

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 2716

Ordered by the Senate May 26
Including House Amendments dated March 20 and Senate Amendments
dated May 26

Sponsored by Representative FREDERICK; Representatives BARKER, GALLEGOS, GORSEK, HOLVEY, KENY-GUYER, KOTEK, MCLAIN, PILUSO, TAYLOR, WILLIAMSON, WITT (Presession filed.)

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.

Requires **public** contracting agencies to provide as material condition of public contract that contractor remain certified as disadvantaged, minority, women or emerging small business enterprise during entire term of public contract if contracting agency awarded public contract, in whole or in part, on basis of contractor's certification. Requires **public** contracting agency to provide that contractors include similar provision in subcontracts. **Permits affected public contracting agency or Oregon Business Development Department to impose civil penalty of not more than \$5,000 for violation of prohibition against fraudulently obtaining or retaining or assisting other person to fraudulently obtain or retain certification as disadvantaged, minority, women or emerging small business enterprise.**

Requires **public** contracting agency to verify that contractor retains certification during entire term of public contract.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to compliance requirements for public contracts that involve disadvantaged business en-
3 terprises; creating new provisions; amending ORS 200.065 and sections 4 and 5, chapter ____,
4 Oregon Laws 2015 (Enrolled Senate Bill 584); and declaring an emergency.

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

6 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 279A.**

7 **SECTION 2. (1) A contracting agency that under ORS 279A.105 awards a public contract**
8 **to a responsible bidder, as defined in ORS 200.005, that has made good faith efforts, as de-**
9 **scribed in ORS 200.045 (3), or that awards a public contract in the course of carrying out an**
10 **affirmative action goal, policy or program under ORS 279A.100 shall:**

11 (a) **Provide as a material condition of the public contract that a contractor remain cer-**
12 **tified as a disadvantaged, minority, women or emerging small business enterprise under ORS**
13 **200.055 for the entire term of the public contract, if the contracting agency awarded the**
14 **public contract, in whole or in part, on the basis of the contractor's certification.**

15 (b) **Require a contractor to provide in the contractor's subcontracts that a subcontractor**
16 **remain certified as a disadvantaged, minority, women or emerging small business enterprise**
17 **under ORS 200.055 for the entire term of the subcontract, if the contractor awards the sub-**
18 **contract, in whole or in part, on the basis of the subcontractor's certification.**

19 (c) **Verify the contractor's or subcontractor's compliance with the requirements set forth**

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 in paragraphs (a) and (b) of this subsection.

2 (d) Verify that a contractor is paying a subcontractor that is certified under ORS 200.055
3 promptly as provided in ORS 279B.220 or 279C.570, as appropriate.

4 (2)(a) If a contracting agency determines at any time during the term of a public contract
5 that a contractor to which the contracting agency awarded the public contract on the basis
6 described in subsection (1) of this section, or a subcontractor to which the contractor
7 awarded a subcontract in connection with the public contract on the basis described in sub-
8 section (1) of this section, is no longer certified, the contracting agency may:

9 (A) Terminate the public contract;

10 (B) Require the contractor to terminate the subcontract; or

11 (C) Exercise any of the remedies for breach of contract that are reserved in the public
12 contract.

13 (b) The actions a contracting agency may take under paragraph (a) of this subsection are
14 in addition to and not in lieu of any other action the Oregon Business Development Depart-
15 ment may take with respect to the contractor or subcontractor under ORS 200.065.

16 (c) Paragraph (a) of this subsection does not apply to an emerging small business as de-
17 fined in ORS 200.005 that, because of growth in the number of full-time equivalent employees
18 or average annual gross receipts that occurs during the term of the public contract, no
19 longer qualifies as a tier one firm or tier two firm, as those terms are defined in ORS 200.005,
20 or for which a certification under ORS 200.055 expires during the term of the public contract.

21 **SECTION 3.** ORS 200.065 is amended to read:

22 200.065. (1) *[It shall be unlawful for any]* A person **may not** fraudulently *[to]* obtain or retain,
23 *[or]* attempt to obtain or retain or *[to]* aid another person **to** fraudulently *[to]* obtain or retain or
24 attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small
25 business enterprise.

26 (2) *[It shall be unlawful knowingly to]* A person **may not knowingly** make a false claim that
27 any person is qualified for certification or is certified under ORS 200.055 for the purpose of
28 *[gaining]* **obtaining** a **public** contract or subcontract or other benefit.

29 (3) *[The]* A public contracting agency may withhold payment, may suspend or terminate *[the]* a
30 **public** contract and may impose on any person a civil penalty **that does not** *[to]* exceed 10 percent
31 of the contract or subcontract price or \$5,000, whichever is less, for each violation of subsection (1)
32 or (2) of this section. **If the public contracting agency does not impose a civil penalty on the**
33 **person under this subsection, the Oregon Business Development Department may independ-**
34 **ently impose a civil penalty that does not exceed \$5,000 for each violation of subsection (1)**
35 **or (2) of this section.** The person shall pay a penalty *[shall be paid]* **that the department im-**
36 **poses** to the Office for Minority, Women and Emerging Small Business.

37 (4) The *[Oregon Business Development]* department or an affected public contracting agency shall
38 investigate *[any complaint that a person has violated]* **violations of** subsection (1) or (2) of this sec-
39 tion. In investigating *[such a complaint]* a **violation**, the department or *[an]* **the** affected public
40 contracting agency may require any additional information, administer oaths, take depositions and
41 issue subpoenas to compel *[the attendance of]* witnesses **to attend and to produce** *[and the pro-*
42 *duction of]* books, papers, records, memoranda or other information necessary to carry out *[its]* **the**
43 **department's or the affected contracting agency's** duties. If *[any]* a person fails to comply with
44 any subpoena *[issued]* **the department issues** under this subsection or refuses to testify on any
45 matter on which a person may lawfully be interrogated, the **department shall follow the** procedure

1 provided in ORS 183.440 [*shall be followed*] to compel compliance.

2 (5) An affected public contracting agency or the department may disqualify any person [*found*
3 *to have violated*] **that under oath during the course of an investigation admits to violating**
4 subsection (1) or (2) of this section, [*or who admits to such violation under oath during the course*
5 *of an investigation from bidding or participating in any public contract for a period of time specified*
6 *by the agency or department, not to exceed three years*] **or that the department or the affected**
7 **contracting agency finds to have violated subsection (1) or (2) of this section, from submit-**
8 **ting a bid or proposal for, or receiving an award of, a public contract for a period of not more**
9 **than three years.** Any public contracting agency that has notice of the finding of the fraudulent
10 certification may also disqualify the person from bidding on or participating in any public contract.

11 **SECTION 4. Section 2 of this 2015 Act and the amendments to ORS 200.065 by section 3**
12 **of this 2015 Act apply to public contracts that a contracting agency advertises or otherwise**
13 **solicits or, if the contracting agency does not advertise or otherwise solicit the public con-**
14 **tract, to public contracts into which the public contracting agency enters on or after the**
15 **operative date specified in section 5 of this 2015 Act.**

16 **SECTION 5. (1) Section 2 of this 2015 Act and the amendments to ORS 200.065 by section**
17 **3 of this 2015 Act become operative on January 1, 2016.**

18 (2) **The Director of the Oregon Business Development Department, the Director of the**
19 **Oregon Department of Administrative Services, the Director of Transportation, the Attorney**
20 **General and a public contracting agency that adopts rules under ORS 279A.065 may take any**
21 **action before the operative date specified in subsection (1) of this section that is necessary**
22 **to enable the director, the Attorney General or the public contracting agency to exercise,**
23 **on and after the operative date specified in subsection (1) of this section, all of the duties,**
24 **functions and powers conferred on the director, the Attorney General or the public con-**
25 **tracting agency by section 2 of this 2015 Act and the amendments to ORS 200.065 by section**
26 **3 of this 2015 Act.**

27 **SECTION 6. If Senate Bill 584 becomes law, section 3 of this 2015 Act (amending ORS**
28 **200.065) is repealed and ORS 200.065, as amended by section 2, chapter __, Oregon Laws 2015**
29 **(Enrolled Senate Bill 584), is amended to read:**

30 200.065. (1) A person may not fraudulently obtain or retain, attempt to obtain or retain or aid
31 another person to fraudulently obtain or retain or attempt to obtain or retain certification as a
32 disadvantaged, minority, women or emerging small business enterprise.

33 (2) A person may not knowingly make a false claim that any person is qualified for certification
34 or is certified under ORS 200.055 for the purpose of [*gaining*] **obtaining a public** contract or sub-
35 contract or other benefit.

36 (3) An affected public contracting agency may withhold payment, may suspend or terminate a
37 public contract and may impose on any person a civil penalty **that does not [to] exceed 10 percent**
38 **of the contract or subcontract price or \$5,000, whichever is less, for each violation of subsection (1)**
39 **or (2) of this section. The person shall pay the penalty to the affected public contracting**
40 **agency. If the affected public contracting agency does not impose a civil penalty on the per-**
41 **son under this subsection, the Oregon Business Development Department may independently**
42 **impose a civil penalty that does not exceed \$5,000 for each violation of subsection (1) or (2)**
43 **of this section. The person shall pay a penalty that the department imposes to the Office for**
44 **Minority, Women and Emerging Small Business.**

45 (4) The [*Oregon Business Development*] department or an affected public contracting agency shall

1 investigate *[any complaint that a person has violated]* **violations of** subsection (1) or (2) of this sec-
 2 tion. In investigating a *[complaint]* **violation**, the department or *[an]* **the** affected public contracting
 3 agency may require any additional information, administer oaths, take depositions and issue
 4 subpoenas to compel witnesses to attend and *[to produce]* **compel the production of** books, papers,
 5 records, memoranda or other information necessary to carry out the department's or the affected
 6 public contracting agency's duties. If a person fails to comply with any subpoena the department
 7 or the affected public contracting agency issues under this subsection or refuses to testify on any
 8 matter on which a person may lawfully be interrogated, the department or the affected public con-
 9 tracting agency shall follow the procedure provided in ORS 183.440 to compel compliance.

10 (5) The department or an affected public contracting agency may disqualify any person that
 11 under oath during the course of an investigation admits to violating subsection (1) or (2) of this
 12 section, or that the department or the affected public contracting agency finds to have violated
 13 subsection (1) or (2) of this section, from submitting a bid or proposal for, or receiving an award of,
 14 a public contract for a period of not more than three years. Any public contracting agency that has
 15 notice of the finding of the fraudulent certification may also disqualify the person from bidding on
 16 or participating in any public contract.

17 **SECTION 7.** If Senate Bill 584 becomes law, section 4 of this 2015 Act is amended to read:

18 **Sec. 4.** Section 2 of this 2015 Act and the amendments to ORS 200.065 by section [3] **6** of this
 19 2015 Act apply to public contracts that a contracting agency advertises or otherwise solicits or, if
 20 the contracting agency does not advertise or otherwise solicit the public contract, to public con-
 21 tracts into which the public contracting agency enters on or after the operative date specified in
 22 section 5 of this 2015 Act.

23 **SECTION 8.** If Senate Bill 584 becomes law, section 5 of this 2015 Act is amended to read:

24 **Sec. 5.** (1) Section 2 of this 2015 Act and the amendments to ORS 200.065 by section [3] **6** of this
 25 2015 Act become operative on January 1, 2016.

26 (2) The Director of the Oregon Business Development Department, the Director of the Oregon
 27 Department of Administrative Services, the Director of Transportation, the Attorney General and
 28 a public contracting agency that adopts rules under ORS 279A.065 may take any action before the
 29 operative date specified in subsection (1) of this section that is necessary to enable the director, the
 30 Attorney General or the public contracting agency to exercise, on and after the operative date
 31 specified in subsection (1) of this section, all of the duties, functions and powers conferred on the
 32 director, the Attorney General or the public contracting agency by section 2 of this 2015 Act and
 33 the amendments to ORS 200.065 by section [3] **6** of this 2015 Act.

34 **SECTION 9.** If Senate Bill 584 becomes law, section 4, chapter ____, Oregon Laws 2015 (Enrolled
 35 Senate Bill 584), is amended to read:

36 **Sec. 4.** The amendments to ORS 200.055[*200.065*] and 200.075 by sections 1 *[to]* **and** 3 *[of this*
 37 *2015 Act]*, **chapter _____, Oregon Laws 2015 (Enrolled Senate Bill 584)**, apply to:

38 (1) Public contracts that a public contracting agency advertises or solicits or, if the public
 39 contracting agency does not advertise or otherwise solicit the public contract, a public contract into
 40 which the public contracting agency enters on or after the operative date specified in section 5 *[of*
 41 *this 2015 Act]*, **chapter _____, Oregon Laws 2015 (Enrolled Senate Bill 584)**;

42 (2) Decisions that the Oregon Business Development Department makes on and after the oper-
 43 ative date specified in section 5 *[of this 2015 Act]*, **chapter _____, Oregon Laws 2015 (Enrolled**
 44 **Senate Bill 584)**, to approve, deny, revoke, suspend or refuse to renew a certification as a disad-
 45 vantaged, minority, women or emerging small business enterprise;

1 (3) Investigations that the department or a public contracting agency conducts on or after the
2 operative date specified in section 5 [of this 2015 Act], **chapter _____, Oregon Laws 2015 (En-**
3 **rolled Senate Bill 584)**; and

4 (4) A public contracting agency's decision on or after the operative date specified in section 5
5 [of this 2015 Act], **chapter _____, Oregon Laws 2015 (Enrolled Senate Bill 584)**, to suspend a
6 business enterprise's right to submit a bid or proposal for a public contract.

7 **SECTION 10.** If Senate Bill 584 becomes law, section 5, chapter __, Oregon Laws 2015 (En-
8 rolled Senate Bill 584), is amended to read:

9 **Sec. 5.** (1) The amendments to ORS 200.055[200.065] and 200.075 by sections 1 [to] **and 3** [of this
10 2015 Act], **chapter _____, Oregon Laws 2015 (Enrolled Senate Bill 584)**, become operative on
11 January 1, 2016.

12 (2) The Director of the Oregon Business Development Department and a public contracting
13 agency that adopts rules under ORS 279A.065 may take any action before the operative date speci-
14 fied in subsection (1) of this section that is necessary to enable the director or the public contract-
15 ing agency to exercise, on and after the operative date specified in subsection (1) of this section,
16 all of the duties, functions and powers conferred on the director or the public contracting agency
17 by the amendments to ORS 200.055[200.065] and 200.075 by sections 1 [to] **and 3** [of this 2015
18 Act], **chapter _____, Oregon Laws 2015 (Enrolled Senate Bill 584)**.

19 **SECTION 11.** **This 2015 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
21 **on its passage.**

22 _____