

Requested by Representative RAYFIELD

**PROPOSED AMENDMENTS TO
HOUSE BILL 2682**

1 On page 1 of the printed bill, delete lines 5 through 25 and delete pages
2 2 through 6 and insert:

3 **“SECTION 1. Section 2 of this 2021 Act is added to and made a part
4 of ORS 654.001 to 654.295.**

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

6 **“(a) ‘Construction vehicle’ means:**

7 **“(A) A motor vehicle or mechanized equipment and all trailers, at-
8 tachments, extensions, machinery and other equipment that is affixed,
9 permanently or otherwise, to the motor vehicle or mechanized equip-
10 ment for use in performing construction services; and**

11 **“(B) Any other motor vehicle or mechanized equipment, including
12 specific classes of motor vehicles or mechanized equipment, that the
13 Director of the Department of Consumer and Business Services iden-
14 tifies or defines as a construction vehicle in rules the director adopts
15 under this section.**

16 **“(b) ‘Lease’ means a transfer of, or the act of transferring, for a
17 term and in return for consideration, the right to possess and use a
18 construction vehicle under a lease agreement.**

19 **“(c) ‘Lease agreement’ means:**

20 **“(A) A contract or other agreement that specifies terms and con-
21 ditions under which a lessee may use a construction vehicle, the du-**

1 **ration of the period of use and compensation due to the owner of the**
2 **construction vehicle for the use; or**

3 **“(B) An arrangement under which the owner or an operator of a**
4 **construction vehicle uses the construction vehicle to perform con-**
5 **struction services for another person under a contract for the con-**
6 **struction services.**

7 **“(d) ‘Lessee’ means a person to whom the owner of a construction**
8 **vehicle transfers the construction vehicle under a lease agreement.**

9 **“(2) The director by rule shall require a person that engages in the**
10 **business of leasing construction vehicles within this state to:**

11 **“(a) Maintain the construction vehicle in a condition that allows for**
12 **safe and reliable operation of the construction vehicle in the environ-**
13 **ment in which and the purposes for which the construction vehicle is**
14 **likely to be used under the terms of a lease agreement;**

15 **“(b) Create and maintain logs, records and other documentation of:**

16 **“(A) Any accidents, breakdowns or failures in the construction ve-**
17 **hicle that occurred during the term of a lease and that resulted in an**
18 **injury to an individual or that required the person to repair or replace**
19 **the construction vehicle so that the lessee could perform the function**
20 **for which the lessee leased the construction vehicle; and**

21 **“(B) All inspections, maintenance and repairs the person performed**
22 **on the construction vehicle within the last 12 months; and**

23 **“(c) Provide or offer to provide training, or manuals and other**
24 **materials that would allow a lessee to provide training, that is ade-**
25 **quate and appropriate for operating the construction vehicle safely**
26 **and reliably in the environment in which and the purposes for which**
27 **the construction vehicle is likely to be used under a lease agreement.**

28 **“(3) In adopting rules under subsection (2) of this section, the di-**
29 **rector shall consult safety standards and regulations that other states,**
30 **the federal Occupational Safety and Health Administration and private**

1 standards organizations have developed to ensure proper inspection,
2 maintenance and repair of construction vehicles and adequate and
3 appropriate training in the safe and reliable operation of construction
4 vehicles. The director shall periodically update the rules that the di-
5 rector adopts under this section to account for changes and updates
6 to the standards the director consulted and changes to the technology,
7 equipment and use of construction vehicles within this state.

8 “(4) The director shall require persons that lease construction ve-
9 hicles within this state to retain the logs, records and documentation
10 described in subsection (2)(b) of this section for a minimum of two
11 years and to make the logs, records and documentation available for
12 inspection by the director or an agent of the director during ordinary
13 business hours.

14 “(5) The director shall assess to what extent and how well a person
15 that leases construction vehicles within this state complies with the
16 standards and requirements the director adopts under this section and
17 shall publish the results of the director’s assessment on the director’s
18 website in a manner that allows for easy and intuitive public access
19 to the assessment. The director’s assessment shall include a summary
20 in the form of a passing or failing grade. The director by rule shall
21 determine the level of compliance that constitutes a passing or failing
22 grade.

23 “(6)(a) To make the assessment described in subsection (5) of this
24 section, the director shall periodically inspect the logs, records, doc-
25 umentation and construction vehicles that a person maintains while
26 engaging in the business of leasing construction vehicles in this state.
27 The director shall ensure that each person that is subject to this sec-
28 tion is subjected to at least one inspection every two years.

29 “(b) The director may contract with a private vendor, or may enter
30 into an interagency or intergovernmental agreement with a public

1 **agency, and may appoint the private vendor or public agency as the**
2 **director’s agent for the purpose of carrying out the inspections de-**
3 **scribed in this subsection.**

4 **“(c) The director shall charge the person that is subjected to an**
5 **inspection under this subsection the actual costs of the inspection and**
6 **of conducting the assessment described in subsection (5) of this sec-**
7 **tion. The director shall bring an action in a court of this state to re-**
8 **cover any costs that are due to the director under this subsection and**
9 **that remain unpaid for a period of 180 days or more and may recover**
10 **attorney fees and costs from the defendant if the director prevails in**
11 **the action.**

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

13 **“279C.375. (1) After a contracting agency has opened bids and determined**
14 **that the contracting agency will award a public improvement contract, the**
15 **contracting agency shall award the contract to the lowest responsible bidder.**

16 **“(2) At least seven days before awarding a public improvement contract,**
17 **unless the contracting agency determines that seven days is impractical un-**
18 **der rules adopted under ORS 279A.065, the contracting agency shall issue to**
19 **each bidder or post, electronically or otherwise, a notice of the contracting**
20 **agency’s intent to award a contract. This subsection does not apply to a**
21 **contract to which competitive bidding does not apply under ORS 279C.335**
22 **(1)(c) or (d). The notice and the manner in which the notice is posted or is-**
23 **ssued must conform to rules adopted under ORS 279A.065.**

24 **“(3) In determining the lowest responsible bidder, a contracting agency**
25 **shall do all of the following:**

26 **“(a) Check the list created by the Construction Contractors Board under**
27 **ORS 701.227 for bidders who are not qualified to hold a public improvement**
28 **contract. If a public improvement contract will require the use of a**
29 **construction vehicle, as defined in section 2 of this 2021 Act, the con-**
30 **tracting agency shall also check any assessment the Director of the**

1 **Department of Consumer and Business Services has given to the bid-**
2 **der or the person that will lease or otherwise provide any construction**
3 **vehicles that will be used in connection with the public improvement.**
4 **If the director’s assessment is a failing grade, the contracting agency**
5 **shall, as appropriate:**

6 **“(A) Require the bidder to obtain any construction vehicles the**
7 **bidder will use in connection with the public improvement contract**
8 **from a person that received a passing grade from the director; or**

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

10 **“(b) [*Determine whether the bidder is responsible*] In addition to the**
11 **determination required under paragraph (a) of this subsection, deter-**
12 **mine whether the bidder is responsible based on the demonstrations**
13 **required under this paragraph. A responsible bidder must demonstrate to**
14 **the contracting agency that the bidder:**

15 **“(A) Has available the appropriate financial, material, equipment, facility**
16 **and personnel resources and expertise, or has the ability to obtain the re-**
17 **sources and expertise, necessary to meet all contractual responsibilities.**

18 **“(B) Holds current licenses that businesses or service professionals oper-**
19 **ating in this state must hold in order to undertake or perform the work**
20 **specified in the contract.**

21 **“(C) Is covered by liability insurance and other insurance in amounts the**
22 **contracting agency requires in the solicitation documents.**

23 **“(D) Qualifies as a carrier-insured employer or a self-insured employer**
24 **under ORS 656.407 or has elected coverage under ORS 656.128.**

25 **“(E) Has made the disclosure required under ORS 279C.370.**

26 **“(F) Completed previous contracts of a similar nature with a satisfactory**
27 **record of performance. For purposes of this subparagraph, a satisfactory re-**
28 **cord of performance means that to the extent that the costs associated with**
29 **and time available to perform a previous contract remained within the**
30 **bidder’s control, the bidder stayed within the time and budget allotted for**

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

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

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

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

18 “(J) Supplied all necessary information in connection with the inquiry
19 concerning responsibility. If a bidder fails to promptly supply information
20 concerning responsibility that the contracting agency requests, the con-
21 tracting agency shall determine the bidder's responsibility based on available
22 information, or may find that the bidder is not responsible.

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

26 “ _____

27 RESPONSIBILITY DETERMINATION FORM

28
29 Project Name: _____

30 Bid Number: _____

1 Business Entity Name: _____

2 CCB License Number: _____

3 Form Submitted By (Contracting Agency):

4 _____

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

6 _____

7 Title: _____

8 Date: _____

9 (The contracting agency must submit this form with attachments, if any,
10 to the Construction Contractors Board within 30 days after the date of con-
11 tract award.)

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

13 Checked the list created by the
14 Construction Contractors Board
15 under ORS 701.227 for bidders who
16 are not qualified to hold a public
17 improvement contract.

18 Determined whether the bidder has
19 met the standards of responsibility.
20 In so doing, the contracting agency
21 has found that the bidder
22 demonstrated that the bidder:

23 Has available the appropriate
24 financial, material, equipment,
25 facility and personnel resources
26 and expertise, or the ability to
27 obtain the resources and
28 expertise, necessary to meet
29 all contractual responsibilities.

30 Holds current licenses that

1 businesses or service professionals
2 operating in this state must hold
3 in order to undertake or perform
4 the work specified in the contract.

5 Is covered by liability insurance
6 and other insurance in amounts
7 required in the solicitation
8 documents.

9 Qualifies as a carrier-insured
10 employer or a self-insured
11 employer under ORS 656.407 or has
12 elected coverage under ORS 656.128.

13 Has disclosed the bidder's first-
14 tier subcontractors in accordance
15 with ORS 279C.370.

16 Has a satisfactory record of
17 performance.

18 Has a satisfactory record of
19 integrity.

20 Is legally qualified to contract
21 with the contracting agency.

22 Possesses a certificate that
23 the Oregon Department of
24 Administrative Services issued under
25 ORS 279A.167.

26 Has supplied all necessary
27 information in connection with
28 the inquiry concerning
29 responsibility.

30 Determined the bidder to be

1 (check one of the following):
2 [] Responsible under ORS 279C.375
3 (3)(a) and (b).
4 [] Not responsible under
5 ORS 279C.375 (3)(a) and (b).

6 (Attach documentation if the contracting agency finds the bidder not to
7 be responsible.)

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

12 “(4) The successful bidder shall:

13 “(a) Promptly execute a formal contract; and

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

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

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

24 **“SECTION 4. Section 2 of this 2021 Act and the amendments to ORS**
25 **279C.375 by section 3 of this 2021 Act apply to public improvement**
26 **contracts that a contracting agency advertises or otherwise solicits or,**
27 **if the contracting agency does not advertise or solicit the public im-**
28 **provement contract, to public improvement contracts into which the**
29 **contracting agency enters and to lease agreements into which other**
30 **persons enter on and after the operative date specified in section 5 of**

1 **this 2021 Act.**

2 **“SECTION 5. (1) Section 2 of this 2021 Act and the amendments to**
3 **ORS 279C.375 by section 3 of this 2021 Act become operative on January**
4 **1, 2022.**

5 **“(2) The Director of the Department of Consumer and Business**
6 **Services, the Attorney General, the Director of the Oregon Depart-**
7 **ment of Administrative Services, the Director of Transportation and**
8 **a contracting agency that adopts rules under ORS 279A.065 and**
9 **279A.070 may adopt rules and take any other action before the opera-**
10 **tive date specified in subsection (1) of this section that is necessary**
11 **to enable the Attorney General, the directors or the contracting**
12 **agency, on and after the operative date specified in subsection (1) of**
13 **this section, to undertake and exercise all of the duties, functions and**
14 **powers conferred on the Attorney General, the directors or the con-**
15 **tracting agency by section 2 of this 2021 Act and the amendments to**
16 **ORS 279C.375 by section 3 of this 2021 Act.**

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

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