

# House Bill 2585

Sponsored by Representative SCHAUFLER (Presession filed.)

## 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 applying the Public Contracting Code to state entities; creating new provisions; amend-  
3 ing ORS 173.500, 179.040, 279A.010, 279A.025, 279A.050, 279A.055, 279A.065, 279A.075, 279B.085,  
4 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355, 279C.360, 279C.390, 279C.445,  
5 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-  
31 nate before the foundation makes a recommendation required by this subsection.

**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.

(3) The Oregon State Capitol Foundation may:

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 2.** ORS 179.040 is amended to read:

179.040. (1) The Department of Corrections, the Department of Human Services and the Oregon Health Authority shall:

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

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

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

(d) Make and adopt rules [*for the guidance of*] **to guide** the agencies and [*for the government of*] **to govern** their respective institutions.

(2) The agencies, respectively, may:

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

2 (b) Subject to ORS 279A.050 [(7)] **(9)**, procure, contract for or enter into agreements for goods  
 3 and services of all kinds, including personal services contracts designated under ORS 279A.055, and  
 4 perform all legal acts requisite and necessary [*for the successful management and maintenance of*] **to**  
 5 **successfully manage and maintain** the institutions within their respective jurisdictions.

6 **SECTION 3.** ORS 279A.010 is amended to read:

7 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-  
 8 plicable definition requires otherwise:

9 (a) “Bidder” means a person that submits a bid in response to an invitation to bid.

10 (b) “Contracting agency” means a public body authorized by law to conduct a procurement.  
 11 “Contracting agency” includes, but is not limited to, the Director of the Oregon Department of Ad-  
 12 ministrative Services and [*any*] **a person** [*authorized by*] **that** a contracting agency **authorizes** to  
 13 conduct a procurement on the contracting agency’s behalf. [*“Contracting agency” does not include the*  
 14 *judicial department or the legislative department.*]

15 (c) “Days” means calendar days.

16 [(d) “Department” means the Oregon Department of Administrative Services.]

17 [(e) “Director” means the Director of the Oregon Department of Administrative Services or a person  
 18 designated by the director to carry out the authority of the director under the Public Contracting  
 19 Code.]

20 [(f)] **(d)** “Emergency” means circumstances that:

21 (A) Could not have been reasonably foreseen;

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

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

25 [(g)] **(e)** “Energy savings performance contract” means a public contract, **including a design-**  
 26 **build contract**, between a contracting agency and a qualified energy service company for [*the*  
 27 *identification, evaluation, recommendation, design and construction of*] **identifying, evaluating, re-**  
 28 **commending, designing and constructing** energy conservation measures[, *including a design-build*  
 29 *contract,*] that guarantee energy savings or performance.

30 [(h)] **(f)** “Executive department” has the meaning given that term in ORS 174.112.

31 [(i)] **(g)** “Goods” [*includes*] **means** supplies, equipment, materials, personal property[, *including*  
 32 *any*] **or other** tangible, intangible and intellectual property and rights and licenses in relation  
 33 [*thereto, and*] **to the property. “Goods” includes** combinations of any of the items identified in this  
 34 paragraph.

35 [(j)] **(h)** “Goods and services” or “goods or services” [*includes*] **means** combinations of any of  
 36 the items identified in the definitions of “goods” and “services.”

37 [(k)] **(i)(A)** “Grant” means:

38 (i) An agreement under which a contracting agency receives **from a grantor** moneys, property  
 39 or other assistance, including but not limited to federal assistance that is characterized as a grant  
 40 by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, com-  
 41 modities or other assets, [*from a grantor*] for the purpose of supporting or stimulating a program or  
 42 activity of the contracting agency and in which [*no substantial involvement by the grantor is*] **the**  
 43 **grantor is not anticipated to be substantially involved** in the program or activity other than [*in-*  
 44 *volvement associated with monitoring*] **to monitor** compliance with the grant conditions; or

45 (ii) An agreement under which a contracting agency provides **to a recipient** moneys, property

1 or other assistance, including but not limited to federal assistance that is characterized as a grant  
 2 by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, com-  
 3 modities or other assets, *[to a recipient]* for the purpose of supporting or stimulating a program or  
 4 activity of the recipient *[and]* in which *[no substantial involvement by the contracting agency is an-*  
 5 *ticipated in the program or activity]* **the contracting agency is not anticipated to be substantially**  
 6 **involved** other than *[involvement associated with monitoring]* **to monitor** compliance with the grant  
 7 conditions.

8 (B) “Grant” does not include a public contract for a public improvement, for public works, as  
 9 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-  
 10 nance necessary to preserve a public improvement, *[when under the public contract a contracting*  
 11 *agency pays, in consideration for contract performance intended to realize or to support the realization*  
 12 *of the purposes for which grant funds were provided to the contracting agency, moneys that the con-*  
 13 *tracting agency has received under a grant]* **if a contracting agency pays moneys the contracting**  
 14 **agency received under a grant as consideration for performance of a public contract intended**  
 15 **to realize or support the purposes for which the grant was provided to the contracting**  
 16 **agency.**

17 *[(L)]* (j) “Industrial oil” means *[any]* compressor, turbine or bearing oil, hydraulic oil, metal-  
 18 working oil or refrigeration oil.

19 *[(m)]* (k) “Judicial department” has the meaning given that term in ORS 174.113.

20 *[(n)]* (L) “Legislative department” has the meaning given that term in ORS 174.114.

21 *[(o)]* (m) “Local contract review board” means a local contract review board described in ORS  
 22 279A.060.

23 *[(p)]* (n) “Local contracting agency” means a local government or special government body au-  
 24 thorized by law to conduct a procurement. *“Local contracting agency” includes any]* **or a person**  
 25 *[authorized by]* **that** a local contracting agency **authorizes** to conduct a procurement on **the local**  
 26 **contracting agency’s** behalf *[of the local contracting agency].*

27 *[(q)]* (o) “Local government” has the meaning given that term in ORS 174.116.

28 *[(r)]* (p) “Lowest responsible bidder” means the lowest bidder who:

29 (A) *[Has]* **Complies** substantially *[complied]* with *[all]* prescribed public contracting procedures  
 30 and requirements;

31 (B) *[Has met]* **Meets** the standards of responsibility set forth in ORS 279B.110 or 279C.375;

32 (C) *[Has]* **Is** not *[been]* debarred or disqualified by the contracting agency under ORS 279B.130  
 33 or 279C.440; and

34 (D) *[If the advertised contract is a public improvement contract,]* Is not on the list created by the  
 35 Construction Contractors Board under ORS 701.227 **if the advertised contract is a public im-**  
 36 **provement contract.**

37 *[(s)]* (q) “Lubricating oil” means *[any]* oil intended for use in an internal combustion crankcase,  
 38 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-  
 39 ment or machinery powered by an internal combustion engine.

40 *[(t)]* (r) “Person” means a natural person capable of being legally bound, a sole proprietorship,  
 41 a corporation, a partnership, a limited liability company or partnership, a limited partnership, a  
 42 for-profit or nonprofit unincorporated association, a business trust, two or more persons having a  
 43 joint or common economic interest, **a public body or** any other person with legal capacity to con-  
 44 tract *[or a public body].*

45 (s) “PETE” means polyethylene terephthalate material.

1        [(w) (t)(A) “Post-consumer waste” means a finished material that **has completed a life cycle**  
 2 **as a consumer item and** would normally be disposed of as solid waste[, *having completed its life*  
 3 *cycle as a consumer item*].

4        (B) “Post-consumer waste” does not include manufacturing waste.

5        [(v) (u) “Price agreement” means a public contract for the procurement of goods or services  
 6 at a set price with:

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

8        (B) An initial order or minimum purchase combined with [*a continuing contractor*] **an obligation**  
 9 **for a contractor to continue** to provide goods or services [*in which*] **but no corresponding obli-**  
 10 **gation for** the contracting agency [*does not*] **to** guarantee a minimum or maximum additional pur-  
 11 chase.

12        [(w) (v) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring  
 13 goods or services[. “*Procurement*” includes] **and** each function and procedure [*undertaken or required*  
 14 *to be undertaken by*] a contracting agency **undertakes or must undertake** to enter into a public  
 15 contract, administer a public contract and obtain the performance of a public contract under the  
 16 Public Contracting Code.

17        [(x) (w) “Proposer” means a person that submits a proposal in response to a request for pro-  
 18 posals.

19        [(y) (x) “Public body” has the meaning given that term in ORS 174.109.

20        [(z) (y)(A) “Public contract” means a **contracting agency’s** sale or other disposal[, or [*a*]  
 21 purchase, lease, rental or other acquisition[, *by a contracting agency*] of:

22        (i) Personal property[.];

23        (ii) Services, including personal services[.];

24        (iii) **Public works;**

25        (iv) Public improvements[, *public works,*.]; **or**

26        (v) Minor alterations, [*or*] ordinary repair or maintenance necessary to preserve a public im-  
 27 provement.

28        (B) “Public contract” does not include [*grants*] **a grant.**

29        [(aa) (z) “Public contracting” means procurement activities described in the Public Contracting  
 30 Code [*relating*] **that are related** to obtaining, modifying or administering public contracts or price  
 31 agreements.

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

33        [(cc) (bb)(A) “Public improvement” means a project for construction, reconstruction or major  
 34 renovation on real property by or for a contracting agency.

35        (B) “Public improvement” does not include:

36        [(A) (i) Projects for which [*no*] funds of a contracting agency are **not** directly or indirectly used,  
 37 except for participation that is incidental or related primarily to project design or inspection; or

38        [(B) (ii) Emergency work, minor alteration, ordinary repair or maintenance necessary to pre-  
 39 serve a public improvement.

40        [(dd) (cc)(A) “Public improvement contract” means a public contract for a public improvement.

41        (B) “Public improvement contract” does not include a public contract for emergency work, mi-  
 42 nor alterations[, or] ordinary repair or maintenance necessary to preserve a public improvement.

43        [(ee) (dd) “Recycled material” means [*any*] material that would otherwise be [*a*] useless, un-  
 44 wanted or discarded [*material*] except [*for the fact*] that the material still has useful physical or  
 45 chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

1 [(ff)] (ee) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product  
2 by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or  
3 use is operationally safe, environmentally sound and complies with all laws and regulations.

4 [(gg)] (ff) "Recycled paper" means a paper product with not less than:

5 (A) Fifty percent of [its] **the fiber weight of the paper product** consisting of secondary waste  
6 materials; or

7 (B) Twenty-five percent of [its] **the fiber weight of the paper product** consisting of post-  
8 consumer waste.

9 [(hh)] (gg) "Recycled PETE" means post-consumer polyethylene terephthalate material.

10 [(ii)] (hh) "Recycled product" means [all] materials, goods and supplies[, of which not less than  
11 50 percent of the total weight [of which] consists of secondary and post-consumer waste [with] **and**  
12 not less than 10 percent of [its] **the** total weight [consisting] **consists** of post-consumer waste. "Re-  
13 cycled product" includes [any] **a product that has completed the product's life cycle as a con-**  
14 **sumer item and** could have been disposed of as solid waste[, having completed its life cycle as a  
15 consumer item, but otherwise] **but** is refurbished for reuse without [substantial alteration of] **sub-**  
16 **stantially altering** the product's form.

17 [(jj)] (ii)(A) "Secondary waste materials" means fragments of products or finished products of a  
18 manufacturing process that has converted a virgin resource into a commodity of real economic  
19 value. "Secondary waste materials" includes post-consumer waste.

20 (B) "Secondary waste materials" does not include excess virgin resources of the manufacturing  
21 process[. For paper, "secondary waste materials" does not include] **or** fibrous waste generated [during  
22 the manufacturing process] **in manufacturing paper**, such as fibers recovered from waste water or  
23 trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from  
24 a manufacturing process.

25 [(kk)] (jj) "Services" [mean] **means** services other than personal services designated under ORS  
26 279A.055, except that, for state contracting agencies with procurement authority under ORS  
27 279A.050 or 279A.140, "services" includes personal services as designated by the state contracting  
28 agencies.

29 [(LL)] (kk) "Special government body" has the meaning given that term in ORS 174.117.

30 [(mm)] (LL) "State agency" means the executive department, except the Secretary of State and  
31 the State Treasurer in the performance of the duties of [their] **the** constitutional offices **of the**  
32 **Secretary of State and the State Treasurer**.

33 [(nn)] (mm) "State contracting agency" means an executive department entity authorized by law  
34 to conduct a procurement.

35 [(oo)] (nn) "State government" has the meaning given that term in ORS 174.111.

36 [(pp)] (oo) "Used oil" has the meaning given that term in ORS 459A.555.

37 [(qq)] (pp) "Virgin oil" means oil that has been refined from crude oil and that has not been used  
38 or contaminated with impurities.

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

- 41
- 42 (a) "Adequate" .....ORS 279C.305
- 43 (b) "Administering contracting
- 44 agency" .....ORS 279A.200
- 45 (c) "Affirmative action".....ORS 279A.100

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

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

**SECTION 4.** ORS 279A.025 is amended to read:

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

(2) The Public Contracting Code does not apply to:

(a) Contracts between a contracting agency and:

(A) Another contracting agency;

(B) The Oregon Health and Science University;



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

1 ORS chapter 279B;

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

4 (A) [*The issuance of*] **Issuing** obligations, as defined in ORS 286A.100 and 287A.310, of a public  
5 body;

6 (B) [*The*] Making [*of*] program loans and similar extensions or advances of funds, aid or assist-  
7 ance by a public body to a public or private body for the purpose of carrying out, promoting or  
8 sustaining activities or programs authorized by law; or

9 (C) [*The*] **A public body's** investment of funds [*by a public body*] as authorized by law[,] and a  
10 **public body's** other financial transactions [*of a public body*] that by their character cannot practi-  
11 cally be established under the competitive contractor selection procedures of ORS 279B.050 to  
12 279B.085;

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

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

16 (t) [*Any other*] Public contracting of a public body **that another provision of law** specifically  
17 [*exempted*] **exempts** from the code [*by another provision of law*].

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

19 (a) The Oregon State Lottery Commission;

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

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

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

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

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

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

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

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

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

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

32 [(L)] (i) Any other public body **that another provision of law** specifically [*exempted*] **exempts**  
33 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 5.** 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*] **If** a contracting agency has authority under this section to carry out functions de-  
42 scribed in this section, or has authority to make procurements under a provision of law other than  
43 the Public Contracting Code, the contracting agency is not required to exercise [*that*] **the con-**  
44 **tracting agency's** authority in accordance with the provisions of the code if, under ORS 279A.025,  
45 the code does not apply to the contract, **the contracting agency or the contracting agency's**

1 **contracting activities** *[or contracting authority]*.

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

5 (3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation  
6 has *[all the]* **complete** authority to:

7 (a) Procure or supervise the procurement of *[all]* services and personal services to construct,  
8 acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking  
9 facilities in connection with *[any]* a public transportation system in accordance with ORS 184.689  
10 (5);

11 (b) Procure or supervise the procurement of *[all]* goods, services, public improvements and per-  
12 sonal services *[relating]* **related** to *[the operation, maintenance or construction of]* **operating, main-**  
13 **taining or constructing** highways, bridges and other transportation facilities that are subject to  
14 the authority of the Department of Transportation; and

15 (c) Establish standards for, prescribe forms for and conduct the prequalification of prospective  
16 bidders on public improvement contracts related to *[the operation, maintenance or construction of]*  
17 **operating, maintaining or constructing** highways, bridges and other transportation facilities that  
18 are subject to the authority of the Department of Transportation.

19 (4) **Except as otherwise provided in the Public Contracting Code or a provision of law**  
20 **other than the Public Contracting Code that authorizes procurement and subject to the pol-**  
21 **icies and directions of the appropriate committee of the Legislative Assembly, the official**  
22 **who serves as the Legislative Administrator, the Legislative Fiscal Officer, the Legislative**  
23 **Revenue Officer, the Legislative Counsel or the Natural Resources Policy Administrator has**  
24 **complete authority to procure or direct the procurement of goods, services and personal**  
25 **services for the agency within the legislative department that the official supervises.**

26 (5) **Except as otherwise provided in the Public Contracting Code or a provision of law**  
27 **other than the Public Contracting Code that authorizes procurement, the State Court Ad-**  
28 **ministrator has complete authority to procure or direct the procurement of goods, services**  
29 **and personal services for programs within the judicial department.**

30 *[(4)]* (6) Except as otherwise provided in the Public Contracting Code, the Secretary of State has  
31 *[all the]* **complete** authority to procure or supervise the procurement of goods, services and personal  
32 services related to programs under the authority of the Secretary of State.

33 *[(5)]* (7) Except as otherwise provided in the Public Contracting Code, the State Treasurer has  
34 *[all the]* **complete** authority to procure or supervise the procurement of goods, services and personal  
35 services related to programs under the authority of the State Treasurer.

36 *[(6)]* (8) The state agencies listed in this subsection have *[all the]* **complete** authority to do the  
37 following in accordance with the Public Contracting Code:

38 (a) The Department of Human Services to procure or supervise the procurement of goods, ser-  
39 vices and personal services under ORS 179.040 for the department's institutions and *[the procurement*  
40 *of]* **to procure** goods, services and personal services for *[the construction, demolition, exchange,*  
41 *maintenance, operation]* **constructing, demolishing, exchanging, maintaining operating** and  
42 equipping *[of]* housing for the purpose of providing care to individuals with mental retardation or  
43 other developmental disabilities, subject to applicable provisions of ORS 427.335;

44 (b) The Oregon Health Authority to procure or supervise the procurement of goods, services and  
45 personal services under ORS 179.040 for the authority's institutions and *[the procurement of]* **to**

1 **procure** goods, services and personal services for [*the construction, demolition, exchange, mainte-*  
 2 *nance, operation*] **constructing, demolishing, exchanging, maintaining, operating** and equipping  
 3 [*of*] housing for [*persons*] **individuals** with chronic mental illness, subject to applicable provisions  
 4 of ORS 426.504;

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

9 (d) The State Parks and Recreation Department to procure or supervise the procurement of  
 10 [*all*] goods, services, public improvements and personal services [*relating*] **related** to state parks;

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

15 (f) The Oregon Business Development Department to procure or supervise the procurement of  
 16 [*all*] goods, services, personal services and public improvements related to [*its*] **the department's**  
 17 foreign trade offices operating outside [*the*] **this** state;

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

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

24 (i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120,  
 25 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, ser-  
 26 vices and personal services under ORS 179.040 for [*its*] **the department's** institutions;

27 (j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate  
 28 broker and principal real estate broker services related to programs under the department's au-  
 29 thority;

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

34 (L) The Department of Education, subject to [*any*] applicable provisions of ORS 329.075, 329.085  
 35 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to pro-  
 36 cure or supervise the procurement of goods, services, personal services and information technology  
 37 [*relating*] **related** to student assessment; and

38 (m) [*Any*] **A** state agency to conduct a procurement [*when the agency is*] **if a provision of law**  
 39 **other than the Public Contracting Code** specifically [*authorized by any provision of law other than*  
 40 *the Public Contracting Code*] **authorizes the state agency** to enter into a contract.

41 [(7)] **(9)** Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Depart-  
 42 ment of Administrative Services has exclusive authority, unless the director delegates this authority,  
 43 to procure or supervise the procurement of [*all*] **state agency information technology contracts**  
 44 **and** price agreements on behalf of the state agencies identified in subsection [(6)(a)] **(8)(a)** to (k) of  
 45 this section under which more than one state agency may order goods, services or personal services

1 [and all state agency information technology contracts]. This subsection does not apply to contracts  
 2 under which the contractor delivers to the state agency information technology products or services  
 3 incidental to the performance of personal services contracts **or construction contracts** described  
 4 in ORS chapter 279C [or construction contracts described in ORS chapter 279C]. A state agency  
 5 identified in subsection (3) or [(6)(a)] **(8)(a)** to (k) of this section may not establish a price agreement  
 6 or enter into a contract for goods, services or personal services without the **director's** approval  
 7 [of the director] if the director has established a price agreement for the goods, services or personal  
 8 services.

9 **SECTION 6.** ORS 279A.055 is amended to read:

10 279A.055. (1) Except as provided in ORS 279A.140, a contracting agency may enter into personal  
 11 services contracts. The provisions of this section do not relieve a contracting agency of the duty to  
 12 comply with ORS 279A.140, [any] other law applicable to state agencies or applicable city or county  
 13 charter provisions.

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

19 **SECTION 7.** ORS 279A.065 is amended to read:

20 279A.065. (1) The Attorney General shall prepare and maintain model rules of procedure [ap-  
 21 propriate for use by all contracting agencies governing] **that govern** public contracting under the  
 22 Public Contracting Code **and that are appropriate for all contracting agencies to use. The At-**  
 23 **torney General** [and] may **also** devise and publish forms for use [therewith] **with the model**  
 24 **rules.** The Attorney General shall adopt the model rules in the manner provided by ORS chapter  
 25 183. Before adopting or amending a model rule, the Attorney General shall consult with the Director  
 26 of the Oregon Department of Administrative Services, the Director of Transportation, **the Legisla-**  
 27 **tive Administrator, the State Court Administrator,** representatives of county governments, rep-  
 28 resentatives of city governments, representatives of school boards and other knowledgeable persons.

29 (2) The Attorney General shall adopt model rules [appropriate for use by all contracting agencies  
 30 to] **that** govern the procedures for entering into energy savings performance contracts **and that are**  
 31 **appropriate for all contracting agencies to use.** Before adopting or amending a rule under this  
 32 subsection, the Attorney General shall consult with the Oregon Department of Administrative Ser-  
 33 vices, the State Department of Energy, the Oregon University System, **the Legislative Adminis-**  
 34 **trator, the State Court Administrator,** local contracting agencies and other knowledgeable  
 35 persons. The Attorney General may develop standard contract forms for use with energy savings  
 36 performance contracts.

37 (3) After each legislative session, the Attorney General shall review [all] **the** laws [passed by]  
 38 the Legislative Assembly **enacted during the session** that affect public contracting to determine  
 39 if the model rules prepared under this section should be modified by [the adoption of] **adopting** a  
 40 new rule or by [the amendment or repeal of] **amending or repealing** an existing rule. If the Attorney  
 41 General determines that a modification of the model rules is necessary, the Attorney General shall  
 42 prepare the modification within [such] **enough** time [as] to allow the modification to take effect  
 43 [no] **not** later than 120 days after the effective date of the legislation that caused the rule to be  
 44 modified. However, the Attorney General may prepare a modification to take effect 121 or more days  
 45 after the effective date of the legislation if the Attorney General [provides notice designating the time

1 *period within which* **notifies the state agencies and persons listed in subsection (1) of this**  
 2 **section as to when** the modification will take effect *[to the state agencies and persons listed in*  
 3 *subsection (1) of this section]*.

4 (4) A contracting agency that has not adopted *[its own]* rules of procedure **applicable to the**  
 5 **contracting agency** in accordance with subsection (5) of this section is subject to the model rules  
 6 *[adopted by]* the Attorney General **adopts** under this section, including *[all]* modifications to the  
 7 model rules that the Attorney General *[may adopt]* **adopts**. This subsection does not apply to per-  
 8 sonal services contracts of local contracting agencies except for contracts for architectural, engi-  
 9 neering and land surveying services and related services.

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

12 (A) Specifically state that the model rules *[adopted by]* the Attorney General **adopts** under this  
 13 section do not apply to the contracting agency; and

14 (B) Prescribe the rules of procedure that the contracting agency will use for public contracts,  
 15 which may include portions of the model rules *[adopted by]* the Attorney General **adopts**.

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

20 **SECTION 8.** ORS 279A.075 is amended to read:

21 279A.075. (1) Unless otherwise provided in the Public Contracting Code, the exercise of all au-  
 22 thorities in the code may be delegated and subdelegated in whole or in part. Notwithstanding dele-  
 23 gations of authority under this section, a person's or agency's exercise of the delegated authority  
 24 is governed by the code and rules adopted under the code.

25 (2) The Secretary of State, State Treasurer, Director of the Oregon Department of Administra-  
 26 tive Services and Director of Transportation, **the officer or administrator of a contracting**  
 27 **agency with procurement authority under ORS 279A.050 (4) or (5)** and other heads of state  
 28 agencies with specific limited authority identified in ORS 279A.050 *[(6)] (8)* may delegate *[their]* **the**  
 29 authority to contract for and manage public contracts for *[their]* **the offices or agencies identified**  
 30 **in this subsection.**

31 **SECTION 9.** ORS 279B.085 is amended to read:

32 279B.085. (1) As used in this section and ORS 279B.400:

33 **(a) "Appointing authority":**

34 **(A) Means, for the Legislative Administrator, the Legislative Administration Committee;**

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

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

37 **(D) Means, for the Legislative Counsel, the Legislative Counsel Committee;**

38 **(E) Has, for the Natural Resources Policy Administrator, the meaning given that term**  
 39 **in ORS 173.610; and**

40 **(F) Means, for the State Court Administrator, the Chief Justice of the Supreme Court.**

41 *[(a)] (b)* "Class special procurement" means a contracting procedure that differs from the pro-  
 42 cedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of en-  
 43 tering into a series of contracts over time or for multiple projects.

44 *[(b)] (c)* "Contract-specific special procurement" means a contracting procedure that differs from  
 45 the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose

1 of entering into a single contract or a number of related contracts on a one-time basis or for a single  
2 project.

3 [(c)] (d) "Special procurement" means, unless the context requires otherwise, a class special  
4 procurement, a contract-specific special procurement or both.

5 (2) Except as provided in subsection (3) of this section, [to seek] **a contracting agency that**  
6 **seeks** approval of a special procurement[, a contracting agency] shall submit a written request to the  
7 Director of the Oregon Department of Administrative Services or the local contract review board,  
8 as applicable, that describes the contracting **agency's proposed contracting** procedure, the goods  
9 or services or the class of goods or services that are the subject of the special procurement and the  
10 circumstances that justify [the use of] **using** a special procurement under the standards set forth in  
11 subsection (4) of this section.

12 (3) [When] **If** the contracting agency **that seeks approval of a special procurement** is the of-  
13 fice of the Secretary of State, [or] the office of the State Treasurer[,] **or a contracting agency with**  
14 **procurement authority under ORS 279A.050 (4) or (5)**, [to seek approval of a special

15 *procurement,*] the contracting agency shall submit a written request to the Secretary of State, [or]  
16 the State Treasurer[,] **or the appointing authority for the officer or administrator of the con-**  
17 **tracting agency with procurement authority under ORS 279A.050 (4) or (5)**, as applicable, that  
18 describes the contracting procedure, the goods or services or the class of goods or services that are  
19 the subject of the special procurement and the circumstances that justify [the use of] **using** a special  
20 procurement under the standards set forth in subsection (4) of this section.

21 (4) The director, a local contract review board, the Secretary of State, [or] the State Treasurer  
22 **or the appointing authority for the officer or administrator of a contracting agency with**  
23 **procurement authority under ORS 279A.050 (4) or (5)** may approve a special procurement if the  
24 director, board, Secretary of State, [or] State Treasurer **or appointing authority** finds that a writ-  
25 ten request submitted under subsection (2) or (3) of this section demonstrates that [the use of] **using**  
26 a special procurement as described in the request, or an alternative procedure prescribed by the  
27 director, board, Secretary of State, [or] State Treasurer **or appointing authority**:

28 (a) Is unlikely to encourage favoritism in [the] awarding [of] public contracts or [to] substantially  
29 diminish competition for public contracts; and

30 (b)(A) Is reasonably expected to result in substantial cost savings to the contracting agency or  
31 [to] the public; or

32 (B) Otherwise substantially promotes the public interest in a manner that could not practicably  
33 be realized by complying with **the** requirements [that are] applicable under ORS 279B.055, 279B.060,  
34 279B.065 or 279B.070 or [under any] rules adopted [thereunder] **under ORS 279B.055, 279B.060,**  
35 **279B.065 or 279B.070.**

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

38 (6) If a contracting agency intends to award a contract through a special procurement that calls  
39 for competition among prospective contractors, the contracting agency shall award the contract to  
40 the offeror the contracting agency determines to be the most advantageous to the contracting  
41 agency.

42 (7) When the director, a local contract review board, the Secretary of State, [or] the State  
43 Treasurer **or the appointing authority for the officer or administrator of a contracting agency**  
44 **with procurement authority under ORS 279A.050 (4) or (5)** approves a class special procurement  
45 under this section, the contracting agency may award contracts to acquire goods or services within

1 the class of goods or services in accordance with the terms of the approval without making a sub-  
 2 sequent request for a special procurement.

3 **SECTION 10.** ORS 279B.400 is amended to read:

4 279B.400. (1) Before seeking judicial review of the approval of a special procurement, a person  
 5 must file a protest, in accordance with *[the]* rules adopted under ORS 279A.065, with the Director  
 6 of the Oregon Department of Administrative Services, **the officer or administrator of a con-**  
 7 **tracting agency with procurement authority under ORS 279A.050 (4) or (5)** or the local con-  
 8 tracting agency, as applicable, and exhaust all available nonjudicial remedies. *[The]* Rules adopted  
 9 under ORS 279A.065 *[shall]* **must** provide a reasonable time and manner for affected persons to  
 10 protest the approval of a special procurement under ORS 279B.085.

11 (2) The **director's** approval of a class special procurement *[by the director]* under ORS 279B.085  
 12 constitutes rulemaking and not a contested case under ORS chapter 183. *[Any]* **An** affected person,  
 13 except the state contracting agency that requested the approval or *[anyone representing]* **a person**  
 14 **that represents** the state contracting agency, may petition the Court of Appeals in the manner  
 15 provided in ORS 183.400 to test the validity of a class special procurement **the director** approved  
 16 *[by the director]*. A proceeding under ORS 183.400 does not affect the validity of a contract executed  
 17 pursuant to a class special procurement before the petition is filed. Notwithstanding ORS 183.400 (1),  
 18 before seeking judicial review under this subsection, a person must file a protest with the director  
 19 as described in subsection (1) of this section.

20 (3)(a) The **director's** approval of a contract-specific special procurement *[by the director]* is re-  
 21 viewable under ORS 183.484, but only if judicial review is sought before the contract is awarded.  
 22 Otherwise, a contract awarded pursuant to the contract-specific special procurement is conclusively  
 23 presumed valid and may not **be challenged**[,] in *[any]* **a** future judicial or administrative  
 24 proceeding[, *be challenged*] on the ground that the contract was awarded under an invalid special  
 25 procurement.

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

30 (4)(a) The approval of a special procurement by **an appointing authority under ORS 279B.085**  
 31 **(4) or by** a local contract review board may be challenged by filing a writ of review under ORS  
 32 chapter 34, provided that all available nonjudicial remedies first have been exhausted, including  
 33 protests as described in subsection (1) of this section. Notwithstanding the 60-day filing period pre-  
 34 scribed by ORS 34.030, the approval of a special procurement is not subject to a writ of review  
 35 proceeding more than 10 days after the **appointing authority or the** board approves the use of the  
 36 special procurement.

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

42 (5) If timely judicial review is sought regarding the approval of a special procurement under  
 43 ORS 279B.085, the contracting agency may not *[proceed with contract execution]* **execute the con-**  
 44 **tract** unless the contracting agency determines that there is a compelling governmental interest in  
 45 proceeding or that the goods or services are urgently needed. If the contracting agency makes such



1 a determination, the contracting agency shall set forth the reasons for the determination in writing  
 2 and immediately provide *[them]* **the reasons** to the person who filed the challenge. Thereafter, after  
 3 joining the prospective contractor as a party to the litigation and upon motion by the person filing  
 4 the challenge, the court may nonetheless stay the performance of the contract if the court finds that  
 5 the contracting agency's determination of the existence of a compelling governmental interest in  
 6 proceeding with contract execution, or the contracting agency's determination that the goods or  
 7 services were urgently needed, was not supported by substantial evidence or constituted a manifest  
 8 abuse of discretion. In granting a stay, the court may require the person seeking the stay to post  
 9 a bond in an amount sufficient to protect the contracting agency and the public from costs associ-  
 10 ated with delay in contract performance.

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

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

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

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

28 **SECTION 11.** ORS 279C.105 is amended to read:

29 279C.105. (1) Except as provided in ORS 279A.140, **a** contracting *[agencies]* **agency** may enter  
 30 into **a contract** *[contracts]* for architectural, engineering and land surveying services and related  
 31 services. The Oregon Department of Administrative Services shall enter into *[contracts]* **a contract**  
 32 for architectural, engineering and land surveying services and related services on behalf of **a** state  
 33 contracting *[agencies]* **agency** that *[are]* **is** subject to ORS 279A.140. The provisions of this section  
 34 do not relieve the contracting agency of the duty to comply with ORS 279A.140, *[any]* other law  
 35 applicable to state contracting agencies[,] or *[any]* applicable city or county charter provisions.  
 36 *[Each]* **A** contracting agency **that is** authorized to enter into *[contracts]* **a contract** for architec-  
 37 tural, engineering and land surveying services and related services shall adopt procedures for *[the]*  
 38 screening and *[selection of]* **selecting** persons to perform *[those]* **the** services under ORS 279C.110  
 39 or 279C.120.

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

45 **SECTION 12.** ORS 279C.335 is amended to read:

1 279C.335. (1) *[All]* **A** public improvement *[contracts shall]* **contract must** be based upon com-  
 2 petitive bids except:

3 (a) *[Contracts]* **A contract** made with a qualified nonprofit *[agencies providing]* **agency that**  
 4 **provides** employment opportunities for individuals with disabilities under ORS 279.835 to 279.855.

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

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

7 (d) A contract **that does** not *[to]* exceed \$100,000 **and that is** made under procedures for com-  
 8 petitive quotes in ORS 279C.412 and 279C.414.

9 (e) *[Contracts for repair, maintenance, improvement or protection of]* **A contract for repairing,**  
 10 **maintaining, improving or protecting** property *[obtained by]* the Department of Veterans' Affairs  
 11 **obtains** under ORS 407.135 and 407.145 (1).

12 (f) Energy savings performance contracts entered into in accordance with rules *[of procedure]*  
 13 adopted under ORS 279A.065.

14 (2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Ad-  
 15 ministrative Services, **the officer or administrator of a contracting agency with procurement**  
 16 **authority under ORS 279A.050 (4) or (5)**, a local contract review board or, for contracts described  
 17 in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract  
 18 or a class of public improvement contracts from the competitive bidding requirements of subsection  
 19 (1) of this section upon approval of the following findings submitted by the contracting agency or,  
 20 if a state agency is not the contracting agency, the state agency seeking the exemption:

21 (a) It is unlikely that the exemption will encourage favoritism in *[the]* awarding *[of]* public im-  
 22 provement contracts or substantially diminish competition for public improvement contracts.

23 (b) *[The]* Awarding *[of]* public improvement contracts under the exemption will likely result in  
 24 substantial cost savings to the contracting agency, to the state agency based upon the justification  
 25 and information described in ORS 279C.330 or, if the contracts are for public improvements de-  
 26 scribed in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the  
 27 Director of the Oregon Department of Administrative Services, **the officer or administrator of a**  
 28 **contracting agency with procurement authority under ORS 279A.050 (4) or (5)**, the Director  
 29 of Transportation or the local contract review board may consider the type, cost and amount of the  
 30 contract, the number of persons available to bid and *[such]* other factors **that the director, officer,**  
 31 **administrator or board** *[as]* may *[be deemed]* **deem** appropriate.

32 (c) *[As an alternative to the finding described in paragraph (b) of this subsection, when]* **If** a  
 33 contracting agency or state agency seeks an exemption that would allow the **agency to** use *[of]* an  
 34 *[alternate]* **alternative** contracting method that the agency has not previously used, **instead of**  
 35 **making the finding described in paragraph (b) of this subsection**, the agency may make a find-  
 36 ing that identifies the project as a pilot project *[for which]* the agency intends to **use to** determine  
 37 whether *[the use of the alternate]* **the alternative** contracting method actually results in substantial  
 38 cost savings to the contracting agency, to the state agency or, if the contract is for a public im-  
 39 provement described in ORS 279A.050 (3)(b), to the contracting agency or the public. **In the eval-**  
 40 **uation required under ORS 279C.355**, the agency shall *[include an analysis and conclusion*  
 41 *regarding actual cost savings, if any, in the evaluation required under ORS 279C.355]* **analyze the**  
 42 **alternative contracting method and determine whether actual cost savings resulted from**  
 43 **using the alternative method.**

44 (3) In making findings to support an exemption for a class of public improvement contracts, the  
 45 contracting agency or state agency shall clearly identify the class using *[the class's defining char-*

1 *acteristics. Those characteristics shall include some*] a combination of project descriptions or lo-  
 2 cations, time periods, contract values, methods of procurement or other factors that distinguish the  
 3 *[limited and related class of public improvement contracts]* **class that would be subject to the ex-**  
 4 **emption** from the **rest of the** agency's overall construction program. The agency may not identify  
 5 a class solely by funding source, such as a particular bond fund, or by the method of procurement,  
 6 but shall identify the class using characteristics that reasonably relate to the exemption criteria set  
 7 forth in subsection (2) of this section.

8 (4) In granting exemptions under subsection (2) of this section, the Director of the Oregon De-  
 9 partment of Administrative Services, the Director of Transportation, **the officer or administrator**  
 10 **of a contracting agency with procurement authority under ORS 279A.050 (4) or (5)** or the local  
 11 contract review board shall:

12 (a) When appropriate, direct the use of *[alternate]* **alternative** contracting methods that take  
 13 account of market realities and modern practices and **that** are consistent with the public policy of  
 14 encouraging competition.

15 (b) Require and approve or disapprove written findings by the contracting agency or state  
 16 agency that support *[the]* awarding *[of]* a particular public improvement contract or a class of public  
 17 improvement contracts[,] without the competitive bidding requirement of subsection (1) of this sec-  
 18 tion. The findings must show that *[the exemption of]* **exempting** a contract or class of contracts  
 19 complies with the requirements of subsection (2) of this section.

20 (5)(a) **A contracting agency or state agency shall hold a public hearing** before final adoption  
 21 of the findings required by subsection (2) of this section *[exempting]* **to exempt** a public improvement  
 22 contract or a class of public improvement contracts from the requirement of competitive bidding[,  
 23 *a contracting agency or state agency shall hold a public hearing]*.

24 (b) Notification of the public hearing *[shall]* **must** be published in at least one trade newspaper  
 25 of general statewide circulation a minimum of 14 days before the hearing.

26 (c) The notice shall state that the public hearing is for the purpose of taking comments on the  
 27 draft findings for an exemption from the competitive bidding requirement. At the time of the notice,  
 28 copies of the draft findings *[shall]* **must** be made available to the public. At the option of the con-  
 29 tracting agency or state agency, the notice may describe the process by which the findings are  
 30 finally adopted and may indicate the opportunity for *[any]* further public comment.

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

33 (e) If a contracting agency or state agency is required to act promptly *[due to]* **because of** cir-  
 34 cumstances beyond the agency's control that do not constitute an emergency, *[notification of the*  
 35 *public hearing may be published simultaneously with the agency's solicitation of]* **the agency may**  
 36 **publish notice of the public hearing at the same time the agency solicits** contractors for the  
 37 alternative public contracting method, as long as responses to the solicitation are due at least five  
 38 days after the *[meeting]* **public hearing** *[and approval of]* **or the date on which the agency ap-**  
 39 **proves** the findings.

40 (6) The purpose of an exemption is to exempt one or more public improvement contracts from  
 41 competitive bidding requirements. The representations in and the accuracy of the findings, including  
 42 *[any]* a general description of the resulting public improvement contract, are the bases for approving  
 43 the findings and granting *[the exception]* **an exemption**. The findings may describe anticipated fea-  
 44 tures of the resulting public improvement contract, but the final parameters of the contract are  
 45 *[those]* **the** characteristics or specifics announced in the solicitation document.

1 (7) A public improvement contract awarded under the competitive bidding requirement of sub-  
 2 section (1) of this section may be amended only in accordance with rules adopted under ORS  
 3 279A.065.

4 (8) **A** public improvement [*contracts excepted from competitive bid requirements under*] **contract**  
 5 **that is not subject to competitive bid requirements in accordance with** subsection (1)(a), (c), (d),  
 6 (e) or (f) of this section [*are*] **is** not subject to the [*exemption*] requirements [*of*] **for exempting**  
 7 **contracts under** subsection (2) of this section.

8 **SECTION 13.** ORS 279C.345 is amended to read:

9 279C.345. (1) Specifications for **a** public improvement [*contracts*] **contract** may not expressly or  
 10 implicitly require [*any*] **a** product by [*any*] **a** brand name or mark[, *nor the*] **or require a** product  
 11 of [*any*] **a** particular manufacturer or seller unless the product is exempt under subsection (2) of this  
 12 section.

13 (2) The Director of the Oregon Department of Administrative Services, **the officer or admin-**  
 14 **istrator of a contracting agency with procurement authority under ORS 279A.050 (4) or (5),**  
 15 a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of  
 16 Transportation may exempt [*certain products or classes*] **a product or a class** of products from **the**  
 17 **prohibition in** subsection (1) of this section [*upon any of the following findings*] **if the director,**  
 18 **officer, administrator or board finds that:**

19 (a) It is unlikely that the exemption will encourage favoritism in [*the*] awarding [*of*] public im-  
 20 provement contracts or substantially diminish competition for public improvement contracts;

21 (b) [*The specification of*] **Specifying** a product by brand name or mark, or **specifying** [*the*] **a**  
 22 product of a particular manufacturer or seller, would result in substantial cost savings to the con-  
 23 tracting agency;

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

25 (d) Efficient utilization of existing equipment or supplies requires [*the acquisition of*] **the con-**  
 26 **tracting agency to acquire** compatible equipment or supplies.

27 **SECTION 14.** ORS 279C.350 is amended to read:

28 279C.350. (1) Exemptions [*granted by*] the Director of the Oregon Department of Administrative  
 29 Services **grants** under ORS 279C.335 (2) or 279C.345 (2) constitute rulemaking and not contested  
 30 cases under ORS chapter 183. However, [*an exemption granted with regard to a specific public im-*  
 31 *provement contract by*] the Director of the Oregon Department of Administrative Services **by order**  
 32 **shall grant or deny an exemption for a specific public improvement contract**[, *or an exemption*  
 33 *granted by*] **and** the Director of Transportation [*with regard to*] **by order shall grant or deny an**  
 34 **exemption for** a specific public improvement contract or class of public improvement contracts  
 35 described in ORS 279A.050 (3)(b)[, *shall be granted by order*]. The order shall set forth findings  
 36 [*supporting*] **that support** the decision to grant or deny the request for the exemption. The order  
 37 is reviewable under ORS 183.484 and does not constitute a contested case order. [*Jurisdiction for*  
 38 *review of the order is with*] The Circuit Court of Marion County[. *The court*] **has jurisdiction to**  
 39 **review the order and** may award costs and attorney fees to the prevailing party.

40 (2) [*Any*] **A** person, except the contracting agency or [*anyone representing*] **a person that re-**  
 41 **presents** the contracting agency, may bring a petition **in the manner provided under ORS 183.400**  
 42 for a declaratory judgment to test the validity of [*any rule adopted by*] **a rule** the Director of the  
 43 Oregon Department of Administrative Services **adopted** under ORS 279C.335 or 279C.345 [*in the*  
 44 *manner provided in ORS 183.400*].

45 (3) [*Any*] **A** person, except the contracting agency or [*anyone representing*] **a person that re-**

1 **presents** the contracting agency, may bring an action for writ of review under ORS chapter 34 to  
 2 test the validity of an exemption **that an officer or administrator of a contracting agency with**  
 3 **procurement authority under ORS 279A.050 (4) or (5) or a local contract review board** granted  
 4 under ORS 279C.335 or 279C.345 *[by a local contract review board]*.

5 **SECTION 15.** ORS 279C.355 is amended to read:

6 279C.355. (1) Upon completion of and final payment for *[any]* a public improvement contract[,]  
 7 or class of public improvement contracts, *in excess of \$100,000 for which* **the contract price of**  
 8 **which exceeded \$100,000, if** the contracting agency did not use *[the]* a competitive bidding process,  
 9 the contracting agency shall prepare and deliver to the Director of the Oregon Department of Ad-  
 10 ministrative Services, **the officer or administrator of a contracting agency with procurement**  
 11 **authority under ORS 279A.050 (4) or (5),** the local contract review board or, for public improve-  
 12 ment contracts described in ORS 279A.050 (3)(b), the Director of Transportation an evaluation of the  
 13 public improvement contract or the class of public improvement contracts.

14 (2) The evaluation **described in subsection (1) of this section** must include but is not limited  
 15 to the following matters:

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

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

18 (c) The number of project change orders *[issued by]* the contracting agency **issued;**

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

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

23 (3) The evaluations required by this section:

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

25 (b) Must be completed within 30 days *[of]* **after** the date the contracting agency accepts:

26 (A) The public improvement project; or

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

29 **SECTION 16.** ORS 279C.360 is amended to read:

30 279C.360. (1) An advertisement for a public improvement *[contracts]* **contract** must be published  
 31 at least once in at least one newspaper of general circulation in the area where the contract is to  
 32 be performed and in as many additional issues and publications as the contracting agency may de-  
 33 termine. The Director of the Oregon Department of Administrative Services, **the officer or ad-**  
 34 **ministrator of a contracting agency with procurement authority under ORS 279A.050 (4) or**  
 35 **(5),** a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director  
 36 of Transportation, by rule or order, may authorize advertisements for public improvement contracts  
 37 to be published electronically instead of in a newspaper of general circulation if the director, **offi-**  
 38 **cer, administrator** or board determines that electronic advertisements are likely to be cost-  
 39 effective. If the public improvement contract has an estimated cost in excess of \$125,000, the  
 40 advertisement must be published in at least one trade newspaper of general statewide circulation.  
 41 The Director of the Oregon Department of Administrative Services, the Director of Transportation,  
 42 **the officer or administrator of a contracting agency with procurement authority under ORS**  
 43 **279A.050 (4) or (5)** or the local contract review board may, by rule or order, require an advertise-  
 44 ment to be published more than once or in one or more additional publications.

45 (2) *[All]* Advertisements for public improvement contracts must state:

- 1 (a) The public improvement project;
- 2 (b) The office where the specifications for the project may be reviewed;
- 3 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
- 4 or classes of work for which bidders must be prequalified if prequalification is a requirement;
- 5 (d) The date and time after which **the contracting agency will not receive** bids [*will not be*
- 6 *received*], which must be at least five days after the date of the last publication of the advertisement;
- 7 (e) The name and title of the person designated [*for receipt of*] **to receive** bids;
- 8 (f) The date, time and place that the contracting agency will publicly open the bids; and
- 9 (g) [*If*] **Whether** the contract is for a public works subject to ORS 279C.800 to 279C.870 or the
- 10 Davis-Bacon Act (40 U.S.C. 3141 et seq.).

11 **SECTION 17.** ORS 279C.390 is amended to read:

12 279C.390. (1) Subject to the provisions of subsection (2) of this section, the Director of the

13 Oregon Department of Administrative Services, a state contracting agency with procurement au-

14 thority under ORS 279A.050, **a contracting agency with procurement authority under ORS**

15 **279A.050 (4) or (5)**, a local contract review board or, for contracts described in ORS 279A.050 (3)(b),

16 the Director of Transportation may exempt [*certain contracts or classes*] **a contract or a class** of

17 contracts from all or a portion of the requirement for bid security and from all or a portion of the

18 requirement that good and sufficient bonds be furnished to ensure performance of the contract and

19 payment of obligations incurred in the performance.

20 (2) The contracting agency may require bid security and a good and sufficient performance bond,

21 a good and sufficient payment bond[,] or [*any*] **a** combination of [*such*] bonds, even [*though*] **if** the

22 public improvement contract is of a class exempted under subsection (1) of this section.

23 (3) The Director of Transportation may:

24 (a) Exempt [*contracts or classes*] **a contract or a class** of contracts financed from the proceeds

25 of bonds issued under ORS 367.620 (3)(a) from the requirement for bid security and from the re-

26 quirement that a good and sufficient bond be furnished to ensure performance of the contract; or

27 (b) Reduce the amount of the required performance bond for [*contracts or classes*] **a contract**

28 **or a class** of contracts financed from the proceeds of the bonds issued under ORS 367.620 (3)(a) to

29 less than 100 percent of the contract price.

30 (4) [*Any*] Recoverable damages that exceed the amount of the performance bond required under

31 subsection (3) of this section [*shall be*] **are** the sole responsibility of the Department of Transporta-

32 tion.

33 **SECTION 18.** ORS 279C.445 is amended to read:

34 279C.445. (1) [*Any*] **A** person [*who*] **that** wishes to appeal disqualification shall, within three

35 business days after [*receipt of*] **receiving** notice of disqualification, notify the contracting agency

36 that the person appeals the disqualification. Immediately upon [*receipt of*] **receiving** the notice of

37 appeal:

38 [(1)] (a) A state contracting agency shall notify the Director of the Oregon Department of Ad-

39 ministrative Services.

40 [(2)] (b) [*All contracting agencies*] **A contracting agency** other than a state contracting [*agen-*

41 *cies*] **agency** shall notify the appropriate **appointing authority for an officer or administrator**

42 **of a contracting agency with procurement authority under ORS 279.050 (4) or (5) or the local**

43 contract review board.

44 (2) **As used in this section, "appointing authority" has the meaning given that term in**

45 **ORS 279C.450.**

1        **SECTION 19.** ORS 279C.450 is amended to read:

2        279C.450. (1) An appeal from a contracting agency's disqualification or denial, revocation or  
 3 revision of a prequalification is subject to the procedures set forth in this section and is not subject  
 4 to ORS chapter 183 except when specifically provided in this section.

5        (2) Promptly upon receiving notice of appeal from a contracting agency as provided in ORS  
 6 279C.445, the Director of the Oregon Department of Administrative Services, **the appointing au-**  
 7 **thority for an officer or administrator of a contracting agency with procurement authority**  
 8 **under ORS 279C.050 (4) or (5)** or the local contract review board shall notify the person appealing  
 9 and the contracting agency of the time and place of the hearing. The director, **appointing authority**  
 10 or board shall conduct the hearing and decide the appeal within 30 days after receiving the notifi-  
 11 cation from the contracting agency unless the person appealing and the contracting agency mutually  
 12 agree to a different period of time. The director, **appointing authority** or board shall set forth in  
 13 writing the reasons for the decision.

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

21        (4) The director may allocate the director's cost for the hearing between the person appealing  
 22 and the contracting agency whose disqualification or prequalification decision is being appealed. The  
 23 director shall base the allocation upon facts the director finds in the record and states in the final  
 24 order that, in the director's opinion, warrant [*such*] **the** allocation of the costs. If the final order  
 25 does not allocate the director's costs for the hearing, the costs must be paid as follows:

26        (a) If the director upholds the decision to disqualify or deny, revoke or revise a prequalification  
 27 of a person, the person appealing the disqualification or prequalification decision shall pay the  
 28 director's costs.

29        (b) If the director reverses the decision to disqualify or deny, revoke or revise a prequalification  
 30 of a person, the contracting agency whose disqualification or prequalification decision is the subject  
 31 of the appeal shall pay the director's costs.

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

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

38        (b) There was evident partiality or corruption on the part of the director, **appointing authority**  
 39 or board or [*any of the members*] **a member** of the board.

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

42        (6) The procedure provided in this section is the exclusive means of judicial review of the deci-  
 43 sion of the director, **appointing authority** or board. The judicial review provisions of ORS 183.480,  
 44 the writs of review and mandamus, as provided in ORS chapter 34, and other legal, declaratory and  
 45 injunctive remedies are not available.

1 (7) The circuit court may, in the court’s discretion, stay the letting of the contract that is the  
 2 subject of the petition in the same manner as the court may issue a stay in a suit in equity. If the  
 3 court determines that an improper disqualification or denial, revocation or revision of a prequali-  
 4 fication occurred and the contract has been let, the court may proceed to take evidence to deter-  
 5 mine the damages, if any, the petitioner suffered and award such damages as the court may find as  
 6 a judgment against the director, **appointing authority** or board. The court may award costs and  
 7 attorney fees to the prevailing party.

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

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

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

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

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

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

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

16 **SECTION 20.** ORS 279C.560 is amended to read:

17 279C.560. (1) Unless a contracting agency that reserves an amount as retainage under ORS  
 18 279C.570 (7) finds in writing that accepting a bond or instrument described in paragraph (a) or (b)  
 19 of this subsection poses an extraordinary risk that is not typically associated with the bond or in-  
 20 strument, the contracting agency in lieu of withholding moneys from payment shall accept from a  
 21 contractor:

22 (a) Bonds, securities or other instruments of a character described in subsection (6) of this sec-  
 23 tion that are deposited as provided in subsection (4) of this section; or

24 (b) A surety bond deposited as provided in subsection (7) of this section.

25 (2) A contracting agency that holds moneys as retainage under ORS 279C.570 (7) shall:

26 (a) Hold the moneys in a fund and pay the moneys to the contractor in accordance with ORS  
 27 279C.570; or

28 (b) *[At the election of the contractor,]* Pay the moneys to the contractor, **at the contractor’s**  
 29 **election**, in accordance with subsection (4) or (5) of this section and in a manner authorized by the  
 30 Director of the Oregon Department of Administrative Services.

31 (3) If the contracting agency incurs additional costs as a result of the exercise of an option de-  
 32 scribed in subsection (1) or (5) of this section, the contracting agency may recover the costs from  
 33 the contractor by reducing the final payment. As work on the contract progresses, the contracting  
 34 agency shall, upon demand, inform the contractor of all accrued costs.

35 (4) The contractor may deposit bonds, securities or other instruments with the contracting  
 36 agency or in a bank or trust company for the contracting agency to hold for the contracting  
 37 agency’s benefit in lieu of moneys held as retainage. If the contracting agency accepts bonds, secu-  
 38 rities or other instruments deposited as provided in this subsection, the contracting agency shall  
 39 reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and  
 40 other instruments and pay the amount of the reduction to the contractor in accordance with ORS  
 41 279C.570. Interest or earnings on the bonds, securities or other instruments *[shall]* accrue to the  
 42 contractor.

43 (5) If the contractor elects, the contracting agency shall deposit the retainage as accumulated  
 44 in an interest-bearing account in a bank, savings bank, trust company or savings association for the  
 45 benefit of the contracting agency. *[When]* **If** the contracting agency is a state contracting agency



1 **or a contracting agency with procurement authority under ORS 279A.050 (4) or (5)**, the ac-  
 2 count must be established through the State Treasurer. Earnings on the account accrue to the  
 3 contractor.

4 (6) Bonds, securities and other instruments deposited or acquired in lieu of retainage, as per-  
 5 mitted by this section, must be of a character approved by the Director of the Oregon Department  
 6 of Administrative Services, including but not limited to:

- 7 (a) Bills, certificates, notes or bonds of the United States.
- 8 (b) Other obligations of the United States or agencies of the United States.
- 9 (c) Obligations of a corporation wholly owned by the federal government.
- 10 (d) Indebtedness of the Federal National Mortgage Association.
- 11 (e) General obligation bonds of the State of Oregon or a political subdivision of the State of  
 12 Oregon.
- 13 (f) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

14 (7) The contractor, with the approval of the contracting agency, may deposit a surety bond for  
 15 all or any portion of the amount of funds retained, or to be retained, by the contracting agency in  
 16 a form acceptable to the contracting agency. The bond and *[any]* proceeds of the bond must be made  
 17 subject to *[all]* claims and liens and in the same manner and priority as set forth for retainage under  
 18 ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The contracting agency shall reduce the mon-  
 19 eys the contracting agency holds as retainage in an amount equal to the value of the bond and pay  
 20 the amount of the reduction to the contractor in accordance with ORS 279C.570. *[Whenever]* **If** a  
 21 contracting agency accepts a surety bond from a contractor in lieu of retainage, the contractor shall  
 22 accept like bonds from a subcontractor or supplier from which the contractor has retainage. The  
 23 contractor shall then reduce the moneys the contractor holds as retainage in an amount equal to  
 24 the value of the bond and pay the amount of the reduction to the subcontractor or supplier.

25 **SECTION 21.** ORS 351.070 is amended to read:

26 351.070. (1) The Oregon University System, in accordance with rules adopted by the State Board  
 27 of Higher Education, shall implement a personnel system and may engage in collective bargaining  
 28 with *[its]* employees **of the Oregon University System**. *[All]* Collective bargaining with *[any]* a  
 29 certified or recognized exclusive employee representative *[shall be]* **is** under the direction and  
 30 supervision of the Chancellor of the Oregon University System. The Oregon University System *[shall*  
 31 *have]* **has** payroll authority pursuant to ORS 292.043 to 292.180.

32 *[(2)(a) The board shall establish competitive procedures for the purchasing, procurement and con-*  
 33 *tracting of goods, services and information technology, for the benefit of the Oregon University System*  
 34 *and all the institutions, departments and activities therein. The board may also establish exemptions*  
 35 *from the competitive procedures when appropriate.]*

36 *[(b) The board shall ensure that the hourly rate of wage paid by any contractor upon all public*  
 37 *improvements contracts undertaken for the board shall not be less than the same rate of wage as de-*  
 38 *termined by the Bureau of Labor and Industries for an hour's work in the same trade or occupation*  
 39 *in the locality where such labor is performed. Claims or disputes arising under this subsection shall*  
 40 *be decided by the Commissioner of the Bureau of Labor and Industries.]*

41 **(2)(a) The board, for the benefit of the Oregon University System and the institutions,**  
 42 **departments and activities of the Oregon University System, may adopt rules under ORS**  
 43 **279A.065 for purchasing, procuring and contracting goods and services in accordance with**  
 44 **ORS chapters 279A, 279B and 279C. The board shall establish competitive procedures for**  
 45 **purchasing, procuring and contracting for information technology services for the Oregon**

1 **University System and the institutions, departments and activities of the Oregon University**  
2 **System. The board may also establish exemptions from the competitive procedures when**  
3 **appropriate.**

4 **(b) The board shall ensure that a contractor or subcontractor that undertakes a public**  
5 **improvement contract for the board pays an hourly rate of wage that is not less than the**  
6 **rate of wage the Bureau of Labor and Industries determines is paid for an hour's work in**  
7 **the same trade or occupation in the locality in which the labor is performed. The Commis-**  
8 **sioner of the Bureau of Labor and Industries shall decide claims and disputes that arise un-**  
9 **der this paragraph.**

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

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

15 (a) Appoint and employ a president and the requisite number of professors, teachers and em-  
16 ployees, and prescribe *[their]* **the** compensation and tenure of office or employment **of the presi-**  
17 **dent, professors, teachers and employees.**

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

22 **(b) Demand and receive the interest described in ORS 352.510 and sums due and accruing**  
23 **to the institutions of higher education for admission and tuition and apply as much of the**  
24 **interest and sums as is necessary to pay the compensation described in paragraph (a) of this**  
25 **subsection and the other current expenses of the institutions.**

26 (c) Prescribe fees for enrollment into the institutions. *[Such]* Enrollment fees *[shall]* **must** in-  
27 clude tuition for education and general services and *[such]* other charges *[found by]* the board *[to*  
28 *be]* **finds are** necessary to carry out *[its]* **the board's** educational programs. The board may award  
29 student aid from any fund other than the General Fund.

30 (d) Prescribe incidental fees for programs under the **board's** supervision or control *[of the board*  
31 *found by the board, upon its]* **that the board finds, upon the board's** own motion or upon recom-  
32 mendation of the recognized student government of the institution concerned, *[to be]* **are** advanta-  
33 geous to the cultural or physical development of students. Fees realized in excess of amounts  
34 allocated and exceeding required reserves *[shall be considered]* **are** surplus incidental fees and  
35 *[shall]* **must** be allocated for programs under the **board's** control *[of the board and]* **that the in-**  
36 **stitution president finds are** *[found to be]* advantageous to the cultural or physical development  
37 of students *[by the institution president upon the recommendation of the recognized student government*  
38 *at the institution concerned]* **and that are recommended by the institution's recognized student**  
39 **government.**

40 *[(e) Upon recommendation of the recognized student government, collect optional fees authorized*  
41 *by the institution executive, for student activities not included in paragraph (c) or (d) of this subsection.*  
42 *The payment of such optional fees shall be at the option and selection of the student and shall not be*  
43 *a prerequisite of enrollment.]*

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

1 (e) Upon recommendation of the recognized student government, collect optional fees the  
 2 institution executive authorizes for student activities not included in paragraph (c) or (d) of  
 3 this subsection. The student may opt or select to pay optional fees, but paying optional fees  
 4 may not be a prerequisite of enrollment.

5 (f) Confer, on the recommendation of the faculty of an institution, degrees that similar  
 6 institutions confer or that the faculty deems appropriate.

7 (g) Prescribe the qualifications for admission into *[such]* the institutions.

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

11 (a) Shall supervise the general course of instruction *[therein,]* **in the institution, division or**  
 12 **department** and the research, extension, educational and other activities *[thereof]* **of the institu-**  
 13 **tion, division or department.**

14 (b) Shall adopt rules and bylaws *[for the government thereof]* **that govern the institution, di-**  
 15 **vision or department**, including the faculty, teachers, students and employees *[therein]* **of the in-**  
 16 **stitution, division or department.**

17 (c) Shall maintain cultural and physical development services and facilities *[therefor]* **for the**  
 18 **institution, division or department** and, in connection *[therewith]* **with the services and**  
 19 **facilities**, may cooperate and enter into agreements with *[any]* **a person or governmental agency.**

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

21 (e) Shall provide health services **to students** at student health centers *[to students]*.

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

23 (A) Dependents of students.

24 (B) Staff.

25 (C) Faculty.

26 (g) Shall prescribe and collect charges.

27 (h) Shall adopt rules relating to the creation, use, custody and disclosure, including access, of  
 28 student education records of the institutions that are consistent with the requirements of applicable  
 29 state and federal law. *[Whenever]* **If** a student has attained 18 years of age or is attending an insti-  
 30 tution of post-secondary education, the permission or consent required of and the rights accorded  
 31 to a parent of the student regarding education records shall *[thereafter]* be required of and accorded  
 32 to only the student.

33 (5) For each institution under *[its]* **the board's** jurisdiction, the board shall provide opportu-  
 34 nities for part-time students to obtain complete undergraduate degrees at unconventional times,  
 35 which include but are not limited to early morning and noon hours, evenings and weekends. In ad-  
 36 ministering these degree programs, the institution may use any educational facility available for the  
 37 use of the institution.

38 (6) For *[all]* institutions of higher education listed in ORS 352.002, the board shall, *[no later than*  
 39 *October 1, 2010, and]* to the extent feasible and cost beneficial, develop and begin implementation  
 40 of a common admissions process that permits applicants to be considered for admission to more than  
 41 one institution.

42 **SECTION 22.** ORS 351.086 is amended to read:

43 351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions  
 44 of ORS chapters 240, *[279A, 279B, 279C,]* 282 and 292 do not apply to the Oregon University System.

45 (2) Notwithstanding subsection (1) of this section, ORS 240.167, 240.185*[, 279A.065 (2), 279B.055*

1 (3), 279C.380 (1)(a) and (3), 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.830, 279C.835,  
 2 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870] and 292.043 apply to the  
 3 Oregon University System.

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

- 6 (a) ORS 182.310 to 182.400;
- 7 (b) ORS 273.413 to 273.456;
- 8 (c) ORS 276.071 [*and 276.072*]; and
- 9 (d) ORS 291.038.

10 (4) Notwithstanding subsection (3)(b) of this section, ORS 273.413 to 273.456 apply to [*any*] a  
 11 structure, equipment or asset owned by the Oregon University System that is encumbered by a  
 12 certificate of participation.

13 **(5) Notwithstanding subsection (3)(c) of this section, ORS 279A.005 to 279A.030, 279A.050**  
 14 **to 279A.075, 279A.100, 279A.105, 279A.110, 279A.120 and 279A.125 and ORS chapter 279C, except**  
 15 **ORS 279C.600 to 279C.625, apply to a public improvement that the Oregon University System**  
 16 **constructs, reconstructs or renovates under a lease-purchase agreement or other agreement**  
 17 **under which the State of Oregon, the Oregon University System or an institution of the**  
 18 **Oregon University System will use or ultimately own the public improvement.**

19 [(5)] (6) In carrying out the duties, functions and powers imposed by law upon the Oregon Uni-  
 20 versity System, the State Board of Higher Education or the Chancellor of the Oregon University  
 21 System may contract with [*any*] a public agency [*for the performance of such*] **to perform** duties,  
 22 functions and powers [*as*] **that** the Oregon University System considers appropriate.

23 **SECTION 23. (1) The amendments to ORS 173.500, 179.040, 279A.010, 279A.025, 279A.050,**  
 24 **279A.055, 279A.065, 279A.075, 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350,**  
 25 **279C.355, 279C.360, 279C.390, 279C.445, 279C.450, 279C.560, 351.070 and 351.086 by sections 1 to**  
 26 **22 of this 2011 Act become operative January 1, 2012.**

27 **(2) The amendments to ORS 173.500, 179.040, 279A.010, 279A.025, 279A.050, 279A.055,**  
 28 **279A.065, 279A.075, 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355,**  
 29 **279C.360, 279C.390, 279C.445, 279C.450, 279C.560, 351.070 and 351.086 by sections 1 to 22 of this**  
 30 **2011 Act apply to public contracts first advertised or otherwise solicited or, if not advertised**  
 31 **or solicited, first entered into on or after the operative date specified in subsection (1) of this**  
 32 **section.**

33 **(3) The Attorney General, the Director of the Oregon Department of Administrative**  
 34 **Services, the Director of Transportation, the State Board of Higher Education, the Legisla-**  
 35 **tive Administrator, the Legislative Fiscal Officer, the Legislative Revenue Officer, the Leg-**  
 36 **islative Counsel, the Natural Resources Policy Administrator, the State Court Administrator**  
 37 **and a contracting agency that adopts rules under ORS 279A.065 may take any action before**  
 38 **the operative date specified in subsection (1) of this section that is necessary to enable the**  
 39 **Attorney General, the Director of the Oregon Department of Administrative Services, the**  
 40 **Director of Transportation, the State Board of Higher Education, the Legislative Adminis-**  
 41 **trator, the Legislative Fiscal Officer, the Legislative Revenue Officer, the Legislative Coun-**  
 42 **sel, the Natural Resources Policy Administrator, the State Court Administrator and a**  
 43 **contracting agency that adopts rules under ORS 279A.065 to exercise, on and after the op-**  
 44 **erative date specified in subsection (1) of this section, all the duties, functions and powers**  
 45 **conferred by the amendments to ORS 173.500, 179.040, 279A.010, 279A.025, 279A.050, 279A.055,**

1 279A.065, 279A.075, 279B.085, 279B.400, 279C.105, 279C.335, 279C.345, 279C.350, 279C.355,  
2 279C.360, 279C.390, 279C.445, 279C.450, 279C.560, 351.070 and 351.086 by sections 1 to 22 of this  
3 2011 Act.

4 **SECTION 24.** This 2011 Act being necessary for the immediate preservation of the public  
5 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
6 on its passage.

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