



Oregon

Kate Brown, Governor

Oregon Transportation Commission


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DATE: June 30, 2022

TO: Oregon Transportation Commission



FROM: Kristopher W. Strickler
Director

SUBJECT: **Agenda Item G** - Community Workforce Agreement Update

Requested Action:

Receive an update and background and background information on the rulemaking process and schedule for [Oregon Revised Statutes \(ORS\) 279C.308](#) on community benefit contracts. This information will provide a foundation in preparation for the September OTC meeting when rules will come before the Commission for approval.

Background:

Oregon's transportation and heavy highway construction industry has been experiencing a shortage of workers and ODOT is committed to addressing this shortage in the following ways:

- Supporting the near-term and long-term workforce needs of the industry by providing access to and building the pool of skilled trade workers;
- Maximizing the impact of ODOT's investments for the benefit of the communities in which they are located;
- Encouraging racial and gender equity within the heavy highway workforce pipeline;
- Responding to and implementing Senate Bill 420.

During the 2021 regular legislative session, [Senate Bill 420](#) was passed and provided the authority for public agencies to designate public improvement projects as "community benefit contracts." Senate Bill 420 was later codified into [ORS 279C.308](#). Though the legislation and statute do not stipulate what form a community benefit contract must take, several examples of such contracts include project labor agreements, community workforce agreements, and community benefit agreements.

Stakeholder engagement on policy

ODOT determined a community workforce agreement (CWA) was the best vehicle to meet agency goals related to workforce development and in late 2021 the [Community Workforce Agreement \(CWA\) Advisory Group](#) was created and tasked with providing input to ODOT on what elements it should consider including in the development of its CWA. The body was comprised of 65 members representing contractors (large, small, DBEs, and industry associations), workforce development partners, labor, local public owners, and more. Seven members were legislative staff or from the Governor's office. In total, the Advisory Group met 11 times for 2-hour sessions from October 2021 to March 2022, with all

[meetings recorded](#) and posted on ODOT's website. A summary of the Advisory Group's input can be found [here](#).

Development of a community workforce agreement

ODOT is currently in negotiations with the Oregon State Building Trades Council and the Northwest Carpenters Union to arrive at a CWA that suitably meets the needs of the agency, Labor, and stakeholders. This agreement establishes a framework and criteria for when a CWA will be attached to ODOT projects. As the majority of State Transportation Improvement Plan (STIP) projects are federalized, the Federal Highway Administration (FHWA) must review and approve the negotiated CWA before it can be applied to federally funded projects.

Outcomes:

OTC to consider administrative rules

Concurrent with the CWA agreement process, ODOT has convened a Rules Advisory Committee (RAC) to provide comment on draft rules that would *authorize ODOT to designate public improvement projects as community benefit contracts*, as outlined in ORS 279C.308:

“(3)(a) A contracting agency or local contract review board may enact or adopt, as appropriate, an ordinance, resolution, rule, regulation or other legislative or administrative measure that authorizes the contracting agency or local contract review board to designate a public improvement contract as a community benefit contract.”

In addition to the providing comments on the [Draft Rules for ORS 279C.308](#), the RAC also provides input to help inform ODOT's development of a fiscal impact statement. Input on the fiscal impact statement aims to assess what positive or negative impacts the implementation of community benefit contracts would have, and possible mitigation strategies if negative impacts are identified. The RAC met twice in June. RAC meeting materials, recordings, and information are available on the [RAC ODOT webpage](#).

After the RAC completes its work, ODOT will consider the feedback of the RAC and refine the Draft Rules for ORS 279C.308 as deemed appropriate and complete the fiscal impact statement. Refined versions of both documents will be filed with Secretary of State's Office by no later than July 26 to notice proposed rulemaking. After notice is published:

- A 21-day public comment period will begin, expected to be between August 1 and August 21.
- ODOT will hold a public hearing on a date to be determined between August 15 and August 19. The specific date and time for the public hearing will be published in the notice.

After completion of the public comment period and consideration of the feedback, ODOT will finalize the rules to bring forward for consideration and recommended approval by the Commission at the September 14, 2022 OTC meeting.

Attachments:

- Attachment 1 – ORS 279c.308 Draft Rules_V3

OAR 731-005-XXXX

Community Benefit Contracts

(1) In addition to the definitions in ORS 279C.308, the following definitions apply to OAR XXX-XXX-XXXX to XXX-XXX-XXXX:

(a) “Community Workforce Agreement” means an agreement entered into between ODOT and one or more labor organizations to establish material terms that ODOT may include in a community benefit contract.

(b) “EDZ resident worker” means a worker domiciled in an economically distressed zip code.

(c) “Economically distressed zip code” or “EDZ” means, a geographic area identified by a United States Postal Service zip code, and identified by the Department as having a high concentration of any of a combination of variables such as, but not limited to, the following:

- (A) Individuals living at or under 200% the federal poverty line;
- (B) Unemployed adult individuals possessing the ability to perform the work;
- (C) Individuals without a college degree.

(d) “Local area resident worker” means a worker domiciled in a United States Postal Service zip code, any portion of which is within a 50-mile radius of a public improvement project location.

(e) “Minority” has the meaning set forth in [41 CFR § 60-4.3](#).

(f) “Priority worker” means an EDZ resident worker, a local area resident worker, a worker identifying as Minority or a worker identifying as a woman.

(g) “Trade” means a trade or occupation for which the Oregon Bureau of Labor and Industries has determined the prevailing wage rate pursuant to ORS 279C.815.

(2) ODOT may designate a public improvement contract as a community benefit contract, in accordance with ORS 279C.308, when:

(a) The project is administered by ODOT and is in the Statewide Transportation Improvement Program (STIP);

(b) The prime contract has a STIP construction cost estimate above a certain threshold to be determined by the Department; and

- (c) The designation as a community benefit contract is approved by the Federal Highway Administration.

(3) In accordance with ORS 279C.308, and in addition to any applicable provisions of the Public Contracting Code, a community benefit contract may include as material provisions of the contract terms and conditions that require the contractor to:

- (a) Employ apprentices from Oregon Bureau of Labor and Industries (BOLI) approved apprenticeship training programs to perform a specified percentage of work hours that workers in apprenticeable occupations perform on the community benefit project;
- (b) Provide for payment of wages at or above the prevailing rate of wage in accordance with applicable laws;
- (c) Comply with any hiring goals and aspirational targets for apprenticeships, workforce diversity, and EDZ hiring as established by ODOT for the community benefit contract.
- (d) Meet periodic reporting requirements that may include, but are not limited to, the following information for both apprentice and journey workers:
 - (A) Apprenticeship hours and percentages;
 - (B) Minority and women workforce hours and percentages;
 - (D) Safety incidents;
 - (E) Any other related or similar information required by ODOT.
- (e) Sign a Letter of Assent binding a contractor and all subcontractors on the public improvement project designated as a community benefit contract to the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents, including a community workforce agreement. Any term or condition incorporated into a community benefit contract under this section (3)(e) must comply with applicable state and federal laws related to public contracting, wage rates, apprenticeship, hiring goals and aspirational targets.

(4) ODOT may reject bids for a community benefit contract in accordance with ORS 279C.395.

(5) ODOT may use information reported by a contractor under section (3)(f) of this rule to submit reports to the Federal Highway Administration, ODOT Office of Civil Rights, Office of Social Equity, and other stakeholders to monitor and determine the progress of equity, workforce diversity and workforce development. ODOT may determine the frequency and content of the information reported.

(6) Nothing in a community benefit contract shall minimize or impede federal contract obligations regarding the Disadvantaged Business Enterprise (DBE) Program, the Equal Employment Opportunity Program (EEO), the On The Job Training Program (OJT), the Tribal Employment Rights Ordinance (TERO), or other federal programs pertinent to the Department.