

Senate Bill 384

Sponsored by Senator GEORGE

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**.

Establishes Department of Transportation Contract Review Board. Allows contractor that has public contract with Department of Transportation to request that board review contract in event of dispute between contractor and department. Requires board to hold informal hearing and issue proposed decision. Requires board to hold formal hearing and issue final order if party does not accept board's proposed decision.

Establishes Department of Transportation Contract Review Fund. Requires board to deposit filing fees in fund. Continuously appropriates moneys in fund to board to carry out board functions. Sunsets January 1, 2015.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a review board for public contracts with the Department of Transportation; appropriat-
3 ing money; and declaring an emergency.

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

5 **SECTION 1. (1) There is established the Department of Transportation Contract Review**
6 **Board, which consists of five members appointed by the Governor. A member must have**
7 **experience in construction, engineering, architecture or the law and may not be employed**
8 **by the Department of Transportation during the member's term in office.**

9 (2) A member's term of office is four years, but a member serves at the pleasure of the
10 Governor. Before a member's term expires, the Governor shall appoint a successor whose
11 term begins on January 1 next following. A member is eligible for reappointment. If there is
12 a vacancy for any cause, the Governor shall make an appointment that is immediately ef-
13 fective for the unexpired term.

14 (3) A member's appointment is subject to confirmation by the Senate in the manner
15 prescribed in ORS 171.562 and 171.565.

16 (4) A member is entitled to compensation and expenses as provided in ORS 292.495.

17 **SECTION 2. Notwithstanding the term of office specified in section 1 of this 2009 Act, of**
18 **the members first appointed to the Department of Transportation Contract Review Board:**

19 (1) One shall serve for a term ending January 1, 2011.

20 (2) One shall serve for a term ending January 1, 2012.

21 (3) One shall serve for a term ending January 1, 2013.

22 (4) Two shall serve for terms ending January 1, 2014.

23 **SECTION 3. (1) The Department of Transportation Contract Review Board shall select**
24 **one of the board's members as chairperson and another member as vice chairperson for such**
25 **terms and with such powers and duties necessary to perform the functions of the offices as**
26 **the board determines.**

27 (2) A majority of board members constitutes a quorum for the transaction of business.

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 (3) The board shall meet at a place, day and hour determined by the board. The board
2 may also meet at other times and places specified by the call of the chairperson or of a
3 majority of board members.

4 (4) The Department of Transportation shall provide staff support to the board.

5 **SECTION 4.** The Department of Transportation Contract Review Board may administer
6 oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the
7 production of documents or other written information necessary to carry out the provisions
8 of sections 1 to 7 of this 2009 Act. If a person fails to comply with a subpoena issued under
9 this section or refuses to testify on matters concerning which the person lawfully may be
10 interrogated, the board may apply in accordance with ORS 183.440 to a circuit court to
11 compel obedience.

12 **SECTION 5.** (1) A contractor that entered into a public contract with the Department
13 of Transportation and that has a dispute with the department about the contract may re-
14 quest that the Department of Transportation Contract Review Board review the contract.
15 If a contractor requests that the board review the contract, the review is in lieu of any other
16 dispute resolution process available to the contractor under the contract.

17 (2) To request review, a contractor shall file a written request with the board and serve
18 a copy of the request on the department. The request must be accompanied by a filing fee
19 of \$500, unless the value of the matter in dispute is less than \$5,000, in which case the filing
20 fee is \$100. The contractor shall include in the request a short and plain statement explaining
21 the dispute about the public contract.

22 (3) Within 15 days after receiving the request for review, the board shall hold an informal
23 hearing to take evidence in connection with the dispute about the public contract. A repre-
24 sentative of the contractor and a representative of the department shall appear at the
25 hearing. Notwithstanding ORS 8.690 and 9.160 and ORS chapter 180, neither the contractor
26 nor the department is required to be represented by legal counsel at the hearing.

27 (4) Within 30 days after the informal hearing, the board shall issue a proposed decision.
28 A decision by the board, including a final order issued under subsection (7) of this section,
29 requires a majority vote of all members of the board.

30 (5) If the contractor and the department accept the board's proposed decision, the deci-
31 sion constitutes a settlement of the dispute.

32 (6) If either party to the dispute does not accept the board's proposed decision, the party
33 that does not accept the decision shall within 10 days after the board issues the decision
34 notify the board and the other party that the decision is not acceptable. Within 15 days after
35 receiving the notice, the board shall set the matter for a formal hearing under the applicable
36 provisions of ORS chapter 183.

37 (7) Within 15 days after the formal hearing, the board shall issue a final order. The board
38 may extend the time for issuing a final order by 15 days if the board finds that the matter
39 is too complex to issue a final order within the initial time limit. The final order is subject
40 to judicial review as provided in ORS 183.482.

41 (8) If the board fails to issue a final order within the time permitted under subsection (7)
42 of this section, the dispute is resolved in favor of the contractor.

43 **SECTION 6.** The Department of Transportation Contract Review Board may adopt rules
44 necessary for the administration of sections 1 to 7 of this 2009 Act in accordance with ap-
45 plicable provisions of ORS chapter 183.

1 **SECTION 7.** (1) The Department of Transportation Contract Review Fund is established
2 separate and distinct from the General Fund. Interest earned by the Department of Trans-
3 portation Contract Review Fund must be credited to the fund.

4 (2) Fees that the Department of Transportation Contract Review Board receives under
5 section 5 of this 2009 Act must be paid into the State Treasury and deposited in the Depart-
6 ment of Transportation Contract Review Fund. The moneys deposited into the fund are
7 continuously appropriated to the board for the purposes of administering sections 1 to 7 of
8 this 2009 Act.

9 **SECTION 8.** (1) Sections 1 to 7 of this 2009 Act become operative on January 1, 2010.

10 (2) The Governor may appoint members of the Department of Transportation Contract
11 Review Board before January 1, 2010, and may take any action before January 1, 2010, that
12 is necessary to enable the board to exercise, on and after January 1, 2010, the duties, func-
13 tions and powers conferred on the board by sections 1 to 7 of this 2009 Act.

14 **SECTION 9.** Sections 1 to 7 of this 2009 Act are repealed on January 1, 2015.

15 **SECTION 10.** This 2009 Act being necessary for the immediate preservation of the public
16 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
17 on its passage.

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