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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**

12/19/2023 7:55 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amends rule to implement Enrolled House Bill 2295 (2023) and to clarify scope of exceptions.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/09/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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**NEED FOR THE RULE(S)**

In 2023, the Oregon Legislative Assembly expanded the scope of businesses that are temporarily exempt from the obligation to file a public works bond described in ORS 279C.836 to include all "veteran-owned businesses." These businesses may, however, lose their exempt status if the Bureau of Labor and Industries determines that the business has violated ORS 279C.800 to 279C.870, or related administrative rules. These rule amendments make a corresponding change to clarify that the provisions of the rule apply to all "veteran-owned businesses," while also clarifying a statutory exception referenced in the rule.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

Enrolled House Bill 2295 (2023) is available here:  
<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/HB2295>.

**STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE**

Although the underlying legislation may promote racial equity in this State, the rule amendments operate to conform to that legislation. As a consequence, these rule amendments will have a corresponding impact on racial equity in this State.

**FISCAL AND ECONOMIC IMPACT:**

The underlying legislation is likely to reduce the cost of compliance for some businesses, which may impact their competitiveness in relation to other businesses. However, because the rule change is necessary to conform to Enrolled House Bill 2295 (2023), it is unlikely that these rule amendments will create a fiscal or economic impact.

**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Expanding the exemption from the obligation to obtain a public works bond could impose greater costs on state agencies and private-sector entities and individuals who would otherwise seek to collect on the bond. The Bureau will be affected in needing to allocate additional staff time to train businesses on the new rules and update training materials. Further, the Bureau will be affected if it is unable to collect on certain bonds when workers are unpaid and will need to utilize the wage security fund or other collection measures. Those economic effects, however, are a function of the underlying legislation. According to the Oregon Employment Department there are nearly 165,000 small businesses in Oregon with at least one employee, fewer than 13,000 of which operate in the construction industry. Because these rule amendments implement Oregon statutory law, the rule amendments do not impose any expected reporting, recordkeeping or administrative activities or costs. Similarly, the rule amendments do not operate to increase the cost of professional services, equipment supplies, labor or administration.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses, as well as all members of the public, are invited to comment on these rules. In addition, the Bureau will post notice of this rulemaking on its webpage and in the Oregon bulletin, while also disseminating this notice to the Bureau's mailing list.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Because these rule amendments are necessary to conform to statutory law, the Bureau believes that any issues related to these rule amendments are likely to be most efficiently surfaced via this public rulemaking notice and request for public comment.

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AMEND: 839-025-0015

RULE SUMMARY: Amends rule to implement Enrolled House Bill 2295 (2023) and to clarify application of rule.

CHANGES TO RULE:

839-025-0015

Public Works Bonds Requirements ¶¶

(1) Pursuant to ~~ORS 279C.836, except as provided~~ Except as otherwise provided in ORS 279C.836, before starting work on a contract or subcontract for a public works project of \$100,000 or more, a contractor or subcontractor must file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. For purposes of this section, "project of \$100,000 or more" includes, but is not limited to, the combined value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project, but does not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay.¶¶

(2) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in Appendix 5.¶¶

(3) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable).¶¶

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;¶¶

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners or venturers (except limited partners);¶¶

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and in the name of the limited liability partnership;¶¶

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and in the name of the limited partnership and any other business name(s) used. Limited partners do not need to be listed on

the bond;¶

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or¶

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.¶

(4) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change.¶

(5) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond.¶

(6) If a disadvantaged business enterprise, minority-owned business, woman-owned business, ~~business that a service-disabled veteran-owned business~~ or emerging small business, certified under ORS 200.055, is found to have violated a provision of ORS 279C.800 to 279C.870 or an administrative rule adopted under ORS 279C.800 to 279C.870, the enterprise or business must file a public works bond in accordance with section (1) of this rule.¶

(7) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.¶

(8) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity.¶

[ED. NOTE: Appendices referenced are available from the Wage and Hour Division of the Bureau of Labor and Industries.]

Statutory/Other Authority: ORS 279C.808, ORS 651.060(4)

Statutes/Other Implemented: ORS 279C.800 - 279C.870, ~~OL Ch. 334 (2017)~~