazardous waste removal) as a means to prepare sites for subsequent new construction, which can then be later put up for bid as their own separate projects.
- This exemption can amount to a devaluing of demolition and hazardous waste removal occupations and can undermine fair-market wages for workers employed on these often-hazardous jobsites.
- Although it is difficult to fully measure the frequency that these stand-alone projects occur, at least three public demolition projects were awarded in the year 2022 alone that seemingly fit this exemption and thus do not appear to have been covered under state prevailing wage requirements.<sup>1</sup>

### POLICY SOLUTION

- SB 594 would ensure that demolition and hazardous materials removal are specifically included under the definition of public works in ORS 279C.800, eliminating this exemption for stand-alone projects going forward.
  - **(6)** (a) “Public works” includes, but is not limited to:
  - **(A)** Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, **demolition, removal of hazardous waste**, 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, **demolishing, removing of hazardous waste**, painting or performing a major renovation on a road, highway, building, structure or improvement of any type;
- California, Delaware, Illinois, Maine, New Jersey, New Mexico, Pennsylvania, Rhode Island and Washington all explicitly include demolition under their state prevailing wage laws and many activities associated with environmental clean-up or hazardous waste are covered by Massachusetts’ prevailing wage standards.
- The U.S. Department of Labor is also currently considering proposed changes, by-way-of the rulemaking process, that would clarify and update coverage standards related to these scopes of work under the Federal Davis Bacon law.
  - These changes could create a confusing mismatch for businesses regarding appropriate public works wage determinations for workers. Enacting SB 594 will help align Oregon’s standards with these Federal policy changes and aid predictability for contractors on taxpayer funded projects.



<sup>1</sup> Source: “Seattle Daily Journal of Commerce”, <https://www.djc.com/const/>, accessed November 30, 2022.