

# Enrolled Senate Bill 173

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CHAPTER .....

AN ACT

Relating to state program for small business; creating new provisions; amending ORS 200.005, 200.025, 200.160, 200.170, 200.180 and 200.190; repealing ORS 200.150; and appropriating money.

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

**SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 200.005 to 200.075.**

**SECTION 2. (1) A business may be certified as an emerging small business by the Department of Consumer and Business Services for up to 12 years and may be:**

**(a) Designated a tier one firm for up to six years unless the business no longer qualifies as a tier one firm.**

**(b) Designated a tier two firm for up to six years unless the business no longer qualifies as a tier two firm.**

**(2) The department shall adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.**

**(3) Notwithstanding the time limits established by subsection (1) of this section, if a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business Services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department shall extend the tier one designation of the firm for one year. A tier one firm may receive the extension described in this subsection only once.**

**SECTION 3. On or before June 30, 2006, a business previously certified as an emerging small business may be recertified as an emerging small business if the business still qualifies as an emerging small business and has eligibility remaining under section 2 of this 2005 Act.**

**SECTION 4. ORS 200.005 is amended to read:**

200.005. As used in ORS 200.005 to 200.075, **200.150 to 200.200** and 279.059:

(1) "Disadvantaged business enterprise" means a small business concern *[which]*:

**(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals, *or*; or**

**(b) For which, in the case of *[any]* a corporation, at least 51 percent of the stock *[of which]* is owned by one or more socially and economically disadvantaged individuals, and *[whose]* of which**

the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) “Economically disadvantaged individual” means *[an]* a **socially disadvantaged** individual *[who is socially disadvantaged and]* whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to *[another]* **other individuals** in the same business area who *[is]* **are** not socially disadvantaged **individuals**.

(3) “Emerging small business” means **an independent business**:

(a) *[A business]* With its principal place of business located in this state;

*[(b) A business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for nonconstruction firms;]*

*[(c) A business which has fewer than 20 employees;]*

*[(d) An independent business; and]*

*[(e) A business properly licensed and legally registered in this state.]*

**(b) That qualifies as a tier one firm or a tier two firm;**

**(c) That is properly licensed and legally registered in this state; and**

**(d) That is not a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.**

*[(4) “Emerging small business” does not mean a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have aggregate annual gross receipts in excess of \$1 million for construction or \$300,000 for nonconstruction firms over the last three years.]*

*[(5) A business may be certified as an emerging small business for no more than seven years.]*

*[(6) “Minority or women business enterprise” means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.]*

*[(7)]* **(4)** “Minority individual” means a person who is a citizen or lawful permanent resident of the United States, who is:

(a) Black, *[who is a person]* having origins in any of the black racial groups of Africa;

(b) Hispanic, *[who is a person of]* **having** Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American, *[who is a person]* having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese, *[who is a person of]* **having** Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native, *[who is a person]* having origins in any of the original peoples of North America; or

(f) A member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

**(5) “Minority or women business enterprise” means a small business concern:**

**(a) That is at least 51 percent owned by one or more minority individuals or women; or**

**(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.**

**(6) “Responsible bidder” means a bidder who, as determined by the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority or women business enterprises in all bids, both public and private, submitted by such the bidder.**

*[(8)]* **(7)** “Small business concern” means a small business as defined by the United States Small Business Administration *[per C.F.R. 121, as amended]* **in 13 C.F.R. part 121.**

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

(9) **“Tier one firm” means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for a business performing construction, as defined in ORS 446.310, or \$600,000 for a business not performing construction.**

(10) **“Tier two firm” means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for a business performing construction, as defined in ORS 446.310, or \$1 million for a business not performing construction.**

[(10)] (11) “Woman” means a person of the female sex who is a citizen or lawful permanent resident of the United States.

[(11) “Responsible bidder” means one who, in the determination of the office of the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder.]

**SECTION 5.** ORS 200.005, as amended by section 213, chapter 794, Oregon Laws 2003, is amended to read:

200.005. As used in ORS 200.005 to 200.075, **200.150 to 200.200** and 279A.105:

(1) “Disadvantaged business enterprise” means a small business concern *[which]*:

(a) **That** is at least 51 percent owned by one or more socially and economically disadvantaged individuals~~], or,~~ **or**

(b) **For which**, in the case of *[any]* a corporation, at least 51 percent of the stock *[of which]* is owned by one or more socially and economically disadvantaged individuals, and *[whose]* **of which the** management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) “Economically disadvantaged individual” means *[an]* **a socially disadvantaged** individual *[who is socially disadvantaged and]* whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to *[another]* **other individuals** in the same business area who *[is]* **are** not socially disadvantaged **individuals**.

(3) “Emerging small business” means **an independent business**:

(a) *[A business]* With its principal place of business located in this state;

*[(b) A business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for nonconstruction firms;]*

*[(c) A business which has fewer than 20 employees;]*

*[(d) An independent business; and]*

*[(e) A business properly licensed and legally registered in this state.]*

**(b) That qualifies as a tier one firm or a tier two firm;**

**(c) That is properly licensed and legally registered in this state; and**

**(d) That is not a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.**

*[(4) “Emerging small business” does not mean a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have aggregate annual gross receipts in excess of \$1 million for construction or \$300,000 for nonconstruction firms over the last three years.]*

*[(5) A business may be certified as an emerging small business for no more than seven years.]*

*[(6) “Minority or women business enterprise” means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.]*

[(7)] (4) “Minority individual” means a person who is a citizen or lawful permanent resident of the United States, who is:

(a) Black, [*who is a person*] having origins in any of the black racial groups of Africa;

(b) Hispanic, [*who is a person of*] **having** Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American, [*who is a person*] having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese, [*who is a person of*] **having** Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native, [*who is a person*] having origins in any of the original peoples of North America; or

(f) A member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) **“Minority or women business enterprise” means a small business concern:**

(a) **That is at least 51 percent owned by one or more minority individuals or women; or**

(b) **For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.**

(6) **“Responsible bidder” means a bidder who, as determined by the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority or women business enterprises in all bids, both public and private, submitted by the bidder.**

[(8)] (7) “Small business concern” means a small business as defined by the United States Small Business Administration [*per C.F.R. 121, as amended*] **in 13 C.F.R. part 121 and in effect on the effective date of this 2005 Act.**

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

(9) **“Tier one firm” means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for a business performing construction, as defined in ORS 446.310, or \$600,000 for a business not performing construction.**

(10) **“Tier two firm” means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for a business performing construction, as defined in ORS 446.310, or \$1 million for a business not performing construction.**

[(10)] (11) “Woman” means a person of the female sex who is a citizen or lawful permanent resident of the United States.

[(11)] *“Responsible bidder” means one who, in the determination of the office of the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder.*

**SECTION 6.** ORS 200.025 is amended to read:

200.025. (1) There is created in the Office of the Governor, the Advocate for Minority, Women and Emerging Small Business who shall be appointed by the Governor.

(2) There is created in the Department of Consumer and Business Services the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by the Director of the Department of Consumer and Business Services.

(3) The Advocate for Minority, Women and Emerging Small Business shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women and emerging small businesses into the business sector;

(b) Prepare an annual report to the Governor, director and Legislative Assembly on the status of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to minority and women's enterprises and recommendations for executive and legislative actions; and

(c) Carry out other duties that may be assigned by the Governor.

(4) The Office for Minority, Women and Emerging Small Business shall:

(a) Provide [*assistance and*] information to minority, women and emerging small businesses;

(b) Assist in the development and implementation of an aggressive strategy for this state, based on research and monitoring, that encourages participation of minorities, women and emerging small businesses in the state's economy;

(c) Make recommendations to the director on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups and emerging small businesses in all state programs;

(d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public agency and other contract solicitations for professional services, supplies and services and other bid opportunities, in consultation with the State Board of Higher Education, the Department of Transportation and other entities;

(e) Monitor the certification and compliance program for disadvantaged, minority, women and emerging small businesses under ORS 279.059;

(f) Investigate complaints and possible abuses of the certification program; and

(g) Assist in the promotion and coordination of plans, programs and operations of state government that strengthen minority and women participation in the economic life of this state.

**SECTION 7.** ORS 200.025, as amended by section 214, chapter 794, Oregon Laws 2003, is amended to read:

200.025. (1) There is created in the Office of the Governor, the Advocate for Minority, Women and Emerging Small Business who shall be appointed by the Governor.

(2) There is created in the Department of Consumer and Business Services the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by the Director of the Department of Consumer and Business Services.

(3) The Advocate for Minority, Women and Emerging Small Business shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women and emerging small businesses into the business sector;

(b) Prepare an annual report to the Governor, director and Legislative Assembly on the status of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to minority and women's enterprises and recommendations for executive and legislative actions; and

(c) Carry out other duties that may be assigned by the Governor.

(4) The Office for Minority, Women and Emerging Small Business shall:

(a) Provide [*assistance and*] information to minority, women and emerging small businesses;

(b) Assist in the development and implementation of an aggressive strategy for this state, based on research and monitoring, that encourages participation of minorities, women and emerging small businesses in the state's economy;

(c) Make recommendations to the director on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups and emerging small businesses in all state programs;

(d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public agency and other contract solicitations for professional services, supplies and services and other bid opportunities, in consultation with the State Board of Higher Education, the Department of Transportation and other entities;

(e) Monitor the certification and compliance program for disadvantaged, minority, women and emerging small businesses under ORS 200.055;

(f) Investigate complaints and possible abuses of the certification program; and

(g) Assist in the promotion and coordination of plans, programs and operations of state government that strengthen minority and women participation in the economic life of this state.

**SECTION 8.** ORS 200.160 is amended to read:

200.160. The Oregon Transportation Commission shall appoint a committee to recommend plans whereby the Department of Transportation may assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects *[and]*. **The committee shall report biennially its recommendation to the commission and *[the Legislative Committee on Trade and Economic Development]* to the appropriate legislative committee.**

**SECTION 9.** ORS 200.170 is amended to read:

200.170. (1) Subject to subsection (2) of this section, *[in order to be eligible for assistance]* **to participate in the emerging small business program** under ORS *[200.005 and]* 200.150 to 200.200, *[the]* **an applicant must:**

*[(a) Be determined to be an emerging small business pursuant to ORS 200.150;]*

*[(b) Have not been found to be eligible for such assistance in more than seven calendar years;]*

**(a) Be certified by the Department of Consumer and Business Services under ORS 200.005 to 200.075 as an emerging small business;**

*[(c)]* **(b) Show that the applicant's place of business and the work in which the applicant seeks to participate are located in this state; and**

*[(d)]* **(c) Show that the applicant is in compliance with applicable licensing and registration requirements.**

(2) The Department of Transportation may limit eligibility for *[assistance]* **participation** on a specific project or contract to emerging small businesses that are located in or draw a part of their workforce from economically depressed areas **or enterprise zones** in this state, as designated by the Economic and Community Development Department in consultation with the Employment Department.

(3) *[The]* **An applicant *[for assistance]* who participates** under ORS *[200.005 and]* 200.150 to 200.200 must perform at least 51 percent of the labor **provided by the applicant** on *[any]* a public improvement or maintenance project *[for which assistance is received]* using the applicant's own workforce.

**SECTION 10.** ORS 200.180 is amended to read:

200.180. The Emerging Small Business Account is established within the *[Consumer and Business Services]* **State Highway Fund**. The Emerging Small Business Account is an investment fund for purposes of ORS 293.701 to 293.820. Moneys in the account *[and the interest thereon]* are continuously appropriated to the **Department of Transportation** for the *[purposes]* **purpose** of assisting emerging small businesses under the plans recommended under ORS 200.160. **Interest earnings on moneys in the account are credited to the account.**

**SECTION 11.** ORS 200.190 is amended to read:

200.190. The Department of Transportation, when undertaking a public improvement highway construction contract, shall deposit with the State Treasurer an amount equal to not more than one percent of the contract award amount. The State Treasurer shall credit the amount reserved to the Emerging Small Business Account *[within the Consumer and Business Services]* **established in the State Highway Fund**. The deposit *[shall]* **must** be made within 30 days of the date on which the contract award is made.

**SECTION 12.** (1) **The Emerging Small Business Account within the Consumer and Business Services Fund is abolished.**

(2) **The Department of Consumer and Business Services shall pay to the Department of Transportation for deposit in the Emerging Small Business Account established in the State Highway Fund by the amendments to ORS 200.180 by section 10 of this 2005 Act:**

**(a) Amounts remaining in the Emerging Small Business Account within the Consumer and Business Services Fund on the effective date of this 2005 Act within 10 days of the effective date of this 2005 Act; and**

**(b) Interest earnings on the moneys in the Emerging Small Business Account within the Consumer and Business Services Fund that are received on or after the effective date of this 2005 Act within 10 days of receipt of the interest earnings.**

**SECTION 13. (1) ORS 200.150 is repealed.  
(2) Section 3 of this 2005 Act is repealed on July 1, 2006.**

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**Passed by Senate July 1, 2005**

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Secretary of Senate

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President of Senate

**Passed by House July 21, 2005**

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Speaker of House

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State