

House Bill 2682

Sponsored by Representative RAYFIELD, Senator GELSER (Presession filed.)

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**.

Directs Construction Contractors Board to adopt rules that require persons that lease construction vehicles in this state to maintain construction vehicles in condition that allows for safe and reliable operation of construction vehicles, to keep certain logs, records and documents and to provide or offer to provide training in safe and reliable operation of construction vehicles.

Requires board to inspect, at least once every two years, persons that lease construction vehicles in this state and assess level of compliance with board's rules. Permits board to charge costs of inspection to person that is subjected to inspection.

Requires contracting agency, as part of contracting agency's determination of whether bidder for public improvement contract is responsible, to check board's assessment of person that supplies construction vehicles for public improvement contract and require bidder to obtain construction vehicles only from person that achieves passing grade from board.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to safety standards for construction vehicles; creating new provisions; amending ORS
3 279C.375; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 701.**

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

7 (a) **"Construction vehicle" means:**

8 (A) **A motor vehicle or mechanized equipment and all trailers, attachments, extensions,**
9 **machinery and other equipment that is affixed, permanently or otherwise, to the motor ve-**
10 **hicle or mechanized equipment for use in performing construction services; and**

11 (B) **Any other motor vehicle or mechanized equipment, including specific classes of motor**
12 **vehicles or mechanized equipment, that the Construction Contractors Board identifies or**
13 **defines as a construction vehicle in rules the board adopts under this section.**

14 (b) **"Lease" means a transfer of, or the act of transferring, for a term and in return for**
15 **consideration, the right to possess and use a construction vehicle under a lease agreement.**

16 (c) **"Lease agreement" means:**

17 (A) **A contract or other agreement that specifies terms and conditions under which a**
18 **lessee may use a construction vehicle, the duration of the period of use and compensation**
19 **due to the owner of the construction vehicle for the use; or**

20 (B) **An arrangement under which the owner or an operator of a construction vehicle uses**
21 **the construction vehicle to perform construction services for another person under a con-**
22 **tract for the construction services.**

23 (d) **"Lessee" means a person to whom the owner of a construction vehicle transfers the**
24 **construction vehicle under a lease agreement.**

25 (2) **The Construction Contractors Board by rule shall require a person that engages in**

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 the business of leasing construction vehicles within this state to:

2 (a) Maintain the construction vehicle in a condition that allows for safe and reliable op-
 3 eration of the construction vehicle in the environment in which and the purposes for which
 4 the construction vehicle is likely to be used under the terms of a lease agreement;

5 (b) Create and maintain logs, records and other documentation of:

6 (A) Any accidents, breakdowns or failures in the construction vehicle that occurred
 7 during the term of a lease and that resulted in an injury to an individual or that required
 8 the person to repair or replace the construction vehicle so that the lessee could perform the
 9 function for which the lessee leased the construction vehicle; and

10 (B) All inspections, maintenance and repairs the person performed on the construction
 11 vehicle within the last 12 months; and

12 (c) Provide or offer to provide training, or manuals and other materials that would allow
 13 a lessee to provide training, that is adequate and appropriate for operating the construction
 14 vehicle safely and reliably in the environment in which and the purposes for which the con-
 15 struction vehicle is likely to be used under a lease agreement.

16 (3) In adopting rules under subsection (2) of this section, the board shall consult safety
 17 standards and regulations that other states, the federal Occupational Safety and Health Ad-
 18 ministration and private standards organizations have developed to ensure proper inspection,
 19 maintenance and repair of construction vehicles and adequate and appropriate training in the
 20 safe and reliable operation of construction vehicles. The board shall periodically update the
 21 rules that the board adopts under this section to account for changes and updates to the
 22 standards the board consulted and changes to the technology, equipment and use of con-
 23 struction vehicles within this state.

24 (4) The board shall require persons that lease construction vehicles within this state to
 25 retain the logs, records and documentation described in subsection (2)(b) of this section for
 26 a minimum of two years and to make the logs, records and documentation available for in-
 27 spection by the board or an agent of the board during ordinary business hours.

28 (5) The board shall assess to what extent and how well a person that leases construction
 29 vehicles within this state complies with the standards and requirements the board adopts
 30 under this section and shall publish the results of the board's assessment on the board's
 31 website in a manner that allows for easy and intuitive public access to the assessment. The
 32 board's assessment shall include a summary in the form of a passing or failing grade. The
 33 board by rule shall determine the level of compliance that constitutes a passing or failing
 34 grade.

35 (6)(a) To make the assessment described in subsection (5) of this section, the board shall
 36 periodically inspect the logs, records, documentation and construction vehicles that a person
 37 maintains while engaging in the business of leasing construction vehicles in this state. The
 38 board shall ensure that each person that is subject to this section is subjected to at least
 39 one inspection every two years.

40 (b) The board may contract with a private vendor, or may enter into an interagency or
 41 intergovernmental agreement with a public agency, and may appoint the private vendor or
 42 public agency as the board's agent for the purpose of carrying out the inspections described
 43 in this subsection.

44 (c) The board shall charge the person that is subjected to an inspection under this sub-
 45 section the actual costs of the inspection and of conducting the assessment described in

1 subsection (5) of this section. The board shall bring an action in a court of this state to re-
 2 cover any costs that are due to the board under this subsection and that remain unpaid for
 3 a period of 180 days or more and may recover attorney fees and costs from the defendant if
 4 the board prevails in the action.

5 **SECTION 3.** ORS 279C.375 is amended to read:

6 279C.375. (1) After a contracting agency has opened bids and determined that the contracting
 7 agency will award a public improvement contract, the contracting agency shall award the contract
 8 to the lowest responsible bidder.

9 (2) At least seven days before awarding a public improvement contract, unless the contracting
 10 agency determines that seven days is impractical under rules adopted under ORS 279A.065, the
 11 contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the
 12 contracting agency's intent to award a contract. This subsection does not apply to a contract to
 13 which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the
 14 manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

15 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
 16 lowing:

17 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
 18 who are not qualified to hold a public improvement contract. **If a public improvement contract**
 19 **will require the use of a construction vehicle, as defined in section 2 of this 2021 Act, the**
 20 **contracting agency shall also check any assessment the board has given to the bidder or the**
 21 **person that will lease or otherwise provide any construction vehicles that will be used in**
 22 **connection with the public improvement. If the board's assessment is a failing grade, the**
 23 **contracting agency shall, as appropriate:**

24 (A) **Require the bidder to obtain any construction vehicles the bidder will use in con-**
 25 **nection with the public improvement contract from a person that received a passing grade**
 26 **from the board; or**

27 (B) **Determine that the bidder is not responsible.**

28 (b) [*Determine whether the bidder is responsible*] **In addition to the determination required**
 29 **under paragraph (a) of this subsection, determine whether the bidder is responsible based**
 30 **on the demonstrations required under this paragraph.** A responsible bidder must demonstrate
 31 to the contracting agency that the bidder:

32 (A) Has available the appropriate financial, material, equipment, facility and personnel resources
 33 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
 34 tractual responsibilities.

35 (B) Holds current licenses that businesses or service professionals operating in this state must
 36 hold in order to undertake or perform the work specified in the contract.

37 (C) Is covered by liability insurance and other insurance in amounts the contracting agency
 38 requires in the solicitation documents.

39 (D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has
 40 elected coverage under ORS 656.128.

41 (E) Has made the disclosure required under ORS 279C.370.

42 (F) Completed previous contracts of a similar nature with a satisfactory record of performance.
 43 For purposes of this subparagraph, a satisfactory record of performance means that to the extent
 44 that the costs associated with and time available to perform a previous contract remained within
 45 the bidder's control, the bidder stayed within the time and budget allotted for the procurement and

1 otherwise performed the contract in a satisfactory manner. The contracting agency shall document
2 the bidder's record of performance if the contracting agency finds under this subparagraph that the
3 bidder is not responsible.

4 (G) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's
5 record of integrity may consider, among other things, whether the bidder has previous criminal
6 convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in
7 connection with the bidder's performance of a contract or subcontract. The contracting agency shall
8 document the bidder's record of integrity if the contracting agency finds under this subparagraph
9 that the bidder is not responsible.

10 (H) Is legally qualified to contract with the contracting agency.

11 (I) Possesses an unexpired certificate that the Oregon Department of Administrative Services
12 issued under ORS 279A.167, if the bidder employs 50 or more full-time workers and submitted a bid
13 for a procurement with an estimated contract price that exceeds \$500,000 in response to an adver-
14 tisement or solicitation from a state contracting agency.

15 (J) Supplied all necessary information in connection with the inquiry concerning responsibility.
16 If a bidder fails to promptly supply information concerning responsibility that the contracting
17 agency requests, the contracting agency shall determine the bidder's responsibility based on avail-
18 able information, or may find that the bidder is not responsible.

19 (c) Document the contracting agency's compliance with the requirements of paragraphs (a) and
20 (b) of this subsection in substantially the following form:

21 _____

22
23 RESPONSIBILITY DETERMINATION FORM

24
25 Project Name: _____

26 Bid Number: _____

27 Business Entity Name: _____

28 CCB License Number: _____

29 Form Submitted By (Contracting Agency):

30 _____

31 Form Submitted By (Contracting Agency Representative's Name): _____

32 Title: _____

33 Date: _____

34 (The contracting agency must submit this form with attachments, if any, to the Construction
35 Contractors Board within 30 days after the date of contract award.)

36 The contracting agency has (check all of the following):

- 37 [] Checked the list created by the
38 Construction Contractors Board
39 under ORS 701.227 for bidders who
40 are not qualified to hold a public
41 improvement contract.

- 42 [] Determined whether the bidder has
43 met the standards of responsibility.
44 In so doing, the contracting agency
45 has found that the bidder

- 1 demonstrated that the bidder:
- 2 [] Has available the appropriate
- 3 financial, material, equipment,
- 4 facility and personnel resources
- 5 and expertise, or the ability to
- 6 obtain the resources and
- 7 expertise, necessary to meet
- 8 all contractual responsibilities.
- 9 [] Holds current licenses that
- 10 businesses or service professionals
- 11 operating in this state must hold
- 12 in order to undertake or perform
- 13 the work specified in the contract.
- 14 [] Is covered by liability insurance
- 15 and other insurance in amounts
- 16 required in the solicitation
- 17 documents.
- 18 [] Qualifies as a carrier-insured
- 19 employer or a self-insured
- 20 employer under ORS 656.407 or has
- 21 elected coverage under ORS 656.128.
- 22 [] Has disclosed the bidder's first-
- 23 tier subcontractors in accordance
- 24 with ORS 279C.370.
- 25 [] Has a satisfactory record of
- 26 performance.
- 27 [] Has a satisfactory record of
- 28 integrity.
- 29 [] Is legally qualified to contract
- 30 with the contracting agency.
- 31 [] Possesses a certificate that
- 32 the Oregon Department of
- 33 Administrative Services issued under
- 34 ORS 279A.167.
- 35 [] Has supplied all necessary
- 36 information in connection with
- 37 the inquiry concerning
- 38 responsibility.
- 39 [] Determined the bidder to be
- 40 (check one of the following):
- 41 [] Responsible under ORS 279C.375
- 42 (3)(a) and (b).
- 43 [] Not responsible under
- 44 ORS 279C.375 (3)(a) and (b).
- 45 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

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(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

(5) Based on competitive bids, a contracting agency may award a public improvement contract or may award multiple public improvement contracts when specified in the invitation to bid.

(6) A contracting agency may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor” has the meaning given that term in ORS 701.005.

SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 279C.375 by section 3 of this 2021 Act apply to public improvement contracts that a contracting agency advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public improvement contract, to public improvement contracts into which the contracting agency enters and to lease agreements into which other persons enter on and after the operative date specified in section 5 of this 2021 Act.

SECTION 5. (1) Section 2 of this 2021 Act and the amendments to ORS 279C.375 by section 3 of this 2021 Act become operative on January 1, 2022.

(2) The Construction Contractors Board, the Attorney General, the Director of the Oregon Department of Administrative Services, the Director of Transportation and a contracting agency that adopts rules under ORS 279A.065 and 279A.070 may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the board, the Attorney General, the directors or the contracting agency, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the board, the Attorney General, the directors or the contracting agency by section 2 of this 2021 Act and the amendments to ORS 279C.375 by section 3 of this 2021 Act.

SECTION 6. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.
