

Senate Bill 324

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Applies provisions of Public Contracting Code to legislative and judicial departments and to Oregon University System.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to application of Public Contracting Code to state government entities; creating new pro-
3 visions; amending ORS 173.500, 279A.010, 279A.025, 279A.050, 279A.055, 279A.065, 279A.075,
4 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355, 279C.360, 279C.390,
5 279C.445, 279C.450, 279C.560, 351.070 and 351.086; and declaring an emergency.

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

7 **SECTION 1.** ORS 173.500 is amended to read:

8 173.500. (1) There is established within the legislative department the Oregon State Capitol
9 Foundation. The foundation shall be composed of not fewer than nine and not more than 25 voting
10 members, who shall each serve a term of four years. The President of the Senate shall appoint three
11 voting members from members of the Senate. The Speaker of the House of Representatives shall
12 appoint three voting members from members of the House of Representatives. The Legislative Ad-
13 ministration Committee shall appoint the remaining voting members. A member is eligible for reap-
14 pointment. At all times there shall be appointed to the foundation an odd number of voting members.
15 The foundation may appoint honorary, nonvoting members to the foundation.

16 (2) The Oregon State Capitol Foundation shall:

17 (a) Advise the Legislative Administration Committee on the terms and conditions of contracts
18 or agreements entered into under ORS 276.002.

19 (b) Recommend to the committee renovations, repairs and additions to the State Capitol.

20 (c) Recommend to the committee exhibits and events for the State Capitol.

21 (d) Deposit gifts, grants, donations and moneys converted from gifts or donations of other than
22 money into separate trust accounts reserved for the purposes of the gifts, grants and donations.

23 (e) Develop, maintain and implement plans to:

24 (A) Enhance and embellish the State Capitol in keeping with the design and purpose of the
25 building and adjacent areas; and

26 (B) Preserve the history of activities of state government that have occurred in the State Capitol
27 and of persons who have participated in state government in the State Capitol.

28 (f) Adopt rules to guide the foundation and implement the foundation's responsibilities under this
29 subsection and the foundation's authority under subsections (3) to (5) of this section.

30 (g) Consult with any advisory committees the Legislative Administration Committee may desig-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 nate before the foundation makes a recommendation required by this subsection.

2 (3) The Oregon State Capitol Foundation may:

3 (a) Solicit and accept gifts, grants and donations from public and private sources in the name
4 of the foundation.

5 (b) Under guidelines adopted by the Legislative Administration Committee, expend moneys from
6 the Oregon State Capitol Foundation Fund for the purposes set out in subsection (2) of this section,
7 including but not limited to the reasonable and necessary operating expenses of the foundation.

8 (c) Convert gifts or donations other than money into moneys.

9 (d) Become or create an organization under section 501(c)(3) of the Internal Revenue Code.

10 (4)(a) As used in this subsection, "community foundation" has the meaning given that term in
11 ORS 348.580.

12 (b) The Oregon State Capitol Foundation may enter into agreements with a person, including a
13 community foundation in Oregon, for the person to assume the management of the moneys in the
14 Oregon State Capitol Foundation Fund. The Oregon State Capitol Foundation may transfer to the
15 person any moneys in the fund.

16 (c) The Oregon State Capitol Foundation shall include in any agreement entered into under this
17 subsection a requirement that:

18 (A) The person conduct a periodic independent financial audit of the moneys transferred to the
19 person.

20 (B) The person prepare an annual financial report according to generally accepted accounting
21 principles.

22 (C) The person submit an annual financial report to the Oregon State Capitol Foundation, the
23 Legislative Administration Committee and the Oregon Investment Council.

24 (d) If a provision of an agreement entered into under this subsection would cause the person to
25 be out of compliance with a federal law, the Oregon State Capitol Foundation may waive the pro-
26 vision.

27 (5) The Oregon State Capitol Foundation may, through the Legislative Administrator, enter into
28 contracts or agreements to implement the foundation's responsibilities and authority. ORS 279.835
29 to 279.855 [and ORS chapters 279A, 279B and 279C] do not apply to a contract or agreement entered
30 into by the foundation.

31 (6) The Oregon State Capitol Foundation may take action under this section upon a majority
32 vote of a quorum of members. A majority of the voting members of the foundation constitutes a
33 quorum for the transaction of business.

34 **SECTION 2.** ORS 279A.010 is amended to read:

35 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
36 plicable definition requires otherwise:

37 (a) "Bidder" means a person that submits a bid in response to an invitation to bid.

38 (b) "Contracting agency" means a public body authorized by law to conduct a procurement.
39 "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Ad-
40 ministrative Services and any person authorized by a contracting agency to conduct a procurement
41 on the contracting agency's behalf. [*"Contracting agency" does not include the judicial department or*
42 *the legislative department.*]

43 (c) "Days" means calendar days.

44 (d) "Department" means the Oregon Department of Administrative Services.

45 (e) "Director" means the Director of the Oregon Department of Administrative Services or a

1 person designated by the director to carry out the authority of the director under the Public Con-
2 tracting Code.

3 (f) “Emergency” means circumstances that:

4 (A) Could not have been reasonably foreseen;

5 (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat
6 to property, public health, welfare or safety; and

7 (C) Require prompt execution of a contract to remedy the condition.

8 (g) “Energy savings performance contract” means a public contract between a contracting
9 agency and a qualified energy service company for the identification, evaluation, recommendation,
10 design and construction of energy conservation measures, including a design-build contract, that
11 guarantee energy savings or performance.

12 (h) “Executive department” has the meaning given that term in ORS 174.112.

13 (i) “Goods” includes supplies, equipment, materials, personal property, including any tangible,
14 intangible and intellectual property and rights and licenses in relation thereto, and combinations
15 of any of the items identified in this paragraph.

16 (j) “Goods and services” or “goods or services” includes combinations of any of the items iden-
17 tified in the definitions of “goods” and “services.”

18 (k)(A) “Grant” means:

19 (i) An agreement under which a contracting agency receives moneys, property or other assist-
20 ance, including but not limited to federal assistance that is characterized as a grant by federal law
21 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
22 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
23 contracting agency and in which no substantial involvement by the grantor is anticipated in the
24 program or activity other than involvement associated with monitoring compliance with the grant
25 conditions; or

26 (ii) An agreement under which a contracting agency provides moneys, property or other assist-
27 ance, including but not limited to federal assistance that is characterized as a grant by federal law
28 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
29 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-
30 cipient and in which no substantial involvement by the contracting agency is anticipated in the
31 program or activity other than involvement associated with monitoring compliance with the grant
32 conditions.

33 (B) “Grant” does not include a public contract for a public improvement, for public works, as
34 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
35 nance necessary to preserve a public improvement, when under the public contract a contracting
36 agency pays, in consideration for contract performance intended to realize or to support the real-
37 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
38 the contracting agency has received under a grant.

39 (L) “Industrial oil” means any compressor, turbine or bearing oil, hydraulic oil, metal-working
40 oil or refrigeration oil.

41 (m) “Judicial department” has the meaning given that term in ORS 174.113.

42 (n) “Legislative department” has the meaning given that term in ORS 174.114.

43 (o) “Local contract review board” means a local contract review board described in ORS
44 279A.060.

45 (p) “Local contracting agency” means a local government or special government body authorized

1 by law to conduct a procurement. “Local contracting agency” includes any person authorized by a
2 local contracting agency to conduct a procurement on behalf of the local contracting agency.

3 (q) “Local government” has the meaning given that term in ORS 174.116.

4 (r) “Lowest responsible bidder” means the lowest bidder who:

5 (A) Has substantially complied with all prescribed public contracting procedures and require-
6 ments;

7 (B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

8 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
9 279C.440; and

10 (D) If the advertised contract is a public improvement contract, is not on the list created by the
11 Construction Contractors Board under ORS 701.227.

12 (s) “Lubricating oil” means any oil intended for use in an internal combustion crankcase,
13 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
14 ment or machinery powered by an internal combustion engine.

15 (t) “Person” means a natural person capable of being legally bound, a sole proprietorship, a
16 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
17 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
18 or common economic interest, any other person with legal capacity to contract or a public body.

19 **(u) “PETE” means polyethylene terephthalate material.**

20 [(u)] (v) “Post-consumer waste” means a finished material that would normally be disposed of
21 as solid waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not
22 include manufacturing waste.

23 [(v)] (w) “Price agreement” means a public contract for the procurement of goods or services
24 at a set price with:

25 (A) No guarantee of a minimum or maximum purchase; or

26 (B) An initial order or minimum purchase combined with a continuing contractor obligation to
27 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
28 mum additional purchase.

29 [(w)] (x) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring
30 goods or services. “Procurement” includes each function and procedure undertaken or required to
31 be undertaken by a contracting agency to enter into a public contract, administer a public contract
32 and obtain the performance of a public contract under the Public Contracting Code.

33 [(x)] (y) “Proposer” means a person that submits a proposal in response to a request for pro-
34 posals.

35 [(y)] (z) “Public body” has the meaning given that term in ORS 174.109.

36 [(z)] (aa) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other
37 acquisition, by a contracting agency of personal property, services, including personal services,
38 public improvements, public works, minor alterations, or ordinary repair or maintenance necessary
39 to preserve a public improvement. “Public contract” does not include grants.

40 [(aa)] (bb) “Public contracting” means procurement activities described in the Public Contract-
41 ing Code relating to obtaining, modifying or administering public contracts or price agreements.

42 [(bb)] (cc) “Public Contracting Code” or “code” means ORS chapters 279A, 279B and 279C.

43 [(cc)] (dd) “Public improvement” means a project for construction, reconstruction or major ren-
44 ovation on real property by or for a contracting agency. “Public improvement” does not include:

45 (A) Projects for which no funds of a contracting agency are directly or indirectly used, except

1 for participation that is incidental or related primarily to project design or inspection; or

2 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a
3 public improvement.

4 [(*dd*)] (**ee**) “Public improvement contract” means a public contract for a public improvement.
5 “Public improvement contract” does not include a public contract for emergency work, minor al-
6 terations, or ordinary repair or maintenance necessary to preserve a public improvement.

7 [(*ee*)] (**ff**) “Recycled material” means any material that would otherwise be a useless, unwanted
8 or discarded material except for the fact that the material still has useful physical or chemical
9 properties after serving a specific purpose and can, therefore, be reused or recycled.

10 [(*ff*)] (**gg**) “Recycled oil” means used oil that has been prepared for reuse as a petroleum product
11 by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or
12 use is operationally safe, environmentally sound and complies with all laws and regulations.

13 [(*gg*)] (**hh**) “Recycled paper” means a paper product with not less than:

14 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or

15 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

16 [(*hh*)] (**ii**) “Recycled PETE” means post-consumer polyethylene terephthalate material.

17 [(*ii*)] (**jj**) “Recycled product” means all materials, goods and supplies, not less than 50 percent
18 of the total weight of which consists of secondary and post-consumer waste with not less than 10
19 percent of its total weight consisting of post-consumer waste. “Recycled product” includes any
20 product that could have been disposed of as solid waste, having completed its life cycle as a con-
21 sumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s
22 form.

23 [(*jj*)] (**kk**) “Secondary waste materials” means fragments of products or finished products of a
24 manufacturing process that has converted a virgin resource into a commodity of real economic
25 value. “Secondary waste materials” includes post-consumer waste. “Secondary waste materials”
26 does not include excess virgin resources of the manufacturing process. For paper, “secondary waste
27 materials” does not include fibrous waste generated during the manufacturing process such as fibers
28 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
29 sawdust or other wood residue from a manufacturing process.

30 [(*kk*)] (**ll**) “Services” mean services other than personal services designated under ORS
31 279A.055, except that, for state contracting agencies with procurement authority under ORS
32 279A.050 or 279A.140, “services” includes personal services as designated by the state contracting
33 agencies.

34 [(*ll*)] (**mm**) “Special government body” has the meaning given that term in ORS 174.117.

35 [(*mm*)] (**nn**) “State agency” means the executive department, except the Secretary of State and
36 the State Treasurer in the performance of the duties of their constitutional offices.

37 [(*nn*)] (**oo**) “State contracting agency” means an executive department entity authorized by law
38 to conduct a procurement.

39 [(*oo*)] (**pp**) “State government” has the meaning given that term in ORS 174.111.

40 [(*pp*)] (**qq**) “Used oil” has the meaning given that term in ORS 459A.555.

41 [(*qq*)] (**rr**) “Virgin oil” means oil that has been refined from crude oil and that has not been used
42 or contaminated with impurities.

43 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
44 appear are:

45

1	(a)	“Adequate”	ORS 279C.305
2	(b)	“Administering contracting	
3		agency”	ORS 279A.200
4	(c)	“Affirmative action”	ORS 279A.100
5	(d)	“Architect”	ORS 279C.100
6	(e)	“Architectural, engineering	
7		and land surveying	
8		services”	ORS 279C.100
9	(f)	“Bid documents”	ORS 279C.400
10	(g)	“Bidder”	ORS 279B.415
11	(h)	“Bids”	ORS 279C.400
12	(i)	“Brand name”	ORS 279B.405
13	(j)	“Brand name or equal	
14		specification”	ORS 279B.200
15	(k)	“Brand name	
16		specification”	ORS 279B.200
17	(L)	“Class special	
18		procurement”	ORS 279B.085
19	(m)	“Consultant”	ORS 279C.115
20	(n)	“Contract-specific	
21		special procurement”	ORS 279B.085
22	(o)	“Cooperative	
23		procurement”	ORS 279A.200
24	(p)	“Cooperative procurement	
25		group”	ORS 279A.200
26	(q)	“Donee”	ORS 279A.250
27	(r)	“Engineer”	ORS 279C.100
28	(s)	“Findings”	ORS 279C.330
29	(t)	“Fire protection	
30		equipment”	ORS 279A.190
31	(u)	“Fringe benefits”	ORS 279C.800
32	(v)	“Funds of a public	
33		agency”	ORS 279C.810
34	(w)	“Good cause”	ORS 279C.585
35	(x)	“Good faith dispute”	ORS 279C.580
36	(y)	“Goods”	ORS 279B.115
37	(z)	“Housing”	ORS 279C.800
38	(aa)	“Interstate cooperative	
39		procurement”	ORS 279A.200
40	(bb)	“Invitation to bid”	ORS 279B.005
41	and	279C.400
42	(cc)	“Joint cooperative	
43		procurement”	ORS 279A.200
44	(dd)	“Labor dispute”	ORS 279C.650
45	(ee)	“Land surveyor”	ORS 279C.100

- 1 (ff) “Legally flawed”ORS 279B.405
- 2 (gg) “Locality”ORS 279C.800
- 3 (hh) “Nonprofit
- 4 organization”ORS 279C.810
- 5 (ii) “Nonresident bidder”ORS 279A.120
- 6 (jj) “Not-for-profit
- 7 organization”ORS 279A.250
- 8 (kk) “Original contract”ORS 279A.200
- 9 (LL) “Permissive cooperative
- 10 procurement”ORS 279A.200
- 11 (mm) “Person”ORS 279C.500
- 12and 279C.815
- 13 (nn) “Personal services”ORS 279C.100
- 14 (oo) “Prevailing rate of
- 15 wage”ORS 279C.800
- 16 (pp) “Procurement
- 17 description”ORS 279B.005
- 18 (qq) “Property”ORS 279A.250
- 19 (rr) “Public agency”ORS 279C.800
- 20 (ss) “Public contract”ORS 279A.190
- 21 (tt) “Public works”ORS 279C.800
- 22 (uu) “Purchasing contracting
- 23 agency”ORS 279A.200
- 24 (vv) “Regularly organized fire
- 25 department”ORS 279A.190
- 26 (ww) “Related services”ORS 279C.100
- 27 (xx) “Request for proposals” ..ORS 279B.005
- 28 (yy) “Resident bidder”ORS 279A.120
- 29 (zz) “Responsible bidder”ORS 279A.105
- 30and 279B.005
- 31 (aaa) “Responsible proposer”ORS 279B.005
- 32 (bbb) “Responsive bid”ORS 279B.005
- 33 (ccc) “Responsive proposal”ORS 279B.005
- 34 (ddd) “Retainage”ORS 279C.550
- 35 (eee) “Special procurement”ORS 279B.085
- 36 (fff) “Specification”ORS 279B.200
- 37 (ggg) “State agency”ORS 279A.250
- 38 (hhh) “Substantial
- 39 completion”ORS 279C.465
- 40 (iii) “Surplus property”ORS 279A.250
- 41 (jjj) “Unnecessarily
- 42 restrictive”ORS 279B.405

43 **SECTION 3.** ORS 279A.025 is amended to read:

44 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
 45 Code applies to all public contracting.

- 1 (2) The Public Contracting Code does not apply to:
- 2 (a) Contracts between a contracting agency and:
- 3 (A) Another contracting agency;
- 4 (B) The Oregon Health and Science University;
- 5 (C) The Oregon State Bar;
- 6 (D) A governmental body of another state;
- 7 (E) The federal government;
- 8 (F) An American Indian tribe or an agency of an American Indian tribe;
- 9 (G) A nation, or a governmental body in a nation, other than the United States; or
- 10 (H) An intergovernmental entity formed between or among:
- 11 (i) Governmental bodies of this or another state;
- 12 (ii) The federal government;
- 13 (iii) An American Indian tribe or an agency of an American Indian tribe;
- 14 (iv) A nation other than the United States; or
- 15 (v) A governmental body in a nation other than the United States;
- 16 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or
- 17 other authority for establishing agreements between or among governmental bodies or agencies or
- 18 tribal governing bodies or agencies;
- 19 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
- 20 414.145 for purposes of source selection;
- 21 (d) Grants;
- 22 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony
- 23 relating to existing or potential litigation or legal matters in which a public body is or may become
- 24 interested;
- 25 (f) Acquisitions or disposals of real property or interest in real property;
- 26 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
- 27 lection;
- 28 (h) Contracts for the procurement or distribution of textbooks;
- 29 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- 30 (j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001,
- 31 or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;
- 32 (k) Contracts entered into under ORS chapter 180 between the Attorney General and private
- 33 counsel or special legal assistants;
- 34 (L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry
- 35 and the State Forestry Department;
- 36 (m) Contracts for forest protection or forest related activities, as described in ORS 477.406, by
- 37 the State Forester or the State Board of Forestry;
- 38 (n) Sponsorship agreements entered into by the State Parks and Recreation Director in accord-
- 39 ance with ORS 565.080 (4);
- 40 (o) Contracts entered into by the Housing and Community Services Department in exercising the
- 41 department's duties prescribed in ORS chapters 456 and 458, except that the department's public
- 42 contracting for goods and services is subject to ORS chapter 279B;
- 43 (p) Contracts entered into by the State Treasurer in exercising the powers of that office pre-
- 44 scribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and 295, including but not limited to invest-
- 45 ment contracts and agreements, banking services, clearing house services and collateralization

1 agreements, bond documents, certificates of participation and other debt repayment agreements, and
 2 any associated contracts, agreements and documents, regardless of whether the obligations that the
 3 contracts, agreements or documents establish are general, special or limited, except that the State
 4 Treasurer's public contracting for goods and services is subject to ORS chapter 279B;

5 (q) Contracts, agreements or other documents entered into, issued or established in connection
 6 with:

7 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

8 (B) The making of program loans and similar extensions or advances of funds, aid or assistance
 9 by a public body to a public or private body for the purpose of carrying out, promoting or sustaining
 10 activities or programs authorized by law; or

11 (C) The investment of funds by a public body as authorized by law, and other financial trans-
 12 actions of a public body that by their character cannot practically be established under the com-
 13 petitive contractor selection procedures of ORS 279B.050 to 279B.085;

14 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
 15 243.275, 243.291, 243.303 and 243.565;

16 (s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

17 (t) Any other public contracting of a public body specifically exempted from the code by another
 18 provision of law.

19 (3) The Public Contracting Code does not apply to the contracting activities of:

20 (a) The Oregon State Lottery Commission;

21 [(b) *The Oregon University System and member institutions, except as provided in ORS 351.086;*]

22 [(c) *The legislative department;*]

23 [(d) *The judicial department;*]

24 [(e)] (b) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS
 25 279.835 to 279.855 and 279A.250 to 279A.290;

26 [(f)] (c) Oregon Corrections Enterprises;

27 [(g)] (d) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250
 28 to 279A.290;

29 [(h)] (e) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

30 [(i)] (f) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

31 [(j)] (g) The Oregon Innovation Council;

32 [(k)] (h) The Oregon Utility Notification Center; or

33 [(L)] (i) Any other public body specifically exempted from the code by another provision of law.

34 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with
 35 qualified nonprofit agencies providing employment opportunities for individuals with disabilities un-
 36 der ORS 279.835 to 279.855.

37 **SECTION 4.** ORS 279A.050 is amended to read:

38 279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting
 39 agency shall exercise all procurement authority in accordance with the provisions of the Public
 40 Contracting Code.

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

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

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

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

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

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

16 **(4) Except as otherwise provided in the Public Contracting Code or a provision of law**
17 **other than the Public Contracting Code, and subject to the policies and directions of the ap-**
18 **propriate committee of the Legislative Assembly, the Legislative Administrator, the Legis-**
19 **lative Fiscal Officer, the Legislative Revenue Officer, the Legislative Counsel and the Natural**
20 **Resources Policy Administrator have all the authority to procure or supervise the procure-**
21 **ment of goods, services and personal services related to programs under the authority of the**
22 **respective legislative services agencies within the legislative department.**

23 **(5) Except as otherwise provided in the Public Contracting Code or a provision of law**
24 **other than the Public Contracting Code, the State Court Administrator has all the authority**
25 **to procure or supervise the procurement of goods, services and personal services related to**
26 **programs under the authority of the judicial department.**

27 [(4)] (6) Except as otherwise provided in the Public Contracting Code, the Secretary of State has
28 all the authority to procure or supervise the procurement of goods, services and personal services
29 related to programs under the authority of the Secretary of State.

30 [(5)] (7) Except as otherwise provided in the Public Contracting Code, the State Treasurer has
31 all the authority to procure or supervise the procurement of goods, services and personal services
32 related to programs under the authority of the State Treasurer.

33 [(6)] (8) The state agencies listed in this subsection have all the authority to do the following
34 in accordance with the Public Contracting Code:

35 (a) The Department of Human Services to procure or supervise the procurement of goods, ser-
36 vices and personal services for the construction, demolition, exchange, maintenance, operation and
37 equipping of housing:

38 (A) For *[persons]* **individuals** with chronic mental illness, subject to applicable provisions of
39 ORS 426.504; and

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

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

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

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

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

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

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

16 (h) The Department of Corrections, subject to any applicable provisions of ORS 279A.120,
17 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods for its
18 institutions;

19 (i) The Department of Veterans' Affairs to procure or supervise the procurement of real estate
20 broker and principal real estate broker services related to programs under the department's au-
21 thority;

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

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

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

32 [(7)] **(9)** Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Depart-
33 ment of Administrative Services has exclusive authority to procure or supervise the procurement
34 of all state agency information technology contracts and all price agreements on behalf of the state
35 agencies identified in subsection [(6)(a)] **(8)(a)** to (j) of this section under which more than one state
36 agency may order goods, services or personal services unless the director delegates this authority.
37 This subsection does not apply to contracts under which the contractor delivers to the state agency
38 information technology products or services incidental to the performance of personal services con-
39 tracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A
40 state agency identified in subsection (3) or [(6)(a)] **(8)(a)** to (j) of this section may not establish a
41 price agreement or enter into a contract for goods, services or personal services without the ap-
42 proval of the director if the director has established a price agreement for the goods, services or
43 personal services.

44 **SECTION 5.** ORS 279A.055 is amended to read:

45 279A.055. (1) Except as provided in ORS 279A.140, a contracting agency may enter into personal

1 services contracts. The provisions of this section do not relieve a contracting agency of the duty to
 2 comply with ORS 279A.140, any other law applicable to state agencies or applicable city or county
 3 charter provisions.

4 (2) A state contracting agency with procurement authority under ORS 279A.050, **the officer or**
 5 **administrator of a contracting agency with procurement authority under ORS 279A.050 (4)**
 6 **or (5)** or a local contract review board by ordinance, resolution, administrative rule or other regu-
 7 lation may designate certain service contracts or classes of service contracts as personal services
 8 contracts.

9 **SECTION 6.** ORS 279A.065 is amended to read:

10 279A.065. (1) The Attorney General shall prepare and maintain model rules of procedure appro-
 11 priate for use by all contracting agencies governing public contracting under the Public Contracting
 12 Code and may devise and publish forms for use therewith. The Attorney General shall adopt the
 13 model rules in the manner provided by ORS chapter 183. Before adopting or amending a model rule,
 14 the Attorney General shall consult with the Director of the Oregon Department of Administrative
 15 Services, the Director of Transportation, **the Legislative Administrator, the State Court Ad-**
 16 **ministrator,** representatives of county governments, representatives of city governments, represen-
 17 tatives of school boards and other knowledgeable persons.

18 (2) The Attorney General shall adopt model rules appropriate for use by all contracting agencies
 19 to govern the procedures for entering into energy savings performance contracts. Before adopting
 20 or amending a rule under this subsection, the Attorney General shall consult with the Oregon De-
 21 partment of Administrative Services, the State Department of Energy, the Oregon University Sys-
 22 tem, **the Legislative Administrator, the State Court Administrator,** local contracting agencies
 23 and other knowledgeable persons. The Attorney General may develop standard contract forms for
 24 use with energy savings performance contracts.

25 (3) After each legislative session, the Attorney General shall review all laws passed by the
 26 Legislative Assembly that affect public contracting to determine if the model rules prepared under
 27 this section should be modified by the adoption of a new rule or by the amendment or repeal of an
 28 existing rule. If the Attorney General determines that a modification of the model rules is necessary,
 29 the Attorney General shall prepare the modification within such time as to allow the modification
 30 to take effect no later than 120 days after the effective date of the legislation that caused the rule
 31 to be modified. However, the Attorney General may prepare a modification to take effect 121 or
 32 more days after the effective date of the legislation if the Attorney General provides notice desig-
 33 nating the time period within which the modification will take effect to the state agencies and per-
 34 sons listed in subsection (1) of this section.

35 (4) A contracting agency that has not adopted [*its own*] rules of procedure **applicable to the**
 36 **contracting agency** in accordance with subsection (5) of this section is subject to the model rules
 37 adopted by the Attorney General under this section, including all modifications to the model rules
 38 that the Attorney General may adopt. This subsection does not apply to personal services contracts
 39 of local contracting agencies except for contracts for architectural, engineering and land surveying
 40 services and related services.

41 (5)(a) A contracting agency may adopt [*its own*] rules of procedure for public contracts that **are**
 42 **applicable to the contracting agency and that:**

43 (A) Specifically state that the model rules adopted by the Attorney General under this section
 44 do not apply to the contracting agency; and

45 (B) Prescribe the rules of procedure that the contracting agency will use for public contracts,

1 which may include portions of the model rules adopted by the Attorney General.

2 (b) A contracting agency that adopts rules under this section shall review the rules each time
3 the Attorney General modifies the model rules under this section to determine whether the con-
4 tracting agency should modify *[its]* **the contracting agency's** rules to ensure compliance with
5 statutory changes.

6 **SECTION 7.** ORS 279A.075 is amended to read:

7 279A.075. (1) Unless otherwise provided in the Public Contracting Code, the exercise of all au-
8 thorities in the code may be delegated and subdelegated in whole or in part. Notwithstanding dele-
9 gations of authority under this section, a person's or agency's exercise of the delegated authority
10 is governed by the code and rules adopted under the code.

11 (2) The Secretary of State, State Treasurer, Director of the Oregon Department of Administra-
12 tive Services and Director of Transportation, **the officer or administrator of a contracting**
13 **agency with procurement authority under ORS 279A.050 (4) or (5)** and other heads of state
14 agencies with specific limited authority identified in ORS 279A.050 *[(6)]* **(8)** may delegate their au-
15 thority to contract for and manage public contracts for their offices or agencies.

16 **SECTION 8.** ORS 279B.085 is amended to read:

17 279B.085. (1) As used in this section and ORS 279B.400:

18 (a) "Class special procurement" means a contracting procedure that differs from the procedures
19 described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into
20 a series of contracts over time or for multiple projects.

21 (b) "Contract-specific special procurement" means a contracting procedure that differs from the
22 procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of
23 entering into a single contract or a number of related contracts on a one-time basis or for a single
24 project.

25 (c) "Special procurement" means, unless the context requires otherwise, a class special pro-
26 curement, a contract-specific special procurement or both.

27 (2) Except as provided in subsection (3) of this section, to seek approval of a special procure-
28 ment, a contracting agency shall submit a written request to the Director of the Oregon Department
29 of Administrative Services or the local contract review board, as applicable, that describes the
30 contracting procedure, the goods or services or the class of goods or services that are the subject
31 of the special procurement and the circumstances that justify the use of a special procurement under
32 the standards set forth in subsection (4) of this section.

33 (3) When the contracting agency **that seeks approval of a special procurement** is the office
34 of the Secretary of State, *[or]* the office of the State Treasurer*[,]* **or a contracting agency with**
35 **procurement authority under ORS 279A.050 (4) or (5)**, *[to seek approval of a special*
36 *procurement,]* the contracting agency shall submit a written request to the Secretary of State, *[or]*
37 the State Treasurer*[,]* **or the appointing authority for the officer or administrator of the con-**
38 **tracting agency with procurement authority under ORS 279A.050 (4) or (5)**, as applicable, that
39 describes the contracting procedure, the goods or services or the class of goods or services that are
40 the subject of the special procurement and the circumstances that justify the use of a special pro-
41 curement under the standards set forth in subsection (4) of this section.

42 (4) The director, a local contract review board, the Secretary of State, *[or]* the State Treasurer
43 **or the appointing authority for the officer or administrator of a contracting agency with**
44 **procurement authority under ORS 279A.050 (4) or (5)** may approve a special procurement if the
45 director, board, **appointing authority**, Secretary of State or State Treasurer finds that a written

1 request submitted under subsection (2) or (3) of this section demonstrates that the use of a special
 2 procurement as described in the request, or an alternative procedure prescribed by the director,
 3 board, **appointing authority**, Secretary of State or State Treasurer:

4 (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially
 5 diminish competition for public contracts; and

6 (b)(A) Is reasonably expected to result in substantial cost savings to the contracting agency or
 7 to the public; or

8 (B) Otherwise substantially promotes the public interest in a manner that could not practicably
 9 be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060,
 10 279B.065 or 279B.070 or under any rules adopted thereunder.

11 (5) Public notice of the approval of a special procurement must be given in the same manner
 12 as provided in ORS 279B.055 (4).

13 (6) If a contracting agency intends to award a contract through a special procurement that calls
 14 for competition among prospective contractors, the contracting agency shall award the contract to
 15 the offeror the contracting agency determines to be the most advantageous to the contracting
 16 agency.

17 (7) When the director, a local contract review board, the Secretary of State, [or] the State
 18 Treasurer **or the appointing authority for the officer or administrator of a contracting agency**
 19 **with procurement authority under ORS 279A.050 (4) or (5)** approves a class special procurement
 20 under this section, the contracting agency may award contracts to acquire goods or services within
 21 the class of goods or services in accordance with the terms of the approval without making a sub-
 22 sequent request for a special procurement.

23 **(8) As used in this section, “appointing authority”:**

24 **(a) Means, for the Legislative Administrator, the Legislative Administration Committee;**

25 **(b) Has, for the Legislative Fiscal Officer, the meaning given that term in ORS 173.410;**

26 **(c) Has, for the Legislative Revenue Officer, the meaning given that term in ORS 173.800;**

27 **(d) Means, for the Legislative Counsel, the Legislative Counsel Committee;**

28 **(e) Has, for the Natural Resources Policy Administrator, the meaning given that term in**
 29 **ORS 173.610; and**

30 **(f) Means, for the State Court Administrator, the Chief Justice of the Supreme Court.**

31 **SECTION 9.** ORS 279B.400 is amended to read:

32 279B.400. (1) Before seeking judicial review of the approval of a special procurement, a person
 33 must file a protest, in accordance with the rules adopted under ORS 279A.065, with the Director of
 34 the Oregon Department of Administrative Services, **the officer or administrator of a contracting**
 35 **agency with procurement authority under ORS 279A.050 (4) or (5)** or the local contracting
 36 agency, as applicable, and exhaust all available nonjudicial remedies. The rules adopted under ORS
 37 279A.065 shall provide a reasonable time and manner for affected persons to protest the approval
 38 of a special procurement under ORS 279B.085.

39 (2) The approval of a class special procurement by the director under ORS 279B.085 constitutes
 40 rulemaking and not a contested case under ORS chapter 183. Any affected person, except the state
 41 contracting agency that requested the approval or anyone representing the state contracting agency,
 42 may petition the Court of Appeals in the manner provided in ORS 183.400 to test the validity of a
 43 class special procurement approved by the director. A proceeding under ORS 183.400 does not affect
 44 the validity of a contract executed pursuant to a class special procurement before the petition is
 45 filed. Notwithstanding ORS 183.400 (1), before seeking judicial review under this subsection, a per-

1 son must file a protest with the director as described in subsection (1) of this section.

2 (3)(a) The approval of a contract-specific special procurement by the director is reviewable un-
3 der ORS 183.484, but only if judicial review is sought before the contract is awarded. Otherwise,
4 a contract awarded pursuant to the contract-specific special procurement is conclusively presumed
5 valid and may not, in any future judicial or administrative proceeding, be challenged on the ground
6 that the contract was awarded under an invalid special procurement.

7 (b) Judicial review may be sought from the Circuit Court for Marion County or the circuit court
8 for the county in which the principal offices of the state contracting agency that requested the ap-
9 proval are located. The circuit court shall give priority on *[its]* **the court's** docket and expedited
10 review to proceedings under this subsection.

11 (4)(a) The approval of a special procurement **by an appointing authority under ORS 279B.085**
12 **(4) or the approval of a special procurement** by a local contract review board may be challenged
13 by filing a writ of review under ORS chapter 34, provided that all available nonjudicial remedies
14 first have been exhausted, including protests as described in subsection (1) of this section.
15 Notwithstanding the 60-day filing period prescribed by ORS 34.030, the approval of a special pro-
16 curement is not subject to a writ of review proceeding more than 10 days after the board approves
17 the use of the special procurement.

18 (b) The writ of review may be filed with and is reviewable by the circuit court for the county
19 in which **are located** the principal offices of the **appropriate contracting agency with procure-**
20 **ment authority under ORS 279A.050 (4) or (5) or in which are located the principal offices**
21 **of the** local contracting agency that requested the approval *[are located]*. The circuit court shall
22 give priority on *[its]* **the circuit court's** docket and expedited review to proceedings under this
23 subsection.

24 (5) If timely judicial review is sought regarding the approval of a special procurement under
25 ORS 279B.085, the contracting agency may not proceed with contract execution unless the con-
26 tracting agency determines that there is a compelling governmental interest in proceeding or that
27 the goods or services are urgently needed. If the contracting agency makes such a determination,
28 the contracting agency shall set forth the reasons for the determination in writing and immediately
29 provide them to the person who filed the challenge. Thereafter, after joining the prospective con-
30 tractor as a party to the litigation and upon motion by the person filing the challenge, the court
31 may nonetheless stay the performance of the contract if the court finds that the contracting agen-
32 cy's determination of the existence of a compelling governmental interest in proceeding with con-
33 tract execution, or the contracting agency's determination that the goods or services were urgently
34 needed, was not supported by substantial evidence or constituted a manifest abuse of discretion. In
35 granting a stay, the court may require the person seeking the stay to post a bond in an amount
36 sufficient to protect the contracting agency and the public from costs associated with delay in con-
37 tract performance.

38 (6) In *[its review]* **reviewing an approval of a special procurement**, the circuit court shall give
39 due deference to any factual contracting decision made by the contracting agency and may not
40 substitute *[its]* **the court's** judgment for that of the contracting agency, but shall review all
41 questions of law de novo. Thereafter:

42 (a) If a contract has not been executed and the court rules in favor of the party that sought
43 judicial review, and if the violation could have affected the award of the contract, the court shall
44 remand the procurement to the contracting agency for a determination whether to continue with the
45 procurement process in light of the court's decision.

1 (b) In addition to the relief provided for in paragraph (a) of this subsection, if a contract has
 2 been executed and the court rules in favor of the party that sought judicial review, the court shall
 3 include in *[its]* **the court's** order a determination whether the party that signed the contract with
 4 the contracting agency is entitled to reimbursement under the conditions of, and calculated in the
 5 same manner as provided in, ORS 279C.470. Notwithstanding that ORS 279C.470 otherwise applies
 6 only to public improvement contracts, under this paragraph the court shall apply ORS 279C.470 to
 7 both public improvement contracts and other public contracts of contracting agencies.

8 (c) The court may award costs and attorney fees to the prevailing party.

9 **SECTION 10.** ORS 279C.105 is amended to read:

10 279C.105. (1) Except as provided in ORS 279A.140, **a contracting [agencies] agency** may enter
 11 into **a contract [contracts]** for architectural, engineering and land surveying services and related
 12 services. The Oregon Department of Administrative Services shall enter into **a contract [contracts]**
 13 for architectural, engineering and land surveying services and related services on behalf of **a state**
 14 contracting *[agencies]* **agency** that *[are]* **is** subject to ORS 279A.140. The provisions of this section
 15 do not relieve the contracting agency of the duty to comply with ORS 279A.140, any other law ap-
 16 plicable to state contracting agencies, or any applicable city or county charter provisions. Each
 17 contracting agency authorized to enter into *[contracts]* **a contract** for architectural, engineering and
 18 land surveying services and related services shall adopt procedures for the screening and selection
 19 of persons to perform those services under ORS 279C.110 or 279C.120.

20 (2) A state contracting agency with procurement authority under ORS 279A.050, **a contracting**
 21 **agency with procurement authority under ORS 279A.050 (4) or (5)** or a local contract review
 22 board by ordinance, resolution, administrative rule or other regulation may designate certain per-
 23 sonal services contracts or classes of personal services contracts as contracts for architectural,
 24 engineering and land surveying services or related services.

25 **SECTION 11.** ORS 279C.335 is amended to read:

26 279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

27 (a) Contracts made with qualified nonprofit agencies providing employment opportunities for
 28 individuals with disabilities under ORS 279.835 to 279.855.

29 (b) A public improvement contract exempt under subsection (2) of this section.

30 (c) A public improvement contract with a value of less than \$5,000.

31 (d) A contract not to exceed \$100,000 made under procedures for competitive quotes in ORS
 32 279C.412 and 279C.414.

33 (e) Contracts for repair, maintenance, improvement or protection of property obtained by the
 34 Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).

35 (f) Energy savings performance contracts entered into in accordance with rules of procedure
 36 adopted under ORS 279A.065.

37 (2) Subject to subsection (4)(b) of this section, **the officer or administrator of a contracting**
 38 **agency with procurement authority under ORS 279A.050 (4) or (5)** the Director of the Oregon
 39 Department of Administrative Services, a local contract review board or, for contracts described in
 40 ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or
 41 a class of public improvement contracts from the competitive bidding requirements of subsection (1)
 42 of this section upon approval of the following findings submitted by the contracting agency or, if a
 43 state agency is not the contracting agency, the state agency seeking the exemption:

44 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
 45 provement contracts or substantially diminish competition for public improvement contracts.

1 (b) The awarding of public improvement contracts under the exemption will likely result in
2 substantial cost savings to the contracting agency, to the state agency based upon the justification
3 and information described in ORS 279C.330 or, if the contracts are for public improvements de-
4 scribed in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, **the**
5 **officer or administrator of a contracting agency with procurement authority under ORS**
6 **279A.050 (4) or (5)**, the Director of the Oregon Department of Administrative Services, the Director
7 of Transportation or the local contract review board may consider the type, cost and amount of the
8 contract, the number of persons available to bid and such other factors as may be deemed appro-
9 priate.

10 (c) As an alternative to the finding described in paragraph (b) of this subsection, when a con-
11 tracting agency or state agency seeks an exemption that would allow the use of an [*alternate*] **al-**
12 **ternative** contracting method that the agency has not previously used, the agency may make a
13 finding that identifies the project as a pilot project for which the agency intends to determine
14 whether the use of the [*alternate*] **alternative** contracting method actually results in substantial cost
15 savings to the contracting agency, to the state agency or, if the contract is for a public improvement
16 described in ORS 279A.050 (3)(b), to the contracting agency or the public. The agency shall include
17 an analysis and conclusion regarding actual cost savings, if any, in the evaluation required under
18 ORS 279C.355.

19 (3) In making findings to support an exemption for a class of public improvement contracts, the
20 contracting agency or state agency shall clearly identify the class using the class's defining char-
21 acteristics. Those characteristics shall include some combination of project descriptions or locations,
22 time periods, contract values, methods of procurement or other factors that distinguish the limited
23 and related class of public improvement contracts from the agency's overall construction program.
24 The agency may not identify a class solely by funding source, such as a particular bond fund, or by
25 the method of procurement, but shall identify the class using characteristics that reasonably relate
26 to the exemption criteria set forth in subsection (2) of this section.

27 (4) In granting exemptions under subsection (2) of this section, **the officer or administrator**
28 **of a contracting agency with procurement authority under ORS 279A.050 (4) or (5)**, the Di-
29 rector of the Oregon Department of Administrative Services, the Director of Transportation or the
30 local contract review board shall:

31 (a) When appropriate, direct the use of [*alternate*] **alternative** contracting methods that take
32 account of market realities and modern practices and are consistent with the public policy of en-
33 couraging competition.

34 (b) Require and approve or disapprove written findings by the contracting agency or state
35 agency that support the awarding of a particular public improvement contract or a class of public
36 improvement contracts, without the competitive bidding requirement of subsection (1) of this section.
37 The findings must show that the exemption of a contract or class of contracts complies with the
38 requirements of subsection (2) of this section.

39 (5)(a) Before final adoption of the findings required by subsection (2) of this section exempting
40 a public improvement contract or a class of public improvement contracts from the requirement of
41 competitive bidding, a contracting agency or state agency shall hold a public hearing.

42 (b) Notification of the public hearing shall be published in at least one trade newspaper of
43 general statewide circulation a minimum of 14 days before the hearing.

44 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
45 draft findings for an exemption from the competitive bidding requirement. At the time of the notice,

1 copies of the draft findings shall be made available to the public. At the option of the contracting
 2 agency or state agency, the notice may describe the process by which the findings are finally
 3 adopted and may indicate the opportunity for any further public comment.

4 (d) At the public hearing, the contracting agency or state agency shall offer an opportunity for
 5 any interested party to appear and present comment.

6 (e) If a contracting agency or state agency is required to act promptly due to circumstances
 7 beyond the agency's control that do not constitute an emergency, notification of the public hearing
 8 may be published simultaneously with the agency's solicitation of contractors for the alternative
 9 public contracting method, as long as responses to the solicitation are due at least five days after
 10 the meeting and approval of the findings.

11 (6) The purpose of an exemption is to exempt one or more public improvement contracts from
 12 competitive bidding requirements. The representations in and the accuracy of the findings, including
 13 any general description of the resulting public improvement contract, are the bases for approving
 14 the findings and granting the [exception] **exemption**. The findings may describe anticipated features
 15 of the resulting public improvement contract, but the final parameters of the contract are those
 16 characteristics or specifics announced in the solicitation document.

17 (7) A public improvement contract awarded under the competitive bidding requirement of sub-
 18 section (1) of this section may be amended only in accordance with rules adopted under ORS
 19 279A.065.

20 (8) Public improvement contracts excepted from competitive bid requirements under subsection
 21 (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection
 22 (2) of this section.

23 **SECTION 12.** ORS 279C.345 is amended to read:

24 279C.345. (1) Specifications for public improvement contracts may not expressly or implicitly
 25 require any product by any brand name or mark, nor the product of any particular manufacturer
 26 or seller unless the product is exempt under subsection (2) of this section.

27 (2) **The officer or administrator of a contracting agency with procurement authority un-**
 28 **der ORS 279A.050 (4) or (5),** the Director of the Oregon Department of Administrative Services, a
 29 local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of
 30 Transportation may exempt certain products or classes of products from subsection (1) of this sec-
 31 tion upon any of the following findings:

32 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
 33 provement contracts or substantially diminish competition for public improvement contracts;

34 (b) The specification of a product by brand name or mark, or the product of a particular man-
 35 ufacturer or seller, would result in substantial cost savings to the contracting agency;

36 (c) There is only one manufacturer or seller of the product of the quality required; or

37 (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible
 38 equipment or supplies.

39 **SECTION 13.** ORS 279C.350 is amended to read:

40 279C.350. (1) Exemptions granted by the Director of the Oregon Department of Administrative
 41 Services under ORS 279C.335 (2) or 279C.345 (2) constitute rulemaking and not contested cases un-
 42 der ORS chapter 183. However, an exemption granted with regard to a specific public improvement
 43 contract by the Director of the Oregon Department of Administrative Services, or an exemption
 44 granted by the Director of Transportation with regard to a specific public improvement contract or
 45 class of public improvement contracts described in ORS 279A.050 (3)(b), shall be granted by order.

1 The order shall set forth findings supporting the decision to grant or deny the request for the ex-
 2 emption. The order is reviewable under ORS 183.484 and does not constitute a contested case order.
 3 Jurisdiction for review of the order is with the Circuit Court of Marion County. The court may
 4 award costs and attorney fees to the prevailing party.

5 (2) Any person except the contracting agency or anyone representing the contracting agency
 6 may bring a petition for a declaratory judgment to test the validity of any rule adopted by the Di-
 7 rector of the Oregon Department of Administrative Services under ORS 279C.335 or 279C.345 in the
 8 manner provided in ORS 183.400.

9 (3) Any person except the contracting agency or anyone representing the contracting agency
 10 may bring an action for writ of review under ORS chapter 34 to test the validity of an exemption
 11 granted under ORS 279C.335 or 279C.345 **by the officer or administrator of a contracting agency**
 12 **with procurement authority under ORS 279A.050 (4) or (5)** by a local contract review board.

13 **SECTION 14.** ORS 279C.355 is amended to read:

14 279C.355. (1) Upon completion of and final payment for any public improvement contract, or
 15 class of public improvement contracts, in excess of \$100,000 for which the contracting agency did
 16 not use the competitive bidding process, the contracting agency shall prepare and deliver to **the**
 17 **officer or administrator of a contracting agency with procurement authority under ORS**
 18 **279A.050 (4) or (5)**, the Director of the Oregon Department of Administrative Services, the local
 19 contract review board or, for public improvement contracts described in ORS 279A.050 (3)(b), the
 20 Director of Transportation an evaluation of the public improvement contract or the class of public
 21 improvement contracts.

22 (2) The evaluation must include but is not limited to the following matters:

23 (a) The actual project cost as compared with original project estimates;

24 (b) The amount of any guaranteed maximum price;

25 (c) The number of project change orders issued by the contracting agency;

26 (d) A narrative description of successes and failures during the design, engineering and con-
 27 struction of the project; and

28 (e) An objective assessment of the use of the alternative contracting process as compared to the
 29 findings required by ORS 279C.335.

30 (3) The evaluations required by this section:

31 (a) Must be made available for public inspection; and

32 (b) Must be completed within 30 days of the date the contracting agency accepts:

33 (A) The public improvement project; or

34 (B) The last public improvement project if the project falls within a class of public improvement
 35 contracts.

36 **SECTION 15.** ORS 279C.360 is amended to read:

37 279C.360. (1) An advertisement for public improvement contracts must be published at least once
 38 in at least one newspaper of general circulation in the area where the contract is to be performed
 39 and in as many additional issues and publications as the contracting agency may determine. **The**
 40 **officer or administrator of a contracting agency with procurement authority under ORS**
 41 **279A.050 (4) or (5)**, the Director of the Oregon Department of Administrative Services, a local
 42 contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transpor-
 43 tation, by rule or order, may authorize advertisements for public improvement contracts to be pub-
 44 lished electronically instead of in a newspaper of general circulation if the director or board
 45 determines that electronic advertisements are likely to be cost-effective. If the public improvement

1 contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least
 2 one trade newspaper of general statewide circulation. **The officer or administrator of a con-**
 3 **tracting agency with procurement authority under ORS 279A.050 (4) or (5),** the Director of the
 4 Oregon Department of Administrative Services, the Director of Transportation or the local contract
 5 review board may, by rule or order, require an advertisement to be published more than once or in
 6 one or more additional publications.

7 (2) All advertisements for public improvement contracts must state:

8 (a) The public improvement project;

9 (b) The office where the specifications for the project may be reviewed;

10 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
 11 or classes of work for which bidders must be prequalified if prequalification is a requirement;

12 (d) The date and time after which bids will not be received, which must be at least five days
 13 after the date of the last publication of the advertisement;

14 (e) The name and title of the person designated for receipt of bids;

15 (f) The date, time and place that the contracting agency will publicly open the bids; and

16 (g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon
 17 Act (40 U.S.C. 3141 et seq.).

18 **SECTION 16.** ORS 279C.390 is amended to read:

19 279C.390. (1) Subject to the provisions of subsection (2) of this section, **the officer or admin-**
 20 **istrator of a contracting agency with procurement authority under ORS 279A.050 (4) or (5),**
 21 the Director of the Oregon Department of Administrative Services, a state contracting agency with
 22 procurement authority under ORS 279A.050, a local contract review board or, for contracts de-
 23 scribed in ORS 279A.050 (3)(b), the Director of Transportation may exempt certain contracts or
 24 classes of contracts from all or a portion of the requirement for bid security and from all or a por-
 25 tion of the requirement that good and sufficient bonds be furnished to ensure performance of the
 26 contract and payment of obligations incurred in the performance.

27 (2) The contracting agency may require bid security and a good and sufficient performance bond,
 28 a good and sufficient payment bond, or any combination of such bonds, even though the public im-
 29 provement contract is of a class exempted under subsection (1) of this section.

30 (3) The Director of Transportation may:

31 (a) Exempt contracts or classes of contracts financed from the proceeds of bonds issued under
 32 ORS 367.620 (3)(a) from the requirement for bid security and from the requirement that a good and
 33 sufficient bond be furnished to ensure performance of the contract; or

34 (b) Reduce the amount of the required performance bond for contracts or classes of contracts
 35 financed from the proceeds of the bonds issued under ORS 367.620 (3)(a) to less than 100 percent
 36 of the contract price.

37 (4) Any recoverable damages that exceed the amount of the performance bond required under
 38 subsection (3) of this section shall be the sole responsibility of the Department of Transportation.

39 **SECTION 17.** ORS 279C.445 is amended to read:

40 279C.445. Any person who wishes to appeal disqualification shall, within three business days
 41 after receipt of notice of disqualification, notify the contracting agency that the person appeals the
 42 disqualification. Immediately upon receipt of the notice of appeal:

43 (1) A state contracting agency shall notify the Director of the Oregon Department of Adminis-
 44 trative Services.

45 (2) All contracting agencies other than state contracting agencies shall notify the appropriate

1 **appointing authority for an officer or administrator of a contracting agency with procure-**
 2 **ment authority under ORS 279A.050 (4) or (5) or the local contract review board. As used in**
 3 **this section, “appointing authority” has the meaning given that term in ORS 279C.450.**

4 **SECTION 18.** ORS 279C.450 is amended to read:

5 279C.450. (1) The procedure for appeal from a disqualification or denial, revocation or revision
 6 of a prequalification by a contracting agency shall be in accordance with this section and is not
 7 subject to ORS chapter 183 except when specifically provided by this section.

8 (2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by ORS
 9 279C.445, **the appointing authority for an officer or administrator of a contracting agency**
 10 **with procurement authority under ORS 279A.050 (4) or (5)**, the Director of the Oregon Depart-
 11 ment of Administrative Services or the local contract review board shall notify the person appealing
 12 and the contracting agency of the time and place of the hearing. The **appointing authority**, di-
 13 rector or board shall conduct the hearing and decide the appeal within 30 days after receiving the
 14 notification from the contracting agency. The **appointing authority**, director or board shall set
 15 forth in writing the reasons for the decision.

16 (3) In the hearing the **appointing authority**, director or board shall consider de novo the notice
 17 of disqualification or denial, revocation or revision of a prequalification, the reasons listed in ORS
 18 279C.440 (2) on which the contracting agency based the disqualification or the standards of respon-
 19 sibility listed in ORS 279C.375 (3)(b) on which the contracting agency based the denial, revocation
 20 or revision of the prequalification and any evidence provided by the parties. In all other respects,
 21 a hearing before the director shall be conducted in the same manner as a contested case under ORS
 22 183.417 (1) to (4) and (7), 183.425, 183.440, 183.450 and 183.452.

23 (4) The director may allocate the director’s cost for the hearing between the person appealing
 24 and the contracting agency whose disqualification or prequalification decision is being appealed. The
 25 allocation shall be based upon facts found by the director and stated in the final order that, in the
 26 director’s opinion, warrant such allocation of the costs. If the final order does not allocate the di-
 27 rector’s costs for the hearing, the costs shall be paid as follows:

28 (a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld,
 29 the director’s costs shall be paid by the person appealing the disqualification or prequalification
 30 decision.

31 (b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a
 32 bidder is reversed by the director, the director’s costs shall be paid by the contracting agency whose
 33 disqualification or prequalification decision is the subject of the appeal.

34 (5) The decision of the **appointing authority**, director or board may be reviewed only upon a
 35 petition, filed within 15 days after the date of the decision, in the circuit court of the county in
 36 which **is located the principle office of the contracting agency with procurement authority**
 37 **under ORS 279A.050 (4) or (5)**, director or board [*has its principal office*]. The circuit court shall
 38 reverse or modify the decision only if [*it*] **the court** finds:

39 (a) The decision was obtained through corruption, fraud or undue means.

40 (b) There was evident partiality or corruption on the part of the **appointing authority**, director
 41 or board or any of **the board’s** [*its*] members.

42 (c) There was an evident material miscalculation of figures or an evident material mistake in
 43 the description of any person, thing or property referred to in the decision.

44 (6) The procedure provided in this section is the exclusive means of judicial review of the deci-
 45 sion of the **appointing authority**, director or board. The judicial review provisions of ORS 183.480

1 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and
2 injunctive remedies, are not available.

3 (7) The circuit court may, in *[its]* **the court's** discretion, stay the letting of the contract that
4 is the subject of the petition in the same manner as a suit in equity. When the court determines that
5 there has been an improper disqualification or denial, revocation or revision of a prequalification
6 and the contract has been let, the court may proceed to take evidence to determine the damages,
7 if any, suffered by the petitioner and award such damages as the court may find as a judgment
8 against the **appointing authority**, director or board. The court may award costs and attorney fees
9 to the prevailing party.

10 (8) **As used in this section, "appointing authority":**

11 (a) **Means, for the Legislative Administrator, the Legislative Administration Committee;**

12 (b) **Has, for the Legislative Fiscal Officer, the meaning given that term in ORS 173.410;**

13 (c) **Has, for the Legislative Revenue Officer, the meaning given that term in ORS 173.800;**

14 (d) **Means, for the Legislative Counsel, the Legislative Counsel Committee;**

15 (e) **Has, for the Natural Resources Policy Administrator, the meaning given that term in**
16 **ORS 173.610; and**

17 (f) **Means, for the State Court Administrator, the Chief Justice of the Supreme Court.**

18 **SECTION 19.** ORS 279C.560 is amended to read:

19 279C.560. (1) Moneys retained by a contracting agency under ORS 279C.570 (7) shall be:

20 (a) Retained in a fund by the contracting agency and paid to the contractor in accordance with
21 ORS 279C.570; or

22 (b) At the option of the contractor, paid to the contractor in accordance with subsection (3) or
23 (4) of this section and in a manner authorized by the Director of the Oregon Department of Ad-
24 ministrative Services.

25 (2) If the contracting agency incurs additional costs as a result of the exercise of the options
26 described in subsection (1) of this section, the contracting agency may recover such costs from the
27 contractor by reduction of the final payment. As work on the contract progresses, the contracting
28 agency shall, upon demand, inform the contractor of all accrued costs.

29 (3) The contractor may deposit bonds or securities with the contracting agency or in any bank
30 or trust company to be held in lieu of the cash retainage for the benefit of the contracting agency.
31 In such event the contracting agency shall reduce the retainage in an amount equal to the value
32 of the bonds and securities and pay the amount of the reduction to the contractor in accordance
33 with ORS 279C.570. Interest on the bonds or securities shall accrue to the contractor.

34 (4) If the contractor elects, the retainage as accumulated shall be deposited by the contracting
35 agency in an interest-bearing account in a bank, savings bank, trust company or savings association
36 for the benefit of the contracting agency. When the contracting agency is a state contracting
37 agency **or a contracting agency with procurement authority under ORS 279A.050 (4) or (5)**, the
38 account shall be established through the State Treasurer. Earnings on the account shall accrue to
39 the contractor.

40 (5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section,
41 shall be of a character approved by the Director of the Oregon Department of Administrative Ser-
42 vices, including but not limited to:

43 (a) Bills, certificates, notes or bonds of the United States.

44 (b) Other obligations of the United States or its agencies.

45 (c) Obligations of any corporation wholly owned by the federal government.

1 (d) Indebtedness of the Federal National Mortgage Association.

2 (6) The contractor, with the approval of the contracting agency, may deposit a surety bond for
 3 all or any portion of the amount of funds retained, or to be retained, by the contracting agency in
 4 a form acceptable to the contracting agency. The bond and any proceeds therefrom shall be made
 5 subject to all claims and liens and in the same manner and priority as set forth for retainage under
 6 ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The contracting agency shall reduce the
 7 retainage in an amount equal to the value of the bond and pay the amount of the reduction to the
 8 contractor in accordance with ORS 279C.570. Whenever a contracting agency accepts a surety bond
 9 from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor
 10 or supplier from which the contractor has retainage. The contractor shall then reduce the retainage
 11 in an amount equal to the value of the bond and pay the amount of the reduction to the subcon-
 12 tractor or supplier.

13 **SECTION 20.** ORS 351.070 is amended to read:

14 351.070. (1) The Oregon University System, in accordance with rules adopted by the State Board
 15 of Higher Education, shall implement a personnel system and may engage in collective bargaining
 16 with *[its]* employees **of the Oregon University System**. *[All]* Collective bargaining with *[any]* a
 17 certified or recognized exclusive employee representative *[shall be]* **is** under the direction and
 18 supervision of the Chancellor of the Oregon University System. The Oregon University System *[shall*
 19 *have]* **has** payroll authority pursuant to ORS 292.043 to 292.180.

20 (2)(a) The board, *[shall establish competitive procedures]* **for the benefit of the Oregon Uni-**
 21 **versity System and all the institutions, departments and activities therein, may adopt rules**
 22 **under ORS 279A.065** for *[the]* purchasing, *[procurement]* **procuring** and contracting *[of]* **for**
 23 **goods[,] and services in accordance with ORS chapters 279A, 279B and 279C.** *[and information*
 24 *technology, for the benefit of the Oregon University System and all the institutions, departments and*
 25 *activities therein.]* **The board shall establish competitive procedures for purchasing, procuring**
 26 **and contracting for information technology services for the Oregon University System and**
 27 **all institutions, departments and activities therein.** The board may also establish exemptions
 28 from the competitive procedures when appropriate.

29 (b) The board shall ensure that the hourly rate of wage paid by *[any]* a contractor upon *[all]*
 30 public improvements contracts undertaken for the board shall not be less than the same rate of wage
 31 as determined by the Bureau of Labor and Industries for an hour's work in the same trade or oc-
 32 cupation in the locality where such labor is performed. Claims or disputes arising under this sub-
 33 section shall be decided by the Commissioner of the Bureau of Labor and Industries.

34 (c) The board shall adopt policies and procedures that achieve results equal to or better than
 35 the standards existing on July 17, 1995, regarding affirmative action, pay equity for comparable
 36 work, recycling, the provision of workers' compensation insurance to workers on contract and the
 37 participation of emerging small businesses and businesses owned by minorities and women.

38 (3) The board may, for each institution under *[its]* **the board's** control:

39 (a) Appoint and employ a president and the requisite number of professors, teachers and em-
 40 ployees, and prescribe *[their]* **the** compensation and tenure of office or employment **of the profes-**
 41 **sors, teachers and employees.**

42 (b) Demand and receive the interest mentioned in ORS 352.510 and *[all]* sums due and accruing
 43 to the institutions of higher education for admission and tuition therein, and apply the *[same]* **in-**
 44 **terest and sums**, or so much thereof as is necessary, to the payment of the compensation referred
 45 to in paragraph (a) of this subsection and the other current expenses of the institutions.

1 (c) Prescribe fees for enrollment into the institutions. Such enrollment fees shall include tuition
 2 for education and general services and such other charges found by the board to be necessary to
 3 carry out *[its]* **the board's** educational programs. The board may award student aid from any fund
 4 other than the General Fund.

5 (d) Prescribe incidental fees for programs under the supervision or control of the board found
 6 by the board, upon *[its]* **the board's** own motion or upon recommendation of the recognized student
 7 government of the institution concerned, to be advantageous to the cultural or physical development
 8 of students. Fees realized in excess of amounts allocated and exceeding required reserves shall be
 9 considered surplus incidental fees and shall be allocated for programs under the control of the board
 10 and found to be advantageous to the cultural or physical development of students by the institution
 11 president upon the recommendation of the recognized student government at the institution con-
 12 cerned.

13 (e) Upon recommendation of the recognized student government, collect optional fees authorized
 14 by the institution executive, for student activities not included in paragraph (c) or (d) of this sub-
 15 section. The payment of *[such]* optional fees *[shall be]* **is** at the option and selection of the student
 16 and *[shall not be]* **is not** a prerequisite of enrollment.

17 (f) Confer, on the recommendation of the faculty of *[any such]* **an** institution, such degrees as
 18 usually are conferred by *[such institutions]* **the institution**, or as *[they]* **the institution** *[deem]*
 19 **deems** appropriate.

20 (g) Prescribe the qualifications for admission into such institutions.

21 (4) Subject to such delegation as the board may decide to make to the institutions, divisions and
 22 departments under *[its]* **the board's** control, the board, for each institution, division and department
 23 under *[its]* **the board's** control:

24 (a) Shall supervise the general course of instruction therein, and the research, extension, edu-
 25 cational and other activities thereof.

26 (b) Shall adopt rules and bylaws for the government thereof, including the faculty, teachers,
 27 students and employees therein.

28 (c) Shall maintain cultural and physical development services and facilities therefor and, in
 29 connection therewith, may cooperate and enter into agreements with any person or governmental
 30 agency.

31 (d) May contract to provide health services at student health centers.

32 (e) Shall provide health services at student health centers to students.

33 (f) May provide health services at student health centers to any of the following:

34 (A) Dependents of students.

35 (B) Staff.

36 (C) Faculty.

37 (g) Shall prescribe and collect charges.

38 (h) Shall adopt rules relating to the creation, use, custody and disclosure, including access, of
 39 student education records of the institutions that are consistent with the requirements of applicable
 40 state and federal law. Whenever a student has attained 18 years of age or is attending an institution
 41 of post-secondary education, the permission or consent required of and the rights accorded to a
 42 parent of the student regarding education records shall thereafter be required of and accorded to
 43 only the student.

44 (5) For each institution under *[its]* **the board's** jurisdiction, the board shall provide opportu-
 45 nities for part-time students to obtain complete undergraduate degrees at unconventional times,

1 which include but are not limited to early morning and noon hours, evenings and weekends. In ad-
 2 ministering these degree programs, the institution may use any educational facility available for the
 3 use of the institution.

4 **SECTION 21.** ORS 351.086 is amended to read:

5 351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions
 6 of ORS chapters 240, [279A, 279B, 279C,] 282 and 292 do not apply to the Oregon University System.

7 (2) Notwithstanding subsection (1) of this section, ORS 240.167, 240.185[, 279A.065 (2), 279B.055
 8 (3), 279C.380 (1)(a) and (3), 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.830, 279C.835,
 9 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870] and 292.043 apply to the
 10 Oregon University System.

11 (3) Notwithstanding any other law, the following provisions do not apply to the Oregon Uni-
 12 versity System:

13 (a) ORS 182.310 to 182.400;

14 (b) ORS 273.413 to 273.456;

15 (c) ORS 276.071 [and 276.072]; and

16 (d) ORS 291.038.

17 (4) Notwithstanding subsection (3)(b) of this section, ORS 273.413 to 273.456 apply to any struc-
 18 ture, equipment or asset owned by the Oregon University System that is encumbered by a certificate
 19 of participation.

20 **(5) Notwithstanding subsection (3)(c) of this section, ORS 279A.005 to 279A.030, 279A.050**
 21 **to 279A.075, 279A.100, 279A.105, 279A.110, 279A.120 and 279A.125 and ORS chapter 279C, except**
 22 **ORS 279C.600 to 279C.625, apply to public improvements that the Oregon University System**
 23 **constructs, reconstructs or renovates for use by the Oregon University System under a**
 24 **lease-purchase agreement or other agreement under which ultimate state ownership is con-**
 25 **templated or expected.**

26 [(5)] (6) In carrying out the duties, functions and powers imposed by law upon the Oregon Uni-
 27 versity System, the State Board of Higher Education or the Chancellor of the Oregon University
 28 System may contract with any public agency for the performance of such duties, functions and
 29 powers as the Oregon University System considers appropriate.

30 **SECTION 22.** (1) **The amendments to ORS 173.500, 279A.010, 279A.025, 279A.050, 279A.055,**
 31 **279A.065, 279A.075, 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355,**
 32 **279C.360, 279C.390, 279C.445, 279C.450, 279C.560, 351.070 and 351.086 by sections 1 to 21 of this**
 33 **2009 Act become operative January 1, 2010.**

34 (2) **The amendments to ORS 173.500, 279A.010, 279A.025, 279A.050, 279A.055, 279A.065,**
 35 **279A.075, 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355, 279C.360,**
 36 **279C.390, 279C.445, 279C.450, 279C.560, 351.070 and 351.086 by sections 1 to 21 of this 2009 Act**
 37 **apply to public contracts first advertised or solicited or, if not advertised or solicited, first**
 38 **entered into on or after the operative date of this 2009 Act.**

39 (3) **The State Board of Higher Education, the Legislative Administrator, the Legislative**
 40 **Fiscal Officer, the Legislative Revenue Officer, the Legislative Counsel, the Natural Re-**
 41 **sources Policy Administrator and the State Court Administrator may take any action before**
 42 **the operative date of this 2009 Act that is necessary to enable the State Board of Higher**
 43 **Education, the Legislative Administrator, the Legislative Fiscal Officer, the Legislative Re-**
 44 **venue Officer, the Legislative Counsel, the Natural Resources Policy Administrator and the**
 45 **State Court Administrator to exercise, on and after the operative date of this 2009 Act, all**

1 the duties, functions and powers conferred on the State Board of Higher Education, the
2 Legislative Administrator, the Legislative Fiscal Officer, the Legislative Revenue Officer, the
3 Legislative Counsel, the Natural Resources Policy Administrator and the State Court Ad-
4 ministrator by this 2009 Act.

5 SECTION 23. This 2009 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
7 on its passage.

8
