

House Bill 2778

Sponsored by Representative SHIELDS

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**.

Removes one-year limitation on authority of disadvantaged, minority, women or emerging small business enterprise to elect not to obtain public works bond. Eliminates authority of business enterprise to elect not to obtain public works bond if business enterprise has ever been determined ineligible to receive contract or subcontract for public works.

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

28 (6) The board may, by rule, require a contractor or subcontractor to obtain a new public works
29 bond if a surety pays a claim out of an existing public works bond. The new bond must be in the
30 amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new

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 bond, a certification that the surety remains liable for the full penal sum of the existing bond,
 2 notwithstanding payment by the surety on the claim.

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

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

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

18 **(c) This subsection does not apply if the business enterprise has ever been determined**
 19 **ineligible to receive a contract or subcontract for public works under ORS 279C.860.**

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

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

28 (10) The Commissioner of the Bureau of Labor and Industries, with approval of the board, shall
 29 adopt rules that establish language for public works bonds.

30 **SECTION 2. The amendments to ORS 279C.836 by section 1 of this 2007 Act apply to**
 31 **business enterprises certified before, on or after the effective date of this 2007 Act.**

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