

House Bill 2653

Sponsored by Representative DOHERTY (Pre-session 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**.

Removes Oregon University System's exemption from Public Contracting Code.
Becomes operative January 1, 2014.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to exemptions from the Public Contracting Code for the Oregon University System; creating
3 new provisions; amending ORS 279A.025 and 351.086; and declaring an emergency.

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

5 **SECTION 1.** ORS 279A.025 is amended to read:

6 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting
7 Code applies to all public contracting.

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

9 (a) Contracts between a contracting agency and:

10 (A) Another contracting agency;

11 (B) The Oregon Health and Science University;

12 (C) The Oregon State Bar;

13 (D) A governmental body of another state;

14 (E) The federal government;

15 (F) An American Indian tribe or an agency of an American Indian tribe;

16 (G) A nation, or a governmental body in a nation, other than the United States; or

17 (H) An intergovernmental entity formed between or among:

18 (i) Governmental bodies of this or another state;

19 (ii) The federal government;

20 (iii) An American Indian tribe or an agency of an American Indian tribe;

21 (iv) A nation other than the United States; or

22 (v) A governmental body in a nation other than the United States;

23 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or
24 other authority for establishing agreements between or among governmental bodies or agencies or
25 tribal governing bodies or agencies;

26 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and
27 414.145 for purposes of source selection;

28 (d) Grants;

29 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony
30 relating to existing or potential litigation or legal matters in which a public body is or may become
31 interested;

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

- 1 (f) Acquisitions or disposals of real property or interest in real property;
- 2 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-
- 3 lection;
- 4 (h) Contracts for *[the procurement or distribution of]* **procuring or distributing** textbooks;
- 5 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
- 6 (j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001,
- 7 or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;
- 8 (k) Contracts *[entered into under ORS chapter 180 between]* the Attorney General and private
- 9 counsel or special legal assistants **enter into under ORS chapter 180**;
- 10 (L) Contracts *[for the sale of]* **to sell** timber from lands *[owned or managed by]* the State Board
- 11 of Forestry and the State Forestry Department **own or manage**;
- 12 (m) Contracts **the State Forester or the State Board of Forestry enters into** for forest
- 13 protection or forest related activities, as described in ORS 477.406*[, by the State Forester or the State*
- 14 *Board of Forestry]*;
- 15 (n) Sponsorship agreements *[entered into by]* the State Parks and Recreation Director **enters**
- 16 **into** in accordance with ORS 565.080 (4);
- 17 (o) Contracts *[entered into by]* the Housing and Community Services Department **enters into** in
- 18 exercising the department's duties prescribed in ORS chapters 456 and 458, except that the
- 19 department's public contracting for goods and services is subject to ORS chapter 279B;
- 20 (p) Contracts *[entered into by]* the State Treasurer **enters into** in exercising the powers of *[that*
- 21 *office]* **the State Treasurer that are** prescribed in ORS chapters 178, 286A, 287A, 289, 293, 294 and
- 22 295, including but not limited to investment contracts and agreements, banking services, clearing
- 23 house services and collateralization agreements, bond documents, certificates of participation and
- 24 other debt repayment agreements, and any associated contracts, agreements and documents, re-
- 25 gardless of whether the obligations that the contracts, agreements or documents establish are gen-
- 26 eral, special or limited, except that the State Treasurer's public contracting for goods and services
- 27 is subject to ORS chapter 279B;
- 28 (q) Contracts, agreements or other documents entered into, issued or established in connection
- 29 with:
- 30 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;
- 31 (B) The making of program loans and similar extensions or advances of funds, aid or assistance
- 32 by a public body to a public or private body for the purpose of carrying out, promoting or sustaining
- 33 activities or programs authorized by law; or
- 34 (C) The investment of funds by a public body as authorized by law, and other financial trans-
- 35 actions of a public body that by *[their]* **the character of the transactions** cannot practically be
- 36 established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;
- 37 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,
- 38 243.275, 243.291, 243.303 and 243.565;
- 39 (s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or
- 40 (t) Any other public contracting of a public body specifically exempted from the code by another
- 41 provision of law.
- 42 (3) The Public Contracting Code does not apply to the contracting activities of:
- 43 (a) The Oregon State Lottery Commission;
- 44 *[(b) The Oregon University System and member public universities, except as provided in ORS*
- 45 *351.086;]*

1 [(c)] (b) The legislative department;

2 [(d)] (c) The judicial department;

3 [(e)] (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS
4 279.835 to 279.855 and 279A.250 to 279A.290;

5 [(f)] (e) Oregon Corrections Enterprises;

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

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

9 [(i)] (h) The Oregon 529 College Savings Network and the Oregon 529 College Savings Board;

10 [(j)] (i) The Oregon Innovation Council;

11 [(k)] (j) The Oregon Utility Notification Center; or

12 [(L)] (k) Any other public body [*specifically exempted from the code by*] **that** another provision
13 of law **specifically exempts from the code**.

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

17 **SECTION 2.** ORS 351.086, as amended by section 48, chapter 104, Oregon Laws 2012, is
18 amended to read:

19 351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions
20 of ORS chapters 182, 240, 270, 273, 276, 278, [279A, 279B, 279C,] 282, 283, 291 and 292 and ORS
21 180.060, 180.160, 180.210, 180.220, 180.225 and 180.230 do not apply to the Oregon University System.

22 (2) Notwithstanding subsection (1) of this section, the provisions of ORS 182.100, 182.109,
23 240.167, 276.073 to 276.090, [279A.065 (2), 279B.055 (3), 279C.380 (1)(a) and (3), 279C.600 to 279C.625,
24 279C.800, 279C.810, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860,
25 279C.865, 279C.870,] 283.085 to 283.092, 291.200, 291.201 to 291.222, 291.223, 291.224 (2) and (6),
26 291.226, 291.272 to 291.278, 291.322 to 291.334, 291.405, 291.407, 291.445, 292.043 and 292.044 apply to
27 the Oregon University System.

28 (3) Notwithstanding subsection (1) of this section, ORS 273.413 to 273.456 apply to any structure,
29 equipment or asset owned by the Oregon University System that is encumbered by a certificate of
30 participation.

31 (4) Notwithstanding subsection (6) of this section:

32 (a) The provisions of ORS chapters 35, 190, 192, 244 and 297 and ORS 30.260 to 30.460, 184.480,
33 184.483, 184.486, 184.488, 200.005 to 200.025, 200.045 to 200.090, 200.100 to 200.120, 200.160 to 200.200,
34 236.605 to 236.640, 243.650 to 243.782, 243.800, 243.820, 243.830, 243.850, 243.910 to 243.945, 307.090
35 and 307.112 apply to the Oregon University System under the same terms as [*they*] **the provisions**
36 apply to other public bodies other than the State of Oregon.

37 (b) The provisions of ORS [*chapter*] **chapters 279A, 279B, 279C and 286A** and ORS 293.115,
38 293.117, 293.130, 293.169, 293.171, 293.205 to 293.225, 293.250, 293.265 to 293.280, 293.285, 293.295,
39 293.321, 293.353, 293.375, 293.406, 293.465 to 293.485, 293.490, 293.495, 293.525, 293.701 to 293.820,
40 293.875, 293.880 and 293.990 apply to the Oregon University System under the same terms as [*they*]
41 **the provisions** apply to state agencies with moneys [*held by*] the State Treasurer **holds**, to the
42 Oregon University System Fund established in ORS 351.506 and to any other moneys deposited with
43 or held by the State Treasurer for the Oregon University System.

44 (5) Notwithstanding subsections (1) and (6) of this section, the Oregon University System and
45 [*its*] **the** agents and employees **of the Oregon University System** remain subject to all statutes and

1 administrative rules of this state that create rights, benefits or protections in favor of military vet-
 2 erans, service members and families of service members to the same extent as an agency of this
 3 state would be subject to such statutes and administrative rules.

4 (6)(a) Except as provided by paragraph (b) of this subsection, the Oregon University System, as
 5 a distinct governmental entity, is not subject to any provision of law enacted after January 1, 2011,
 6 with respect to any governmental entity, that is unique to governmental entities, unless the pro-
 7 vision specifically provides that *[it]* **the provision** applies to the Oregon University System.

8 (b) To the same extent as state agencies that borrow through the State Treasurer or that have
 9 moneys held in the State Treasury, the Oregon University System is subject to any provision of law
 10 enacted after January 1, 2011, that relates to or affects the borrowings of the Oregon University
 11 System through the State Treasurer or the deposit, payment or investment of moneys held in the
 12 Oregon University System Fund or any other moneys held for the Oregon University System in the
 13 State Treasury.

14 (7) In carrying out the duties, functions and powers imposed by law upon the Oregon University
 15 System, the State Board of Higher Education or the Chancellor of the Oregon University System
 16 may contract with any public agency *[for the performance of such]* **to perform** duties, functions and
 17 powers *[as]* **that** the board or chancellor considers appropriate.

18 **SECTION 3. (1) The amendments to ORS 279A.025 and 351.086 by sections 1 and 2 of this**
 19 **2013 Act become operative on January 1, 2014.**

20 **(2) The Director of the Oregon Department of Administrative Services, the Director of**
 21 **Transportation, the Attorney General, the State Board of Higher Education, the Chancellor**
 22 **of the Oregon University System or a president of an institution within the Oregon Univer-**
 23 **sity System may take any action before the operative date specified in subsection (1) of this**
 24 **section that is necessary to enable the director, the Attorney General, the board, the**
 25 **chancellor or the president to exercise the duties, functions and powers conferred on the**
 26 **director, the Attorney General, the board, the chancellor or the president by the amend-**
 27 **ments to ORS 279A.025 and 351.086 by sections 1 and 2 of this 2013 Act.**

28 **SECTION 4. The amendments to ORS 279A.025 and 351.086 by sections 1 and 2 of this 2013**
 29 **Act apply to public contracts that a contracting agency advertises or otherwise solicits or,**
 30 **if the contracting agency does not advertise or solicit the contract, to contracts into which**
 31 **the contracting agency enters on or after the operative date specified in section 3 (1) of this**
 32 **2013 Act.**

33 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
 34 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 35 **on its passage.**

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