

House Bill 2694

Sponsored by Representative WITT (at the request of Terri Voshell) (Pre-session 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**.

Adds lesbian, gay, bisexual and transgender to definition of "minority individual" for purposes of providing public contracting opportunities to minority-owned businesses in this state. Permits Oregon Business Development Department by rule to adopt standards from private organization for purpose of certifying businesses.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the inclusion of LGBT-owned businesses in business equity programs; creating new pro-
3 visions; amending ORS 200.005 and 200.055; and prescribing an effective date.

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

5 **SECTION 1.** ORS 200.005 is amended to read:

6 200.005. As used in ORS 200.005 to 200.075, 200.110, 200.120, 200.160 to 200.200 and 279A.105:

7 (1) "Contracting agency" has the meaning given that term in ORS 279A.010.

8 (2) "Contractor" means a person that agrees to legally enforceable terms and conditions under
9 which the person performs services or supplies materials in accordance with a contracting agency's
10 specifications and for the purpose of accomplishing results the contracting agency intends, while
11 retaining control of the means, methods and manner of performing the services or supplying the
12 materials.

13 (3) "Disadvantaged business enterprise" means a small business concern:

14 (a) At least 51 percent of which one or more socially and economically disadvantaged individuals
15 own; or

16 (b) At least 51 percent of the stock of which, if the small business concern is a corporation, is
17 owned by one or more economically disadvantaged individuals who also control and manage the
18 daily business operations of the small business concern.

19 (4) "Economically disadvantaged individual" means a socially disadvantaged individual for whom
20 diminished capital and credit opportunities have impaired the individual's ability to compete in the
21 free enterprise system as compared to other individuals in the same business area who are not so-
22 cially disadvantaged individuals.

23 (5) "Emerging small business" means an independent business concern that:

24 (a) Has a principal place of business located in this state;

25 (b) Qualifies as a tier one firm or a tier two firm;

26 (c) Is properly licensed and legally registered in this state; and

27 (d) Is not a subsidiary or parent company that belongs to a group of firms that the same indi-
28 viduals own or control if, in the aggregate, the group of firms does not qualify as a tier one firm
29 or a tier two firm.

30 (6) "Minority individual" means an individual who is a citizen or lawful permanent resident of

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 United States and is:

2 (a) African American, having origins in any of the original peoples of Africa;

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

5 (c) Asian American, having origins in any of the original peoples of East Asia, Southeast Asia,
6 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) Lesbian, gay, bisexual or transgender; or**

12 [(f)] (g) Any other individual or member of another group that the Certification Office for
13 Business Inclusion and Diversity determines is socially and economically disadvantaged.

14 (7) “Minority-owned business,” “woman-owned business” or “business that a service-disabled
15 veteran owns” means, as appropriate, a small business concern:

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

18 (b) At least 51 percent of the stock of which, if the small business concern is a corporation, is
19 owned by one or more minority individuals, women or service-disabled veterans who also control
20 and manage the daily business operations of the small business concern.

21 (8) “Responsible bidder or proposer” means a bidder or proposer that the Governor’s Policy
22 Advisor for Economic and Business Equity determines has undertaken both a policy and practice
23 of actively pursuing participation by minority-owned businesses, woman-owned businesses, busi-
24 nesses that service-disabled veterans own or emerging small businesses in all of the bidder’s or
25 proposer’s bids or proposals, both public and private.

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

30 (10) “Small business concern” means a small business, as defined by the United States Small
31 Business Administration in 13 C.F.R. part 121, as in effect on January 1, 2016.

32 (11) “Socially disadvantaged individual” means an individual who has been subjected to racial
33 or ethnic prejudice or cultural bias, without regard to individual qualities, because of the
34 individual’s identity as a member of a group.

35 (12) “State contracting agency” has the meaning given that term in ORS 279A.010.

36 (13) “Subcontractor” means a contractor that does not have a direct contractual relationship
37 with a contracting agency.

38 (14) “Tier one firm” means a business that employs not more than 19 full-time equivalent em-
39 ployees and has average annual gross receipts for the last three years that do not exceed an amount
40 that the Oregon Business Development Department specifies by rule.

41 (15) “Tier two firm” means a business that employs not more than 29 full-time equivalent em-
42 ployees and has average annual gross receipts for the last three years that do not exceed an amount
43 that the Oregon Business Development Department specifies by rule.

44 (16) “Woman” means a person of the female gender who is a citizen or lawful permanent resi-
45 dent of the United States.

SECTION 2. ORS 200.055 is amended to read:

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

- (A) A disadvantaged business enterprise;
- (B) A minority-owned business;
- (C) A woman-owned business;
- (D) A business that a service-disabled veteran owns; or
- (E) An emerging small business.

(b) An enterprise or business shall submit a separate application for each category of certification the enterprise or business seeks under paragraph (a) of this subsection.

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

(d) For purposes of awarding a public contract, a contracting agency shall recognize an enterprise or business with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075. For purposes of awarding a subcontract in connection with a public contract, a contractor may recognize a subcontractor with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075.

~~[(2)]~~ **(2)(a)** In consultation with public universities listed in ORS 352.002 and the Department of Transportation, and with the approval of the Governor’s Policy Advisor for Economic and Business Equity, the Oregon Business Development Department by rule shall adopt a uniform standard form and procedure to provide complete documentation of an enterprise’s or a business’ status as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The department shall compile and make available a list of enterprises and businesses that the Certification Office for Business Inclusion and Diversity certifies under this section.

(b) The Oregon Business Development Department by rule may adopt as standards for certifying a business described in subsection (1)(a) of this section standards that a private organization promulgates and may accept a certification from a private organization as evidence that an applicant for certification under subsection (1) of this section has met the standards the organization promulgated. For the purposes of certifying a minority-owned business owned by a minority individual identified in ORS 200.005 (6)(f), the department may adopt standards that the National LGBT Chamber of Commerce promulgates and may accept a certification from the National LGBT Chamber of Commerce as evidence that an applicant for certification under subsection (1) of this section has met the standards.

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

(4) If the Certification Office for Business Inclusion and Diversity denies, revokes or refuses to renew a business’s certification as a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, the business may request a contested case hearing as provided in ORS chapter 183.

(5) The Oregon Business Development Department, through the Certification Office for Business

1 Inclusion and Diversity, is the sole agency that may certify enterprises and businesses as disadvan-
 2 tagged business enterprises, minority-owned businesses, woman-owned businesses, businesses that
 3 service-disabled veterans own and emerging small businesses that are eligible to perform public
 4 contracts in this state.

5 (6) The Oregon Business Development Department by rule may establish a fee not to exceed
 6 \$100 for a copy of the list described in subsection (2) of this section and may assess contracting
 7 agencies for services under ORS 200.005 to 200.075.

8 (7) The Department of Transportation may collect a fee, not to exceed \$200, from a bidder or
 9 proposer at the time the bidder or proposer prequalifies to perform public contracts to cover the
 10 costs of the Oregon Business Development Department in administering ORS 200.005 to 200.075. The
 11 Department of Transportation shall transfer fees that the Department of Transportation collects
 12 under this subsection to the credit of the account established under subsection (8) of this section.

13 (8) The Oregon Business Development Department shall establish a special account in which to
 14 deposit fees and assessments. The special account is continuously appropriated to the Oregon Busi-
 15 ness Development Department to meet the Oregon Business Development Department's expenses in
 16 administering ORS 200.005 to 200.075.

17 **SECTION 3. (1) The amendments to ORS 200.005 and 200.055 by sections 1 and 2 of this**
 18 **2021 Act become operative January 1, 2022.**

19 **(2) The Oregon Business Development Department may adopt rules and take any other**
 20 **action before the operative date specified in subsection (1) of this section that is necessary**
 21 **to enable the department, on and after the operative date specified in subsection (1) of this**
 22 **section, to undertake or exercise all of the duties, functions and powers conferred on the**
 23 **department by the amendments to ORS 200.005 and 200.055 by sections 1 and 2 of this 2021**
 24 **Act.**

25 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**
 26 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

27