

**PROPOSED AMENDMENTS TO
HOUSE BILL 3303**

1 On page 1 of the printed bill, delete lines 8 through 28.

2 Delete pages 2 and 3.

3 On page 4, delete lines 1 through 31 and insert:

4 **“SECTION 1.** ORS 200.005 is amended to read:

5 “200.005. As used in ORS 200.005 to 200.075, **200.110, 200.120**, 200.160 to
6 200.200 and 279A.105:

7 **“(1) ‘Contracting agency’ has the meaning given that term in ORS**
8 **279A.010.**

9 **“(2) ‘Contractor’ means a person that agrees to legally enforceable**
10 **terms and conditions under which the person performs services or**
11 **supplies materials in accordance with a contracting agency’s specifi-**
12 **cations and for the purpose of accomplishing results the contracting**
13 **agency intends, while retaining control of the means, methods and**
14 **manner of performing the services or supplying the materials.**

15 **“[(1)] (3) ‘Disadvantaged business enterprise’ means a small business**
16 **concern:**

17 **“(a) [That is] At least 51 percent [owned by] of which one or more so-**
18 **cially and economically disadvantaged individuals own; or**

19 **“[(b) For which, in the case of a corporation, at least 51 percent of the stock**
20 **is owned by one or more socially and economically disadvantaged individuals,**
21 **and of which the management and daily business operations are controlled by**
22 **one or more of the socially and economically disadvantaged individuals who**

1 *own it.]*

2 “(b) **At least 51 percent of the stock of which, if the small business**
3 **concern is a corporation, is owned by one or more economically dis-**
4 **advantaged individuals who also control and manage the daily business**
5 **operations of the small business concern.**

6 “[2)] (4) ‘Economically disadvantaged individual’ means a socially disad-
7 vantaged individual [*whose ability to compete in the free enterprise system has*
8 *been impaired due to*] **for whom** diminished capital and credit opportunities
9 **have impaired the individual’s ability to compete in the free enterprise**
10 **system** as compared to other individuals in the same business area who are
11 not socially disadvantaged individuals.

12 “[3)] (5) ‘Emerging small business’ means an independent business **con-**
13 **cern that:**

14 “(a) [*With its*] **Has a** principal place of business located in this state;

15 “(b) [*That*] Qualifies as a tier one firm or a tier two firm;

16 “(c) [*That*] Is properly licensed and legally registered in this state; and

17 “(d) [*That*] Is not a subsidiary or parent company [*belonging*] **that be-**
18 **longs** to a group of firms that [*are owned or controlled by*] the same indi-
19 viduals **own or control** if, in the aggregate, the group of firms does not
20 qualify as a tier one firm or a tier two firm.

21 “[4)] (6) ‘Minority individual’ means [*a person*] **an individual** who is a
22 citizen or lawful permanent resident of the United States[, *who*] **and** is:

23 “(a) [*Black*] **African American**, having origins in any of the [*black racial*
24 *groups of*] **original peoples of** Africa;

25 “(b) Hispanic, having Mexican, Puerto Rican, Cuban, Central or South
26 American or other Spanish culture or origin, regardless of race;

27 “(c) Asian American, having origins in any of the original peoples of [*the*
28 *Far*] East **Asia**, Southeast Asia, the Indian subcontinent or the Pacific Is-
29 lands;

30 “(d) Portuguese, having Portuguese, Brazilian or other Portuguese culture

1 or origin, regardless of race;

2 “(e) American Indian or Alaskan Native, having origins in any of the
3 original peoples of North America; or

4 “(f) [A] **Any other individual or** member of another group[, *or another*
5 *individual who*] **that the Certification Office for Business Inclusion and**
6 **Diversity determines** is socially and economically disadvantaged [*as deter-*
7 *mined by the Advocate for Minority, Women and Emerging Small Business*].

8 “[*(5) ‘Minority or women business enterprise’ means a small business con-*
9 *cern.*:]

10 “[*(a) That is at least 51 percent owned by one or more minority individuals*
11 *or women; or*]

12 “[*(b) For which, in the case of a corporation, at least 51 percent of the stock*
13 *is owned by one or more individuals who are minority individuals or women,*
14 *and of which the management and daily business operations are controlled by*
15 *one or more of the minority individuals or women who own it.*]

16 “[*(6) ‘Responsible bidder’ means a bidder who, as determined by the Ad-*
17 *vocate for Minority, Women and Emerging Small Business, has undertaken*
18 *both a policy and practice of actively pursuing participation by minority or*
19 *women business enterprises in all bids, both public and private, submitted by*
20 *the bidder.*]

21 “(7) **‘Minority-owned business,’ ‘woman-owned business’ or ‘busi-**
22 **ness that a service-disabled veteran owns’ means, as appropriate, a**
23 **small business concern:**

24 “(a) **At least 51 percent of which one or more minority individuals,**
25 **women or service-disabled veterans own and control; or**

26 “(b) **At least 51 percent of the stock of which, if the small business**
27 **concern is a corporation, is owned by one or more minority individ-**
28 **uals, women or service-disabled veterans who also control and manage**
29 **the daily business operations of the small business concern.**

30 “(8) **‘Responsible bidder or proposer’ means a bidder or proposer**

1 **that the Governor’s Policy Advisor for Economic and Business Equity**
2 **determines has undertaken both a policy and practice of actively pur-**
3 **suing participation by minority-owned businesses, woman-owned**
4 **businesses, businesses that service-disabled veterans own or emerging**
5 **small businesses in all of the bidder’s or proposer’s bids or proposals,**
6 **both public and private.**

7 **“(9) ‘Service-disabled veteran’ means a veteran who has a United**
8 **States Department of Veterans Affairs disability rating of at least zero**
9 **percent as a result of an injury or illness that the veteran incurred,**
10 **or that was aggravated, during active military service and who re-**
11 **ceived a discharge or release under other than dishonorable condi-**
12 **tions.**

13 **“[(7)] (10) ‘Small business concern’ means a small business, as defined by**
14 **the United States Small Business Administration in 13 C.F.R. part 121 [and**
15 **in effect on January 1, 2006.], as in effect on the operative date specified**
16 **in section 28 of this 2015 Act.**

17 **“[(8)] (11) ‘Socially disadvantaged individual’ means an individual who**
18 **has been subjected to racial or ethnic prejudice or cultural bias, without**
19 **regard to individual qualities, because of the individual’s identity as a**
20 **member of a group.**

21 **“(12) ‘Subcontractor’ means a contractor that does not have a direct**
22 **contractual relationship with a contracting agency.**

23 **“[(9)] (13) ‘Tier one firm’ means a business that employs [fewer than 20]**
24 **not more than 19 full-time equivalent employees and has average annual**
25 **gross receipts for the last three years that do not exceed [\$1.5 million for a**
26 **business performing construction, as defined in ORS 446.310, or \$600,000 for**
27 **a business not performing construction] an amount that the Oregon Busi-**
28 **ness Development Department specifies by rule.**

29 **“[(10)] (14) ‘Tier two firm’ means a business that employs [fewer than 30]**
30 **not more than 29 full-time equivalent employees and has average annual**

1 gross receipts for the last three years that do not exceed [*\$3 million for a*
2 *business performing construction, as defined in ORS 446.310, or \$1 million for*
3 *a business not performing construction*] **an amount that the Oregon Busi-**
4 **ness Development Department specifies by rule.**

5 “[*(11)*] **(15)** ‘Woman’ means a person of the female [*sex*] **gender** who is a
6 citizen or lawful permanent resident of the United States.

7 **“SECTION 2.** ORS 200.025 is amended to read:

8 “200.025. (1) [*There is created, in the Office of the Governor, the Advocate*
9 *for Minority, Women and Emerging Small Business who shall be appointed*
10 *by the Governor.*] **The Governor shall appoint a Governor’s Policy Advi-**
11 **sor for Economic and Business Equity within the office of the Gover-**
12 **nor.**

13 “(2) [*There is created in the Oregon Business Development Department the*
14 *Office for Minority, Women and Emerging Small Business, the employees of*
15 *which shall be appointed by*] **The Certification Office for Business Inclu-**
16 **sion and Diversity is created within the Oregon Business Development**
17 **Department, and the Director of the Oregon Business Development De-**
18 **partment shall appoint the employees of the office.**

19 “[*(3)(a) The director may prescribe the duties and assignments of all offi-*
20 *cers and employees of the Office for Minority, Women and Emerging Small*
21 *Business. The director shall establish the compensation of all officers and*
22 *employees of the office.*]

23 “[*(b) The officers and employees of the office shall be allowed reimburse-*
24 *ment for reasonable and necessary travel and other expenses incurred in the*
25 *performance of their duties.*]

26 “[*(4)*] **(3)** The [*Advocate for Minority, Women and Emerging Small Busi-*
27 *ness*] **Governor’s Policy Advisor for Economic and Business Equity**
28 **shall:**

29 “(a) Advise the Governor and the director on activities and initiatives
30 that may promote the economic integration of minorities, women, **service-**

1 **disabled veterans** and emerging small businesses into the business sector;

2 “[(b) Prepare an annual report to the Governor, director and Legislative
3 Assembly on the status of minorities and women in the marketplace, accom-
4 plishments and resolutions of issues of concern to minority and women’s en-
5 terprises and recommendations for executive and legislative actions; and]

6 “(b) Prepare an annual report to the Governor, director and Legis-
7 lative Assembly on disadvantaged business enterprises, minority-
8 owned businesses, woman-owned businesses, businesses that
9 service-disabled veterans own and emerging small businesses that ex-
10 amines:

11 “(A) The status of the enterprises and businesses in the market-
12 place;

13 “(B) Accomplishments and resolutions that have occurred with re-
14 spect to issues that concern the enterprises and businesses; and

15 “(C) Recommendations for executive and legislative action; and

16 “(c) Carry out other duties that [may be assigned by] the Governor **may**
17 **assign**.

18 “[5] (4) The [Office for Minority, Women and Emerging Small Business]
19 **Certification Office for Business Inclusion and Diversity** shall:

20 “(a) Provide information to [minority, women and] **minority-owned**
21 **businesses, woman-owned businesses, businesses that service-disabled**
22 **veterans own and** emerging small businesses;

23 “(b) Assist in [the development and implementation of] **developing and**
24 **implementing** an aggressive strategy for this state, based on research and
25 monitoring, that encourages [participation of] minorities, women, **service-**
26 **disabled veterans** and emerging small businesses **to participate** in the
27 state’s economy;

28 “(c) [Make recommendations to the director on the research, development
29 and implementation of the plan for the involvement of disadvantaged and mi-
30 nority groups and emerging small businesses in all state programs] **Recom-**

1 **mend to the director methods for researching, developing and**
2 **implementing a plan to involve minority-owned businesses, woman-**
3 **owned businesses, businesses that service-disabled veterans own and**
4 **emerging small businesses in all state programs;**

5 “(d) Maintain, **in consultation with the State Board of Higher Edu-**
6 **cation, the Department of Transportation and other entities,** an Oregon
7 Opportunity Register and Clearinghouse for information [*on public agency*
8 *and other contract solicitations for professional services, supplies and services*
9 *and other bid opportunities, in consultation with the State Board of Higher*
10 *Education, the Department of Transportation and other entities] **about con-**
11 **tracting agency solicitations and other opportunities to submit bids**
12 **or proposals to contracting agencies to provide goods, supplies and**
13 **services, including professional services;***

14 “[*e*] Monitor the certification and compliance program for disadvantaged,
15 minority, women and emerging small businesses under ORS 200.055;]

16 “(e) **Monitor the certification and compliance program under ORS**
17 **200.055 for:**

18 “(A) **Disadvantaged business enterprises;**

19 “(B) **Minority-owned businesses, woman-owned businesses and**
20 **businesses that service-disabled veterans own; and**

21 “(C) **Emerging small businesses;**

22 “(f) Investigate complaints and possible abuses of the certification pro-
23 gram; and

24 “(g) Assist in [*the promotion and coordination of*] **promoting and coor-**
25 **dinating** plans, programs and operations of state government that
26 [*strengthen minority and women participation*] **help minority-owned busi-**
27 **nesses, woman-owned businesses, businesses that service-disabled vet-**
28 **erans own and emerging small businesses to participate** in the economic
29 life of this state.”.

30 In line 40, delete “\$5,000” and insert “\$10,000”.

1 On page 5, line 1, delete “(1)”.

2 In lines 4 through 13, delete the boldfaced material.

3 Delete lines 19 through 23 and insert:

4 “(1) As used in this section, ‘required participant’ means:

5 “(a) A disadvantaged business enterprise;

6 “(b) A minority-owned business, a woman-owned business or a business

7 that a service-disabled veteran owns; or

8 “(c) An emerging small business.

9 “(2) If a public contract requires participation from a required participant

10 and a bidder or proposer for the public contract is not a required participant,

11 a contracting agency may award the public contract to the bidder or

12 proposer only if the bidder or proposer:

13 “(a) Demonstrates that the bidder or proposer is responsible; and

14 “(b) Has made good faith efforts to encourage required participants to

15 participate in the public contract.

16 “(3) A contracting agency may rebuttably presume that for the purposes

17 of this section a bidder or proposer is responsible and has made good faith

18 efforts to encourage required participants to participate in the public con-

19 tract if the bidder or proposer takes all of these actions:”.

20 In line 33, delete “the enterprises and businesses” and insert “required

21 participants”.

22 In line 39, delete “and” and insert a comma.

23 In line 40, before the semicolon insert “and emerging small businesses”.

24 On page 6, line 1, delete “Oregon Business Development Department” and

25 insert “Certification Office for Business Inclusion and Diversity”.

26 On page 7, line 28, delete “(3)” and insert “(4)”.

27 Delete lines 30 and 31 and insert “required participants to participate”.

28 In line 33, delete “(2)” and insert “(3)”.

29 In line 36, delete “(1)”.

30 In lines 40 through 45, delete the boldfaced material.

1 On page 8, delete lines 1 through 5 and insert:

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

4 “(A) A disadvantaged business enterprise;

5 “(B) A minority-owned business;

6 “(C) A woman-owned business;

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

8 “(E) An emerging small business.

9 “(b) An enterprise or business shall submit a separate application for each
10 category of certification the enterprise or business seeks under paragraph (a)
11 of this subsection.

12 “(c) If an enterprise or business qualifies under ORS 200.005 to 200.075
13 and if the office approves an application from the enterprise or business, the
14 office shall certify the enterprise or business under one or more of the cat-
15 egories described in paragraph (a) of this subsection.

16 “(d) For purposes of awarding a public contract, a contracting agency
17 shall recognize an enterprise or business with a certification from the office
18 as the category of enterprise or business described in the certification and
19 as having met the requirements set forth in ORS 200.005 to 200.075. For
20 purposes of awarding a subcontract in connection with a public contract, a
21 contractor may recognize a subcontractor with a certification from the office
22 as the category of enterprise or business described in the certification and
23 as having met the requirements set forth in ORS 200.005 to 200.075.”.

24 In line 16, delete “department” and insert “Certification Office for Busi-
25 ness Inclusion and Diversity”.

26 Delete lines 17 through 20 and insert:

27 “(3) If the Certification Office for Business Inclusion and Diversity denies
28 a certification as, or decertifies, a disadvantaged business enterprise, an af-
29 fected business enterprise may appeal directly to the United States Depart-
30 ment of Transportation.”.

1 In line 22, delete “department” and insert “Certification Office for Busi-
2 ness Inclusion and Diversity”.

3 In line 26, before “is” insert “, through the Certification Office for Busi-
4 ness Inclusion and Diversity,”.

5 On page 9, line 13, delete “Office for”.

6 In line 14, delete “Economic and Business Equity” and insert “Certifica-
7 tion Office for Business Inclusion and Diversity”.

8 On page 10, line 31, delete “Oregon Business Development Department”
9 and insert “Certification Office for Business Inclusion and Diversity”.

10 In line 36, delete “department” and insert “Oregon Business Development
11 Department”.

12 In line 38, delete “department” and insert “office”.

13 On page 12, line 11, delete “department” and insert “Certification Office
14 for Business Inclusion and Diversity”.

15 In line 33, delete “23” and insert “26”.

16 On page 16, line 41, restore “is awarded” and delete “enters into”.

17 On page 17, delete lines 21 through 23 and insert:

18 “(5) If a contracting agency awards a public contract to a contractor and
19 the contractor violates the contractor’s certification under subsection (4) of
20 this section, the contracting agency may regard the violation as a breach of
21 contract that permits the contracting agency to:”.

22 On page 22, delete lines 2 through 4 and insert:

23 “(c) Investments in start-up and expanding businesses, in minority-owned
24 businesses, woman-owned businesses and businesses that service-disabled
25 veterans own and in emerging growth businesses can produce substantial
26 positive returns for long-term investors.”.

27 Delete lines 14 and 15 and insert:

28 “(b) ‘Minority-owned business,’ ‘woman-owned business’ and ‘business that
29 a service-disabled veteran owns’ have the meanings given those terms in ORS
30 200.005.”.

1 On page 27, line 7, delete “Office for Economic and Business Equity” and
2 insert “Certification Office for Business Inclusion and Diversity”.

3 In line 10, delete “Office for”.

4 In line 11, delete “Economic and Business Equity” and insert “Certifica-
5 tion Office for Business Inclusion and Diversity”.

6 In line 24, delete “becomes” and insert “become”.

7
