

Enrolled Senate Bill 427

Sponsored by Senator STEINER (at the request of Department of Early Learning and Care) (Pre-session filed.)

CHAPTER

AN ACT

Relating to powers of the Department of Early Learning and Care; creating new provisions; amending ORS 279A.050, 326.432, 327.269 and 327.274; and declaring an emergency.

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

SECTION 1. ORS 327.269, as amended by section 20, chapter 631, Oregon Laws 2021, is amended to read:

327.269. (1) The Early Learning Account is established within the Fund for Student Success.

(2) The Early Learning Account shall consist of:

- (a) Moneys transferred from the Fund for Student Success under ORS 327.001;
- (b) Moneys appropriated or otherwise transferred to the account by the Legislative Assembly;
- (c) Amounts donated to the account; and
- (d) Other amounts deposited into the account from any source.

(3) The Department of Education or the Department of Early Learning and Care, on behalf of the State of Oregon, may solicit and accept gifts, grants, donations and other moneys from public and private sources for the Early Learning Account. Moneys received as provided in this subsection shall be deposited into the Early Learning Account.

(4) Moneys in the Early Learning Account are continuously appropriated to:

- (a) The Department of Education **for early childhood special education or early intervention services, as provided by ORS 343.475;** and
- (b) **The Department of Early Learning and Care for early learning programs, as described in ORS 327.274.**

SECTION 2. ORS 327.274, as amended by section 21, chapter 631, Oregon Laws 2021, and section 30, chapter 27, Oregon Laws 2022, is amended to read:

327.274. (1) **The Department of Education shall use moneys in the Early Learning Account to provide funding for early childhood special education or early intervention services, as provided by ORS 343.475.**

(2) The Department of Early Learning and Care shall use moneys in the Early Learning Account to provide funding for early learning programs in a manner consistent with a statewide early learning system plan overseen by the Early Learning Council. Early learning programs *[that may receive]* **for which the department may use** moneys from the Early Learning Account include:

- [(a) Early childhood special education or early intervention services, as provided by ORS 343.475;]*
- [(b)]* (a) Relief nurseries;
- [(c)]* (b) Programs funded by the Early Childhood Equity Fund;

[(d)] (c) The Oregon prekindergarten program and other public preschool programs established under ORS 329.170 to 329.200, by increasing:

- (A) The total number of spaces for children served by the programs; or
- (B) Existing spaces for full-day programs from half-day programs;

[(e)] (d) Professional development for early childhood educators; and

[(f)] (e) Early Head Start programs.

[(2)] (3) In addition to the uses identified in subsection [(1)] (2) of this section, **the Department of Early Learning and Care may use moneys in the Early Learning Account [may be used] for:**

(a) [Staffing needs] **Administrative, operational or program needs, including staffing,** of the Department of Early Learning and Care for the purpose of implementing this section.

(b) Costs incurred by the Department of **Early Learning and Care** in conducting the biennial evaluation of programs that receive grants under ORS 417.782.

[(3)] (4) The Early Learning Council shall adopt rules necessary for the distribution of moneys under this section.

SECTION 3. (1) The Department of Early Learning and Care shall disburse and expend moneys in a manner that is consistent with the intended purposes for which the moneys were appropriated or allocated to the department.

(2) If moneys are appropriated or allocated to the department and provisions for the intended disbursement or expenditure of the moneys are not provided in statute, in agreement or by any other means related to the appropriation or allocation, the department may disburse or expend the moneys in the manner the department determines is most consistent with the intended purposes for which the moneys were appropriated or allocated, including by:

(a) Awarding a grant;

(b) Entering into a contract, intergovernmental agreement or other legal agreement; or

(c) Passing through moneys based on state or federal law or legal agreement.

(3) This section applies to moneys received from the federal government or its agencies, moneys appropriated by the Legislative Assembly or any other moneys appropriated or allocated to the department.

SECTION 4. The Early Learning System Director and the Director of Human Services may delegate to each other by interagency agreement any duties, functions or powers granted to the Department of Early Learning and Care or the Department of Human Services, as the directors deem necessary for the efficient and effective operation of the respective functions of the departments, including:

(1) Eligibility determinations for programs established under either department.

(2) Administrative proceedings, including contested case hearings and judicial reviews.

(3) The authority to make or receive payments.

(4) The recovery of erroneous payments or of overpayments.

SECTION 5. (1) The Department of Early Learning and Care may enter into agreements governing the custody, use and preservation of the records, papers, files and communications of the department in accordance with applicable privacy laws. The use of the records, papers, files and communications is limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished.

(2) The records, papers, files and communications of the Department of Early Learning and Care may be maintained in a single or combined data system accessible to the Department of Early Learning and Care and to the Department of Human Services, the Department of Education or any other state agency, subject to mutual agreement, for the administration of programs and the coordination of functions shared by the Department of Early Learning and Care and the other state agency.

SECTION 6. ORS 279A.050, as amended by section 17, chapter 631, Oregon Laws 2021, is amended to read:

279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all of the contracting agency's procurement authority in accordance with the provisions of the Public Contracting Code.

(b) If a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency need not exercise the contracting agency's authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting agency.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection and the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority available to carry out the provisions of the Public Contracting Code.

(b) Except as otherwise provided in the Public Contracting Code, for state agencies the director may delegate to the State Chief Information Officer the authority to procure or supervise the procurement of all goods, services and personal services related to information technology and telecommunications for state contracting agencies. This paragraph does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidentally in performing a personal services contract described in ORS chapter 279C or a construction contract described in ORS chapter 279C.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority available to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts that relate to operating, maintaining or constructing highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services for constructing, demolishing, exchanging, maintaining, operating and equipping housing for the purpose of providing care to individuals with intellectual disabilities or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services under ORS 179.040 and construction materials, equipment and supplies for the authority's institutions and the procurement of goods, services, personal services, construction materials, equipment and supplies for constructing, demolishing, exchanging, maintaining, operating and equipping housing for individuals with chronic mental illness, subject to applicable provisions of ORS 426.504;

(c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements,

public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;

(d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services related to state parks;

(e) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;

(f) The Oregon Business Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);

(h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

(k) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;

(L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal Every Student Succeeds Act (P.L. 114-95, 129 Stat. 1802), to procure or supervise the procurement of goods, services, personal services and information technology related to student assessment;

(m) The Department of Early Learning and Care to procure or supervise the procurement of goods, services, personal services and information technology related to [*early childhood*] **the authority of the department or the Early Learning Council**; and

(n) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.

(7)(a) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates the authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6) of this section under which more than one state agency may order goods, services or personal services.

(b) The director may delegate to the State Chief Information Officer the exclusive authority to procure or supervise the procurement of all price agreements related to information technology and telecommunications on behalf of the state agencies identified in subsection (6) of this section. Notwithstanding any authority that a state agency may have under subsection (3) or (6) of this section, the state agency may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director or the State Chief Information Officer if the director or the State Chief Information Officer has established a price agreement for the goods, services or personal services.

(c) The State Chief Information Officer may review any solicitation document for procuring information technology or telecommunications that a state agency intends to issue before the state agency issues the solicitation document and may require the state agency to name the State Chief

Information Officer as a third-party beneficiary with full authority to enforce the terms and conditions of any public contract for information technology or telecommunications. The State Chief Information Officer must approve a state agency's procurement for information technology or telecommunications if the procurement has an anticipated contract price of \$1 million or more. The State Chief Information Officer may require the state agency to name the State Chief Information Officer as the contracting party on behalf of the State of Oregon in a procurement for information technology or telecommunications that has an anticipated contract price of \$1 million or more.

SECTION 7. ORS 326.432 is amended to read:

326.432. (1) The Department of Early Learning and Care is under the supervision and control of the Early Learning System Director, who is responsible for the performance of the duties, functions and powers of the department.

(2) The director shall be appointed by the Governor and serves at the pleasure of the Governor.

(3) The director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the Governor, and shall be reimbursed for all expenses actually and necessarily incurred by the director in the performance of official duties.

(4) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all subordinate officers and employees of the department, prescribe their duties and fix their compensation.

(5) The director may apply for, receive and accept grants, gifts or other payments, including property or services from any governmental or other public or private person, and may make arrangement to use the receipts, including for undertaking special studies and other projects that relate to the costs of child care and access to child care.

(6) The director may delegate any duty, function or power of the director to a subordinate employee, unless otherwise prohibited by law or rule.

SECTION 8. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect July 1, 2023.

Passed by Senate February 21, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House April 14, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Shemia Fagan, Secretary of State