

**SENATE AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 3303  
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON WORKFORCE

June 8

1 On page 1 of the printed A-engrossed bill, line 5, after “2013” delete the rest of the line and line  
2 6 and insert “, and sections 2, 4 and 5, chapter \_\_\_, Oregon Laws 2015 (Enrolled House Bill 2716);  
3 repealing ORS 200.100 and sections 3, 6, 7, 8, 9 and 10, chapter \_\_\_, Oregon Laws 2015 (Enrolled  
4 House Bill 2716); and declaring an emergency.”.

5 On page 3, line 12, delete “28” and insert “30”.

6 After line 15, insert:

7 “(12) ‘State contracting agency’ has the meaning given that term in ORS 279A.010.”.

8 In line 16, delete “(12)” and insert “(13)”.

9 In line 18, delete “(13)” and insert “(14)”.

10 In line 23, delete “(14)” and insert “(15)”.

11 In line 28, delete “(15)” and insert “(16)”.

12 On page 5, line 9, before “contracting” insert “state”.

13 In line 10, before “contracting” insert “state”.

14 In line 12, before “contracting” insert “state”.

15 In line 13, restore “state”.

16 On page 8, delete lines 7 through 45 and delete pages 9 through 11.

17 On page 12, delete lines 1 through 16 and insert:

18 “**SECTION 5.** ORS 200.055, as amended by section 1, chapter 148, Oregon Laws 2015 (Enrolled  
19 Senate Bill 584), is amended to read:

20 “200.055. [(1) *A business enterprise may apply to the Oregon Business Development Department for*  
21 *certification as a disadvantaged, minority, women or emerging small business enterprise. If the business*  
22 *enterprise is qualified as provided in ORS 200.005 to 200.075 and the department approves the appli-*  
23 *cation, the department shall certify the applicant as a disadvantaged, minority, women or emerging*  
24 *small business enterprise. All public contracting agencies shall treat a business enterprise that receives*  
25 *a certification under this section as a disadvantaged, minority, women or emerging small business en-*  
26 *terprise for the purposes of awarding public contracts.*]

27 “(1)(a) **An enterprise or business may apply to the Certification Office for Business**  
28 **Inclusion and Diversity for certification as:**

29 “(A) **A disadvantaged business enterprise;**

30 “(B) **A minority-owned business;**

31 “(C) **A woman-owned business;**

32 “(D) **A business that a service-disabled veteran owns; or**

33 “(E) **An emerging small business.**

34 “(b) **An enterprise or business shall submit a separate application for each category of**

1 certification the enterprise or business seeks under paragraph (a) of this subsection.

2 “(c) If an enterprise or business qualifies under ORS 200.005 to 200.075 and if the office  
3 approves an application from the enterprise or business, the office shall certify the enter-  
4 prise or business under one or more of the categories described in paragraph (a) of this  
5 subsection.

6 “(d) For purposes of awarding a public contract, a contracting agency shall recognize an  
7 enterprise or business with a certification from the office as the category of enterprise or  
8 business described in the certification and as having met the requirements set forth in ORS  
9 200.005 to 200.075. For purposes of awarding a subcontract in connection with a public con-  
10 tract, a contractor may recognize a subcontractor with a certification from the office as the  
11 category of enterprise or business described in the certification and as having met the re-  
12 quirements set forth in ORS 200.005 to 200.075.

13 “(2) In consultation with the State Board of Higher Education and the Department of Trans-  
14 portation, and with the approval of the [*Advocate for Minority, Women and Emerging Small*  
15 *Business*] **Governor’s Policy Advisor for Economic and Business Equity**, the Oregon Business  
16 Development Department by rule shall adopt a uniform standard form and procedure [*designed*] to  
17 provide complete documentation [*that a business enterprise is certified as a disadvantaged, minority,*  
18 *women or emerging small business enterprise. The department shall compile and make available upon*  
19 *request a list of certified disadvantaged, minority, women or emerging small business enterprises.*] **of**  
20 **an enterprise’s or a business’ status as a disadvantaged business enterprise, a minority-**  
21 **owned business, a woman-owned business, a business that a service-disabled veteran owns**  
22 **or an emerging small business. The department shall compile and make available a list of**  
23 **enterprises and businesses that the Certification Office for Business Inclusion and Diversity**  
24 **certifies under this section.**

25 “[*(3) If the department denies, revokes or refuses to renew a business enterprise’s certification as*  
26 *a disadvantaged business enterprise, the business enterprise may appeal directly to the United States*  
27 *Department of Transportation.*]

28 “**(3) If the Certification Office for Business Inclusion and Diversity denies a certification**  
29 **as, or decertifies, a disadvantaged business enterprise, an affected business enterprise may**  
30 **appeal directly to the United States Department of Transportation.**

31 “(4) If the [*department*] **Certification Office for Business Inclusion and Diversity** denies, re-  
32 vokes or refuses to renew a [*business enterprise’s*] **business’s** certification as a [*minority, women or*  
33 *emerging small business enterprise*] **minority-owned business, a woman-owned business, a busi-**  
34 **ness that a service-disabled veteran owns or an emerging small business**, the business [*enter-*  
35 *prise*] may request a contested case hearing as provided in ORS chapter 183.

36 “(5) The Oregon Business Development Department, **through the Certification Office for**  
37 **Business Inclusion and Diversity**, is the sole agency [*authorized to*] **that may** certify enterprises  
38 [*as disadvantaged, minority, women or emerging small business enterprises*] **and businesses as dis-**  
39 **advantaged business enterprises, minority-owned businesses, woman-owned businesses,**  
40 **businesses that service-disabled veterans own and emerging small businesses** that are eligible  
41 to perform public contracts in this state.

42 “(6) The Oregon Business Development Department by rule may establish a fee not to exceed  
43 \$100 for a copy of the list [*of certified disadvantaged, minority, women and emerging small business*  
44 *enterprises*] **described in subsection (2) of this section** and may assess [*state*] **contracting** agen-  
45 cies for services under ORS 200.005 to 200.075.

1 “(7) The Department of Transportation may collect a fee, not to exceed \$200, from a bidder **or**  
2 **proposer at the time the bidder or proposer prequalifies to perform public contracts** [*upon*  
3 *bidder prequalifications*] to cover the costs of the Oregon Business Development Department in ad-  
4 ministering ORS 200.005 to 200.075. The Department of Transportation shall transfer [*the*] fees **that**  
5 **the Department of Transportation collects under this subsection** to the credit of the account  
6 established under subsection (8) of this section.

7 “(8) The Oregon Business Development Department shall establish a special account in which  
8 to deposit fees and assessments. The special account is continuously appropriated to the **Oregon**  
9 **Business Development** Department to meet the **Oregon Business Development** Department’s ex-  
10 penses in administering ORS 200.005 to 200.075.

11 “**SECTION 6.** ORS 200.065, as amended by section 2, chapter 148, Oregon Laws 2015 (Enrolled  
12 Senate Bill 584), is amended to read:

13 “200.065. (1) A person may not fraudulently obtain or retain, attempt to **fraudulently** obtain or  
14 retain or aid another person [*to*] **in** fraudulently [*obtain or retain or attempt to*] **obtaining or re-**  
15 **taining or attempting to fraudulently** obtain or retain certification as a [*disadvantaged, minority,*  
16 *women or emerging small business enterprise*] **disadvantaged business enterprise, a minority-**  
17 **owned business, a woman-owned business, a business that a service-disabled veteran owns**  
18 **or an emerging small business.**

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

22 “(3) An affected [*public*] contracting agency may withhold payment, may suspend or terminate  
23 a public contract and may impose on any person a civil penalty [*not to*] **that does not** exceed 10  
24 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation of sub-  
25 section (1) or (2) of this section. **The person shall pay the penalty to the affected contracting**  
26 **agency. If the affected contracting agency does not impose a civil penalty on the person un-**  
27 **der this subsection, the Oregon Business Development Department may independently im-**  
28 **pose a civil penalty that does not exceed \$5,000 for each violation of subsection (1) or (2) of**  
29 **this section. The person shall pay a penalty that the department imposes to the Certification**  
30 **Office for Business Inclusion and Diversity.**

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

42 “(5) The department or an affected [*public*] contracting agency may disqualify **from submitting**  
43 **a bid or proposal or receiving an award of a public contract, for a period of not more than**  
44 **three years**, any person that under oath during the course of an investigation admits to violating  
45 subsection (1) or (2) of this section[,] or that the department or the affected [*public*] contracting

1 agency finds to have violated subsection (1) or (2) of this section[, *from submitting a bid or proposal*  
2 *for, or receiving an award of, a public contract for a period of not more than three years*]. Any  
3 [*public*] contracting agency that has notice of the finding of the fraudulent certification may also  
4 disqualify the person from bidding on or participating in any public contract.

5 “**SECTION 7.** ORS 200.075, as amended by section 3, chapter 148, Oregon Laws 2015 (Enrolled  
6 Senate Bill 584), is amended to read:

7 “200.075. (1) An affected [*public*] contracting agency shall suspend any bidder’s, proposer’s,  
8 contractor’s or subcontractor’s right to submit a bid or proposal for, or receive an award of, a public  
9 contract in the future if the bidder, proposer, contractor or subcontractor knowingly commits any  
10 of the acts listed in [*paragraphs (a) to (d) of*] this subsection. The affected [*public*] contracting  
11 agency shall suspend the right only after providing notice and opportunity for hearing in a manner  
12 that the affected [*public*] contracting agency provides by rule. The affected [*public*] contracting  
13 agency shall specify a time for the suspension that is up to one year for a first violation, up to three  
14 years for a second violation and up to five years for a third violation. Each violation must remain  
15 on record for five years. After five years the affected [*public*] contracting agency may not consider  
16 the violation in reviewing future violations. A bidder, proposer, contractor or subcontractor may  
17 not:

18 “[*(a) Enter into any agreement to represent that a disadvantaged, minority, women or emerging*  
19 *small business enterprise certified pursuant to ORS 200.055 will perform a public contract or subcon-*  
20 *tract or supply material under a public improvement contract without the knowledge and consent of the*  
21 *disadvantaged, minority, women or emerging small business enterprise.*]

22 “**(a) Enter into any agreement to represent that a disadvantaged business enterprise, a**  
23 **minority-owned business, a woman-owned business, a business that a service-disabled vet-**  
24 **eran owns or an emerging small business certified under ORS 200.055 will perform work or**  
25 **supply materials under a public contract without the knowledge and consent of the disad-**  
26 **vantaged business enterprise, minority-owned business, woman-owned business, business**  
27 **that a service-disabled veteran owns or emerging small business.**

28 “(b) Exercise or permit another bidder, proposer, contractor or subcontractor to exercise man-  
29 agement and decision making control over the internal operations of a [*certified disadvantaged, mi-*  
30 *nority, women or emerging small business enterprise*] **disadvantaged business enterprise, a**  
31 **minority-owned business, a woman-owned business, a business that a service-disabled vet-**  
32 **eran owns or an emerging small business**, other than the bidder’s, proposer’s, contractor’s or  
33 subcontractor’s own [*business*] enterprise **or business**. As used in this paragraph, ‘internal oper-  
34 ations’ does not include normal scheduling, coordination, execution or performance as a subcon-  
35 tractor on a public contract.

36 “(c) Use a [*disadvantaged, minority, women or emerging small business enterprise*] **disadvantaged**  
37 **business enterprise, a minority-owned business, a woman-owned business, a business that a**  
38 **service-disabled veteran owns or an emerging small business** to perform a public contract or  
39 subcontract or to supply material under a public [*improvement*] contract to meet an established goal  
40 or requirement if the [*disadvantaged, minority, women or emerging small business enterprise*] **disad-**  
41 **vantaged business enterprise, minority-owned business, woman-owned business, business**  
42 **that a service-disabled veteran owns or emerging small business** does not perform a commer-  
43 cially useful function in carrying out responsibilities and obligations under the **public** contract.

44 “(d) Fail to perform a commercially useful function in performing a public contract or subcon-  
45 tract or in supplying material to a contractor or subcontractor that is performing a public contract

1 **or subcontract** if the bidder, proposer, contractor or subcontractor is presented as a certified  
2 [*disadvantaged, minority, women or emerging small business enterprise*] **disadvantaged business**  
3 **enterprise, minority-owned business, woman-owned business, business that a service-disabled**  
4 **veteran owns or emerging small business** to meet an established goal or requirement.

5 “(2) The [*Oregon Business Development Department*] **Certification Office for Business Inclu-**  
6 **sion and Diversity** shall revoke [*a business*] **an** enterprise’s **or a business’s** certification under  
7 ORS 200.055 as a [*disadvantaged, minority, women or emerging small business enterprise, if*] **disad-**  
8 **vantaged business enterprise, a minority-owned business, a woman-owned business, a busi-**  
9 **ness that a service-disabled veteran owns or an emerging small business if**, after conducting  
10 an investigation in a manner similar to the manner provided in ORS 200.065 (4) for investigating a  
11 violation of ORS 200.065 (1) or (2), the **Oregon Business Development** Department finds that the  
12 [*business*] enterprise **or business** allows or commits any of the acts listed in [*paragraphs (a) to (c)*  
13 *of*] this subsection. A [*disadvantaged, minority, women or emerging small business enterprise*] **disad-**  
14 **vantaged business enterprise, a minority-owned business, a woman-owned business, a busi-**  
15 **ness that a service-disabled veteran owns or an emerging small business** may not:

16 “(a) Use the [*business*] enterprise’s **or business’s** name to meet a [*disadvantaged, minority,*  
17 *women or emerging small business enterprise*] goal or requirement [*on*] **for disadvantaged business**  
18 **enterprises, minority-owned businesses, woman-owned businesses, businesses that service-**  
19 **disabled veterans own or emerging small businesses to participate in** a public contract or  
20 subcontract if the [*business*] enterprise **or business** does not in fact intend to or does not actually  
21 perform [*the*] work under the public contract or subcontract or does not intend to or does not pur-  
22 chase and supply material under a public contract or subcontract to supply material.

23 “(b) Use personnel of an uncertified [*business*] enterprise **or business** to operate, manage or  
24 otherwise control the [*disadvantaged, minority, women or emerging small business enterprise*] **disad-**  
25 **vantaged business enterprise, minority-owned business, woman-owned business, business**  
26 **that a service-disabled veteran owns or emerging small business.**

27 “(c) Exhibit a pattern of failing to perform a commercially useful function in performing a public  
28 contract or subcontract or supplying material to a contractor or subcontractor on a public contract  
29 if the [*business*] enterprise **or business** is represented as a [*certified disadvantaged, minority, women*  
30 *or emerging small business enterprise to meet*] **disadvantaged business enterprise, a minority-**  
31 **owned business, a woman-owned business, a business that a service-disabled veteran owns**  
32 **or an emerging small business certified under ORS 200.055 for the purpose of meeting** an es-  
33 tablished goal or requirement.

34 “(3)(a) An affected [*public*] contracting agency shall notify the department if the affected  
35 [*public*] contracting agency investigates a [*disadvantaged, minority, women or emerging small busi-*  
36 *ness enterprise*] **disadvantaged business enterprise, a minority-owned business, a woman-owned**  
37 **business, a business that a service-disabled veteran owns or an emerging small business** for  
38 failing to perform a commercially useful function.

39 “(b) The department may conduct an independent investigation of a [*disadvantaged, minority,*  
40 *women or emerging small business enterprise*] **disadvantaged business enterprise, a minority-**  
41 **owned business, a woman-owned business, a business that a service-disabled veteran owns**  
42 **or an emerging small business** for exhibiting a pattern of failing to perform a commercially useful  
43 function in response to notifications from one or more affected [*public*] contracting agencies under  
44 paragraph (a) of this subsection.

45 “(4)[*(a) For the purpose of*] **As used in** this section, ‘commercially useful function’:

1 “(a) Means a function or service:

2 “(A) That the [*business*] enterprise **or business** actually performs;

3 “(B) For which [*there is*] a demand **exists** in the marketplace; and

4 “(C) For which the [*business*] enterprise **or business** receives payment that is proportionate to  
5 the work that the [*business*] enterprise **or business** performs or that conforms with industry stan-  
6 dards.

7 “(b) [*Commercially useful function*] Does not include acting as a broker to provide for others  
8 to perform work.”.

9 On page 27, after line 37, insert:

10 “**SECTION 25. If House Bill 2716 becomes law, sections 3 (amending ORS 200.065), 6**  
11 **(amending ORS 200.065), 7, 8, 9 and 10, chapter \_\_, Oregon Laws 2015 (Enrolled House Bill**  
12 **2716), are repealed.**

13 “**SECTION 26.** If House Bill 2716 becomes law, section 2, chapter \_\_, Oregon Laws 2015 (En-  
14 rolled House Bill 2716), is amended to read:

15 “**Sec. 2.** (1) A contracting agency that under ORS 279A.105 awards a public contract to a re-  
16 sponsible bidder, as defined in ORS 200.005, that has made good faith efforts, as described in ORS  
17 200.045 (3), or that awards a public contract in the course of carrying out an affirmative action goal,  
18 policy or program under ORS 279A.100 shall:

19 “(a) Provide as a material condition of the public contract that a contractor remain certified  
20 as a [*disadvantaged, minority, women*] **disadvantaged business enterprise, minority-owned busi-**  
21 **ness, woman-owned business, business that a service-disabled veteran owns** or emerging small  
22 business [*enterprise*] under ORS 200.055 for the entire term of the public contract, if the contracting  
23 agency awarded the public contract, in whole or in part, on the basis of the contractor’s certifica-  
24 tion.

25 “(b) Require a contractor to provide in the contractor’s subcontracts that a subcontractor re-  
26 main certified as a [*disadvantaged, minority, women*] **disadvantaged business enterprise,**  
27 **minority-owned business, woman-owned business, business that a service-disabled veteran**  
28 **owns** or emerging small business [*enterprise*] under ORS 200.055 for the entire term of the subcon-  
29 tract, if the contractor awards the subcontract, in whole or in part, on the basis of the  
30 subcontractor’s certification.

31 “(c) Verify the contractor’s or subcontractor’s compliance with the requirements set forth in  
32 paragraphs (a) and (b) of this subsection.

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

35 “(2)(a) If a contracting agency determines at any time during the term of a public contract that  
36 a contractor to which the contracting agency awarded the public contract on the basis described in  
37 subsection (1) of this section, or a subcontractor to which the contractor awarded a subcontract in  
38 connection with the public contract on the basis described in subsection (1) of this section, is no  
39 longer certified, the contracting agency may:

40 “(A) Terminate the public contract;

41 “(B) Require the contractor to terminate the subcontract; or

42 “(C) Exercise any of the remedies for breach of contract that are reserved in the public con-  
43 tract.

44 “(b) The actions a contracting agency may take under paragraph (a) of this subsection are in  
45 addition to and not in lieu of any other action the Oregon Business Development Department may

1 take with respect to the contractor or subcontractor under ORS 200.065.

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

7 In line 38, delete “25” and insert “27”.

8 In line 45, delete “26” and insert “28”.

9 On page 28, delete lines 7 through 14 and insert:

10 **“SECTION 29. The amendments to ORS 184.404, 200.005, 200.025, 200.035, 200.045, 200.055,**  
11 **200.065, 200.075, 200.090, 200.110, 200.120, 279A.105, 279A.110, 279A.142, 279C.110, 279C.836,**  
12 **285B.740, 286A.615, 293.796, 351.070, 353.130 and 470.560 and section 18, chapter 4, Oregon Laws**  
13 **2013, by sections 1 to 23 of this 2015 Act and the repeal of ORS 200.100 by section 24 of this**  
14 **2015 Act apply to:**

15 **“(1) Public contracts that a contracting agency advertises or otherwise solicits or, if the**  
16 **contracting agency does not advertise or solicit the public contract, to public contracts into**  
17 **which the contracting agency enters on or after the operative date specified in section 30 of**  
18 **this 2015 Act;**

19 **“(2) Decisions that the Oregon Business Development Department makes on and after**  
20 **the operative date specified in section 30 of this 2015 Act to approve, deny, revoke or refuse**  
21 **to renew a certification as a disadvantaged business enterprise, a minority-owned business,**  
22 **a woman-owned business, a business that a service-disabled veteran owns or an emerging**  
23 **small business;**

24 **“(3) Investigations that the department or a contracting agency conducts on or after the**  
25 **operative date specified in section 30 of this 2015 Act; and**

26 **“(4) A contracting agency’s decision on or after the operative date specified in section**  
27 **30 of this 2015 Act to suspend an enterprise’s or business’s right to submit a bid or proposal**  
28 **for a public contract.”.**

29 In line 15, delete “28” and insert “30”.

30 After line 30, insert:

31 **“SECTION 31. If House Bill 2716 becomes law, section 4, chapter \_\_\_, Oregon Laws 2015 (En-**  
32 **rolled House Bill 2716), is amended to read:**

33 **“Sec. 4. Section 2 [of this 2015 Act and the amendments to ORS 200.065 by section 3 of this 2015**  
34 **Act apply], chapter \_\_\_, Oregon Laws 2015 (Enrolled House Bill 2716), applies to public contracts**  
35 **that a contracting agency advertises or otherwise solicits or, if the contracting agency does not**  
36 **advertise or otherwise solicit the public contract, to public contracts into which the [public] con-**  
37 **tracting agency enters on or after the operative date specified in section 5 [of this 2015 Act],**  
38 **chapter \_\_\_, Oregon Laws 2015 (Enrolled House Bill 2716).**

39 **“SECTION 32. If House Bill 2716 becomes law, section 5, chapter \_\_\_, Oregon Laws 2015 (En-**  
40 **rolled House Bill 2716), is amended to read:**

41 **“Sec. 5. (1) Section 2 [of this 2015 Act and the amendments to ORS 200.065 by section 3 of this**  
42 **2015 Act become], chapter \_\_\_, Oregon Laws 2015 (Enrolled House Bill 2716), becomes operative**  
43 **on January 1, 2016.**

44 **“(2) The Director of the Oregon Business Development Department, the Director of the Oregon**  
45 **Department of Administrative Services, the Director of Transportation, the Attorney General and**

1 a contracting agency that adopts rules under ORS 279A.065 may take any action before the opera-  
2 tive date specified in subsection (1) of this section that is necessary to enable the director, the At-  
3 torney General or the contracting agency to exercise, on and after the operative date specified in  
4 subsection (1) of this section, all of the duties, functions and powers conferred on the director, the  
5 Attorney General or the contracting agency by section 2 [*of this 2015 Act and the amendments to*  
6 *ORS 200.065 by section 3 of this 2015 Act*], **chapter \_\_, Oregon Laws 2015 (Enrolled House Bill**  
7 **2716)**.”.

8 In line 31, delete “29” and insert “33”.

9