

Requested by SENATE COMMITTEE ON WORKFORCE

**PROPOSED AMENDMENTS TO  
SENATE BILL 294**

1 On page 1 of the printed bill, line 2, delete “creating new provisions;”.

2 In line 3, delete “amending ORS 279B.030 and 279B.033;”.

3 Delete lines 5 through 24 and delete pages 2 through 6 and insert:

4 **“SECTION 1. Section 2 of this 2017 Act is added to and made a part**  
5 **of ORS chapter 342.**

6 **“SECTION 2. (1) As used in this section:**

7 **“(a) ‘Exclusive representative’ has the meaning given that term in**  
8 **ORS 243.650.**

9 **“(b) ‘Procurement’ has the meaning given that term in ORS**  
10 **279A.010.**

11 **“(2)(a) An employee of a school district or education service dis-**  
12 **trict, or the employee’s exclusive representative, may challenge in an**  
13 **arbitration proceeding under subsection (3) of this section a cost**  
14 **analysis for a procurement that the school district or education ser-**  
15 **vice district conducted under ORS 279B.033 or a determination the**  
16 **school district or education service district made under ORS 279B.036**  
17 **if:**

18 **“(A) The school district or education service district allegedly vio-**  
19 **lated a provision of ORS 279B.030, 279B.033 or 279B.036;**

20 **“(B) The employee or the exclusive representative described the al-**  
21 **leged violation in a written notice to the school district or education**

1 service district not later than 30 days after the date of the alleged vi-  
2 olation;

3 “(C) The school district or education service district proceeded with  
4 the procurement after receiving the notice described in subparagraph  
5 (B) of this paragraph; and

6 “(D) The employee or the exclusive representative exhausted any  
7 administrative remedy the school district or education service district  
8 provides to address the alleged violation.

9 “(b)(A) Except as provided in subparagraph (B) of this paragraph,  
10 for the purposes of this section, a school district or education service  
11 district proceeded with a procurement if the school district or educa-  
12 tion service district advertised or solicited the procurement in ac-  
13 cordance with ORS chapter 279B or otherwise took affirmative steps  
14 to seek a contractor to perform services for which the school district  
15 or education service district would be required to conduct a procure-  
16 ment in accordance with ORS chapter 279B.

17 “(B) A school district or education service district does not, for the  
18 purposes of this section, proceed with a procurement if:

19 “(i) The school district or education service district issued a request  
20 for information or a request for a quotation or otherwise sought to  
21 obtain needed information in the course of complying with ORS  
22 279B.030, 279B.033 or 279B.036; or

23 “(ii) The school district or education service district, after adver-  
24 tising or soliciting a procurement, updated a cost analysis or recon-  
25 sidered a determination in accordance with section 4 or 6 of this 2017  
26 Act.

27 “(3)(a) An employee or exclusive representative that seeks to initi-  
28 ate an arbitration proceeding under this section shall notify the school  
29 district or education service district within 10 days after the school  
30 district or education service district proceeded with a procurement as

1 described in subsection (2)(a)(C) of this section or after the employee  
2 or exclusive representative exhausted any available administrative  
3 remedies as provided in subsection (2)(a)(D) of this section, whichever  
4 is later. The employee or exclusive representative and the school dis-  
5 trict or education service district shall jointly select an arbitrator to  
6 conduct an arbitration proceeding as provided in paragraph (c) of this  
7 subsection.

8 “(b) If the employee or exclusive representative and the school dis-  
9 trict or education service district cannot agree on an arbitrator as  
10 provided in paragraph (a) of this subsection, the employee or exclusive  
11 representative and the school district or education service district  
12 shall request from the State Conciliation Service a list of seven pro-  
13 spective arbitrators from which each may alternately strike a name  
14 to select the arbitrator.

15 “(c) The arbitrator shall conduct the arbitration proceeding in ac-  
16 cordance with the rules of the Employment Relations Board. The re-  
17 sults of the arbitration proceeding are final, are binding on the parties  
18 to the proceeding and are not subject to appeal.

19 “(d) Each party to the arbitration proceeding shall share equally in  
20 paying the costs for the arbitrator and the proceeding.

21 “(4)(a) If an employee or the employee’s exclusive representative  
22 notifies the school district or education service district as provided in  
23 subsection (2)(a)(B) of this section and timely seeks arbitration in ac-  
24 cordance with subsection (3) of this section, the school district or ed-  
25 ucation service district, while the arbitration proceeding is pending,  
26 may not proceed with the procurement that is the subject of the ar-  
27 bitration proceeding unless the school district or education service  
28 district determines that:

29 “(A) A compelling governmental interest exists in proceeding with  
30 the procurement; or

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

2       **“(b) A school district or education service district that makes a**  
3 **determination to proceed with a procurement under paragraph (a) of**  
4 **this subsection shall set forth in writing the reasons for the determi-**  
5 **nation and immediately provide the reasons to the employee or ex-**  
6 **clusive representative and to the arbitrator in any arbitration**  
7 **proceeding under this section.**

8       **“(c) Despite a school district’s or education service district’s deter-**  
9 **mination under paragraph (a) of this subsection, the arbitrator may**  
10 **stay the procurement while the arbitration proceeding is pending on**  
11 **the employee’s or exclusive representative’s motion if the arbitrator**  
12 **finds that the school district’s or the education service district’s de-**  
13 **termination under paragraph (a) of this subsection was not supported**  
14 **by substantial evidence.**

15       **“(5) If at the conclusion of an arbitration proceeding under this**  
16 **section the arbitrator finds that a school district or education service**  
17 **district violated ORS 279B.030, 279B.033 or 279B.036, the arbitrator may**  
18 **order the school district or education service district to stop or cancel**  
19 **the procurement and take any other affirmative action the arbitrator**  
20 **determines will effectuate the purposes of this section. The arbitrator**  
21 **may not in the arbitration proceeding or in any order that results**  
22 **from the arbitration proceeding award costs to any party to the pro-**  
23 **ceeding.**

24       **“SECTION 3. Section 4 of this 2017 Act is added to and made a part**  
25 **of ORS chapter 332.**

26       **“SECTION 4. (1) As used in this section:**

27       **“(a) ‘Procurement’ has the meaning given that term in ORS**  
28 **279A.010.**

29       **“(b) ‘Public contract’ has the meaning given that term in ORS**  
30 **279A.010.**

1       **“(2) To obtain information necessary to conduct a cost analysis**  
2 **under ORS 279B.033 or make a determination under ORS 279B.036, a**  
3 **school district, before advertising or otherwise soliciting a procure-**  
4 **ment, shall issue a request for information or a request for a quota-**  
5 **tion or shall use another reasonably practicable method to obtain**  
6 **needed information.**

7       **“(3) If, after advertising or otherwise soliciting a procurement and**  
8 **before awarding a public contract, a school district obtains new or**  
9 **additional information from bids or proposals, or from other sources,**  
10 **that would alter or otherwise affect a cost analysis the school district**  
11 **conducted under ORS 279B.033 or a determination the school district**  
12 **made under ORS 279B.036, the school district shall update the cost**  
13 **analysis with the new or additional information or, if necessary, re-**  
14 **consider the school district’s determination as to the feasibility of**  
15 **performing with the school district’s own personnel or resources the**  
16 **services that are the subject of the procurement. The school district**  
17 **may proceed with the procurement only after updating the cost anal-**  
18 **ysis or, if appropriate, reconsidering the determination and only if the**  
19 **procurement continues to meet the applicable requirements set forth**  
20 **in ORS 279B.033 (2) or 279B.036 (1).**

21       **“(4) For the purposes of determining whether a school district may**  
22 **proceed with a procurement after conducting a cost analysis, not-**  
23 **withstanding the requirement set forth for contracting agencies in**  
24 **ORS 279B.033 (2)(a), a school district may not proceed with a procure-**  
25 **ment if the primary, not the sole, reason that the costs estimated**  
26 **under ORS 279B.033 (1)(b) are lower than the costs estimated under**  
27 **ORS 279B.033 (1)(a) is because the costs estimated under ORS 279B.033**  
28 **(1)(b)(A) are lower than the costs estimated under ORS 279B.033**  
29 **(1)(a)(A).**

30       **“SECTION 5. Section 6 of this 2017 Act is added to and made a part**

1 of ORS chapter 334.

2 **“SECTION 6. (1) As used in this section:**

3 **“(a) ‘Procurement’ has the meaning given that term in ORS**  
4 **279A.010.**

5 **“(b) ‘Public contract’ has the meaning given that term in ORS**  
6 **279A.010.**

7 **“(2) To obtain information necessary to conduct a cost analysis**  
8 **under ORS 279B.033 or make a determination under ORS 279B.036, an**  
9 **education service district, before advertising or otherwise soliciting a**  
10 **procurement, shall issue a request for information or a request for a**  
11 **quotation or shall use another reasonably practicable method to obtain**  
12 **needed information.**

13 **“(3) If, after advertising or otherwise soliciting a procurement and**  
14 **before awarding a public contract, an education service district obtains**  
15 **new or additional information from bids or proposals, or from other**  
16 **sources, that would alter or otherwise affect a cost analysis the edu-**  
17 **cation service district conducted under ORS 279B.033 or a determi-**  
18 **nation the education service district made under ORS 279B.036, the**  
19 **education service district shall update the cost analysis with the new**  
20 **or additional information or, if necessary, reconsider the education**  
21 **service district’s determination as to the feasibility of performing with**  
22 **the education service district’s own personnel or resources the services**  
23 **that are the subject of the procurement. The education service district**  
24 **may proceed with the procurement only after updating the cost anal-**  
25 **ysis or, if appropriate, reconsidering the determination and only if the**  
26 **procurement continues to meet the applicable requirements set forth**  
27 **in ORS 279B.033 (2) or 279B.036 (1).**

28 **“(4) For the purposes of determining whether an education service**  
29 **district may proceed with a procurement after conducting a cost**  
30 **analysis, notwithstanding the requirement set forth for contracting**

1 agencies in ORS 279B.033 (2)(a), an education service district may not  
2 proceed with a procurement if the primary, not the sole, reason that  
3 the costs estimated under ORS 279B.033 (1)(b) are lower than the costs  
4 estimated under ORS 279B.033 (1)(a) is because the costs estimated  
5 under ORS 279B.033 (1)(b)(A) are lower than the costs estimated under  
6 ORS 279B.033 (1)(a)(A).

7 **SECTION 7.** Sections 2, 4 and 6 of this 2017 Act apply to procure-  
8 ments that a school district or education service district first adver-  
9 tises or otherwise solicits or, if the school district or education service  
10 district does not advertise or solicit the procurement, to procurements  
11 that the school district or education service district first conducts on  
12 or after the operative date specified in section 8 of this 2017 Act.

13 **SECTION 8.** (1) Sections 2, 4 and 6 of this 2017 Act become opera-  
14 tive on January 1, 2018.

15 **(2)** A school district board or an education service district board  
16 may take any action before the operative date specified in subsection  
17 (1) of this section that is necessary to enable a school district or edu-  
18 cation service district to exercise, on and after the operative date  
19 specified in subsection (1) of this section, all of the duties, functions  
20 and powers conferred on the school district or education service dis-  
21 trict by sections 2, 4 and 6 of this 2017 Act.

22 **SECTION 9.** This 2017 Act takes effect on the 91st day after the  
23 date on which the 2017 regular session of the Seventy-ninth Legislative  
24 Assembly adjourns sine die.”

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