

House Bill 3060

Sponsored by Representatives LININGER, NOSSE, SANCHEZ, ALONSO LEON, POWER; Representatives CLEM, HERNANDEZ, LIVELY, Senator BURDICK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits state contracting agency from entering into public contract with prospective contractor that has not certified that prospective contractor has policy and practice of preventing sexual harassment, sexual assault and discrimination against members of protected classes of workers. Specifies minimum elements that policy and practice must include.

Requires public contract to require as material term that contractor have and maintain policy and practice to prevent sexual harassment, sexual assault and discrimination against members of protected classes.

Becomes operative on January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requiring contractors in public procurements to have policies to prevent certain
3 discriminatory conduct; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 279A.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **“Discrimination” means conduct that has the purpose or effect of creating employ-**
8 **ment conditions for an individual that are intimidating, hostile or offensive or that evince**
9 **animosity, resentment, anger, prejudice or ill will in others primarily because of the**
10 **individual’s identification with or membership in a protected class.**

11 (b) **“Protected class” means a group of people that state or federal law protects from**
12 **employment discrimination including, but not limited to, a group in which membership de-**
13 **pends on an individual’s association or identification with other individuals on the basis of a**
14 **shared:**

15 (A) **Race or ethnicity;**

16 (B) **Gender or gender identity;**

17 (C) **Religion;**

18 (D) **Sexual orientation; or**

19 (E) **Disability.**

20 (c) **“Sexual assault” means any unwanted sexual contact, as defined in ORS 163.305.**

21 (d) **“Sexual harassment” means:**

22 (A) **A demand for sexual favors in exchange for benefits; or**

23 (B) **Unwelcome conduct of a sexual nature that has the purpose or effect of interfering**
24 **with a person’s ability to perform job duties or that creates an intimidating, offensive or**
25 **hostile work environment.**

26 (2)(a) **Except as provided in subsection (4) of this section, a state contracting agency may**
27 **not enter into a public contract with an anticipated contract price of \$150,000 or more with**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 a prospective contractor that does not certify in a signed writing included with a bid or
2 proposal for the public contract that the prospective contractor has a policy and practice of
3 preventing sexual harassment, sexual assault and discrimination against employees who are
4 members of a protected class.

5 (b) A prospective contractor may not certify under paragraph (a) of this subsection that
6 the prospective contractor has a policy and practice of preventing sexual harassment, sexual
7 assault or discrimination against employees who are members of a protected class unless the
8 policy and practice includes, at a minimum:

9 (A) A written notice to employees that clearly prohibits and specifies disciplinary meas-
10 ures for conduct that constitutes sexual harassment, sexual assault or discrimination
11 against a member of a protected class.

12 (B) A clear process that:

13 (i) Enables an employee that experiences or witnesses conduct that constitutes sexual
14 harassment, sexual assault or discrimination against a member of a protected class to report
15 and stop the conduct; and

16 (ii) Guides the prospective contractor in responding to a report under sub-subparagraph
17 (i) of this subparagraph, resolving the issues identified in the report and disciplining em-
18 ployees who engage in prohibited conduct.

19 (C) A regular written procedure for submitting a report under subparagraph (B)(i) of this
20 paragraph that identifies the specific individuals to whom an employee may submit the re-
21 port and the individuals who have responsibility for resolving issues identified in the report.

22 (D) A practice of treating as confidential, to the extent permitted by law, any report that
23 an employee makes under subparagraph (B)(i) of this paragraph.

24 (E) A prohibition against retaliating against an employee who experiences or witnesses,
25 and reports, conduct that constitutes sexual harassment, sexual assault or discrimination
26 against a member of a protected class.

27 (F) A prohibition against discrimination in providing benefits to an employee or a de-
28 pendent of the employee based on the employee's gender or sexual orientation or the gender
29 or sexual orientation of the employee's dependent.

30 (3) Every public contract must require as a material term of the public contract that a
31 contractor certify that the contractor has a policy and practice that meets the requirements
32 described in subsection (2) of this section and will maintain the policy and practice in force
33 during the entire term of the public contract.

34 (4) A state contracting agency may accept a bid or proposal from a prospective contrac-
35 tor that has not provided the certification described in subsection (2) of this section if:

36 (a) The state contracting agency conducted the procurement under ORS 279B.075 or
37 279B.080; or

38 (b) Only one prospective contractor submitted a bid or proposal in response to the state
39 contracting agency's solicitation.

40 **SECTION 3.** Section 2 of this 2017 Act applies to procurements that a state contracting
41 agency advertises or otherwise solicits or, if the state contracting agency does not advertise
42 or solicit the procurement, to public contracts into which the state contracting agency en-
43 ters on or after the operative date specified in section 4 of this 2017 Act.

44 **SECTION 4.** (1) Section 2 of this 2017 Act becomes operative on January 1, 2018.

45 (2) The Attorney General, the Director of the Oregon Department of Administrative

1 **Services, the Director of Transportation or a state contracting agency that adopts rules**
2 **under ORS 279A.065 may adopt rules and take any other action that is necessary to enable**
3 **the Attorney General, the director or the state contracting agency, on and after the opera-**
4 **tive date specified in subsection (1) of this section, to exercise all of the duties, functions and**
5 **powers conferred on the Attorney General, the director or the state contracting agency by**
6 **section 2 of this 2017 Act.**

7 **SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017**
8 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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