

**A-Engrossed**  
**House Bill 2776**

Ordered by the House April 30  
Including House Amendments dated April 30

Sponsored by Representative SHIELDS; Representative HOLVEY

**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.

Extends from one year to [*five*] **four** years authority of disadvantaged, minority, women or emerging small business enterprise to elect not to obtain public works bond. **Provides that contractor or subcontractor may elect not to file public works bond for any public works project for which contract price does not exceed \$100,000.**

**A BILL FOR AN ACT**

1  
2 Relating to election by certain business enterprises not to obtain public works bond; creating new  
3 provisions; and amending ORS 279C.830 and 279C.836.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279C.836 is amended to read:

6 279C.836. (1) Except as provided in subsection (7) [*or (8)*], **(8) or (9)** of this section, before  
7 starting work on a contract or subcontract for a public works project, a contractor or subcontractor  
8 shall file with the Construction Contractors Board a public works bond with a corporate surety  
9 authorized to do business in this state in the amount of \$30,000. The bond must provide that the  
10 contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to  
11 workers performing labor upon public works projects. The bond must be a continuing obligation, and  
12 the surety's liability for the aggregate of claims that may be payable from the bond may not exceed  
13 the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid  
14 under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by  
15 giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau  
16 of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for  
17 work performed on contracts entered into after the cancellation. The cancellation does not limit the  
18 surety's liability for work performed on contracts entered into before the cancellation.

19 (2) Before permitting a subcontractor to start work on a public works project, the contractor  
20 shall verify that the subcontractor has filed a public works bond as required under this section or  
21 has elected not to file a public works bond under subsection (7) **or (8)** of this section.

22 (3) A contractor or subcontractor is not required under this section to file a separate public  
23 works bond for each public works project for which the contractor or subcontractor has a contract.

24 (4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of  
25 wage on a public works project is not required to file a public works bond under this section.

26 (5) A public works bond required by this section is in addition to any other bond the contractor  
27 or subcontractor is required to obtain.

**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 (6) The board may, by rule, require a contractor or subcontractor to obtain a new public works  
 2 bond if a surety pays a claim out of an existing public works bond. The new bond must be in the  
 3 amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new  
 4 bond, a certification that the surety remains liable for the full penal sum of the existing bond,  
 5 notwithstanding payment by the surety on the claim.

6 (7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under  
 7 ORS 200.055 may, for up to [*one year*] **four years** after certification, elect not to file a public works  
 8 bond as required under subsection (1) this section. If a business enterprise elects not to file a public  
 9 works bond, the business enterprise shall give the board written verification of the certification and  
 10 written notice that the business enterprise elects not to file the bond.

11 (b) A business enterprise that elects not to file a public works bond under this subsection shall  
 12 notify the public agency for whose benefit the contract was awarded or, if the business enterprise  
 13 is a subcontractor, the contractor of the election before starting work on a public works project.  
 14 When a business enterprise elects not to file a public works bond under this subsection, a claim for  
 15 unpaid wages may be made against the payment bond of the business enterprise or, if the business  
 16 enterprise is a subcontractor, the payment bond of the contractor.

17 (c) An election not to file a public works bond expires [*one year*] **four years** after the date the  
 18 business enterprise is certified. After an election has expired and before starting or continuing work  
 19 on a contract or subcontract for a public works project, the business enterprise shall file a public  
 20 works bond with the board as required under subsection (1) of this section.

21 **(8) A contractor or subcontractor may elect not to file a public works bond as required**  
 22 **under subsection (1) of this section for any public works project for which the contract price**  
 23 **does not exceed \$100,000.**

24 [(8)] (9) In cases of emergency, or when the interest or property of the public agency for whose  
 25 benefit the contract was awarded probably would suffer material injury by delay or other cause, the  
 26 requirement for filing a public works bond may be excused, if a declaration of the emergency is  
 27 made in accordance with rules adopted under ORS 279A.065.

28 [(9)] (10) The board shall make available on a searchable public website information concerning  
 29 public works bonds filed with the board, claims made on those bonds, elections made by certified  
 30 business enterprises not to file those bonds and the expiration date of each election. The board may  
 31 adopt rules necessary to perform the duties required of the board by this section.

32 [(10)] (11) The Commissioner of the Bureau of Labor and Industries, with approval of the board,  
 33 shall adopt rules that establish language for public works bonds.

34 **SECTION 2.** ORS 279C.830 is amended to read:

35 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision  
 36 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of  
 37 wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade  
 38 or occupation required for the public works employed in the performance of the contract either by  
 39 the contractor or subcontractor or other person doing or contracting to do the whole or any part  
 40 of the work contemplated by the contract.

41 (b) If a public agency is required under paragraph (a) of this subsection to include the state and  
 42 federal prevailing rates of wage in the specifications, the public agency also shall include in the  
 43 specifications information showing which prevailing rate of wage is higher for workers in each trade  
 44 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-  
 45 dustries under ORS 279C.815 (2)(b).

1 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not  
2 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838.

3 (2) The specifications for every contract for public works between a public agency and a con-  
4 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the  
5 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-  
6 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-  
7 sioner.

8 (3) The specifications for every contract for public works shall contain a provision stating that  
9 the contractor and every subcontractor must have a public works bond filed with the Construction  
10 Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (7), [or]  
11 (8) **or** (9). Every contract awarded by a contracting agency shall contain a provision requiring the  
12 contractor:

13 (a) To have a public works bond filed with the Construction Contractors Board before starting  
14 work on the project, unless exempt under ORS 279C.836 (7), [or] (8) **or** (9).

15 (b) To include in every subcontract a provision requiring the subcontractor to have a public  
16 works bond filed with the Construction Contractors Board before starting work on the project, un-  
17 less exempt under ORS 279C.836 (7), [or] (8) **or** (9).

18 **SECTION 3. The amendments to ORS 279C.830 and 279C.836 by sections 1 and 2 of this**  
19 **2007 Act apply to business enterprises certified before, on or after the effective date of this**  
20 **2007 Act and to contracts for projects first advertised, or if not advertised then entered into,**  
21 **on or after the effective date of this 2007 Act.**

22