

Summary of 2007 Legislative Changes Related to Prevailing Wage Rate Law

HOUSE BILL 2140

Applies to public contracts first advertised, but if not advertised then entered into, on or after July 1, 2007.

ORS 279C.800(6)(a) – Amends the definition of “public works” to include:

- (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 for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a public agency; or
- (C) A project for the construction of a privately owned road, highway, building, structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

ORS 279C.810(1) – Expands and clarifies what “funds of a public agency” does not include.

ORS 279C.810(2) – Expands the exemptions from the prevailing wage rate law. ORS 279C.800 to 279C.870 does not apply to:

- Projects that are privately owned, that use funds of a private entity, in which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency, and for which less than \$750,000 of funds of a public agency are used.
- Projects for residential construction that are privately owned and that predominantly provide affordable housing. The terms “affordable housing”, “predominately”, “privately owned”, and “residential construction” are defined in this statute.

ORS 279C.830 – Establishes that the rates that apply to a public works project of the type described in ORS 279C.800(6)(a)(B) or (C) are the rates that are in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works must include the applicable prevailing rate of wage.

NEW ORS – Requires BOLI to make a coverage determination when requested, about whether a project or proposed project is or would be subject to the prevailing wage rate laws. The requestor or anyone adversely affected or aggrieved by the determination can request a hearing.

NEW ORS – The prohibition against dividing a public works project into more than one contract for the purpose of avoiding compliance with the prevailing wage rate laws is moved to a new statutory location. Provides that if a project is a public works of the type described in ORS 279C.800(6)(a)(B) or (C) the Commissioner of the Bureau of Labor and Industries is required to divide the project, if appropriate. If the commissioner divides the project, any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency will not be subject to the prevailing wage rate laws. Requires that if a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner will divide the project, if appropriate. If the commissioner divides such a project, the parts of the project that are not public works will not be subject to the prevailing wage rate laws.

HOUSE BILL 2021

Applies only to public contracts for public works, including public works subject to the Davis-Bacon Act (40 U.S.C. 3141 et. seq.), first advertised or solicited on or after January 1, 2008.

ORS 279C.830 – Allows that the prevailing rates of wage may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

ORS 279C.838 – Requires that when a public works project is subject to the Davis-Bacon Act, BOLI must use the federal definition and interpretation of “site of work,” and must use the federal guidelines for whether workers transporting materials and supplies to and from the site of the project are due the prevailing rate of wage. Provides that on public works projects subject to the Davis-Bacon Act, the PWR laws do not apply to workers enrolled in skill training programs that are certified by the U.S. Secretary of Transportation under the Federal-Aid Highway Act.

ORS 279C.855 – Requires that when a public works project is subject to the Davis-Bacon Act, if a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract, or fails to include in the specifications information showing which prevailing rate of wage is higher, the public agency will be liable to each affected worker for any unpaid difference between the applicable higher rate of wage and the lower rate of wage. The public agency will also be liable for an additional amount equal to the amount of unpaid wages due under this section, as liquidated damages.

ORS 279C.825 – Requires the PWR fee to be paid by the public agency that awards a public works contract, rather than by the contractor to whom the public works contract is awarded. Increases the maximum PWR fee to \$7,500 and the minimum PWR fee to \$250; the increase is only in effect for public works contracts entered into on or after January 1, 2008 and before January 1, 2011.

NEW ORS – Requires BOLI to develop and adopt a plan to increase diversity statewide among workers employed on public works projects.

HOUSE BILL 2776

Applies to business enterprises certified before, on or after January 1, 2008, and to contracts for projects first advertised, or if not advertised then entered into, on or after January 1, 2008.

ORS 279C.836 – Allows certified disadvantaged, minority, women or emerging small business enterprises to elect not to file a public works bond with Construction Contractors Board (CCB) for up to four years after certification. Allows a contractor or subcontractor to elect not to file a public works bond with CCB when working on a public works project for which the total project cost does not exceed \$100,000.