

House Bill 3321

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

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**.

Requires contracting agencies to provide to Oregon Department of Administrative Services, and department to post on Oregon transparency website, certain information about public contracts.

Requires public contract to provide that contractor provide information to contracting agency and that contracting agency treat information as public record subject to disclosure under state's public records laws. Requires meetings between contractor and contracting agency head or local contract review board to comply with state's public meetings laws.

Prohibits contracting agency from awarding public contract unless contracting agency first determines that contracting agency has necessary personnel and expertise to properly administer, oversee and monitor public contract and contractor's performance under public contract. Specifies criteria for contracting agency's determination.

Specifies required provisions and allowable contents of public contract for goods or services, including personal services. Prohibits certain provisions in public contract for goods or services, including personal services.

Requires bidder or proposer to demonstrate responsibility by submitting affidavit that certifies that contractor has complied with applicable local, state and federal laws, rules, regulations, ordinances and resolutions.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public contracts; creating new provisions; amending ORS 184.483 and 279B.110; and de-
3 claring an emergency.

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

5 **SECTION 1.** ORS 184.483 is amended to read:

6 184.483. (1) The Oregon Department of Administrative Services shall develop and make available
7 an Oregon transparency website. The website *[shall]* **must** allow any person to view information
8 that is a public record and **is** not exempt from disclosure under ORS 192.410 to 192.505, including
9 but not limited to information described in subsection (3) of this section.

10 (2) *[State agencies and education service districts,]* To the extent practicable, *[and]* subject to
11 laws relating to confidentiality, *[when]* **if** at no additional cost, *[using]* **with** existing data and ex-
12 isting resources *[of]* **and without reallocating resources**, *[the]* **a** state agency or **an** education
13 service district *[and without reallocation of resources,]* shall:

14 (a) *[Furnish information to the Oregon transparency website by posting]* **Post reports to the**
15 **Oregon transparency website** and *[providing]* **provide links from the Oregon transparency**
16 **website** to existing **state agency and education service district** information system applications
17 in accordance with standards *[established by the Oregon Department of Administrative Services]* **the**
18 **department establishes**; and

19 (b) Provide the information in the format and manner *[required by]* **that** the *[Oregon Department*
20 *of Administrative Services]* **department requires**.

21 (3) To the extent practicable, *[and]* subject to laws relating to confidentiality, *[when]* **if** at no
22 additional cost, *[using]* **with** existing data and existing resources of the state agency or education

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 service district and without reallocation of resources, the Oregon transparency website [*shall contain*] **must make available** information about each state agency and education service district, including but not limited to:

4 (a) [*Annual revenues of state agencies*] **The state agency's** and education service [*districts*] **district's annual revenue;**

6 (b) [*Annual expenditures of state agencies*] **The state agency's** and education service [*districts*] **district's annual expenditures;**

8 (c) **The state agency's and education service district's** annual human resources expenses, including compensation[, *of state agencies and education service districts*];

10 (d) **The state agency's** annual tax expenditures [*of state agencies*], including, when possible, the identity of the recipients of each tax expenditure;

12 (e) [*For each state agency,*] A description of the percentage of expenditures **the state agency** made in this state and the percentage of expenditures **the state agency** made outside this state under all contracts for goods or services [*entered into by*] the state agency **entered into** during each biennium;

16 (f) A prominently placed graphic representation of the primary funding categories and approximate number of individuals [*served by*] **that** the state agency or the education service district **serves;**

19 (g) A description of the **state agency's or education service district's** mission, function and program categories [*of the state agency or education service district*];

21 (h) Information about the state agency from the Oregon Progress Board;

22 (i) A copy of any audit report [*issued by*] **that** the Secretary of State **issued** for the state agency or of any audit reports issued for the education service district;

24 (j) The local service plans of the education service [*districts*] **district;**

25 (k) A copy of each report required by statute for **the** education service [*districts*] **district;** and

26 (L) A copy of all notices of public meetings of the education service [*districts*] **district.**

27 (4) In addition to the information described in subsection (3) of this section:

28 (a) The department shall post on the Oregon transparency website notices of public meetings [*required to be provided by the*] **a** state agency **must provide** under ORS 192.640. If the state agency maintains a website where minutes or summaries of the public meetings are available, the state agency shall provide the department with the link to [*that*] **the** website for posting on the Oregon transparency website.

33 (b) The department shall post on the Oregon transparency website a link for the website [*maintained by*] **that** the Secretary of State **maintains** for rules **the state agency** adopted [*by the state agency*]. If the state agency maintains a website where the **state agency's** rules [*of the agency*] are posted, or where any information relating to the **state agency's** rules [*of the agency*] is posted, the state agency shall provide the department with the link to that website for posting on the Oregon transparency website.

39 [(c) *The department shall provide links on the Oregon transparency website for information received by the department regarding contracts and subcontracts entered into by a state agency or education service district, to the extent disclosure of that information is allowed by law and the information is already available on websites maintained by the state agency or education service district. To the extent available, the information linked to under this section must include:*]

44 [(A) *Information on professional, personal and material contracts;*]

45 [(B) *The date of each contract and the amount payable under the contract;*]

1 [(C) *The period during which the contract is or was in effect; and*]

2 [(D) *The names and addresses of vendors.*]

3 (5)(a) **As used in this subsection:**

4 (A) **“Contracting agency” has the meaning given that term in ORS 279A.010.**

5 (B) **“Procurement” has the meaning given that term in ORS 279A.010.**

6 (C)(i) **“Public contract” means a purchase, lease, rental or other acquisition, or a sale**
7 **or other disposal, of personal property, goods or services, including personal services, and**
8 **minor repairs, alterations and maintenance necessary to preserve a public improvement.**

9 (ii) **“Public contract” does not include construction services, public improvements, public**
10 **works and grants.**

11 (b) **A contracting agency shall provide the department with, and the department shall**
12 **post on the Oregon transparency website, the following information concerning each public**
13 **contract into which the contracting agency enters:**

14 (A) **The name of the contracting agency;**

15 (B) **The name and business address of each contractor with which the contracting agency**
16 **executes a public contract and the name and business address of each subcontractor with**
17 **which each contractor executes a subcontract related to the public contract;**

18 (C) **A description of the nature of the procurement and a brief summary of the terms**
19 **and conditions of the public contract;**

20 (D) **The dates on which the contracting agency executes or renews the public contract**
21 **and the dates on which the public contract terminates;**

22 (E) **The contract price for the public contract, the amount the contracting agency ex-**
23 **pends on the public contract during each fiscal year during which the public contract is in**
24 **force, the funding source for the contracting agency’s expenditures and the amount re-**
25 **maining of the contract price that the contracting agency must pay to the contractor under**
26 **the terms of the public contract for which the agency does not have a current appropriation**
27 **or expenditure limit; and**

28 (F) **A list of full-time equivalent positions that the contractor employs in performing the**
29 **public contract and the annual salary or hourly wage rate, as appropriate, that the con-**
30 **tractor pays each full-time equivalent position in connection with the public contract.**

31 (c) **The department shall use the information described in paragraph (b) of this sub-**
32 **section, and shall request from each contracting agency any other information the depart-**
33 **ment requires, to compile and post on the Oregon transparency website the following**
34 **summaries, statistics and measurements:**

35 (A) **A list of all of each contracting agency’s active public contracts and the total amount**
36 **each contracting agency has expended or will expend for all of the contracting agency’s**
37 **public contracts in the current fiscal year;**

38 (B) **A list of all of each contracting agency’s public contracts for the past five fiscal years**
39 **and the total amount each contracting agency expended for all of the contracting agency’s**
40 **public contracts in each fiscal year;**

41 (C) **A graphic representation of the amount that each contracting agency spent on all**
42 **of the contracting agency’s public contracts for each fiscal year as a percentage of the con-**
43 **tracting agency’s total budget;**

44 (D) **A listing and graphic representation of the amount that each contracting agency**
45 **expended in each fiscal year for all of the full-time equivalent positions that contractors**

1 employ to perform all of the contracting agency's public contracts, compared with the
 2 amount the contracting agency pays each fiscal year for all of the full-time equivalent posi-
 3 tions that the contracting agency employs to perform the contracting agency's functions;
 4 and

5 (E) A listing and graphic representation of the salary or wage rate, as appropriate, for
 6 each category of full-time equivalent positions for which each contracting agency pays a
 7 contractor under the terms of the contracting agency's public contracts, compared with the
 8 salary or wage rate, as appropriate, for the nearest equivalent category of positions, if any,
 9 that the contracting agency would employ to perform a function similar to the function a
 10 contractor's employee performs for the contracting agency under a public contract.

11 (d) The department shall ensure that the information the department posts on the
 12 Oregon transparency website in accordance with this subsection is searchable, sortable,
 13 downloadable and easily accessible and otherwise meets the requirements set forth in sub-
 14 section (6) of this section.

15 (e) The department shall adopt rules to implement the provisions of this subsection.

16 [(5)] (6) In creating, operating, refining and recommending enhancements to the Oregon trans-
 17 parency website, the [*Oregon Department of Administrative Services*] **department** and the Trans-
 18 parency Oregon Advisory Commission created in ORS 184.486 shall consider and, to the extent
 19 practicable, adhere to the following principles:

20 (a) The website must be accessible without cost and be easy to use;

21 (b) Information included on the Oregon transparency website must be presented using plain,
 22 easily understandable language; and

23 (c) The website should teach users about how state government and education service districts
 24 work and provide users with the opportunity to learn [*something about*] how state government and
 25 education service districts raise and spend revenue.

26 [(6)] (7) If a state agency or an education service district [*is not able to*] **cannot** include infor-
 27 mation described in this section on the Oregon transparency website because of the lack of avail-
 28 ability of information or cost in acquiring [*it*] **the information**, the Transparency Oregon Advisory
 29 Commission created in ORS 184.486 shall list the information that is not included for [*that*] **the** state
 30 agency or education service district in the commission's report to the Legislative Assembly required
 31 under ORS 184.486.

32 [(7)] (8) The [*Oregon Department of Administrative Services*] **department** shall include on the
 33 Oregon transparency website a page that provides links to websites [*established by*] **that** local gov-
 34 ernments, as defined in ORS 174.116, and [*by*] special government bodies, as defined in ORS 174.117,
 35 **establish** for the purpose of providing transparency in the **local governments' and special gov-**
 36 **ernment bodies' revenues, expenditures and budgets** [*of the public bodies*], **if a local government**
 37 **or special government body requests the department to post a link.** The department shall [*in-*
 38 *clude a link to the website of the public body upon receiving a request from the public body, and*
 39 *shall*] consider recommendations from the Transparency Oregon Advisory Commission for [*the*
 40 *inclusion of*] **including** other links to local and special government body websites. The department
 41 shall include a prominent link on the home page of the Oregon transparency website for information
 42 posted to the page described in this subsection.

43 **SECTION 2. Sections 3, 4 and 5 of this 2015 Act are added to and made a part of ORS**
 44 **chapter 279B.**

45 **SECTION 3. (1)(a) Each public contract for services, including personal services, shall**

1 require the contractor to:

2 (A) Provide the contracting agency with copies of all of the contractor's records, books,
 3 documents, electronic files and other materials that the contractor uses in performing the
 4 public contract; and

5 (B) Charge the contracting agency not more than the contractor's actual cost of copying
 6 and delivering the records, books, documents, electronic files and other materials.

7 (b) The public contract shall provide that the records, books, documents, electronic files
 8 and other materials are public records that are subject to disclosure as provided in ORS
 9 192.410 to 192.505.

10 (2) A contractor that performs a public contract for services, including personal services,
 11 shall at a minimum create, maintain and preserve the records, books, documents, electronic
 12 files and other materials that a contracting agency would ordinarily and necessarily create,
 13 maintain and preserve if the contracting agency performed the functions that the contractor
 14 performs under the public contract. The contracting agency shall list and describe the re-
 15 cords, books, documents, electronic files and other materials that a contractor must create,
 16 maintain and preserve under this subsection.

17 (3) A public contract for services, including personal services, shall provide that any
 18 meeting between the contractor or an agent of the contractor and the director, commis-
 19 sioner, governing body or other head of a contracting agency or a local contract review board
 20 is a public meeting that is subject to the provisions of ORS 192.610 to 192.690.

21 **SECTION 4.** (1) A contracting agency may not award a public contract under this chapter
 22 unless the contracting agency has determined that the contracting agency has the personnel
 23 and expertise necessary to properly administer, oversee and monitor the public contract and
 24 the contractors that perform the public contract. If the contracting agency determines that
 25 the contracting agency does not have adequate personnel or expertise to properly administer,
 26 oversee and monitor a public contract that the contracting agency intends to award, the
 27 contracting agency may not award the public contract unless the contracting agency first
 28 seeks and obtains an appropriation, expenditure limitation or other budgetary authority
 29 necessary to employ the necessary personnel or acquire the necessary expertise.

30 (2) For the purposes of subsection (1) of this section, a contracting agency has the per-
 31 sonnel and expertise necessary to properly administer, oversee and monitor a public contract
 32 if the contracting agency has project management and personnel management policies and
 33 procedures, trained personnel and an organization and structure that is capable of:

34 (a) Developing and specifying acceptance criteria for a contractor's performance that are
 35 adequate to ensure that the contracting agency receives the benefit of the contracting
 36 agency's bargain with the contractor under the public contract;

37 (b) Ensuring that the contractor follows invoicing, billing and other financial practices
 38 and controls that the contracting agency requires under the public contract;

39 (c) Monitoring the contractor's performance to ensure that the contractor conforms with
 40 the schedule set forth in the public contract, timely delivers any goods or services required
 41 under the public contract, meets or exceeds the quality specifications and other specifica-
 42 tions for goods and services set forth in the public contract and does not exceed cost spec-
 43 ifications set forth in the public contract;

44 (d) Recognizing when a contractor is not providing timely or otherwise acceptable per-
 45 formance and requiring a cure or, if necessary, declaring a breach of the public contract;

1 (e) Collecting, organizing, filing and maintaining copies of all necessary documentation,
2 including records, books, documents, electronic files and other materials that the contractor
3 uses in performing the public contract and that the contracting agency generates in admin-
4 istering, overseeing and monitoring the public contract; and

5 (f) Meeting standards that an auditor would apply in evaluating whether the contracting
6 agency properly administered, oversaw and monitored the public contract.

7 (3) A contracting agency shall make the contracting agency's determination, and reasons
8 for the determination, under subsection (1) of this section available as a public record and
9 shall post the determination and reasons on the contracting agency's website.

10 (4) The Attorney General, the Director of the Oregon Department of Administrative
11 Services and a contracting agency that adopts rules under ORS 279A.065 may adopt rules
12 necessary to implement the provisions of this section.

13 **SECTION 5.** (1) A public contract for goods or services, including personal services,
14 must:

15 (a) Specify criteria for a contractor's performance and criteria under which a contracting
16 agency accepts the contractor's performance;

17 (b) Specify costs associated with the contractor's performance including, but not limited
18 to, costs for:

19 (A) Goods or services, or portions or components of goods or services, that the con-
20 tractor delivers to the contracting agency;

21 (B) The time a contractor spends performing the public contract, expressed, if appropri-
22 ate, as an hourly rate;

23 (C) Materials and supplies that the contractor provides or delivers;

24 (D) The contractor's expected profit;

25 (E) The contractor's overhead, fees, insurance premiums and other expenses that the
26 contractor charges to the contracting agency; and

27 (F) Other or miscellaneous expenditures associated with the contractor's performing the
28 public contract; and

29 (c) Provide that a contractor shall report to the contracting agency each quarter, at a
30 minimum, with respect to:

31 (A) The contractor's compliance with the provisions of the public contract;

32 (B) The contractor's compliance with the performance criteria and specifications set
33 forth in the public contract; and

34 (C) The compensation and expenses for which the contractor has billed the contracting
35 agency as compared to projected costs and expenses for the public contract at the time of
36 the report.

37 (2) A public contract for goods or services, including personal services, may not:

38 (a) Guarantee profits for a contractor or guarantee payment for goods or services that
39 a contractor does not provide;

40 (b) Guarantee occupancy or occupancy rates for any facility, building, structure or other
41 public improvement that a contracting agency leases to a contractor or agrees to have a
42 contractor operate on the contracting agency's behalf;

43 (c) Prohibit a contracting agency from altering, repairing or maintaining a public im-
44 provement that the contracting agency owns, leases or occupies;

45 (d) Pay or reimburse a contractor for the contractor's losses as a result of a fire, flood,

1 earthquake or other natural disaster, emergency, war, riot, strike or act of civil or military
2 authority or other mishap that the contracting agency could not reasonably anticipate or
3 control; or

4 (e) Provide for automatic or guaranteed increases in a contractor's hourly rates or other
5 compensation without the contracting agency's or the local contract review board's review
6 and assent, conducted in accordance with the provisions of ORS 192.610 to 192.690.

7 (3) A contracting agency shall provide in each public contract for goods or services, in-
8 cluding personal services, that the contracting agency may terminate the public contract if
9 the contractor:

10 (a) Fails to meet performance or acceptance criteria specified in the public contract after
11 the contracting agency gives the contractor an opportunity to cure;

12 (b) Charges compensation or expenses to contracting agency that exceed the compen-
13 sation and expenses set forth in the public contract for the fiscal year, unless the contract-
14 ing agency agrees to the excess and amends the public contract accordingly; or

15 (c) Fails to comply with applicable local, state and federal laws, rules, regulations, ordi-
16 nances and resolutions.

17 (4)(a) Except as provided in paragraph (b) of this subsection, a contracting agency may
18 not renew a public contract without conducting a competitive process, if the contracting
19 agency initially awarded the public contract after a competitive process.

20 (b) A contracting agency may renew the public contract without repeating the entire
21 previous competitive process if the contracting agency:

22 (A) Develops specifications and anticipated costs for a new procurement of goods or
23 services, including personal services, that are the same as, or similar to, the goods or ser-
24 vices the contracting agency procured under the existing public contract, taking account of
25 changes in costs, in technologies, in delivery methods and in other aspects of the market for
26 the goods or services at the time the contracting agency develops the specifications for the
27 new procurement; and

28 (B) Determines that the existing contractor will meet the specifications and costs that
29 the contracting agency developed under subparagraph (A) of this paragraph.

30 **SECTION 6.** ORS 279B.110, as amended by section 3, chapter 77, Oregon Laws 2014, is amended
31 to read:

32 279B.110. (1) As part of a contracting agency's evaluation of a bid or proposal, the contracting
33 agency shall determine whether the bidder or proposer is responsible in accordance with the stan-
34 dards of responsibility set forth in subsection (2) of this section. If the contracting agency deter-
35 mines that a bidder or proposer is not responsible, the contracting agency shall provide the bidder
36 or proposer with written notice of the contracting agency's determination.

37 (2) In order for a contracting agency to determine that a bidder or proposer is responsible, the
38 bidder or proposer must demonstrate to the contracting agency that the bidder or proposer:

39 (a) Has available the appropriate financial, material, equipment, facility and personnel resources
40 and expertise, or has the ability to obtain the resources and expertise, necessary to meet all con-
41 tractual responsibilities.

42 (b) Completed previous contracts of a similar nature with a satisfactory record of performance.
43 For purposes of this paragraph, a satisfactory record of performance means that to the extent that
44 the costs associated with and time available to perform a previous contract remained within the
45 bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for

1 the procurement and otherwise performed the contract in a satisfactory manner. The contracting
 2 agency shall document the bidder's or proposer's record of performance if the contracting agency
 3 finds under this paragraph that the bidder or proposer is not responsible.

4 (c) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or
 5 proposer's record of integrity may consider, among other things, whether the bidder or proposer has
 6 previous criminal convictions for offenses related to obtaining or attempting to obtain a contract
 7 or subcontract or in connection with the bidder's or proposer's performance of a contract or sub-
 8 contract. The contracting agency shall document the bidder's or proposer's record of integrity if the
 9 contracting agency finds under this paragraph that the bidder or proposer is not responsible.

10 (d) Is legally qualified to contract with the contracting agency.

11 (e) Complied with **all applicable local, state and federal laws, rules, regulations, ordinances**
 12 **and resolutions, including** the tax laws of this state or a political subdivision of this state, [*in-*
 13 *cluding*] **and specifically with** ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or
 14 proposer shall demonstrate compliance by submitting a signed affidavit that attests, under penalty
 15 of perjury, that the bidder or proposer has complied with [*the tax laws of this state or a political*
 16 *subdivision of this state*] **applicable local, state and federal laws, rules, regulations, ordinances**
 17 **and resolutions.**

18 (f) Supplied all necessary information in connection with the inquiry concerning responsibility.
 19 If a bidder or proposer fails to promptly supply information concerning responsibility that the con-
 20 tracting agency requests, the contracting agency shall determine the bidder's or proposer's respon-
 21 sibility based on available information or may find that the bidder or proposer is not responsible.

22 (g) Was not debarred by the contracting agency under ORS 279B.130.

23 (3) A contracting agency may refuse to disclose outside of the contracting agency confidential
 24 information [*furnished by*] **that** a bidder or proposer **provides** under this section [*when*] if the bidder
 25 or proposer has clearly identified in writing the information the bidder or proposer seeks to have
 26 treated as confidential and the contracting agency has authority under ORS 192.410 to 192.505 to
 27 withhold the identified information from disclosure.

28 **SECTION 7. Sections 3, 4 and 5 of this 2015 Act and the amendments to ORS 184.483 and**
 29 **279B.100 by sections 1 and 6 of this 2015 Act apply to public contracts that a contracting**
 30 **agency first advertises or otherwise solicits or, if the contracting agency did not advertise**
 31 **or solicit the public contract, to a public contract into which the contracting agency enters,**
 32 **on or after the operative date specified in section 8 of this 2015 Act.**

33 **SECTION 8. (1) Sections 3, 4 and 5 of this 2015 Act and the amendments to ORS 184.483**
 34 **and 279B.110 by sections 1 and 6 of this 2015 Act become operative January 1, 2016.**

35 **(2) The Attorney General, the Director of the Oregon Department of Administrative**
 36 **Services and a contracting agency that adopts rules under ORS 279A.065 may adopt rules and**
 37 **take any other action before the operative date specified in subsection (1) of this section that**
 38 **is necessary to enable the Attorney General, the director or the contracting agency to ex-**
 39 **ercise, on and after the operative date specified in subsection (1) of this section, all of the**
 40 **duties, functions and powers conferred on the Attorney General, the director or the con-**
 41 **tracting agency by sections 3, 4 and 5 of this 2015 Act and the amendments to ORS 184.483**
 42 **and 279B.110 by sections 1 and 6 of this 2015 Act.**

43 **SECTION 9. This 2015 Act being necessary for the immediate preservation of the public**
 44 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 45 **on its passage.**

