

**PROPOSED AMENDMENTS TO
SENATE BILL 414**

1 On page 1 of the printed bill, delete lines 6 through 24 and delete page
2 2.

3 On page 3, delete lines 1 through 3 and insert:

4 **“SECTION 2. (1)(a) An exclusive representative, as defined in ORS**
5 **243.650, of a bargaining unit for employees of a contracting agency that**
6 **conducts a cost analysis under ORS 279B.033 or makes a determination**
7 **under ORS 279B.036 may seek judicial review of the contracting**
8 **agency’s cost analysis or determination if:**

9 **“(A) The contracting agency allegedly violated a provision of ORS**
10 **279B.030, 279B.033 or 279B.036;**

11 **“(B) The exclusive representative described the alleged violation in**
12 **a written notice to the contracting agency not later than 10 days after**
13 **the date of the alleged violation;**

14 **“(C) The contracting agency proceeded with the procurement after**
15 **receiving the notice described in subparagraph (B) of this paragraph;**
16 **and**

17 **“(D) The exclusive representative exhausted any administrative**
18 **remedy the contracting agency provides to address the alleged vio-**
19 **lation.**

20 **“(b) If a contracting agency’s decision to conduct a procurement for**
21 **services that is subject to ORS 279B.030 would affect an employee of**
22 **the contracting agency and the affected employee does not have an**

1 **exclusive representative or belong to a bargaining unit, the affected**
2 **employee may seek judicial review as provided in paragraph (a) of this**
3 **subsection.**

4 **“(c)(A) Except as provided in subparagraph (B) of this paragraph,**
5 **for the purposes of this section, a contracting agency proceeded with**
6 **a procurement if the contracting agency advertised or solicited the**
7 **procurement in accordance with the provisions of this chapter or**
8 **otherwise took affirmative steps to seek a contractor to perform ser-**
9 **vices for which the contracting agency would be required to conduct**
10 **a procurement in accordance with the provisions of this chapter.**

11 **“(B) A contracting agency did not, for the purposes of this section,**
12 **proceed with a procurement if:**

13 **“(i) The contracting agency issued a request for information or a**
14 **request for a quotation or otherwise sought to obtain needed infor-**
15 **mation in the course of complying with ORS 279B.030, 279B.033 or**
16 **279B.036; or**

17 **“(ii) The contracting agency, after advertising or soliciting a pro-**
18 **curement, updated a cost analysis or reconsidered a determination in**
19 **accordance with ORS 279B.030 (1)(c).**

20 **“(2)(a) If an exclusive representative of a bargaining unit for em-**
21 **ployees of a state contracting agency, or an affected employee of a**
22 **state contracting agency who does not have an exclusive represen-**
23 **tative or belong to a bargaining unit, seeks judicial review for the**
24 **state contracting agency’s alleged violation of a provision of ORS**
25 **279B.030, 279B.033 or 279B.036, the Circuit Court for Marion County or**
26 **the circuit court for the county in which the principal offices of the**
27 **state contracting agency are located may review the alleged violation**
28 **under ORS 183.484. For the purposes of the review, a state contracting**
29 **agency’s decision to advertise or solicit or otherwise proceed with a**
30 **procurement is an order other than an order in a contested case.**

1 **“(b) If an exclusive representative of a bargaining unit for employ-**
2 **ees of a local contracting agency, or an affected employee of a local**
3 **contracting agency who does not have an exclusive representative or**
4 **belong to a bargaining unit, seeks judicial review for the local con-**
5 **tracting agency’s alleged violation of a provision of ORS 279B.030,**
6 **279B.033 or 279B.036, the circuit court for the county in which the**
7 **principal offices of the local contracting agency are located may re-**
8 **view the alleged violation by means of a writ of review under ORS**
9 **chapter 34.**

10 **“(3)(a) If an exclusive representative of a bargaining unit for em-**
11 **ployees of a contracting agency, or an affected employee of a con-**
12 **tracting agency who does not have an exclusive representative or**
13 **belong to a bargaining unit, notifies the contracting agency as pro-**
14 **vided in subsection (1)(a)(B) of this section and timely seeks judicial**
15 **review under this section, the contracting agency may not proceed**
16 **with the procurement that is the subject of the review unless the**
17 **contracting agency determines that:**

18 **“(A) A compelling governmental interest exists in proceeding with**
19 **the procurement; or**

20 **“(B) An emergency exists that requires the procurement.**

21 **“(b) A contracting agency that makes a determination to proceed**
22 **with a procurement under paragraph (a) of this subsection shall set**
23 **forth in writing the reasons for the determination and immediately**
24 **provide the reasons to the exclusive representative or the affected**
25 **employee.**

26 **“(c) Despite a contracting agency’s determination under paragraph**
27 **(a) of this subsection, the court, after joining as a party to the liti-**
28 **gation any prospective contractor interested in the procurement, may**
29 **stay the procurement on the exclusive representative’s or the affected**
30 **employee’s motion if the court finds that the contracting agency’s**

1 **determination under paragraph (a) of this subsection was not sup-**
2 **ported by substantial evidence or constituted a manifest abuse of dis-**
3 **cretion. In granting a stay under this paragraph, the court may**
4 **require the exclusive representative or the affected employee to post**
5 **a bond in an amount sufficient to protect the contracting agency and**
6 **the public from costs associated with a delay in the procurement if the**
7 **court finds that issuing an injunction may irreparably harm the con-**
8 **tracting agency or the contractor and that the exclusive**
9 **representative’s or affected employee’s likelihood of success on the**
10 **merits of the case is minimal.**

11 **“(4) Notwithstanding ORS 279B.145 or any other provision of this**
12 **chapter or ORS chapter 279A, a court that conducts a review under**
13 **this section shall review de novo a contracting agency’s cost analysis**
14 **or determination under ORS 279B.030, 279B.033 or 279B.036.**

15 **“(5) If, after judicial review under this section, the court rules in**
16 **favor of the exclusive representative or the affected employee, the**
17 **court shall enjoin the contracting agency from proceeding with the**
18 **procurement. The court may not award costs or attorney fees to the**
19 **prevailing party in the litigation.”.**

20 On page 4, line 10, delete “, including but not limited to”.

21 In lines 11 and 12, delete the boldfaced material.

22 In line 17, delete “profit the potential contractor would realize and the”
23 and delete “potential” and insert “prospective”.

24 In line 25, delete the second “and”.

25 In line 28, delete the period and insert “; and

26 “(iv) Costs that the contracting agency would incur in administering any
27 public contract that results from the procurement and in monitoring or
28 overseeing the contractor’s performance during the term of the public con-
29 tract, including costs the contracting agency would incur under section 1,
30 chapter 77, Oregon Laws 2014, or under other requirements to engage a sep-

1 arate contractor for oversight, monitoring or quality assurance.”.

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