

Requested by Senator COURTNEY

**PROPOSED AMENDMENTS TO
B-ENGROSSED HOUSE BILL 3203**

1 On page 1 of the printed B-engrossed bill, delete lines 6 through 13 and
2 delete pages 2 through 9 and insert:

3 **“SECTION 1.** ORS 279C.305 is amended to read:

4 “279C.305. *[(1) It is the policy of the State of Oregon that contracting*
5 *agencies shall make every effort to construct public improvements at the least*
6 *cost to the contracting agency.]*

7 “[2) *Not less than 30 days prior to adoption of the contracting agency’s*
8 *budget for the subsequent budget period, each contracting agency shall prepare*
9 *and file with the Commissioner of the Bureau of Labor and Industries a list*
10 *of every public improvement known to the contracting agency that the con-*
11 *tracting agency plans to fund in the budget period, identifying each improve-*
12 *ment by name and estimating the total on-site construction costs. The list shall*
13 *also contain a statement as to whether the contracting agency intends to per-*
14 *form the construction through a private contractor. If the contracting agency*
15 *intends to perform construction work using the contracting agency’s own*
16 *equipment and personnel on a project estimated to cost more than \$125,000, the*
17 *contracting agency shall also show that the contracting agency’s decision con-*
18 *forms to the policy stated in subsection (1) of this section. The list is a public*
19 *record and may be revised periodically by the agency.]*

20 “[3) *Before a contracting agency constructs a public improvement with its*
21 *own equipment or personnel:]*

1 “(a) If the estimated cost exceeds \$125,000, the contracting agency shall
2 prepare adequate plans and specifications and the estimated unit cost of each
3 classification of work. The estimated cost of the work must include a reason-
4 able allowance for the cost, including investment cost, of any equipment used.
5 As used in this paragraph, ‘adequate’ means sufficient to control the perform-
6 ance of the work and to ensure satisfactory quality of construction by the
7 contracting agency personnel.]

8 “(b) The contracting agency shall cause to be kept and preserved a full,
9 true and accurate account of the costs of performing the work, including all
10 engineering and administrative expenses and the cost, including investment
11 costs, of any equipment used. The final account of the costs is a public
12 record.]

13 “(4) Subsections (2) and (3) of this section do not apply to a contracting
14 agency when the public improvement is to be used for the distribution or
15 transmission of electric power.]

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

19 **“(1) The policy of the State of Oregon is that contracting agencies**
20 **shall make every effort to construct public improvements at the least**
21 **cost to the contracting agency.**

22 **“(2)(a) Not less than 30 days before adopting a budget for the sub-**
23 **sequent budget period or before starting to construct a public im-**
24 **provement, each contracting agency shall prepare and file with the**
25 **Commissioner of the Bureau of Labor and Industries a list of every**
26 **public improvement that the contracting agency plans to fund in the**
27 **budget period, identifying each improvement by name and estimating**
28 **the total on-site construction costs. The list must also state whether**
29 **the contracting agency intends to perform the construction through**
30 **a private contractor.**

1 **“(b) If the contracting agency intends to use the contracting**
2 **agency’s own equipment or personnel to perform construction work**
3 **on a public improvement, and the estimated value of the construction**
4 **work that the contracting agency intends to perform with the con-**
5 **tracting agency’s own equipment or personnel exceeds \$200,000, the**
6 **contracting agency shall file with the commissioner not later than 180**
7 **days before construction begins on the public improvement an analysis**
8 **that shows that the contracting agency’s decision conforms to the**
9 **policy stated in subsection (1) of this section. The list and the analysis**
10 **are public records and the contracting agency may periodically revise**
11 **the list or analysis.**

12 **“(3) As part of the analysis required under subsection (2)(b) of this**
13 **section, a contracting agency shall:**

14 **“(a) Estimate the cost of contracting with a private contractor to**
15 **construct the public improvement, including in the estimate all nec-**
16 **essary and related costs that the private contractor would incur to**
17 **construct the public improvement;**

18 **“(b) Estimate the costs the contracting agency would incur in con-**
19 **structing the public improvement with the contracting agency’s own**
20 **equipment or personnel and include in the estimate:**

21 **“(A) The cost of labor, including all benefits the contracting agency**
22 **pays to or on behalf of employees of the contracting agency who will**
23 **work on the public improvement, workers’ compensation insurance**
24 **premiums and the cost of traveling to and from the site of the public**
25 **improvement;**

26 **“(B) The cost of equipment, including costs associated with leasing,**
27 **renting or acquiring and owning the equipment, costs for transporting**
28 **the equipment to and from the site of the public improvement, costs**
29 **for depreciation and costs for insuring, operating, storing, repairing**
30 **and maintaining the equipment;**

1 **“(C) The costs of administration and overhead the contracting**
2 **agency will incur, including insurance, shop and office costs that are**
3 **allocable to the public improvement;**

4 **“(D) The cost of tools and materials;**

5 **“(E) The costs associated with any contracts into which the con-**
6 **tracting agency must enter;**

7 **“(F) The commercially reasonable value of quality control testing**
8 **if the contracting agency would require quality control testing for the**
9 **work that a private contractor performed on the public improvement;**
10 **and**

11 **“(G) Any other necessary and related costs that the contracting**
12 **agency will incur to construct the public improvement with the con-**
13 **tracting agency’s own equipment or personnel; and**

14 **“(c) Compare the cost the contracting agency estimates under par-**
15 **agraph (a) of this subsection with the cost the contracting agency es-**
16 **timates under paragraph (b) of this subsection.**

17 **“(4) Before a contracting agency constructs a public improvement**
18 **with the contracting agency’s own equipment or personnel, the con-**
19 **tracting agency shall:**

20 **“(a) Prepare plans, specifications and estimates of the unit cost of**
21 **each classification of construction work that are sufficient to control**
22 **the performance of the construction work and ensure satisfactory**
23 **construction quality, if the estimated cost of the public improvement**
24 **exceeds \$200,000; and**

25 **“(b) Prepare and preserve a full, true and accurate account of the**
26 **actual costs of performing the work, including all categories of costs**
27 **described in subsection (3)(b) of this section. The final account of the**
28 **costs is a public record.**

29 **“(5) Subsections (2) to (4) of this section do not apply to a con-**
30 **tracting agency if:**

1 “(a) The public improvement is for distributing or transmitting
2 electric power; or

3 “(b) The contracting agency did not receive a responsive bid or
4 proposal for constructing the public improvement from a responsible
5 bidder or proposer after soliciting bids or proposals for constructing
6 the public improvement, if the solicitation:

7 “(A) Occurred within one year before the date on which con-
8 struction began; and

9 “(B) Allowed a commercially reasonable time in which to perform
10 the construction.

11 “(6)(a) Except as provided in paragraph (b) of this subsection, for
12 purposes of this section, resurfacing highways, roads or streets at a
13 depth of two or more inches and at an estimated cost that exceeds
14 \$125,000 is a public improvement that is subject to the listing, analysis
15 and accounting provisions of subsections (2) to (4) of this section.

16 “(b) A public improvement does not include placing maintenance
17 patching, chip seals or other seals as a maintenance treatment on
18 highways, roads, streets or bridges.

19 “(c) A contracting agency shall prepare and preserve a full, true
20 and accurate account of the actual costs of performing road or street
21 resurfacing if the actual or estimated cost of the highway, road or
22 street resurfacing exceeds \$125,000.

23 “(7)(a) The Bureau of Labor and Industries shall conduct a review
24 of:

25 “(A) The costs described in subsection (3) of this section to deter-
26 mine whether contracting agencies must adjust the methodology for
27 calculating the costs;

28 “(B) The threshold amounts specified for conducting the analysis
29 described in subsection (2)(b) of this section and preparing the spec-
30 ifications and cost estimates described in subsection (4) of this section

1 to determine whether to adjust the threshold amounts; and

2 “(C) Other aspects of the implementation of the policy set forth in
3 subsection (1) of this section.

4 “(b) The bureau shall conduct the review described in paragraph (a)
5 of this subsection every four years, beginning in the last calendar
6 quarter of 2021, and in consultation with affected contracting agencies,
7 contractors and trade associations. The bureau shall communicate
8 the results of the review to all contracting agencies, shall make the
9 results available to interested persons upon request and shall report
10 the results to the Legislative Assembly not later than January 1 of the
11 calendar year that follows the year in which the bureau conducted the
12 review.

13 **“SECTION 2. Section 3 of this 2017 Act is added to and made a part
14 of ORS chapter 279C.”.**

15 On page 10, line 1, delete “7” and insert “3”.

16 In line 4, delete “the” and insert “a”.

17 Delete lines 17 through 20 and insert:

18 “(2)(a) The commissioner shall investigate a violation of ORS 279C.305
19 that is alleged in a complaint under subsection (1) of this section or that the
20 commissioner discovers or otherwise has reason to believe occurred unless
21 the commissioner reasonably concludes that the facts alleged do not consti-
22 tute a violation or that the complaint is frivolous or was filed to harass the
23 contracting agency or for purposes other than to enforce the requirements
24 of ORS 279C.305.

25 “(b) In the course of an investigation under this subsection, to the extent
26 reasonably necessary, the commissioner may:”.

27 Delete lines 27 through 43 and insert:

28 “(3)(a) The commissioner must conclude an investigation under subsection
29 (2) of this section within 60 days after beginning the investigation and must
30 either find substantial evidence of a violation of ORS 279C.305 or end the

1 investigation and dismiss any complaint. If the commissioner finds substan-
2 tial evidence of a violation, the commissioner shall:

3 “(A) Notify the contracting agency in writing that the commissioner has
4 found substantial evidence of a violation of ORS 279C.305, describe the na-
5 ture of the violation and, if the commissioner has not found substantial evi-
6 dence of a violation in the five years preceding the date on which the
7 commissioner began the investigation, state that for future violations, the
8 commissioner will require the contracting agency to negotiate an agreement
9 under paragraph (b) of this subsection.

10 “(B) Provide a copy of any notice the commissioner issued under subpar-
11 agraph (A) of this paragraph to any contractor or trade association that filed
12 a complaint concerning the violation under subsection (1) of this section.

13 “(b) If the commissioner in the course of an investigation under sub-
14 section (2) of this section finds substantial evidence that the contracting
15 agency violated ORS 279C.305 within the five years preceding the date on
16 which the commissioner began the investigation, the commissioner shall
17 specify a period of time within which the contracting agency must negotiate
18 an agreement with the contractor or the trade association to remedy the vi-
19 olation and prevent future violations.”.

20 On page 11, line 6, after “complaint” insert “, provided that the commis-
21 sioner states the commissioner’s reasons for the dismissal in an order to
22 dismiss the complaint”.

23 In line 25, delete the second “the” and insert “a”.

24 In line 32, after “commissioner” insert “shall order the contracting agency
25 to cease and desist from the conduct that constitutes the breach and”.

26 After line 40, insert:

27 “(6) In addition to other available remedies for violations of orders of the
28 commissioner, a contractor or trade association may bring a civil action to
29 enforce a cease and desist order issued under subsection (5)(a) of this section
30 through writ of mandamus or specific performance.”.

1 In line 41, delete “8” and insert “4”.

2 On page 17, delete lines 13 through 38 and insert:

3 **“SECTION 5. Section 3 of this 2017 Act and the amendments to ORS**
4 **279A.010 and 279C.305 by sections 1 and 4 of this 2017 Act apply to**
5 **procurements that a contracting agency first advertises or otherwise**
6 **solicits or, if the contracting agency does not advertise or solicit the**
7 **procurement, to a public contract that a contracting agency enters**
8 **into on or after the operative date specified in section 6 of this 2017**
9 **Act.**

10 **“SECTION 6. (1) Section 3 of this 2017 Act and the amendments to**
11 **ORS 279A.010 and 279C.305 by sections 1 and 4 of this 2017 Act become**
12 **operative on January 1, 2018.**

13 **“(2) The Commissioner of the Bureau of Labor and Industries, the**
14 **Attorney General, the Director of the Oregon Department of Admin-**
15 **istrative Services, the Director of Transportation or a contracting**
16 **agency that adopts rules under ORS 279A.065 may adopt rules and take**
17 **any other action before the operative date specified in subsection (1)**
18 **of this section that is necessary to enable the commissioner, the At-**
19 **torney General, the director or the contracting agency to exercise all**
20 **of the duties, functions and powers conferred on the commissioner,**
21 **the Attorney General, the director or the contracting agency by sec-**
22 **tion 3 of this 2017 Act and the amendments to ORS 279A.010 and**
23 **279C.305 by sections 1 and 4 of this 2017 Act.**

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

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