

D R A F T

SUMMARY

Provides that specifications for public improvement contracts and contracts for public works must require adherence to current seismic safety standards and seismic rehabilitation standards in constructing, reconstructing or performing major renovation on public building or critical infrastructure that is or will be located in area of state that is susceptible to seismic events.

Requires contracting agency to consult with Seismic Safety Policy Advisory Commission to determine if public improvement or public works is or will be located in area of state that is susceptible to seismic events. Requires contracting agency to consult with Department of Consumer and Business Services and local government to determine applicable seismic safety and seismic rehabilitation standards.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to requirements for adherence to applicable seismic standards in
3 certain public contracts; creating new provisions; amending ORS 279C.345
4 and 279C.350; and prescribing an effective date.

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

6 **SECTION 1.** ORS 279C.345 is amended to read:

7 279C.345. (1) **As used in this section, “public works” has the meaning**
8 **given that term in ORS 279C.800.**

9 [(1)] (2) Specifications for public improvement contracts **or contracts for**
10 **public works** may not expressly or implicitly require any product by any
11 brand name or mark, nor the product of any particular manufacturer or
12 seller unless the product is exempt under subsection [(2)] (4) of this section.

13 **(3)(a) Specifications for public improvement contracts or contracts**

1 **for public works must require adherence to current seismic safety**
2 **standards and seismic rehabilitation standards in constructing, re-**
3 **constructing or performing major renovations on public buildings or**
4 **critical infrastructure that is or will be located in an area of the state**
5 **that is susceptible to seismic events.**

6 **(b) In preparing specifications for a public improvement contract**
7 **or contract for public works a contracting agency shall consult with**
8 **the Seismic Safety Policy Advisory Commission to determine if the**
9 **proposed public improvement or public works is within an area of the**
10 **state that is susceptible to seismic events. To determine applicable**
11 **seismic safety standards and seismic rehabilitation standards to in-**
12 **clude within the contract specifications, the contracting agency shall**
13 **consult with the Department of Consumer and Business Services and**
14 **any local government within the jurisdiction of which the public im-**
15 **provement or public works will be located, if the local government**
16 **administers a building code with seismic safety standards or seismic**
17 **rehabilitation standards.**

18 [(2)] (4) The Director of the Oregon Department of Administrative Ser-
19 vices, a local contract review board or, for contracts described in ORS
20 279A.050 (3)(b), the Director of Transportation may exempt certain products
21 or classes of products from subsection (1) of this section upon any of the
22 following findings:

23 (a) [*It is unlikely that*] The exemption [*will*] **is unlikely to** encourage
24 favoritism in the awarding of public improvement contracts or substantially
25 diminish competition for public improvement contracts;

26 (b) The specification of a product by brand name or mark, or the product
27 of a particular manufacturer or seller, would result in substantial cost
28 savings to the contracting agency;

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

31 (d) Efficient utilization of existing equipment or supplies requires the

1 acquisition of compatible equipment or supplies.

2 **SECTION 2.** ORS 279C.350 is amended to read:

3 279C.350. (1) Exemptions [*granted by*] **that** the Director of the Oregon
4 Department of Administrative Services **grants** under ORS 279C.335 (2) or
5 279C.345 [(2)] **(4)** constitute rulemaking and not contested cases under ORS
6 chapter 183. However, an exemption granted with regard to a specific public
7 improvement contract by the Director of the Oregon Department of Admin-
8 istrative Services, or an exemption granted by the Director of Transportation
9 with regard to a specific public improvement contract or class of public im-
10 provement contracts described in ORS 279A.050 (3)(b), [*shall*] **must** be
11 granted by order. The order [*shall*] **must** set forth findings supporting the
12 decision to grant or deny the request for the exemption. The order is re-
13 viewable under ORS 183.484 and does not constitute a contested case order.
14 Jurisdiction for review of the order is with the Circuit Court of Marion
15 County. The court may award costs and attorney fees to the prevailing party.

16 (2) Any person except the contracting agency or anyone representing the
17 contracting agency may bring a petition **in the manner provided in ORS**
18 **183.400** for a declaratory judgment to test the validity of any rule [*adopted*
19 *by*] the Director of the Oregon Department of Administrative Services **adopts**
20 under ORS 279C.335 or 279C.345 [*in the manner provided in ORS 183.400*].

21 (3) Any person except the contracting agency or anyone representing the
22 contracting agency may bring an action for writ of review under ORS chap-
23 ter 34 to test the validity of an exemption [*granted*] **a local contract review**
24 **board grants** under ORS 279C.335 or 279C.345 [*by a local contract review*
25 *board*].

26 **SECTION 3.** The amendments to ORS 279C.345 and 279C.350 by
27 sections 1 and 2 of this 2021 Act apply to public improvement contracts
28 or contracts for public works that a contracting agency first advertises
29 or otherwise solicits or, if the contracting agency does not advertise
30 or solicit the public improvement contract or contract for public
31 works, to public improvement contracts or contracts for public works

1 into which the contracting agency enters on or after the operative
2 date specified in section 4 of this 2021 Act.

3 **SECTION 4.** (1) The amendments to ORS 279C.345 and 279C.350 by
4 sections 1 and 2 of this 2021 Act become operative on January 1, 2022.

5 (2) The Attorney General, the Director of the Oregon Department
6 of Administrative Services, the Director of Transportation and a con-
7 tracting agency that adopts rules under ORS 279A.065 or 279A.070 may
8 adopt rules and take any other action before the operative date speci-
9 fied in subsection (1) of this section that is necessary to enable the
10 Attorney General, the directors or the contracting agency, on and af-
11 ter the operative date specified in subsection (1) of this section to
12 undertake and exercise all of the duties, functions and powers con-
13 ferred on the Attorney General, the directors or the contracting
14 agency by the amendments to ORS 279C.345 and 279C.350 by sections 1
15 and 2 of this 2021 Act.

16 **SECTION 5.** This 2021 Act takes effect on the 91st day after the date
17 on which the 2021 regular session of the Eighty-first Legislative As-
18 sembly adjourns sine die.

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