

Senate Bill 768

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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**.

Requires Oregon Department of Administrative Services to conduct study to assess disparities between availability of and use of disadvantaged, minority or women business enterprises in public contracting and to assess whether discrimination exists.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to disparities in awarding public contracts; and declaring an emergency.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Disadvantaged business enterprise" has the meaning given that term in ORS 200.005.**

6 (b) **"Minority or women business enterprise" has the meaning given that term in ORS**
7 **200.005.**

8 (2) **The Oregon Department of Administrative Services shall conduct or procure a con-**
9 **tractor to conduct a study that:**

10 (a) **Investigates whether evidence exists for discrimination in public contracting that is**
11 **based on race, ethnicity or sex and analyzes and evaluates the evidence to assess the effects**
12 **of discrimination for each group that federal, state or local law identifies as a disadvantaged**
13 **group. The study must use evidence obtained from empirical methods and from anecdotes**
14 **or complaints that members of disadvantaged groups make concerning discrimination, in-**
15 **cluding discrimination or barriers to obtaining bonding, insurance and financing or condi-**
16 **tions that result in disparities in rates of business formation, business opportunities and**
17 **earnings.**

18 (b) **Analyzes and evaluates the extent to which disadvantaged business enterprises and**
19 **minority and women business enterprises are available and have suitable capacity in indus-**
20 **tries that commonly provide goods or services to state contracting agencies.**

21 (c) **Determines whether a disparity exists between the availability and capability of the**
22 **business enterprises identified under paragraph (b) of this subsection and the number of**
23 **public contracts the identified business enterprises obtain from state contracting agencies.**
24 **The determination must consider whether state contracting agencies have discriminated**
25 **against disadvantaged business enterprises or minority or women business enterprises and**
26 **the extent to which any discrimination found resulted in a disparity, and must account for**
27 **whether previous use of race-conscious practices may have affected statistics upon which the**
28 **study determines the existence of a disparity.**

29 (3) **The department may award one or more public contracts to conduct the study de-**
30 **scribed in subsection (2) of this section.**

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 (4)(a) The department shall submit a report concerning the study to the Governor, the
2 President of the Senate and the Speaker of the House of Representatives by January 1, 2013.

3 (b) The report described in paragraph (a) of this subsection shall include the statistical
4 and anecdotal data that the study uses or generates concerning any disparity identified in
5 accordance with subsection (2)(c) of this section.

6 (c) The report described in paragraph (a) of this subsection may include:

7 (A) An executive summary of the findings and conclusions set forth in the study.

8 (B) A section that defines the characteristics of each group the study identifies as having
9 a distinct gender, race or ethnicity.

10 (C) A section that analyzes the complaints and other anecdotal evidence the study ex-
11 amines, along with recent legal cases, to determine whether trends exist in the extent or
12 scope of discriminatory practices and the extent of legally cognizable claims and remedies
13 available for discriminatory practices.

14 (D) A section that identifies assumptions and conditions that affect the conduct of the
15 study, with particular reference to:

16 (i) The market area identified for the study and any regions identified within the market
17 area, together with reasons for identifying the particular market area and any regions;

18 (ii) The overall approach or theoretical basis for conducting the study in the manner in
19 which the department or contractor conducted the study, together with the legal, academic
20 or other authority or support for the approach or basis; and

21 (iii) Specific contracts or other information included or excluded from the study and
22 limitations on the use of data or proxies in the study, together with reasons for including
23 or excluding the contracts or other information or for limiting the use of the data or proxies.

24 (E) A section that describes the methodology the study used to collect and evaluate data
25 and anecdotal evidence, perform the analysis of business enterprise availability and utiliza-
26 tion, make the determination required under subsection (2)(c) of this section and reach other
27 conclusions set forth in the study.

28 (F) A section that describes the sources of the data used in the study, together with
29 summaries of the data.

30 (G) A section that describes how the study performed the analysis of the availability and
31 utilization of business enterprises and includes the results of the analysis, which describes
32 the statistical analysis used to determine a disparity and the results of the analysis. The
33 section may also include a description of how the study examined and analyzed the procure-
34 ment policies and procedures of state contracting agencies and anecdotal evidence that af-
35 fected the study's determination of the extent of a disparity.

36 (H) A section that sets forth the study's results, conclusions and recommendations.

37 (5) The department or contractor may consider for the study:

38 (a) The extent to which disadvantaged business enterprises or minority or women busi-
39 ness enterprises were available and were used to provide goods or services in the
40 department's own contracts, in contracts that contracting agencies subject to the
41 department's procurement authority awarded or in contracts that contracting agencies with
42 independent procurement authority awarded;

43 (b) Practices that private industry, government or unions used in the past to restrict or
44 promote particular business enterprises for public contracts;

45 (c) The extent to which bonding, insurance and financing are generally available and

- 1 available to disadvantaged business enterprises or minority or women business enterprises;
2 (d) The results of previous studies and findings from government agencies;
3 (e) The results of legal actions; and
4 (f) Other statistical and anecdotal evidence that the department or contractor deems to
5 be appropriate.

6 **SECTION 2.** This 2011 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
8 on its passage.

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