

Details on Using Public Dollars on Private Property

- 1) The use of public dollars is for the purpose of EWEB compliance with a State or Federal law. In the case of leak detection and repair, OAR **690-086-0150 (6) (b)** requires EWEB to have water conservation programs for customers that include technical and financial assistance. If EWEB were conducting the program for goodwill purposes only, we would not be allowed to conduct the program. Compliance requirements are key to avoiding accusations of a government monopoly messing with the free market.
- 2) Once a compliance purpose is established, EWEB aligned with Prevailing Wage Rules exemptions regarding definition of a “public work” and public funds for contractor wages allowed on private property. Notice that the use of public funds has to serve the public interest, hence first the compliance requirement must be established. If there were no exemption for use of public funds on private property, regardless of wage rules, our risk management department would not have allowed us to conduct the program. It is my understanding that this exemption was put in place in the 1970’s to allow utilities to conduct mass residential weatherization programs during the energy crisis. That’s hearsay, but makes sense.
 - a. The term “public works” includes, but is not limited to, 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 a public agency to serve the public interest. ORS 279C.800(6)(a)(A)
 - b. **Exemptions from the PWR Law:** A project may meet the definition of the term “public works,” but if one of the following exemptions applies to the project, the project will not be subject to the PWR law.
 - i. **Privately Owned Residential Projects That Provide Affordable Housing** The PWR law does not apply to privately owned residential construction projects that predominately provide affordable housing. Generally, “residential construction” projects are projects for the construction, reconstruction, major renovation or painting of a single family house or apartment building of no more than four stories in height. “Affordable housing” means the occupants’ incomes are no greater than 60 percent of the area median income, or no greater than 80 percent if the occupants are owners. “Predominately” for affordable housing means at least 60 percent of the project is designated for affordable housing. Affordable housing can be considered “privately owned” even if it is owned by a public agency, as long as it is leased to a private entity for 50 years or more, or if the affordable housing is owned by a partnership, as long as the public agency is not a majority owner in the partnership. ORS 279C.810(2)(d); OAR 839-025-0100(1)(e)

Reference Division 86: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_690/690_086.html

Reference Prevailing Wage Rules definition and exemptions:

http://www.oregon.gov/boli/WHD/PWR/pages/w_pwr_covered.aspx

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