

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

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

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

7 After line 15, insert:

8 “(12) ‘State contracting agency’ has the meaning given that term in ORS
9 279A.010.”.

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

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

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

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

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

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

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

17 In line 13, restore “state”.

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

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

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

1 “200.055. [(1) A business enterprise may apply to the Oregon Business De-
2 velopment Department for certification as a disadvantaged, minority, women
3 or emerging small business enterprise. If the business enterprise is qualified
4 as provided in ORS 200.005 to 200.075 and the department approves the ap-
5 plication, the department shall certify the applicant as a disadvantaged, mi-
6 nority, women or emerging small business enterprise. All public contracting
7 agencies shall treat a business enterprise that receives a certification under
8 this section as a disadvantaged, minority, women or emerging small business
9 enterprise for the purposes of awarding public contracts.]

10 **“(1)(a) An enterprise or business may apply to the Certification Of-
11 fice for Business Inclusion and Diversity for certification as:**

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

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

14 **“(C) A woman-owned business;**

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

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

17 **“(b) An enterprise or business shall submit a separate application
18 for each category of certification the enterprise or business seeks un-
19 der paragraph (a) of this subsection.**

20 **“(c) If an enterprise or business qualifies under ORS 200.005 to
21 200.075 and if the office approves an application from the enterprise
22 or business, the office shall certify the enterprise or business under
23 one or more of the categories described in paragraph (a) of this sub-
24 section.**

25 **“(d) For purposes of awarding a public contract, a contracting
26 agency shall recognize an enterprise or business with a certification
27 from the office as the category of enterprise or business described in
28 the certification and as having met the requirements set forth in ORS
29 200.005 to 200.075. For purposes of awarding a subcontract in con-
30 nection with a public contract, a contractor may recognize a subcon-**

1 **tractor with a certification from the office as the category of**
2 **enterprise or business described in the certification and as having met**
3 **the requirements set forth in ORS 200.005 to 200.075.**

4 “(2) In consultation with the State Board of Higher Education and the
5 Department of Transportation, and with the approval of the [*Advocate for*
6 *Minority, Women and Emerging Small Business*] **Governor’s Policy Advisor**
7 **for Economic and Business Equity**, the Oregon Business Development
8 Department by rule shall adopt a uniform standard form and procedure [*de-*
9 *signed*] to provide complete documentation [*that a business enterprise is cer-*
10 *tified as a disadvantaged, minority, women or emerging small business*
11 *enterprise. The department shall compile and make available upon request a*
12 *list of certified disadvantaged, minority, women or emerging small business*
13 *enterprises.*] **of an enterprise’s or a business’ status as a disadvantaged**
14 **business enterprise, a minority-owned business, a woman-owned busi-**
15 **ness, a business that a service-disabled veteran owns or an emerging**
16 **small business. The department shall compile and make available a list**
17 **of enterprises and businesses that the Certification Office for Business**
18 **Inclusion and Diversity certifies under this section.**

19 “[*(3) If the department denies, revokes or refuses to renew a business*
20 *enterprise’s certification as a disadvantaged business enterprise, the business*
21 *enterprise may appeal directly to the United States Department of Transpor-*
22 *tation.*]

23 “**(3) If the Certification Office for Business Inclusion and Diversity**
24 **denies a certification as, or decertifies, a disadvantaged business en-**
25 **terprise, an affected business enterprise may appeal directly to the**
26 **United States Department of Transportation.**

27 “(4) If the [*department*] **Certification Office for Business Inclusion and**
28 **Diversity** denies, revokes or refuses to renew a [*business enterprise’s*]
29 **business’s** certification as a [*minority, women or emerging small business*
30 *enterprise*] **minority-owned business, a woman-owned business, a busi-**

1 **ness that a service-disabled veteran owns or an emerging small busi-**
2 **ness**, the business [*enterprise*] may request a contested case hearing as
3 provided in ORS chapter 183.

4 “(5) The Oregon Business Development Department, **through the Certi-**
5 **fication Office for Business Inclusion and Diversity**, is the sole agency
6 [*authorized to*] **that may** certify enterprises [*as disadvantaged, minority,*
7 *women or emerging small business enterprises*] **and businesses as disad-**
8 **vantaged business enterprises, minority-owned businesses, woman-**
9 **owned businesses, businesses that service-disabled veterans own and**
10 **emerging small businesses** that are eligible to perform public contracts in
11 this state.

12 “(6) The Oregon Business Development Department by rule may establish
13 a fee not to exceed \$100 for a copy of the list [*of certified disadvantaged,*
14 *minority, women and emerging small business enterprises*] **described in sub-**
15 **section (2) of this section** and may assess [*state*] **contracting** agencies for
16 services under ORS 200.005 to 200.075.

17 “(7) The Department of Transportation may collect a fee, not to exceed
18 \$200, from a bidder **or proposer at the time the bidder or proposer pre-**
19 **qualifies to perform public contracts** [*upon bidder prequalifications*] to
20 cover the costs of the Oregon Business Development Department in admin-
21 istering ORS 200.005 to 200.075. The Department of Transportation shall
22 transfer [*the*] fees **that the Department of Transportation collects under**
23 **this subsection** to the credit of the account established under subsection (8)
24 of this section.

25 “(8) The Oregon Business Development Department shall establish a spe-
26 cial account in which to deposit fees and assessments. The special account
27 is continuously appropriated to the **Oregon Business Development De-**
28 **partment** to meet the **Oregon Business Development** Department’s ex-
29 penses in administering ORS 200.005 to 200.075.

30 **“SECTION 6.** ORS 200.065, as amended by section 2, chapter ___, Oregon

1 Laws 2015 (Enrolled Senate Bill 584), is amended to read:

2 “200.065. (1) A person may not fraudulently obtain or retain, attempt to
3 **fraudulently** obtain or retain or aid another person [*to*] **in** fraudulently
4 [*obtain or retain or attempt to*] **obtaining or retaining or attempting to**
5 **fraudulently** obtain or retain certification as a [*disadvantaged, minority,*
6 *women or emerging small business enterprise*] **disadvantaged business en-**
7 **terprise, a minority-owned business, a woman-owned business, a busi-**
8 **ness that a service-disabled veteran owns or an emerging small**
9 **business.**

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

13 “(3) An affected [*public*] contracting agency may withhold payment, may
14 suspend or terminate a public contract and may impose on any person a civil
15 penalty [*not to*] **that does not** exceed 10 percent of the contract or subcon-
16 tract price or \$5,000, whichever is less, for each violation of subsection (1)
17 or (2) of this section. **The person shall pay the penalty to the affected**
18 **contracting agency. If the affected contracting agency does not impose**
19 **a civil penalty on the person under this subsection, the Oregon Busi-**
20 **ness Development Department may independently impose a civil pen-**
21 **alty that does not exceed \$5,000 for each violation of subsection (1) or**
22 **(2) of this section. The person shall pay a penalty that the department**
23 **imposes to the Certification Office for Business Inclusion and Diver-**
24 **sity.**

25 “(4) The [*Oregon Business Development*] department or an affected
26 [*public*] contracting agency shall investigate [*any complaint that a person has*
27 *violated*] **violations of** subsection (1) or (2) of this section. In investigating
28 a [*complaint*] **violation**, the department or an affected [*public*] contracting
29 agency may require any additional information, administer oaths, take de-
30 positions and issue subpoenas to compel witnesses to attend and [*to*

1 *produce*] **compel the production of** books, papers, records, memoranda or
2 other information necessary to carry out the department's or the affected
3 *[public]* contracting agency's duties. If a person fails to comply with any
4 subpoena **that** the department or the affected *[public]* contracting agency
5 *[issues]* **issued** under this subsection or refuses to testify on any matter on
6 which a person may lawfully be interrogated, the department or the affected
7 *[public]* contracting agency shall follow the procedure provided in ORS
8 183.440 to compel compliance.

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

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

22 “200.075. (1) An affected *[public]* contracting agency shall suspend any
23 bidder's, proposer's, contractor's or subcontractor's right to submit a bid or
24 proposal for, or receive an award of, a public contract in the future if the
25 bidder, proposer, contractor or subcontractor knowingly commits any of the
26 acts listed in *[paragraphs (a) to (d) of]* this subsection. The affected *[public]*
27 contracting agency shall suspend the right only after providing notice and
28 opportunity for hearing in a manner that the affected *[public]* contracting
29 agency provides by rule. The affected *[public]* contracting agency shall
30 specify a time for the suspension that is up to one year for a first violation,

1 up to three years for a second violation and up to five years for a third vi-
2 olation. Each violation must remain on record for five years. After five years
3 the affected [*public*] contracting agency may not consider the violation in
4 reviewing future violations. A bidder, proposer, contractor or subcontractor
5 may not:

6 “[(a) *Enter into any agreement to represent that a disadvantaged, minority,*
7 *women or emerging small business enterprise certified pursuant to ORS*
8 *200.055 will perform a public contract or subcontract or supply material under*
9 *a public improvement contract without the knowledge and consent of the dis-*
10 *advantaged, minority, women or emerging small business enterprise.]*

11 “(a) **Enter into any agreement to represent that a disadvantaged**
12 **business enterprise, a minority-owned business, a woman-owned busi-**
13 **ness, a business that a service-disabled veteran owns or an emerging**
14 **small business certified under ORS 200.055 will perform work or supply**
15 **materials under a public contract without the knowledge and consent**
16 **of the disadvantaged business enterprise, minority-owned business,**
17 **woman-owned business, business that a service-disabled veteran owns**
18 **or emerging small business.**

19 “(b) Exercise or permit another bidder, proposer, contractor or subcon-
20 tractor to exercise management and decision making control over the inter-
21 nal operations of a [*certified disadvantaged, minority, women or emerging*
22 *small business enterprise*] **disadvantaged business enterprise, a**
23 **minority-owned business, a woman-owned business, a business that a**
24 **service-disabled veteran owns or an emerging small business,** other
25 than the bidder’s, proposer’s, contractor’s or subcontractor’s own [*business*]
26 enterprise **or business.** As used in this paragraph, ‘internal operations’ does
27 not include normal scheduling, coordination, execution or performance as a
28 subcontractor on a public contract.

29 “(c) Use a [*disadvantaged, minority, women or emerging small business*
30 *enterprise*] **disadvantaged business enterprise, a minority-owned busi-**

1 **ness, a woman-owned business, a business that a service-disabled vet-**
2 **eran owns or an emerging small business** to perform a public contract
3 or subcontract or to supply material under a public [*improvement*] contract
4 to meet an established goal or requirement if the [*disadvantaged, minority,*
5 *women or emerging small business enterprise*] **disadvantaged business en-**
6 **terprise, minority-owned business, woman-owned business, business**
7 **that a service-disabled veteran owns or emerging small business** does
8 not perform a commercially useful function in carrying out responsibilities
9 and obligations under the **public** contract.

10 “(d) Fail to perform a commercially useful function in performing a public
11 contract or subcontract or in supplying material to a contractor or subcon-
12 tractor that is performing a public contract **or subcontract** if the bidder,
13 proposer, contractor or subcontractor is presented as a certified [*disadvan-*
14 *tagged, minority, women or emerging small business enterprise*] **disadvantaged**
15 **business enterprise, minority-owned business, woman-owned business,**
16 **business that a service-disabled veteran owns or emerging small busi-**
17 **ness** to meet an established goal or requirement.

18 “(2) The [*Oregon Business Development Department*] **Certification Office**
19 **for Business Inclusion and Diversity** shall revoke [*a business*] **an**
20 enterprise’s **or a business’s** certification under ORS 200.055 as a [*disadvan-*
21 *tagged, minority, women or emerging small business enterprise, if*] **disadvan-**
22 **tagged business enterprise, a minority-owned business, a woman-owned**
23 **business, a business that a service-disabled veteran owns or an**
24 **emerging small business if**, after conducting an investigation in a manner
25 similar to the manner provided in ORS 200.065 (4) for investigating a vio-
26 lation of ORS 200.065 (1) or (2), the **Oregon Business Development De-**
27 **partment** finds that the [*business*] enterprise **or business** allows or commits
28 any of the acts listed in [*paragraphs (a) to (c) of*] this subsection. A [*disad-*
29 *vantaged, minority, women or emerging small business enterprise*] **disadvan-**
30 **tagged business enterprise, a minority-owned business, a woman-owned**

1 **business, a business that a service-disabled veteran owns or an**
2 **emerging small business** may not:

3 “(a) Use the [*business*] enterprise’s **or business’s** name to meet a [*disad-*
4 *vantaged, minority, women or emerging small business enterprise*] goal or re-
5 quirement [*on*] **for disadvantaged business enterprises, minority-owned**
6 **businesses, woman-owned businesses, businesses that service-disabled**
7 **veterans own or emerging small businesses to participate in** a public
8 contract or subcontract if the [*business*] enterprise **or business** does not in
9 fact intend to or does not actually perform [*the*] work under the public con-
10 tract or subcontract or does not intend to or does not purchase and supply
11 material under a public contract or subcontract to supply material.

12 “(b) Use personnel of an uncertified [*business*] enterprise **or business** to
13 operate, manage or otherwise control the [*disadvantaged, minority, women*
14 *or emerging small business enterprise*] **disadvantaged business enterprise,**
15 **minority-owned business, woman-owned business, business that a**
16 **service-disabled veteran owns or emerging small business.**

17 “(c) Exhibit a pattern of failing to perform a commercially useful function
18 in performing a public contract or subcontract or supplying material to a
19 contractor or subcontractor on a public contract if the [*business*] enterprise
20 **or business** is represented as a [*certified disadvantaged, minority, women or*
21 *emerging small business enterprise to meet*] **disadvantaged business enter-**
22 **prise, a minority-owned business, a woman-owned business, a business**
23 **that a service-disabled veteran owns or an emerging small business**
24 **certified under ORS 200.055 for the purpose of meeting** an established
25 goal or requirement.

26 “(3)(a) An affected [*public*] contracting agency shall notify the department
27 if the affected [*public*] contracting agency investigates a [*disadvantaged, mi-*
28 *nority, women or emerging small business enterprise*] **disadvantaged busi-**
29 **ness enterprise, a minority-owned business, a woman-owned business,**
30 **a business that a service-disabled veteran owns or an emerging small**

1 **business** for failing to perform a commercially useful function.

2 “(b) The department may conduct an independent investigation of a [*dis-*
3 *advantaged, minority, women or emerging small business enterprise*] **disad-**
4 **vantaged business enterprise, a minority-owned business, a**
5 **woman-owned business, a business that a service-disabled veteran**
6 **owns or an emerging small business** for exhibiting a pattern of failing to
7 perform a commercially useful function in response to notifications from one
8 or more affected [*public*] contracting agencies under paragraph (a) of this
9 subsection.

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

12 “(a) Means a function or service:

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

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

15 “(C) For which the [*business*] enterprise **or business** receives payment
16 that is proportionate to the work that the [*business*] enterprise **or business**
17 performs or that conforms with industry standards.

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

20 On page 27, after line 37, insert:

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

24 “**SECTION 26.** If House Bill 2716 becomes law, section 2, chapter __,
25 Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

26 “**Sec. 2.** (1) A contracting agency that under ORS 279A.105 awards a
27 public contract to a responsible bidder, as defined in ORS 200.005, that has
28 made good faith efforts, as described in ORS 200.045 (3), or that awards a
29 public contract in the course of carrying out an affirmative action goal,
30 policy or program under ORS 279A.100 shall:

1 “(a) Provide as a material condition of the public contract that a con-
2 tractor remain certified as a [*disadvantaged, minority, women*] **disadvan-**
3 **tagged business enterprise, minority-owned business, woman-owned**
4 **business, business that a service-disabled veteran owns** or emerging
5 small business [*enterprise*] under ORS 200.055 for the entire term of the
6 public contract, if the contracting agency awarded the public contract, in
7 whole or in part, on the basis of the contractor’s certification.

8 “(b) Require a contractor to provide in the contractor’s subcontracts that
9 a subcontractor remain certified as a [*disadvantaged, minority, women*] **dis-**
10 **advantaged business enterprise, minority-owned business, woman-**
11 **owned business, business that a service-disabled veteran owns** or
12 emerging small business [*enterprise*] under ORS 200.055 for the entire term
13 of the subcontract, if the contractor awards the subcontract, in whole or in
14 part, on the basis of the subcontractor’s certification.

15 “(c) Verify the contractor’s or subcontractor’s compliance with the re-
16 quirements set forth in paragraphs (a) and (b) of this subsection.

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

20 “(2)(a) If a contracting agency determines at any time during the term of
21 a public contract that a contractor to which the contracting agency awarded
22 the public contract on the basis described in subsection (1) of this section,
23 or a subcontractor to which the contractor awarded a subcontract in con-
24 nection with the public contract on the basis described in subsection (1) of
25 this section, is no longer certified, the contracting agency may:

26 “(A) Terminate the public contract;

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

28 “(C) Exercise any of the remedies for breach of contract that are reserved
29 in the public contract.

30 “(b) The actions a contracting agency may take under paragraph (a) of

1 this subsection are in addition to and not in lieu of any other action the
2 Oregon Business Development Department may take with respect to the
3 contractor or subcontractor under ORS 200.065.

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

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

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

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

14 **“SECTION 29. The amendments to ORS 184.404, 200.005, 200.025,**
15 **200.035, 200.045, 200.055, 200.065, 200.075, 200.090, 200.110, 200.120, 279A.105,**
16 **279A.110, 279A.142, 279C.110, 279C.836, 285B.740, 286A.615, 293.796, 351.070,**
17 **353.130 and 470.560 and section 18, chapter 4, Oregon Laws 2013, by**
18 **sections 1 to 23 of this 2015 Act and the repeal of ORS 200.100 by section**
19 **24 of this 2015 Act apply to:**

20 **“(1) Public contracts that a contracting agency advertises or oth-**
21 **erwise solicits or, if the contracting agency does not advertise or so-**
22 **licit the public contract, to public contracts into which the contracting**
23 **agency enters on or after the operative date specified in section 30 of**
24 **this 2015 Act.**

25 **“(2) Decisions that the Oregon Business Development Department**
26 **makes on and after the operative date specified in section 30 of this**
27 **2015 Act to approve, deny, revoke or refuse to renew a certification**
28 **as a disadvantaged business enterprise, a minority-owned business, a**
29 **woman-owned business, a business that a service-disabled veteran**
30 **owns or an emerging small business;**

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

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

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

8 After line 30, insert:

9 “**SECTION 31.** If House Bill 2716 becomes law, section 4, chapter ____,
10 Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

11 “**Sec. 4.** Section 2 [*of this 2015 Act and the amendments to ORS 200.065*
12 *by section 3 of this 2015 Act apply*], **chapter ____, Oregon Laws 2015 (En-**
13 **rolled House Bill 2716), applies** to public contracts that a contracting
14 agency advertises or otherwise solicits or, if the contracting agency does not
15 advertise or otherwise solicit the public contract, to public contracts into
16 which the [*public*] contracting agency enters on or after the operative date
17 specified in section 5 [*of this 2015 Act*], **chapter ____, Oregon Laws 2015**
18 **(Enrolled House Bill 2716).**

19 “**SECTION 32.** If House Bill 2716 becomes law, section 5, chapter ____,
20 Oregon Laws 2015 (Enrolled House Bill 2716), is amended to read:

21 “**Sec. 5.** (1) Section 2 [*of this 2015 Act and the amendments to ORS 200.065*
22 *by section 3 of this 2015 Act become*], **chapter ____, Oregon Laws 2015 (En-**
23 **rolled House Bill 2716), becomes** operative on January 1, 2016.

24 “(2) The Director of the Oregon Business Development Department, the
25 Director of the Oregon Department of Administrative Services, the Director
26 of Transportation, the Attorney General and a contracting agency that
27 adopts rules under ORS 279A.065 may take any action before the operative
28 date specified in subsection (1) of this section that is necessary to enable the
29 director, the Attorney General or the contracting agency to exercise, on and
30 after the operative date specified in subsection (1) of this section, all of the

1 duties, functions and powers conferred on the director, the Attorney General
2 or the contracting agency by section 2 [*of this 2015 Act and the amendments*
3 *to ORS 200.065 by section 3 of this 2015 Act*], **chapter __, Oregon Laws**
4 **2015 (Enrolled House Bill 2716).**”.

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

6 _____