

HB 3203 B STAFF MEASURE SUMMARY

House Committee On Rules

Action Date: 06/19/17

Action: Do pass with amendments to the A-Eng bill, and be referred to Ways and Means. (Printed B-Eng).

Vote: 5-4-0-0

Yeas: 5 - Holvey, Nosse, Rayfield, Smith Warner, Williamson

Nays: 4 - Barreto, Hack, Kennemer, McLane

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Requires contracting agency, prior to adoption of budget or commencing public improvement project, to file list of every public improvement planned during budget period with Bureau of Labor and Industries (BOLI). Requires agency to specify intent to use private contractor or agency equipment and personnel. Directs agency to file cost analysis demonstrating conformity with policy to construct at least-cost, at least 180 days prior to beginning projects with estimated value of construction work in excess of \$200,000. Specifies elements of cost analysis. Requires agency to prepare detailed plans as specified when using agency equipment and personnel on project exceeding \$200,000. Provides exemptions. Includes resurfacing roadways at depth of two inches or more, estimated in excess of \$175,000, as public improvement and excludes maintenance patching, chip seals or other maintenance treatments estimated between \$175,000 and \$750,000 with conditions. Increases dollar thresholds that trigger filing requirements every two-years from July 1, 2019 to July 1, 2025. Authorizes BOLI to investigate contractor or trade association complaints that least-cost policy has been violated. Prescribes investigatory authority and timeline for resolution. Authorizes BOLI to require violating agency to enter into negotiated agreement with complainant as to remedy. Provides remedy for failed negotiations and breach. Allows civil penalty if contested case hearing results in preponderance of evidence showing violation.

ISSUES DISCUSSED:

- Importance of determining standard process for performing cost analysis
- Different approaches to keeping dollar thresholds updated
- Establishment of clear legal enforcement mechanism for violations
- Proposed process of progressive discipline
- Ongoing work group efforts
- Thresholds in surrounding states
- Other potential amendments

EFFECT OF AMENDMENT:

Replaces 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 projects on the list that the agency intends to perform with its own staff, and equipment and that exceed \$125,000 in estimated costs, the agency must show that its decision conforms with Oregon's policy that every effort shall be made to construct public improvements at the least cost to the contracting agency. For 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

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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. The state's least-cost policy is not currently capable of accurate implementation or enforcement. Contracting agencies and private contractors that would like to bid on public improvement projects are not able to determine least-expensive alternatives without detailed cost analyses.

House Bill 3203-B specifies what contracting agencies must take into account when performing cost analyses. The measure also clarifies that resurfacing highways, roads or streets at a depth of at least two inches, or at an estimated cost exceeding \$175,000, is considered a public improvement project and increases the \$175,000 threshold every two years through 2025. The measure further provides for a complaint process, allowing contractors or trade associations to allege violations of the least-cost policy that BOLI may investigate. If substantial evidence of a violation is found and there has been at least one violation within the previous five years, BOLI can require the contracting agency to negotiate and enter into an agreement with the complainant to remedy the violation and prevent future violations.