

House Bill 2716

Sponsored by Representative FREDERICK (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 **as introduced**.

Requires 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 contracting agency to provide that contractors include similar provision in subcontracts.

Requires contracting agency to verify that contractor retains certification during entire term of public contract and to investigate, when warranted, violations of prohibition against fraudulently obtaining certification or against falsely claiming that person is qualified for certification.

Requires Oregon Business Development Department by rule to establish program for investigating and verifying that contractors retain certification during entire term of public contract. Permits department to charge contracting agency for cost of conducting investigation and verification.

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 declaring an emergency.

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

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

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

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

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

18 (c) **Verify the contractor's or subcontractor's compliance with the requirements set forth**
19 **in paragraphs (a) and (b) of this subsection by:**

20 (A) **Obtaining a copy of the documentation that the Oregon Business Development De-**
21 **partment used in certifying the contractor or subcontractor under ORS 200.055 (2) before**
22 **executing the public contract and contacting the department at least quarterly during the**
23 **term of the public contract to verify that the contractor or subcontractor remains certified;**
24 **and**

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 **(B) Investigating, alone or in conjunction with the Oregon Business Development De-**
 2 **partment, whether the contractor or subcontractor violated ORS 200.065 (1) or (2), if the**
 3 **contracting agency reasonably suspects that a violation has occurred.**

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

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

9 **(A) Terminate the contract; or**

10 **(B) Exercise any of the remedies for breach of contract that are reserved in the contract.**

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

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

15 200.065. (1) *[It shall be unlawful for any]* **A person may not** fraudulently *[to]* obtain or retain,
 16 *[or]* attempt to obtain or retain or *[to]* aid another person **to** fraudulently *[to]* obtain or retain or
 17 attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small
 18 business enterprise.

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

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

30 (4)(a) The *[Oregon Business Development]* department or an affected public contracting agency
 31 shall investigate *[any complaint that a person has violated]* **violations of** subsection (1) or (2) of this
 32 section. In investigating *[such a complaint]* **a violation**, the department or *[an]* **the** affected public
 33 contracting agency may require any additional information, administer oaths, take depositions and
 34 issue subpoenas to compel *[the attendance of]* witnesses **to attend and to produce** *[and the pro-*
 35 *duction of]* books, papers, records, memoranda or other information necessary to carry out *[its]* **the**
 36 **department's or the affected contracting agency's** duties. If *[any]* a person fails to comply with
 37 any subpoena *[issued]* **the department issues** under this subsection or refuses to testify on any
 38 matter on which a person may lawfully be interrogated, the **department shall follow the** procedure
 39 provided in ORS 183.440 *[shall be followed]* to compel compliance.

40 **(b)(A) The department by rule shall establish a program for investigating and verifying**
 41 **that a person that obtains a public contract on the basis of the person's certification as a**
 42 **disadvantaged, minority, women or emerging small business enterprise under ORS 200.055**
 43 **retains the certification during the term of the public contract. In the program, the depart-**
 44 **ment, at a minimum, shall:**

45 **(i) Periodically review the documentation the department used to certify the person and**

1 determine whether any material aspect of the person's operations, governance, ownership
 2 or other basis on which the person qualified for certification under ORS 200.055 has changed
 3 in a way that would disqualify the person from certification.

4 (ii) Conduct spot inspections or other investigations of the person's operations in the
 5 manner provided in paragraph (a) of this subsection as the department deems necessary to
 6 verify information in the documentation.

7 (iii) Notify the affected contracting agency immediately if the department determines
 8 that a contractor or subcontractor that the department certified as a disadvantaged, mi-
 9 nority, women or emerging small business enterprise no longer qualifies for certification.

10 (B) The department may charge a fee to a contracting agency in an amount that is suf-
 11 ficient to recover the department's costs in conducting an investigation or verification.

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

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

26 **SECTION 5.** (1) Section 2 of this 2015 Act and the amendments to ORS 200.065 by section
 27 3 of this 2015 Act become operative on January 1, 2016.

28 (2) The Director of the Oregon Business Development Department, the Director of the
 29 Oregon Department of Administrative Services, the Director of Transportation, the Attorney
 30 General and a contracting agency that adopts rules under ORS 279A.065 may take any action
 31 before the operative date specified in subsection (1) of this section that is necessary to enable
 32 the director, the Attorney General or the contracting agency to exercise, on and after the
 33 operative date specified in subsection (1) of this section, all of the duties, functions and
 34 powers conferred on the director, the Attorney General or the contracting agency by section
 35 2 of this 2015 Act and the amendments to ORS 200.065 by section 3 of this 2015 Act.

36 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public
 37 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
 38 on its passage.