

HB 3203 A STAFF MEASURE SUMMARY

House Committee On Business and Labor

Action Date: 04/17/17

Action: Without recommendation as to passage, with amendments, and be referred to Rules.
(Printed A-Eng.)

Vote: 9-0-0-0

Yeas: 9 - Barreto, Bynum, Doherty, Evans, Fahey, Hack, Heard, Holvey, Kennemer

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Requires contracting agency to determine whether constructing public improvement with own staff and equipment will result in least cost to agency. Requires cost analysis to be filed with Bureau of Labor and Industries (BOLI). Permits BOLI to investigate contracting agency's alleged violation of Act and other statutes. Requires BOLI to investigate complaint made by construction contractor or trade association. Allows BOLI to enter final order setting forth terms of agreement between contracting agency and construction contractor or trade association. Allows party to agreement to bring civil action to enforce terms of agreement.

ISSUES DISCUSSED:

- Least-cost policy that guides public contracting decisions
- Level of sophistication in performing cost analysis varies by agency
- Only existing remedy is for contractor to file suit against contracting agency
- Whether contracting agencies are thorough in preparing list of projects each year
- \$125,000 threshold was set in 1997
- Whether \$125,000 threshold should be raised to reflect inflation
- Project disrupting pavement at least two inches in depth will be considered a public improvement project regardless of price tag

EFFECT OF AMENDMENT:

Replaces original measure.

BACKGROUND:

Current law requires public contracting agencies to provide a list to the Bureau of Labor and Industries (BOLI) of all public improvement projects that the agency plans to fund in the upcoming budget period. For those projects on the list that the agency intends to perform with their own staff and equipment and that exceed \$125,000 in estimated costs, the agency must show that its decision conforms with the State of Oregon's policy that every effort shall be made to construct public improvements at the least cost to the contracting agency. For those projects that will be performed in-house, the contracting agency must prepare plans and specifications and the estimated unit cost of each classification of work. A full, true and accurate account of the costs to perform the work must be kept and made public. For purposes of the least-cost policy on public improvement projects, current law considers the resurfacing of a highway, road or street at a depth of at least two inches and at an estimated cost that exceeds \$125,000 to be a public improvement project.

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Cities and counties generally keep public works staffing levels at a level that will be adequate to respond to emergencies. Between performing emergency repairs and maintaining equipment, the staff want to work on projects to justify their employment and provide the opportunity to develop and maintain skills. However, without a detailed cost analysis, the contracting agency and private contractors that would like to bid on public improvement projects do not know if it will be less expensive for the government entity to perform the work in-house or to contract with a private contractor.

House Bill 3203-A specifies the costs that a contracting agency must take into account when performing its cost analysis. The measure clarifies that resurfacing highways, roads or streets at a depth of at least two inches or at an estimated cost exceeding \$125,000 is considered a public improvement project. The measure allows a contractor or trade association to file a complaint with BOLI if they allege that the least-cost policy has been violated. BOLI is required to investigate a complaint; if it finds substantial evidence of a violation and there has been at least one other previous violation, BOLI can require the contracting agency to negotiate and enter into an agreement with the contractor or trade association to remedy the violation and prevent future violations.