

# Enrolled Senate Bill 152

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CHAPTER .....

## AN ACT

Relating to purchasing authority of state agencies responsible for state institutions; amending ORS 179.040 and 279A.050; and declaring an emergency.

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

**SECTION 1.** ORS 179.040 is amended to read:

179.040. (1) The Department of Corrections and the Department of Human Services shall:

(a) Govern, manage and administer the affairs of the public institutions and works within their respective jurisdictions.

(b) Enter into contracts for the planning, erection, completion and furnishings of all new buildings or additions at their respective institutions.

(c) Subject to any applicable provisions of ORS 279A.125, 279A.255, 279A.275, 279A.280, 279A.285, 279A.290, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280 and 283.110 to 283.395, enter into contracts for the purchase of supplies for their respective institutions.

(d) Make and adopt rules, *not inconsistent with law,* for the guidance of the Department of Corrections or the Department of Human Services and for the government of their respective institutions.

(2) The Department of Corrections and the Department of Human Services, respectively, may:

(a) Sue and plead in all courts of law and equity.

(b) **Subject to ORS 279A.050 (7), procure, contract for or enter into agreements for goods and services of all kinds, including personal services contracts designated under ORS 279A.055, and perform all legal [and peaceful] acts requisite and necessary for the successful management and maintenance of the institutions within their respective jurisdictions.**

**SECTION 2.** ORS 279A.050 is amended to read:

279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services **under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services** for the construction, demolition, exchange, maintenance, operation and equipping of housing:

(A) For persons with chronic mental illness, subject to applicable provisions of ORS 426.504; and

(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

(c) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;

(d) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

(e) The Economic and Community Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(f) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

(g) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

(h) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, **services and personal services under ORS 179.040** for its institutions;

(i) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

(j) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

(k) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology relating to student assessment; and

(L) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7) *[Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority to procure or supervise the procurement of all state agency information technology contracts and all price agreements on behalf of the state agencies identified in subsection (6)(a) to (j) of this section under which more than one state agency may order goods, services or personal services unless the director delegates this authority.]* **Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates this authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6)(a) to (j) of this section under which more than one state agency may order goods, services or personal services and all state agency information technology contracts.** This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to (j) of this section may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director if the director has established a price agreement for the goods, services or personal services.

**SECTION 3. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.**

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**Passed by Senate April 23, 2009**

**Repassed by Senate June 1, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 28, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

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

.....M,....., 2009

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Secretary of State