

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
House Committee On Consumer Protection and Government Effectiveness

MEASURE: HB 2716 A
CARRIER: Rep. Frederick

Fiscal: Fiscal impact issued

Revenue: No Revenue Impact

Action Date: 03/17/15

Action: Do Pass As Amended And Be Printed Engrossed.

Meeting Dates: 02/24, 03/17

Vote:

Yeas: 5 - Fagan, Holvey, McLain, Nearman, Rayfield

Nays: 2 - Buehler, Stark

Prepared By: Wendy Simons, Committee Administrator

WHAT THE MEASURE DOES:

Requires contracting agencies provide as material condition of public contract that contractor remain certified as disadvantaged, minority, women or emerging small business enterprise during entire term of contract if contract was awarded on basis of contractor's certification. Requires contractors include similar provision in subcontracts. Requires contracting agency to verify certification status of contractor or subcontractor during entire term of contract, and provides that contracting agency may terminate contract, require contractor to terminate subcontract, or pursue remedies for breach of contract if contractor or subcontractor does not retain certification. Makes exception for emerging small businesses that no longer qualify because of growth in employees or gross receipts. Provides that Oregon Business Development Department (OBDD) may independently impose civil penalty up to \$5,000 for each violation of certification requirement if contracting agency does not impose civil penalty. Becomes operative January 1, 2016. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Abuse of certification programs intended to benefit disadvantaged, minority- and woman-owned, and emerging small businesses
- Enforcement of certification requirements

EFFECT OF COMMITTEE AMENDMENT:

Deletes requirement that contracting agency or contractor verify compliance of contractor or subcontractor by obtaining documentation from OBDD and continuing to contact OBDD on quarterly basis. Requires contractor to terminate contract with subcontractor if contractor determines that subcontractor is no longer certified. Makes exception for emerging small businesses that no longer qualify because of growth in employees or gross receipts. Deletes requirement for OBDD to develop by rule program for investigating and verifying that person obtaining public contract on basis of certification as disadvantaged, minority, women or emerging small business enterprise remain certified during entire term of contract.

BACKGROUND:

The Oregon Business Development Department, also known as Business Oregon, certifies businesses who meet the criteria for the Disadvantaged Business Enterprise (DBE), Minority/Women Business Enterprise (MWBE) and Emerging Small Business (ESB) certifications. In order to qualify, a firm must be an independently owned and operated for-profit business which is properly licensed and registered with the Secretary of State, and at least 51 percent owned and controlled by a socially and economically disadvantaged individual who manages the day-to-day operations. Businesses meeting these criteria are eligible for certain contracting opportunities with federal, state, county and city governments and special jurisdictions.

House Bill 2716-A requires contracting agencies to include a requirement in public contracts that the contractor remain certified as a disadvantaged, minority, women or emerging small business enterprise during the entire term of the contract if the contract was awarded on the basis of the contractor's certification. Contractors must include a similar provision in any subcontracts for the project. The bill requires a contracting agency to verify the certification status of a contractor or subcontractor during the entire term of a contract, and provides that the contracting agency may terminate a contract, require the contractor to terminate a subcontract, or pursue remedies for breach of contract if a contractor or subcontractor does not retain certification, with the exception of emerging small businesses that no longer qualify because they have grown. The bill provides that OBDD may independently impose a civil penalty of up to \$5,000 for each violation of the certification requirement if the contracting agency does not impose a civil penalty.