

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2282**

1 On page 1 of the printed A-engrossed bill, line 2, delete “and amending  
2 ORS 822.043” and insert “amending ORS 279C.305 and 822.043; and declaring  
3 an emergency”.

4 On page 2, after line 32, insert:

5 **“SECTION 4.** ORS 279C.305 is amended to read:

6 “279C.305. (1) [*It is*] The policy of the State of Oregon **is** that contracting  
7 agencies shall make every effort to construct public improvements at the  
8 least cost to the contracting agency.

9 “(2) Not less than 30 days [*prior to adoption of the contracting agency’s*]  
10 **before adopting a** budget for the subsequent budget period, each contracting  
11 agency shall prepare and file with the Commissioner of the Bureau of Labor  
12 and Industries a list of every public improvement [*known to the contracting*  
13 *agency*] that the contracting agency plans to fund in the budget period,  
14 identifying each improvement by name and estimating the total on-site con-  
15 struction costs. The list [*shall*] **must** also [*contain a statement as to*] **state**  
16 whether the contracting agency intends to perform the construction through  
17 a private contractor. If the contracting agency intends to perform con-  
18 struction work using the contracting agency’s own equipment and personnel  
19 on a project estimated to cost more than \$125,000, the contracting agency  
20 shall [*also show*] **include with the list an analysis** that **shows that** the  
21 contracting agency’s decision conforms to the policy stated in subsection (1)  
22 of this section. The list **and analysis** [*is a*] **are** public [*record*] **records** and

1 *[may be revised periodically by the agency]* the contracting agency may  
2 periodically revise the list or analysis.

3 “(3)(a) The Commissioner of the Bureau of Labor and Industries  
4 shall adopt rules for transportation projects, as defined under ORS  
5 367.010, that specify how a contracting agency must conduct the writ-  
6 ten analysis required under subsection (2) of this section. The rules  
7 must:

8 “(A) Require a contracting agency to estimate the cost of con-  
9 structing a public improvement through a private contractor and  
10 compare the estimated cost with the estimated cost of constructing  
11 the public improvement with the contracting agency’s own equipment  
12 and personnel.

13 “(B) Provide that in estimating a contracting agency’s cost of con-  
14 structing a public improvement with the contracting agency’s own  
15 equipment and personnel, the contracting agency shall account for:

16 “(i) The cost of labor at the applicable prevailing rate of wage that  
17 the commissioner determines under ORS 279C.815, if the public im-  
18 provement is a public works project;

19 “(ii) The cost of equipment, including any associated costs of in-  
20 vestment and ownership;

21 “(iii) The costs of administration and overhead the contracting  
22 agency will incur in connection with the public improvement;

23 “(iv) Tax revenue the state will not realize if the contracting agency  
24 constructs a public improvement with the contracting agency’s own  
25 equipment and personnel;

26 “(v) The costs of subcontracts into which the contracting agency  
27 must enter; and

28 “(vi) Other costs that a private contractor would incur, including  
29 but not limited to costs associated with obtaining applicable insurance  
30 and warranties, engaging contractors for quality control, inviting

1 participation from small business enterprises certified under ORS  
2 200.055 and traffic control.

3 “(b) Before adopting or amending rules in accordance with this  
4 subsection, the commissioner shall consult with the Secretary of  
5 State, the Director of the Oregon Department of Administrative Ser-  
6 vices, the Director of Transportation, local contracting agencies, pri-  
7 vate construction contractors and subcontractors and other  
8 knowledgeable persons.

9 “[3] (4) Before a contracting agency constructs a public improvement  
10 with *[its]* the contracting agency’s own equipment or personnel, the con-  
11 tracting agency shall:

12 “(a) File the list and analysis required under subsection (2) of this  
13 section with the commissioner.

14 “[a] (b) *[If the estimated cost exceeds \$125,000, the contracting agency*  
15 *shall]* Prepare adequate plans and specifications and the estimated unit cost  
16 of each classification of work, **if the estimated cost of the public im-**  
17 **provement exceeds \$125,000.** *[The estimated cost of the work must include*  
18 *a reasonable allowance for the cost, including investment cost, of any equip-*  
19 *ment used.]* As used in this paragraph, ‘adequate’ means sufficient to control  
20 the performance of the work and to ensure satisfactory quality of con-  
21 struction by the contracting agency personnel.

22 “[b] (c) *[The contracting agency shall cause to be kept and preserved]*  
23 **Keep and preserve** a full, true and accurate account of the costs of per-  
24 forming the work, including all engineering and administrative expenses,  
25 **labor costs at the applicable prevailing rate of wage if the public im-**  
26 **provement is a public works project** and the cost, including investment  
27 costs, of any equipment **that will be** used. The final account of the costs is  
28 a public record.

29 “[4] (5) Subsections (2) *[and (3)]* **to (4)** of this section do not apply to  
30 a contracting agency *[when]* **if** the public improvement is *[to be used for the*

1 *distribution or transmission of]* **for distributing or transmitting** electric  
2 power.

3 “[~~(5)~~] **(6)** For purposes of this section, resurfacing [*of*] highways, roads or  
4 streets at a depth of two or more inches [*and*] **or** at an estimated cost that  
5 exceeds \$125,000 is a public improvement.

6 **“(7) With respect to transportation projects, as defined under ORS**  
7 **367.010, the commissioner may investigate violations of this section or**  
8 **ORS 279C.307 or 279C.310 and in the course of the investigation may:**

9 **“(a) Compel attendance from witnesses, examine the witnesses un-**  
10 **der oath and otherwise receive testimony;**

11 **“(b) Require a contracting agency or employee of a contracting**  
12 **agency to produce books, records, files or other documents; or**

13 **“(c) Take any other action that is necessary to conduct an investi-**  
14 **gation under this subsection.**

15 **“(8)(a) A trade association of construction contractors or another**  
16 **person, in addition to any other remedy the trade association or other**  
17 **person may have under the Public Contracting Code, may file a com-**  
18 **plaint with the commissioner that alleges a violation of this section**  
19 **or ORS 279C.307 or 279C.310 to the extent the alleged violation arises**  
20 **out of a transportation project. The complaint must set forth the acts**  
21 **or omissions that constituted the violation and the trade association**  
22 **or other person must file the complaint within one year after the acts**  
23 **or omissions occurred. A trade association or another person may not**  
24 **file a complaint with the commissioner under this paragraph if the**  
25 **trade association or other person brings an action in a court of this**  
26 **state for a violation of this section or ORS 279C.307 or 279C.310 that**  
27 **sets forth acts or omissions that are similar to or the same as the acts**  
28 **or omissions in the complaint to the commissioner. The commissioner**  
29 **shall dismiss a complaint the commissioner receives under this para-**  
30 **graph if a trade association or another person brings an action in a**

1 court of this state as provided in this paragraph.

2 “(b) If the commissioner reasonably believes that the acts or omis-  
3 sions set forth in a complaint under paragraph (a) of this subsection  
4 occurred and constituted a violation of this section or ORS 279C.307  
5 or 279C.310, the commissioner, within 30 days after receiving the  
6 complaint, shall notify the contracting agency against which the  
7 complaint alleges the violation and:

8 “(A) Shall investigate the complaint and, if the commissioner finds  
9 substantial evidence of a violation in the course of the investigation,  
10 shall make and deliver to the contracting agency and the trade asso-  
11 ciation or other person that filed the complaint a finding of substantial  
12 evidence that sets forth the evidence the commissioner found.

13 “(B) May facilitate a settlement agreement between the contracting  
14 agency and the trade association or other person that filed the com-  
15 plaint to eliminate the effects of any violation and to discourage fu-  
16 ture violations. The commissioner may enforce the settlement  
17 agreement in the same manner provided under this section for en-  
18 forcing a violation of this section or ORS 279C.307 or 279C.310.

19 “(c) A party to a settlement agreement under paragraph (b) of this  
20 subsection may bring an action to enforce the settlement agreement.  
21 The court may enjoin a violation of the settlement agreement or may  
22 require specific performance from a party to the settlement agree-  
23 ment.

24 “(9)(a) If the commissioner issues a finding of substantial evidence  
25 under subsection (8)(b)(A) of this section and the trade association or  
26 other person that filed a complaint under subsection (8)(a) of this  
27 section and the contracting agency against which the trade association  
28 or other person filed the complaint do not enter into a settlement  
29 agreement within 30 days after the date of the commissioner’s finding  
30 of substantial evidence, the commissioner shall conduct a hearing on

1 the complaint as provided in ORS 183.413 to 183.470.

2 “(b) After conducting a hearing under paragraph (a) of this sub-  
3 section and considering the evidence, the commissioner shall deter-  
4 mine whether a violation of this section or ORS 279C.307 or 279C.310  
5 occurred. If the commissioner determines that a violation has oc-  
6 curred, the commissioner shall issue an order to cease and desist from  
7 the conduct that constitutes the violation and may impose a fine of  
8 not more than \$5,000 on the contracting agency for each violation.

9 “(c) The commissioner shall apply the proceeds of a fine under  
10 paragraph (b) of this subsection first to the costs the commissioner  
11 incurs in investigating the complaint that resulted in the commis-  
12 sioner finding a violation and the costs associated with conducting a  
13 hearing under paragraph (a) of this subsection. The commissioner  
14 shall transfer any remaining moneys to the State Treasurer for deposit  
15 into the State Highway Fund.

16 “(d) An order to cease and desist that the commissioner issues un-  
17 der paragraph (b) of this subsection must provide that the contracting  
18 agency perform actions that the commissioner reasonably determines  
19 will:

20 “(A) Carry out the purposes of this section or ORS 279C.307 or  
21 279C.310, as appropriate; and

22 “(B) Eliminate the effects of the violation, which may include hav-  
23 ing a private contractor perform any remaining construction on the  
24 public improvement that is the subject of the violation.

25 **“SECTION 5.** The amendments to ORS 279C.305 by section 4 of this  
26 2015 Act apply to procurements that a contracting agency advertises  
27 or otherwise solicits or, if the contracting agency does not advertise  
28 or solicit the procurement, to public improvement contracts into  
29 which the contracting agency enters on or after the operative date  
30 specified in section 6 of this 2015 Act.

1       **“SECTION 6. (1) Sections 1 and 2 of this 2015 Act and the amend-**  
2 **ments to ORS 279C.305 and 822.043 by sections 3 and 4 of this 2015 Act**  
3 **become operative on January 1, 2016.**

4       **“(2) The Commissioner of the Bureau of Labor and Industries, the**  
5 **Director of the Oregon Department of Administrative Services, the**  
6 **Director of Transportation or a contracting agency that adopts rules**  
7 **under ORS 279A.065 may adopt rules and take any other action before**  
8 **the operative date specified in subsection (1) of this section that is**  
9 **necessary to enable the commissioner, the director or the contracting**  
10 **agency to exercise, on and after the operative date specified in sub-**  
11 **section (1) of this section, all of the duties, functions and powers**  
12 **conferred on the commissioner, the director or the contracting agency**  
13 **by the amendments to ORS 279C.305 by section 4 of this 2015 Act.**

14       **“SECTION 7. This 2015 Act being necessary for the immediate**  
15 **preservation of the public peace, health and safety, an emergency is**  
16 **declared to exist, and this 2015 Act takes effect on its passage.”.**

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