

HOUSE AMENDMENTS TO B-ENGROSSED HOUSE BILL 3203

By JOINT COMMITTEE ON WAYS AND MEANS

July 5

1 On page 1 of the printed B-engrossed bill, delete lines 6 through 13 and delete pages 2 through
2 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 agencies shall make every*
5 *effort to construct public improvements at the least cost to the contracting agency.*]

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

16 “[3) *Before a contracting agency constructs a public improvement with its own equipment or per-*
17 *sonnel:*]

18 “[*(a) If the estimated cost exceeds \$125,000, the contracting agency shall prepare adequate plans*
19 *and specifications and the estimated unit cost of each classification of work. The estimated cost of the*
20 *work must include a reasonable allowance for the cost, including investment cost, of any equipment*
21 *used. As used in this paragraph, ‘adequate’ means sufficient to control the performance of the work*
22 *and to ensure satisfactory quality of construction by the contracting agency personnel.*]

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

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

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

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

32 “(2)(a) **Not less than 30 days before adopting a budget for the subsequent budget period**
33 **or before starting to construct a public improvement, each contracting agency shall prepare**
34 **and file with the Commissioner of the Bureau of Labor and Industries a list of every public**
35 **improvement that the contracting agency plans to fund in the budget period, identifying each**

1 improvement by name and estimating the total on-site construction costs. The list must also
2 state whether the contracting agency intends to perform the construction through a private
3 contractor.

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

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

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

17 “(b) Estimate the costs the contracting agency would incur in constructing the public
18 improvement with the contracting agency’s own equipment or personnel and include in the
19 estimate:

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

24 “(B) The cost of equipment, including costs associated with leasing, renting or acquiring
25 and owning the equipment, costs for transporting the equipment to and from the site of the
26 public improvement, costs for depreciation and costs for insuring, operating, storing, re-
27 pairing and maintaining the equipment;

28 “(C) The costs of administration and overhead the contracting agency will incur, includ-
29 ing insurance, shop and office costs that are allocable to the public improvement;

30 “(D) The cost of tools and materials;

31 “(E) The costs associated with any contracts into which the contracting agency must
32 enter;

33 “(F) The commercially reasonable value of quality control testing if the contracting
34 agency would require quality control testing for the work that a private contractor per-
35 formed on the public improvement; and

36 “(G) Any other necessary and related costs that the contracting agency will incur to
37 construct the public improvement with the contracting agency’s own equipment or person-
38 nel; and

39 “(c) Compare the cost the contracting agency estimates under paragraph (a) of this
40 subsection with the cost the contracting agency estimates under paragraph (b) of this sub-
41 section.

42 “(4) Before a contracting agency constructs a public improvement with the contracting
43 agency’s own equipment or personnel, the contracting agency shall:

44 “(a) Prepare plans, specifications and estimates of the unit cost of each classification of
45 construction work that are sufficient to control the performance of the construction work

1 and ensure satisfactory construction quality, if the estimated cost of the public improvement
2 exceeds \$200,000; and

3 “(b) Prepare and preserve a full, true and accurate account of the actual costs of per-
4 forming the work, including all categories of costs described in subsection (3)(b) of this sec-
5 tion. The final account of the costs is a public record.

6 “(5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

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

8 “(b) The contracting agency did not receive a responsive bid or proposal for constructing
9 the public improvement from a responsible bidder or proposer after soliciting bids or pro-
10 posals for constructing the public improvement, if the solicitation:

11 “(A) Occurred within one year before the date on which construction began; and

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

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

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

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

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

23 “(A) The costs described in subsection (3) of this section to determine whether con-
24 tracting agencies must adjust the methodology for calculating the costs;

25 “(B) The threshold amounts specified for conducting the analysis described in subsection
26 (2)(b) of this section and preparing the specifications and cost estimates described in sub-
27 section (4) of this section to determine whether to adjust the threshold amounts; and

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

30 “(b) The bureau shall conduct the review described in paragraph (a) of this subsection
31 every four years, beginning in the last calendar quarter of 2021, and in consultation with
32 affected contracting agencies, contractors and trade associations. The bureau shall com-
33 municate the results of the review to all contracting agencies, shall make the results avail-
34 able to interested persons upon request and shall report the results to the Legislative
35 Assembly not later than January 1 of the calendar year that follows the year in which the
36 bureau conducted the review.

37 “SECTION 2. Section 3 of this 2017 Act is added to and made a part of ORS chapter
38 279C.”.

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

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

41 Delete lines 17 through 20 and insert:

42 “(2)(a) The commissioner shall investigate a violation of ORS 279C.305 that is alleged in a
43 complaint under subsection (1) of this section or that the commissioner discovers or otherwise has
44 reason to believe occurred unless the commissioner reasonably concludes that the facts alleged do
45 not constitute a violation or that the complaint is frivolous or was filed to harass the contracting

1 agency or for purposes other than to enforce the requirements of ORS 279C.305.

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

4 Delete lines 27 through 43 and insert:

5 “(3)(a) The commissioner must conclude an investigation under subsection (2) of this section
6 within 60 days after beginning the investigation and must either find substantial evidence of a vio-
7 lation of ORS 279C.305 or end the investigation and dismiss any complaint. If the commissioner finds
8 substantial evidence of a violation, the commissioner shall:

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

14 “(B) Provide a copy of any notice the commissioner issued under subparagraph (A) of this par-
15 agraph to any contractor or trade association that filed a complaint concerning the violation under
16 subsection (1) of this section.

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

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

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

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

27 After line 40, insert:

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

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

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

33 **“SECTION 5. Section 3 of this 2017 Act and the amendments to ORS 279A.010 and
34 279C.305 by sections 1 and 4 of this 2017 Act apply to procurements that a contracting agency
35 first advertises or otherwise solicits or, if the contracting agency does not advertise or so-
36 licit the procurement, to a public contract that a contracting agency enters into on or after
37 the operative date specified in section 6 of this 2017 Act.**

38 **“SECTION 6. (1) Section 3 of this 2017 Act and the amendments to ORS 279A.010 and
39 279C.305 by sections 1 and 4 of this 2017 Act become operative on January 1, 2018.**

40 **“(2) The Commissioner of the Bureau of Labor and Industries, the Attorney General, the
41 Director of the Oregon Department of Administrative Services, the Director of Transporta-
42 tion or a contracting agency that adopts rules under ORS 279A.065 may adopt rules and take
43 any other action before the operative date specified in subsection (1) of this section that is
44 necessary to enable the commissioner, the Attorney General, the director or the contracting
45 agency to exercise all of the duties, functions and powers conferred on the commissioner,**

1 the Attorney General, the director or the contracting agency by section 3 of this 2017 Act
2 and the amendments to ORS 279A.010 and 279C.305 by sections 1 and 4 of this 2017 Act.

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

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