

A-Engrossed
Senate Bill 871

Ordered by the Senate April 12
Including Senate Amendments dated April 12

Sponsored by Senator LIEBER, Representative MARSH

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.

[Requires Department of Consumer and Business Services to study how to build efficiency and resiliency into buildings. Directs department to submit findings to interim committees of Legislative Assembly related to environment not later than September 15, 2024.]

Specifies requirements for energy savings performance contract and provides that contracting agency may solicit and award energy savings performance contract without competitive process and without requirement to issue request for proposals but may award energy savings performance contract only to qualified energy service company.

Requires Oregon Department of Administrative Services to cooperate with State Department of Energy to develop methodology and work plan for state agencies to conduct assessment of energy use in, and greenhouse gas emissions from, state-owned buildings. Specifies requirements for assessments. Requires departments to create searchable and modifiable database with data collected from state agencies and to use baseline data from database to plan energy use reduction and greenhouse gas emission reduction targets in capital projects.

Requires Oregon Department of Administrative Services, with support from State Department of Energy, to oversee specified capital projects and to develop and implement guidelines for sustainable design and provide guidance and technical expertise to state agencies with respect to construction methods, materials, energy conservation measures, greenhouse gas emission reduction methods, and other techniques and technologies. Requires state agencies to report regularly to Oregon Department of Administrative Services concerning progress on capital projects and toward meeting specified goals.

Authorizes state agencies to enter into energy generation projects at state-owned or state rented facilities and to retain 100 percent of net savings from project.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to resilient efficient buildings; creating new provisions; amending ORS 279A.010, 279A.065,
3 469.754 and 469.756; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 279C.**

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

7 (a) **“Cost effective” means that over the useful life of an energy conservation measure**
8 **the present value of a reduction in costs to a contracting agency associated with energy use**
9 **in a public improvement is greater than the net present value, discounted at the cost of**
10 **public borrowing, of the costs to the contracting agency of constructing or installing, main-**
11 **taining and operating the energy conservation measure that provides the reduction in energy**
12 **use.**

13 (b) **“Energy conservation measure” means equipment, a fixture or a furnishing that a**
14 **qualified energy service company identifies, evaluates, recommends, designs and constructs**
15 **or installs for or in a public improvement as a means for reducing energy consumption and**

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 related costs of energy use in the public improvement, including reductions and cost savings
2 associated with using electrical energy, thermal energy and water, reductions in generated
3 waste, including greenhouse gas emissions, and reductions in costs associated with waste or
4 disposing of waste.

5 (c) "Guarantee" means an enforceable agreement between a contracting agency and a
6 qualified energy service company that:

7 (A) Allocates responsibilities between the contracting agency and the qualified energy
8 service company for achieving specific energy savings or performance from an energy con-
9 servation measure in a public improvement; and

10 (B) Provides remedies to a contracting agency, including damages and appropriate equi-
11 table relief, if an energy conservation measure the qualified energy service company identi-
12 fies, evaluates, recommends, designs, constructs or installs for or in a public improvement
13 fails to achieve the energy savings or performance specified in an energy savings perform-
14 ance contract.

15 (d) "Qualified energy service company" means a person that:

16 (A) Has demonstrated a technical, operational, financial and managerial capability for,
17 and a prior record of success in, identifying, evaluating, recommending, designing and con-
18 structing or installing an energy conservation measure;

19 (B) Has developed expertise in measuring and verifying energy use and reductions in en-
20 ergy use in buildings and other structures; and

21 (C) Has prequalified with the State Department of Energy as provided under rules the
22 department adopts under ORS 276.915.

23 (2) An energy savings performance contract must:

24 (a) Permit a contracting agency to purchase or finance the costs of an energy conser-
25 vation measure with any combination of:

26 (A) Financing that a qualified energy service company provides;

27 (B) Tax-exempt lease purchase agreements;

28 (C) Municipal lease financing;

29 (D) Financing from financial institutions or other parties; or

30 (E) Other financing that the State Treasurer approves;

31 (b) Permit the contracting agency to pay the costs of an energy conservation measure
32 and any costs of financing the energy conservation measure from:

33 (A) Energy cost savings, reductions in utility costs or savings in operating or maintaining
34 the public improvement;

35 (B) Proceeds from grants or gifts, incentives from utilities, refinancing or other financ-
36 ing; or

37 (C) Other funding sources, including appropriations, the contracting agency's capital
38 budget or other funds that the contracting agency may lawfully use for the purpose set forth
39 in this paragraph;

40 (c) Provide that the contracting agency may purchase or finance an energy conservation
41 measure as provided in paragraph (a) of this subsection if the utility cost savings that will
42 result from the energy conservation measure is sufficient to pay, within the useful life of the
43 energy conservation measure, the cost of the energy conservation measure and the costs of
44 financing the energy conservation measure;

45 (d) Provide that a contracting agency may finance the costs of all energy conservation

1 measures for a public improvement as provided in paragraph (a) of this subsection if the
2 aggregated utility cost savings that will result from all energy conservation measures is
3 sufficient to pay, within the useful life of the energy conservation measures, the cost of the
4 energy conservation measures and the costs of financing the energy conservation measures;
5 and

6 (e) Provide a guarantee to the contracting agency of a specific and measurable reduction
7 in energy use and utility costs as a consequence of installing and operating the energy con-
8 servation measures that are the subject of the energy savings performance contract.

9 (3) A contracting agency may enter into only those energy savings performance con-
10 tracts that are cost effective.

11 (4) A contracting agency may choose only a qualified energy service company as a con-
12 tractor for an energy savings performance contract. The exemption set forth in ORS 279C.335
13 (1)(f) exempts the contracting agency from any requirement to issue a request for proposals
14 or otherwise conduct a competitive procurement. In soliciting an energy savings perform-
15 ance contract, the contracting agency may use any lawful process that complies with the
16 contracting agency's rules and policies.

17 **SECTION 3.** (1) As used in this section, "state agency" has the meaning given that term
18 in ORS 278.005.

19 (2)(a) The Oregon Department of Administrative Services, in cooperation with the State
20 Department of Energy, shall develop a methodology and work plan for state agencies to im-
21 plement a comprehensive assessment of energy use and greenhouse gas emissions of state-
22 owned buildings. At a minimum, the assessments must:

23 (A) Examine and quantify each building's greenhouse gas emissions, using where feasible
24 existing data such as energy use reporting for existing state-owned buildings that state
25 agencies submitted to the State Department of Energy and data from other existing pro-
26 grams and contracts;

27 (B) Identify equipment or usage that contributes to greenhouse gas emissions from each
28 building; and

29 (C) Determine and quantify the useful life of equipment in each building that contributes
30 to greenhouse gas emissions.

31 (b) The Oregon Department of Administrative Services may direct state agencies to
32 conduct the assessments described in paragraph (a) of this subsection in phases or stages
33 and may specify a minimum building size that is subject to an assessment.

34 (c) The Oregon Department of Administrative Services may procure and make available
35 to state agencies services from a private contractor to conduct the assessments described
36 in paragraph (a) of this subsection throughout the state.

37 (3) All agencies of state government shall cooperate with and assist the Oregon Depart-
38 ment of Administrative Services, or the department's contractor, in conducting the assess-
39 ments and shall timely provide relevant information to the department, or the department's
40 contractor, in accordance with methodology the department specifies.

41 (4) The Oregon Department of Administrative Services, with support from the State De-
42 partment of Energy, shall create a searchable and modifiable database with the data that the
43 Oregon Department of Administrative Services, or the department's contractor, collects
44 from state agency assessments described in subsection (2) of this section. State agencies
45 shall use baseline data from the database as a tool for planning energy use reduction and

1 **greenhouse gas emissions reduction targets in capital projects.**

2 **(5)(a) The Oregon Department of Administrative Services, in collaboration with the De-**
3 **partment of Environmental Quality and the State Department of Energy, shall oversee all**
4 **capital projects in which:**

5 **(A) A state agency constructs or performs a major renovation on a state building; and**

6 **(B) The estimated contract price for the capital project exceeds \$1 million.**

7 **(b) In performing the oversight described in paragraph (a) of this subsection, the Oregon**
8 **Department of Administrative Services shall:**

9 **(A) Develop and implement guidelines for sustainable design that:**

10 **(i) Apply to all state agencies and all capital projects described in paragraph (a) of this**
11 **subsection;**

12 **(ii) Take into account the building's life cycle and the life cycle of all of the building's**
13 **systems, components, materials, operations and maintenance; and**

14 **(iii) Consider each building's size, cost or purpose;**

15 **(B) Provide guidance and technical expertise to each state agency with respect to con-**
16 **struction methods, materials, energy conservation measures, greenhouse gas emissions re-**
17 **duction methods, green building construction and renovation and other techniques and**
18 **technologies that will aid in achieving the state's green building, energy efficiency and**
19 **greenhouse gas emissions reduction goals; and**

20 **(C) Use existing work the State Department of Energy performed in connection with the**
21 **United States Department of Energy's Standard Energy Efficiency Data program, data from**
22 **other existing programs and contracts and, where appropriate, data from the database de-**
23 **scribed in subsection (4) of this section.**

24 **(c) Each state agency shall report regularly to the Oregon Department of Administrative**
25 **Services concerning progress on a capital project described in paragraph (a) of this sub-**
26 **section, with an emphasis on progress toward meeting the goals described in paragraph**
27 **(b)(B) of this subsection. A state agency may combine a report under this paragraph with a**
28 **report from another state agency.**

29 **(6) The Oregon Department of Administrative Services and the State Department of En-**
30 **ergy shall participate on behalf of the state in the National Building Performance Standards**
31 **Coalition.**

32 **SECTION 4.** ORS 279A.010 is amended to read:

33 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
34 plicable definition requires otherwise:

35 (a) "Bidder" means a person that submits a bid in response to an invitation to bid.

36 (b) "Contracting agency" means a public body authorized by law to conduct a procurement.
37 "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Ad-
38 ministrative Services and any person authorized by a contracting agency to conduct a procurement
39 on the contracting agency's behalf. "Contracting agency" does not include the judicial department
40 or the legislative department.

41 (c) "Days" means calendar days.

42 (d) "Department" means the Oregon Department of Administrative Services.

43 (e) "Director" means the Director of the Oregon Department of Administrative Services or a
44 person designated by the director to carry out the authority of the director under the Public Con-
45 tracting Code.

1 (f) “Emergency” means circumstances that:

2 (A) Could not have been reasonably foreseen;

3 (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat
4 to property, public health, welfare or safety; and

5 (C) Require prompt execution of a contract to remedy the condition.

6 [(g) “Energy savings performance contract” means a public contract between a contracting agency
7 and a qualified energy service company for the identification, evaluation, recommendation, design and
8 construction of energy conservation measures, including a design-build contract, that guarantee energy
9 savings or performance.]

10 (g) “Energy savings performance contract” means a public contract between a contract-
11 ing agency and a qualified energy service company, as defined in section 2 of this 2023 Act,
12 including a design-build contract as defined in rules the Attorney General or a contracting
13 agency adopts under ORS 279A.065, in which the qualified energy service company:

14 (A) Identifies, evaluates, recommends, designs and constructs or installs an energy con-
15 servation measure for use in a public improvement; and

16 (B) Guarantees that the energy conservation measure will provide a specified level or
17 amount of energy savings or reduction in utility costs.

18 (h) “Executive department” has the meaning given that term in ORS 174.112.

19 (i) “Goods” includes supplies, equipment, materials, personal property, including any tangible,
20 intangible and intellectual property and rights and licenses in relation thereto, and combinations
21 of any of the items identified in this paragraph.

22 (j) “Goods and services” or “goods or services” includes combinations of any of the items iden-
23 tified in the definitions of “goods” and “services.”

24 (k)(A) “Grant” means:

25 (i) An agreement under which a contracting agency receives moneys, property or other assist-
26 ance, including but not limited to federal assistance that is characterized as a grant by federal law
27 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
28 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
29 contracting agency and in which no substantial involvement by the grantor is anticipated in the
30 program or activity other than involvement associated with monitoring compliance with the grant
31 conditions; or

32 (ii) An agreement under which a contracting agency provides moneys, property or other assist-
33 ance, including but not limited to federal assistance that is characterized as a grant by federal law
34 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
35 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-
36 cipient and in which no substantial involvement by the contracting agency is anticipated in the
37 program or activity other than involvement associated with monitoring compliance with the grant
38 conditions.

39 (B) “Grant” does not include a public contract for a public improvement, for public works, as
40 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
41 nance necessary to preserve a public improvement, when under the public contract a contracting
42 agency pays, in consideration for contract performance intended to realize or to support the real-
43 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
44 the contracting agency has received under a grant.

45 (L) “Industrial oil” means any compressor, turbine or bearing oil, hydraulic oil, metal-working

- 1 oil or refrigeration oil.
- 2 (m) “Judicial department” has the meaning given that term in ORS 174.113.
- 3 (n) “Legislative department” has the meaning given that term in ORS 174.114.
- 4 (o) “Local contract review board” means a local contract review board described in ORS
5 279A.060.
- 6 (p) “Local contracting agency” means a local government or special government body authorized
7 by law to conduct a procurement. “Local contracting agency” includes any person authorized by a
8 local contracting agency to conduct a procurement on behalf of the local contracting agency.
- 9 (q) “Local government” has the meaning given that term in ORS 174.116.
- 10 (r) “Lowest responsible bidder” means the lowest bidder who:
- 11 (A) Has substantially complied with all prescribed public contracting procedures and require-
12 ments;
- 13 (B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;
- 14 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
15 279C.440; and
- 16 (D) If the advertised contract is a public improvement contract, is not on the list created by the
17 Construction Contractors Board under ORS 701.227.
- 18 (s) “Lubricating oil” means any oil intended for use in an internal combustion crankcase,
19 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
20 ment or machinery powered by an internal combustion engine.
- 21 (t) “Person” means a natural person capable of being legally bound, a sole proprietorship, a
22 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
23 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
24 or common economic interest, any other person with legal capacity to contract or a public body.
- 25 (u) “Post-consumer waste” means a finished material that would normally be disposed of as solid
26 waste, having completed its life cycle as a consumer item. “Post-consumer waste” does not include
27 manufacturing waste.
- 28 (v) “Price agreement” means a public contract for the procurement of goods or services at a set
29 price with:
- 30 (A) No guarantee of a minimum or maximum purchase; or
- 31 (B) An initial order or minimum purchase combined with a continuing contractor obligation to
32 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
33 mum additional purchase.
- 34 (w) “Procurement” means the act of purchasing, leasing, renting or otherwise acquiring goods
35 or services. “Procurement” includes each function and procedure undertaken or required to be
36 undertaken by a contracting agency to enter into a public contract, administer a public contract and
37 obtain the performance of a public contract under the Public Contracting Code.
- 38 (x) “Proposer” means a person that submits a proposal in response to a request for proposals.
- 39 (y) “Public body” has the meaning given that term in ORS 174.109.
- 40 (z) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other ac-
41 quisition, by a contracting agency of personal property, services, including personal services, public
42 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-
43 serve a public improvement. “Public contract” does not include grants.
- 44 (aa) “Public contracting” means procurement activities described in the Public Contracting Code
45 relating to obtaining, modifying or administering public contracts or price agreements.

- 1 (bb) "Public Contracting Code" or "code" means ORS chapters 279A, 279B and 279C.
- 2 (cc) "Public improvement" means a project for construction, reconstruction or major renovation
3 on real property by or for a contracting agency. "Public improvement" does not include:
- 4 (A) Projects for which no funds of a contracting agency are directly or indirectly used, except
5 for participation that is incidental or related primarily to project design or inspection; or
- 6 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a
7 public improvement.
- 8 (dd) "Public improvement contract" means a public contract for a public improvement. "Public
9 improvement contract" does not include a public contract for emergency work, minor alterations,
10 or ordinary repair or maintenance necessary to preserve a public improvement.
- 11 (ee) "Recycled material" means any material that would otherwise be a useless, unwanted or
12 discarded material except for the fact that the material still has useful physical or chemical prop-
13 erties after serving a specific purpose and can, therefore, be reused or recycled.
- 14 (ff) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by
15 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use
16 is operationally safe, environmentally sound and complies with all laws and regulations.
- 17 (gg) "Recycled paper" means a paper product with not less than:
- 18 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or
- 19 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.
- 20 (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.
- 21 (ii) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the
22 total weight of which consists of secondary and post-consumer waste with not less than 10 percent
23 of its total weight consisting of post-consumer waste. "Recycled product" includes any product that
24 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but
25 otherwise is refurbished for reuse without substantial alteration of the product's form.
- 26 (jj) "Secondary waste materials" means fragments of products or finished products of a manu-
27 facturing process that has converted a virgin resource into a commodity of real economic value.
28 "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not
29 include excess virgin resources of the manufacturing process. For paper, "secondary waste
30 materials" does not include fibrous waste generated during the manufacturing process such as fibers
31 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
32 sawdust or other wood residue from a manufacturing process.
- 33 (kk) "Services" mean services other than personal services designated under ORS 279A.055, ex-
34 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
35 279A.140, "services" includes personal services as designated by the state contracting agencies.
- 36 (LL) "Special government body" has the meaning given that term in ORS 174.117.
- 37 (mm) "State agency" means the executive department, except the Secretary of State and the
38 State Treasurer in the performance of the duties of their constitutional offices.
- 39 (nn) "State contracting agency" means an executive department entity authorized by law to
40 conduct a procurement.
- 41 (oo) "State government" has the meaning given that term in ORS 174.111.
- 42 (pp) "Used oil" has the meaning given that term in ORS 459A.555.
- 43 (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been used or
44 contaminated with impurities.
- 45 (2) Other definitions appearing in the Public Contracting Code and the sections in which they

1 appear are:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

-
- (a) “Administering contracting agency”ORS 279A.200
 - (b) “Affirmative action”ORS 279A.100
 - (c) “Architect”ORS 279C.100
 - (d) “Architectural, engineering, photogram-metric mapping, transportation planning or land surveying services”ORS 279C.100
 - (e) “Bid documents”ORS 279C.400
 - (f) “Bidder”ORS 279B.415
 - (g) “Bids”ORS 279C.400
 - (h) “Brand name”ORS 279B.405
 - (i) “Brand name or equal specification”ORS 279B.200
 - (j) “Brand name specification”ORS 279B.200
 - (k) “Class special procurement”ORS 279B.085
 - (L) “Consultant”ORS 279C.115
 - (m) “Contract-specific special procurement”ORS 279B.085
 - (n) “Cooperative procurement”ORS 279A.200
 - (o) “Cooperative procurement group”ORS 279A.200
 - (p) “Donee”ORS 279A.250
 - (q) “Engineer”ORS 279C.100
 - (r) “Findings”ORS 279C.330
 - (s) “Fire protection equipment”ORS 279A.190
 - (t) “Fringe benefits”ORS 279C.800
 - (u) “Funds of a public agency”ORS 279C.810
 - (v) “Good cause”ORS 279C.585
 - (w) “Good faith dispute”ORS 279C.580
 - (x) “Goods”ORS 279B.115
 - (y) “Housing”ORS 279C.800
 - (z) “Interstate cooperative procurement”ORS 279A.200
 - (aa) “Invitation to bid”ORS 279B.005

- 1and 279C.400
- 2 (bb) “Joint cooperative
- 3 procurement”ORS 279A.200
- 4 (cc) “Labor dispute”ORS 279C.650
- 5 (dd) “Land surveyor”ORS 279C.100
- 6 (ee) “Legally flawed”ORS 279B.405
- 7 (ff) “Locality”ORS 279C.800
- 8 (gg) “Nonprofit
- 9 organization”ORS 279C.810
- 10 (hh) “Nonresident bidder”ORS 279A.120
- 11 (ii) “Not-for-profit
- 12 organization”ORS 279A.250
- 13 (jj) “Original contract”ORS 279A.200
- 14 (kk) “Permissive cooperative
- 15 procurement”ORS 279A.200
- 16 (LL) “Person”ORS 279C.500
- 17and 279C.815
- 18 (mm) “Personal services”ORS 279C.100
- 19 (nn) “Photogrammetric
- 20 mapping”ORS 279C.100
- 21 (oo) “Photogrammetrist”ORS 279C.100
- 22 (pp) “Prevailing rate of
- 23 wage”ORS 279C.800
- 24 (qq) “Procurement
- 25 description”ORS 279B.005
- 26 (rr) “Property”ORS 279A.250
- 27 (ss) “Public agency”ORS 279C.800
- 28 (tt) “Public contract”ORS 279A.190
- 29 (uu) “Public works”ORS 279C.800
- 30 (vv) “Purchasing contracting
- 31 agency”ORS 279A.200
- 32 (ww) “Regularly organized fire
- 33 department”ORS 279A.190
- 34 (xx) “Related services”ORS 279C.100
- 35 (yy) “Request for
- 36 proposals”ORS 279B.005
- 37 (zz) “Resident bidder”ORS 279A.120
- 38 (aaa) “Responsible bidder”ORS 279A.105
- 39and 279B.005
- 40 (bbb) “Responsible
- 41 proposer”ORS 279B.005
- 42 (ccc) “Responsive bid”ORS 279B.005
- 43 (ddd) “Responsive
- 44 proposal”ORS 279B.005
- 45 (eee) “Retainage”ORS 279C.550

- 1 (fff) “Special
- 2 procurement”ORS 279B.085
- 3 (ggg) “Specification”ORS 279B.200
- 4 (hhh) “State agency”ORS 279A.250
- 5 (iii) “Substantial
- 6 completion”ORS 279C.465
- 7 (jjj) “Surplus property”ORS 279A.250
- 8 (kkk) “Transportation
- 9 planning services”ORS 279C.100
- 10 (LLL) “Unnecessarily
- 11 restrictive”ORS 279B.405

12
13

SECTION 5. ORS 279A.065 is amended to read:

14
15 279A.065. (1) The Attorney General shall prepare and maintain model rules that specify proce-
16 dures for public contracting under the Public Contracting Code and that are appropriate for all
17 contracting agencies to use. The Attorney General may devise and publish forms for use with the
18 model rules. The Attorney General shall adopt the model rules in accordance with ORS chapter 183.
19 Before adopting or amending a model rule, the Attorney General shall consult with the Director of
20 the Oregon Department of Administrative Services, the Director of Transportation, representatives
21 of county governments, representatives of city governments, representatives of school boards and
22 other knowledgeable persons.

23 (2) The Attorney General shall adopt model rules *[that]* **to** specify procedures for all contracting
24 agencies to use to enter into energy savings performance contracts **that are consistent with the**
25 **requirements of section 2 of this 2023 Act.** Before adopting or amending a rule under this sub-
26 section, the Attorney General shall consult with the Oregon Department of Administrative Services,
27 the State Department of Energy, local contracting agencies and other knowledgeable persons. The
28 Attorney General may develop standard contract forms for use with energy savings performance
29 contracts.

30 (3)(a) The Attorney General shall adopt model rules that specify procedures for all contracting
31 agencies to use to procure construction manager/general contractor services. Before adopting or
32 amending a rule under this subsection, the Attorney General shall consult with the Director of the
33 Oregon Department of Administrative Services, the Director of Transportation, local contracting
34 agencies, construction contractors, construction subcontractors and other knowledgeable persons.

35 (b) Notwithstanding subsection (6) of this section, a contracting agency may not adopt the con-
36 tracting agency’s own rules for procuring construction manager/general contractor services.

37 (4) After each legislative session, the Attorney General shall review all laws the Legislative
38 Assembly passed that affect public contracting to determine if the Attorney General should amend
39 or repeal a model rule prepared under this section or adopt a new rule. If the Attorney General
40 determines that a modification of the model rules is necessary, the Attorney General shall prepare
41 the modification within such time as to allow the modification to take effect no later than 120 days
42 after the effective date of the legislation that caused the Attorney General to modify the rule. The
43 Attorney General may prepare a modification to take effect 121 or more days after the effective date
44 of the legislation if the Attorney General, in a notice to the state agencies and persons listed in
45 subsection (1) of this section, specifies when the modification will take effect.

1 (5) A contracting agency that has not adopted the contracting agency's own rules of procedure
2 in accordance with subsection (6) of this section is subject to the model rules the Attorney General
3 adopts under this section, including all modifications to the model rules that the Attorney General
4 may adopt.

5 (6)(a) A contracting agency may adopt the contracting agency's own rules of procedure for
6 public contracts that:

7 (A) Specifically state that the model rules the Attorney General adopts under this section do
8 not apply to the contracting agency; and

9 (B) Prescribe the rules of procedure that the contracting agency will use for public contracts,
10 which may include portions of the model rules the Attorney General adopts.

11 (b) A contracting agency that adopts rules under this subsection shall review the rules each
12 time the Attorney General modifies the model rules under this section to determine whether the
13 contracting agency should modify the contracting agency's rules to ensure compliance with statu-
14 tory changes.

15 **SECTION 6.** ORS 469.754 is amended to read:

16 469.754. (1) State agencies [*are authorized to*] **may** enter into such contractual and other ar-
17 rangements as [*may be*] **are** necessary or convenient to design, develop, operate and finance projects
18 on-site at state owned or state rented facilities. [*In developing such projects, state agencies shall offer*
19 *a right of first refusal of two months for conservation and direct use renewable resources and three*
20 *months for cogeneration and generating renewable resources to each local utility providing utility ser-*
21 *vice to the agency to jointly develop, finance, operate and otherwise act together in the development and*
22 *operation of such projects. The State Department of Energy shall adopt rules to establish the procedure*
23 *by which the right of first refusal shall be administered. In adopting the rules, the department shall*
24 *insure that the local utility providing utility service to the state agency is entitled to the first right to*
25 *negotiate with the state agency and that the utility is entitled to match any offer made by any other*
26 *entity to participate in the project. The department also shall adopt procedures that insure that the right*
27 *to first negotiate and the right to match any offer applies to the sale of electrical or steam output from*
28 *the project.*]

29 (2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

30 (A) A state agency's budget [*shall*] **may** not be cut because of savings due to the project; and

31 (B) A state agency shall retain [*50*] **100** percent of the net savings to the state agency after any
32 project debt service.

33 (b) Savings from a project [*shall*] **must** be deposited in a revolving fund administered by the
34 state agency.

35 (3) A state agency shall spend the savings under subsection (2) of this section to increase pro-
36 ductivity through:

37 (a) Energy efficiency projects;

38 (b) High-tech improvements, such as the purchase or installation of new desktop or laptop com-
39 puters or the linkage of computers into systems or networks; or

40 (c) Infrastructure improvements.

41 (4) The moneys credited to the revolving fund may be invested and reinvested as provided in
42 ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or
43 other earnings on moneys in the revolving fund [*shall*] **must** be credited to the revolving fund.

44 [*(5) The remaining 50 percent of net savings to the state agency after any project debt service shall*
45 *be deposited in the General Fund.*]

1 [(6)] (5) [Nothing in] ORS 469.752 to 469.756 [authorizes] **do not authorize** a state agency to sell
2 electricity to an entity other than an investor owned utility, a publicly owned utility, an electric
3 cooperative utility or the Bonneville Power Administration.

4 [(7)] (6) [Nothing in] ORS 469.752 to 469.756 [limits] **do not limit** the authority of a state agency
5 conferred by any other provision of law, or [affects] **affect** any authority, including the authority
6 of a municipality, to regulate utility service under existing law.

7 **SECTION 7.** ORS 469.756 is amended to read:

8 469.756. The State Department of Energy in consultation with other state agencies and utilities
9 shall adopt rules, guidelines and procedures that are necessary to establish savings for projects and
10 to implement other provisions of ORS 469.752 to 469.756[*including, but not limited to, rules pre-*
11 *scribing the procedures to be followed by an agency in negotiating with local utilities to develop*
12 *agreements suitable for the joint development of projects, and procedures to determine which local*
13 *utility, if any, shall be chosen to jointly develop the project*]. The department may enter into agree-
14 ments under ORS chapter 190 with state agencies to provide technical assistance in selecting ap-
15 propriate projects and to evaluate and determine energy and cost savings.

16 **SECTION 8.** (1) **Section 2 of this 2023 Act and the amendments to ORS 279A.010 and**
17 **279A.065 by sections 4 and 5 of this 2023 Act apply to procurements for energy savings per-**
18 **formance contracts that a contracting agency enters into on and after the operative date**
19 **specified in section 9 of this 2023 Act.**

20 (2) **The amendments to ORS 469.754 and 469.756 by sections 6 and 7 of this 2023 Act apply**
21 **to projects that a state agency commences, and to contracts for energy sales into which the**
22 **state agency enters, on and after the operative date specified in section 9 of this 2023 Act.**

23 **SECTION 9.** (1) **Sections 2 and 3 of this 2023 Act and the amendments to ORS 279A.010,**
24 **279A.065, 469.754 and 469.756 by sections 4 to 7 of this 2023 Act become operative on January**
25 **1, 2024.**

26 (2) **The Attorney General, the Director of the Oregon Department of Administrative**
27 **Services, the Director of Transportation, the Director of the State Department of Energy, a**
28 **contracting agency that adopts rules under ORS 279A.065 and a state agency that commences**
29 **a project under ORS 469.752 to 469.756 may adopt rules and take any other action before the**
30 **operative date specified in subsection (1) of this section that is necessary to enable the At-**
31 **torney General, the directors, the contracting agency or the state agency to undertake and**
32 **exercise all of the duties, functions and powers conferred on the Attorney General, the di-**
33 **rectors, the contracting agency or the state agency by sections 2 and 3 of this 2023 Act and**
34 **the amendments to ORS 279A.010, 279A.065, 469.754 and 469.756 by sections 4 to 7 of this 2023**
35 **Act.**

36 **SECTION 10.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
37 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

38