

HOUSE AMENDMENTS TO HOUSE BILL 3303

By COMMITTEE ON VETERANS AND EMERGENCY PREPAREDNESS

April 3

- 1 On page 1 of the printed bill, delete lines 8 through 28.
- 2 Delete pages 2 and 3.
- 3 On page 4, delete lines 1 through 31 and insert:
- 4 “**SECTION 1.** ORS 200.005 is amended to read:
- 5 “200.005. As used in ORS 200.005 to 200.075, **200.110, 200.120**, 200.160 to 200.200 and 279A.105:
- 6 “(1) ‘**Contracting agency**’ has the meaning given that term in ORS 279A.010.
- 7 “(2) ‘**Contractor**’ means a person that agrees to legally enforceable terms and conditions
- 8 **under which the person performs services or supplies materials in accordance with a con-**
- 9 **tracting agency’s specifications and for the purpose of accomplishing results the contracting**
- 10 **agency intends, while retaining control of the means, methods and manner of performing the**
- 11 **services or supplying the materials.**
- 12 “[1] (3) ‘Disadvantaged business enterprise’ means a small business concern:
- 13 “(a) [*That is*] At least 51 percent [*owned by*] **of which** one or more socially and economically
- 14 disadvantaged individuals **own**; or
- 15 “[*b*] *For which, in the case of a corporation, at least 51 percent of the stock is owned by one or*
- 16 *more socially and economically disadvantaged individuals, and of which the management and daily*
- 17 *business operations are controlled by one or more of the socially and economically disadvantaged in-*
- 18 *dividuals who own it.*]
- 19 “(b) **At least 51 percent of the stock of which, if the small business concern is a corpo-**
- 20 **ration, is owned by one or more economically disadvantaged individuals who also control and**
- 21 **manage the daily business operations of the small business concern.**
- 22 “[2] (4) ‘Economically disadvantaged individual’ means a socially disadvantaged individual
- 23 [*whose ability to compete in the free enterprise system has been impaired due to*] **for whom** diminished
- 24 capital and credit opportunities **have impaired the individual’s ability to compete in the free**
- 25 **enterprise system** as compared to other individuals in the same business area who are not socially
- 26 disadvantaged individuals.
- 27 “[3] (5) ‘Emerging small business’ means an independent business **concern that:**
- 28 “(a) [*With its*] **Has a** principal place of business located in this state;
- 29 “(b) [*That*] Qualifies as a tier one firm or a tier two firm;
- 30 “(c) [*That*] Is properly licensed and legally registered in this state; and
- 31 “(d) [*That*] Is not a subsidiary or parent company [*belonging*] **that belongs** to a group of firms
- 32 that [*are owned or controlled by*] the same individuals **own or control** if, in the aggregate, the group
- 33 of firms does not qualify as a tier one firm or a tier two firm.
- 34 “[4] (6) ‘Minority individual’ means [*a person*] **an individual** who is a citizen or lawful perma-
- 35 nent resident of the United States[, *who*] **and is:**

1 “(a) [*Black*] **African American**, having origins in any of the [*black racial groups of*] **original**
2 **peoples of Africa**;

3 “(b) Hispanic, having Mexican, Puerto Rican, Cuban, Central or South American or other
4 Spanish culture or origin, regardless of race;

5 “(c) Asian American, having origins in any of the original peoples of [*the Far*] **East Asia**,
6 Southeast Asia, the Indian subcontinent or the Pacific Islands;

7 “(d) Portuguese, having Portuguese, Brazilian or other Portuguese culture or origin, regardless
8 of race;

9 “(e) American Indian or Alaskan Native, having origins in any of the original peoples of North
10 America; or

11 “(f) [A] **Any other individual or member of another group**[, *or another individual who*] **that the**
12 **Certification Office for Business Inclusion and Diversity determines** is socially and econom-
13 ically disadvantaged [*as determined by the Advocate for Minority, Women and Emerging Small Busi-*
14 *ness*].

15 “[*(5) ‘Minority or women business enterprise’ means a small business concern:*]

16 “[*(a) That is at least 51 percent owned by one or more minority individuals or women; or*]

17 “[*(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or*
18 *more individuals who are minority individuals or women, and of which the management and daily*
19 *business operations are controlled by one or more of the minority individuals or women who own it.*]

20 “[*(6) ‘Responsible bidder’ means a bidder who, as determined by the Advocate for Minority,*
21 *Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing*
22 *participation by minority or women business enterprises in all bids, both public and private, submitted*
23 *by the bidder.*]

24 “(7) **‘Minority-owned business,’ ‘woman-owned business’ or ‘business that a service-**
25 **disabled veteran owns’ means, as appropriate, a small business concern:**

26 “(a) **At least 51 percent of which one or more minority individuals, women or service-**
27 **disabled veterans own and control; or**

28 “(b) **At least 51 percent of the stock of which, if the small business concern is a corpo-**
29 **ration, is owned by one or more minority individuals, women or service-disabled veterans**
30 **who also control and manage the daily business operations of the small business concern.**

31 “(8) **‘Responsible bidder or proposer’ means a bidder or proposer that the Governor’s**
32 **Policy Advisor for Economic and Business Equity determines has undertaken both a policy**
33 **and practice of actively pursuing participation by minority-owned businesses, woman-owned**
34 **businesses, businesses that service-disabled veterans own or emerging small businesses in**
35 **all of the bidder’s or proposer’s bids or proposals, both public and private.**

36 “(9) **‘Service-disabled veteran’ means a veteran who has a United States Department of**
37 **Veterans Affairs disability rating of at least zero percent as a result of an injury or illness**
38 **that the veteran incurred, or that was aggravated, during active military service and who**
39 **received a discharge or release under other than dishonorable conditions.**

40 “[*(7)*] (10) **‘Small business concern’ means a small business, as defined by the United States**
41 **Small Business Administration in 13 C.F.R. part 121 [*and in effect on January 1, 2006.*], as in effect**
42 **on the operative date specified in section 28 of this 2015 Act.**

43 “[*(8)*] (11) **‘Socially disadvantaged individual’ means an individual who has been subjected to**
44 **racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the**
45 **individual’s identity as a member of a group.**

1 “(12) ‘Subcontractor’ means a contractor that does not have a direct contractual re-
2 lationship with a contracting agency.

3 “[9] (13) ‘Tier one firm’ means a business that employs [fewer than 20] not more than 19
4 full-time equivalent employees and has average annual gross receipts for the last three years that
5 do not exceed [\$1.5 million for a business performing construction, as defined in ORS 446.310, or
6 \$600,000 for a business not performing construction] an amount that the Oregon Business Devel-
7 opment Department specifies by rule.

8 “[10] (14) ‘Tier two firm’ means a business that employs [fewer than 30] not more than 29
9 full-time equivalent employees and has average annual gross receipts for the last three years that
10 do not exceed [\$3 million for a business performing construction, as defined in ORS 446.310, or \$1
11 million for a business not performing construction] an amount that the Oregon Business Devel-
12 opment Department specifies by rule.

13 “[11] (15) ‘Woman’ means a person of the female [sex] gender who is a citizen or lawful per-
14 manent resident of the United States.

15 “SECTION 2. ORS 200.025 is amended to read:

16 “200.025. (1) [There is created, in the Office of the Governor, the Advocate for Minority, Women
17 and Emerging Small Business who shall be appointed by the Governor.] **The Governor shall appoint**
18 **a Governor’s Policy Advisor for Economic and Business Equity within the office of the Gov-**
19 **ernor.**

20 “(2) [There is created in the Oregon Business Development Department the Office for Minority,
21 Women and Emerging Small Business, the employees of which shall be appointed by] **The Certifica-**
22 **tion Office for Business Inclusion and Diversity is created within the Oregon Business De-**
23 **velopment Department, and the Director of the Oregon Business Development Department shall**
24 **appoint the employees of the office.**

25 “[3](a) The director may prescribe the duties and assignments of all officers and employees of the
26 Office for Minority, Women and Emerging Small Business. The director shall establish the compen-
27 sation of all officers and employees of the office.]

28 “[b) The officers and employees of the office shall be allowed reimbursement for reasonable and
29 necessary travel and other expenses incurred in the performance of their duties.]

30 “[4] (3) The [Advocate for Minority, Women and Emerging Small Business] **Governor’s Policy**
31 **Advisor for Economic and Business Equity** shall:

32 “(a) Advise the Governor and the director on activities and initiatives that may promote the
33 economic integration of minorities, women, **service-disabled veterans** and emerging small busi-
34 nesses into the business sector;

35 “[b) Prepare an annual report to the Governor, director and Legislative Assembly on the status
36 of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to
37 minority and women’s enterprises and recommendations for executive and legislative actions; and]

38 “(b) **Prepare an annual report to the Governor, director and Legislative Assembly on**
39 **disadvantaged business enterprises, minority-owned businesses, woman-owned businesses,**
40 **businesses that service-disabled veterans own and emerging small businesses that examines:**

41 “(A) **The status of the enterprises and businesses in the marketplace;**

42 “(B) **Accomplishments and resolutions that have occurred with respect to issues that**
43 **concern the enterprises and businesses; and**

44 “(C) **Recommendations for executive and legislative action; and**

45 “(c) Carry out other duties that [may be assigned by] the Governor **may assign.**

1 “[5] (4) The [Office for Minority, Women and Emerging Small Business] **Certification Office**
2 **for Business Inclusion and Diversity** shall:

3 “(a) Provide information to [minority, women and] **minority-owned businesses, woman-owned**
4 **businesses, businesses that service-disabled veterans own and** emerging small businesses;

5 “(b) Assist in [the development and implementation of] **developing and implementing** an ag-
6 gressive strategy for this state, based on research and monitoring, that encourages [participation
7 of] minorities, women, **service-disabled veterans** and emerging small businesses **to participate** in
8 the state’s economy;

9 “(c) [Make recommendations to the director on the research, development and implementation of the
10 plan for the involvement of disadvantaged and minority groups and emerging small businesses in all
11 state programs] **Recommend to the director methods for researching, developing and imple-**
12 **menting a plan to involve minority-owned businesses, woman-owned businesses, businesses**
13 **that service-disabled veterans own and emerging small businesses in all state programs;**

14 “(d) Maintain, **in consultation with the State Board of Higher Education, the Department**
15 **of Transportation and other entities**, an Oregon Opportunity Register and Clearinghouse for in-
16 formation [on public agency and other contract solicitations for professional services, supplies and
17 services and other bid opportunities, in consultation with the State Board of Higher Education, the
18 Department of Transportation and other entities] **about contracting agency solicitations and other**
19 **opportunities to submit bids or proposals to contracting agencies to provide goods, supplies**
20 **and services, including professional services;**

21 “[e) Monitor the certification and compliance program for disadvantaged, minority, women and
22 emerging small businesses under ORS 200.055;]

23 “(e) **Monitor the certification and compliance program under ORS 200.055 for:**

24 “(A) **Disadvantaged business enterprises;**

25 “(B) **Minority-owned businesses, woman-owned businesses and businesses that service-**
26 **disabled veterans own; and**

27 “(C) **Emerging small businesses;**

28 “(f) Investigate complaints and possible abuses of the certification program; and

29 “(g) Assist in [the promotion and coordination of] **promoting and coordinating** plans, programs
30 and operations of state government that [strengthen minority and women participation] **help**
31 **minority-owned businesses, woman-owned businesses, businesses that service-disabled vet-**
32 **erans own and emerging small businesses to participate** in the economic life of this state.”.

33 In line 40, delete “\$5,000” and insert “\$10,000”.

34 On page 5, line 1, delete “(1)”.

35 In lines 4 through 13, delete the boldfaced material.

36 Delete lines 19 through 23 and insert:

37 “(1) As used in this section, ‘required participant’ means:

38 “(a) A disadvantaged business enterprise;

39 “(b) A minority-owned business, a woman-owned business or a business that a service-disabled
40 veteran owns; or

41 “(c) An emerging small business.

42 “(2) If a public contract requires participation from a required participant and a bidder or
43 proposer for the public contract is not a required participant, a contracting agency may award the
44 public contract to the bidder or proposer only if the bidder or proposer:

45 “(a) Demonstrates that the bidder or proposer is responsible; and

1 “(b) Has made good faith efforts to encourage required participants to participate in the public
2 contract.

3 “(3) A contracting agency may rebuttably presume that for the purposes of this section a bidder
4 or proposer is responsible and has made good faith efforts to encourage required participants to
5 participate in the public contract if the bidder or proposer takes all of these actions:”.

6 In line 33, delete “the enterprises and businesses” and insert “required participants”.

7 In line 39, delete “and” and insert a comma.

8 In line 40, before the semicolon insert “and emerging small businesses”.

9 On page 6, line 1, delete “Oregon Business Development Department” and insert “Certification
10 Office for Business Inclusion and Diversity”.

11 On page 7, line 28, delete “(3)” and insert “(4)”.

12 Delete lines 30 and 31 and insert “required participants to participate”.

13 In line 33, delete “(2)” and insert “(3)”.

14 In line 36, delete “(1)”.

15 In lines 40 through 45, delete the boldfaced material.

16 On page 8, delete lines 1 through 5 and insert:

17 “(1)(a) An enterprise or business may apply to the Certification Office for Business Inclusion and
18 Diversity for certification as:

19 “(A) A disadvantaged business enterprise;

20 “(B) A minority-owned business;

21 “(C) A woman-owned business;

22 “(D) A business that a service-disabled veteran owns; or

23 “(E) An emerging small business.

24 “(b) An enterprise or business shall submit a separate application for each category of certi-
25 fication the enterprise or business seeks under paragraph (a) of this subsection.

26 “(c) If an enterprise or business qualifies under ORS 200.005 to 200.075 and if the office approves
27 an application from the enterprise or business, the office shall certify the enterprise or business
28 under one or more of the categories described in paragraph (a) of this subsection.

29 “(d) For purposes of awarding a public contract, a contracting agency shall recognize an enter-
30 prise or business with a certification from the office as the category of enterprise or business de-
31 scribed in the certification and as having met the requirements set forth in ORS 200.005 to 200.075.
32 For purposes of awarding a subcontract in connection with a public contract, a contractor may
33 recognize a subcontractor with a certification from the office as the category of enterprise or busi-
34 ness described in the certification and as having met the requirements set forth in ORS 200.005 to
35 200.075.”.

36 In line 16, delete “department” and insert “Certification Office for Business Inclusion and Di-
37 versity”.

38 Delete lines 17 through 20 and insert:

39 “(3) If the Certification Office for Business Inclusion and Diversity denies a certification as, or
40 decertifies, a disadvantaged business enterprise, an affected business enterprise may appeal directly
41 to the United States Department of Transportation.”.

42 In line 22, delete “department” and insert “Certification Office for Business Inclusion and Di-
43 versity”.

44 In line 26, before “is” insert “, through the Certification Office for Business Inclusion and Di-
45 versity,”.

1 On page 9, line 13, delete “Office for”.

2 In line 14, delete “Economic and Business Equity” and insert “Certification Office for Business
3 Inclusion and Diversity”.

4 On page 10, line 31, delete “Oregon Business Development Department” and insert “Certifica-
5 tion Office for Business Inclusion and Diversity”.

6 In line 36, delete “department” and insert “Oregon Business Development Department”.

7 In line 38, delete “department” and insert “office”.

8 On page 12, line 11, delete “department” and insert “Certification Office for Business Inclusion
9 and Diversity”.

10 In line 33, delete “23” and insert “26”.

11 On page 16, line 41, restore “is awarded” and delete “enters into”.

12 On page 17, delete lines 21 through 23 and insert:
13 “(5) If a contracting agency awards a public contract to a contractor and the contractor violates
14 the contractor’s certification under subsection (4) of this section, the contracting agency may regard
15 the violation as a breach of contract that permits the contracting agency to:”.

16 On page 22, delete lines 2 through 4 and insert:
17 “(c) Investments in start-up and expanding businesses, in minority-owned businesses, woman-
18 owned businesses and businesses that service-disabled veterans own and in emerging growth busi-
19 nesses can produce substantial positive returns for long-term investors.”.

20 Delete lines 14 and 15 and insert:
21 “(b) ‘Minority-owned business,’ ‘woman-owned business’ and ‘business that a service-disabled
22 veteran owns’ have the meanings given those terms in ORS 200.005.”.

23 On page 27, line 7, delete “Office for Economic and Business Equity” and insert “Certification
24 Office for Business Inclusion and Diversity”.

25 In line 10, delete “Office for”.

26 In line 11, delete “Economic and Business Equity” and insert “Certification Office for Business
27 Inclusion and Diversity”.

28 In line 24, delete “becomes” and insert “become”.

29
