

A-Engrossed House Bill 2341

Ordered by the House May 12
Including House Amendments dated May 12

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for House Interim Work Group on Public Contracting Law)

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.

Revises requirements and procedures for public contracting. Specifies dates when provisions become operative.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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Relating to public contracting; creating new provisions; amending ORS 7.250, 9.010, 65.813, 105.435, 173.500, 177.120, 177.150, 179.040, 179.140, 181.150, 182.375, 182.460, 182.466, 183.335, 183.355, 190.110, 190.240, 190.420, 190.485, 192.240, 200.005, 200.025, 200.045, 200.055, 200.200, 238.260, 238.410, 246.170, 261.253, 261.335, 261.345, 270.005, 276.071, 279.835, 279.840, 279.845, 279.850, 279.855, 283.110, 283.120, 283.150, 283.510, 284.375, 285A.075, 285A.227, 285A.273, 285A.276, 285B.341, 285B.344, 285B.473, 285B.575, 286.066, 286.071, 288.523, 291.990, 292.990, 293.741, 293.746, 293.780, 294.850, 294.855, 305.085, 305.612, 332.155, 344.750, 348.703, 351.086, 351.155, 351.689, 353.100, 353.130, 366.773, 367.025, 368.051, 377.836, 383.017, 390.195, 391.150, 396.345, 407.177, 408.375, 414.630, 414.640, 414.725, 421.352, 421.438, 426.504, 427.335, 452.620, 455.465, 459.235, 461.055, 461.120, 468.035, 468.265, 468A.707, 468A.745, 468A.760, 475.225, 476.055, 565.080, 565.120, 565.442, 576.306, 576.307, 577.320, 651.060, 651.120, 651.170, 651.185, 652.332, 656.753, 657.665, 657.710, 657.732, 657.734, 671.613, 674.349, 674.358, 701.227, 701.410, 701.435, 701.440, 705.145, 706.515, 723.136, 737.602, 737.604, 742.061, 757.552, 774.190 and 777.775 and section 1, chapter 336, Oregon Laws 1995, section 1, chapter 847, Oregon Laws 1999, section 2, chapter 934, Oregon Laws 1999, section 49, chapter 1084, Oregon Laws 1999, sections 4 and 5, chapter 628, Oregon Laws 2001, section 5, chapter 835, Oregon Laws 2001, and sections 1 and 3, chapter 937, Oregon Laws 2001; repealing ORS 279.005, 279.007, 279.009, 279.011, 279.015, 279.017, 279.019, 279.021, 279.023, 279.025, 279.027, 279.029, 279.031, 279.033, 279.035, 279.037, 279.039, 279.041, 279.043, 279.045, 279.047, 279.049, 279.051, 279.053, 279.055, 279.056, 279.057, 279.058, 279.059, 279.061, 279.063, 279.067, 279.073, 279.095, 279.101, 279.103, 279.106, 279.111, 279.116, 279.310, 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320, 279.321, 279.322, 279.323, 279.324, 279.326, 279.328, 279.330, 279.332, 279.333, 279.334, 279.335, 279.336, 279.338, 279.348, 279.349, 279.350, 279.352, 279.354, 279.355, 279.356, 279.357, 279.359, 279.361, 279.363, 279.365, 279.370, 279.375, 279.380, 279.400, 279.410, 279.420, 279.430, 279.435, 279.445, 279.526, 279.528, 279.536, 279.538, 279.540, 279.542, 279.545, 279.550, 279.555, 279.560, 279.562, 279.565, 279.567, 279.570, 279.573, 279.580, 279.585, 279.590, 279.595, 279.605, 279.615, 279.617, 279.621, 279.630,

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.

1 279.635, 279.640, 279.645, 279.650, 279.710, 279.711, 279.712, 279.717, 279.722, 279.723, 279.725,
2 279.727, 279.729, 279.742, 279.744, 279.746, 279.748, 279.800, 279.805, 279.820, 279.822, 279.824,
3 279.826, 279.828, 279.830, 279.831, 279.833 and 279.990; appropriating money; and declaring an
4 emergency.

5 (1) In order to promote the policy of a sound and responsive public contracting system, the
6 Legislative Assembly finds that it is appropriate to divide the public contracting statutes into the
7 following three chapters:

8 (a) ORS chapter 279C on public improvements and architectural, engineering, land surveying and
9 related service contracts;

10 (b) ORS chapter 279B on public procurements; and

11 (c) ORS chapter 279A on overarching provisions.

12 (2) Within the general statutory framework of the Public Contracting Code, changes may be
13 made over time to accommodate new industry practices or special needs without adversely affecting
14 traditional forms of contracting.

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

16
17 **PART 1: GENERAL PROVISIONS**

18 **(ORS Chapter 279A)**

19
20 **GENERAL PROVISIONS**

21
22 **SECTION 1. Short title. Sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act may be**
23 **cited as the Public Contracting Code.**

24 **SECTION 2. Definitions for the Public Contracting Code. (1) As used in the Public Con-**
25 **tracting Code, unless the context or a specifically applicable definition requires otherwise:**

26 (a) **“Bidder” means a person that submits a bid in response to an invitation to bid.**

27 (b) **“Contracting agency” means a public body authorized by law to conduct a procure-**
28 **ment. “Contracting agency” includes, but is not limited to, the Director of the Oregon De-**
29 **partment of Administrative Services and any person authorized by a contracting agency to**
30 **conduct a procurement on the contracting agency’s behalf. “Contracting agency” does not**
31 **include the judicial department or the legislative department.**

32 (c) **“Days” means calendar days.**

33 (d) **“Department” means the Oregon Department of Administrative Services.**

34 (e) **“Director” means the Director of the Oregon Department of Administrative Services**
35 **or a person designated by the director to carry out the authority of the director under the**
36 **Public Contracting Code.**

37 (f) **“Emergency” means circumstances that:**

38 (A) **Could not have been reasonably foreseen;**

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

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

42 (g) **“Executive department” has the meaning given that term in ORS 174.112.**

43 (h)(A) **“Grant” means:**

44 (i) **An agreement under which a contracting agency receives moneys, property or other**
45 **assistance, including but not limited to federal assistance that is characterized as a grant**

1 by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests,
2 commodities or other assets, from a grantor for the purpose of supporting or stimulating a
3 program or activity of the contracting agency and in which no substantial involvement by
4 the grantor is anticipated in the program or activity other than involvement associated with
5 monitoring compliance with the grant conditions; or

6 (ii) An agreement under which a contracting agency provides moneys, property or other
7 assistance, including but not limited to federal assistance that is characterized as a grant
8 by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests,
9 commodities or other assets, to a recipient for the purpose of supporting or stimulating a
10 program or activity of the recipient and in which no substantial involvement by the con-
11 tracting agency is anticipated in the program or activity other than involvement associated
12 with monitoring compliance with the grant conditions.

13 (B) "Grant" does not include a public contract, including a price agreement, under which
14 a contracting agency pays, in consideration for contract performance intended to realize or
15 to support the realization of the purposes for which grant funds were provided to the con-
16 tracting agency, moneys that the contracting agency has received under a grant.

17 (i) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-
18 working oil or refrigeration oil.

19 (j) "Judicial department" has the meaning given that term in ORS 174.113.

20 (k) "Legislative department" has the meaning given that term in ORS 174.114.

21 (L) "Local contract review board" means a local contract review board described in sec-
22 tion 9 of this 2003 Act.

23 (m) "Local contracting agency" means a local government or special government body
24 authorized by law to conduct a procurement. "Local contracting agency" includes any person
25 authorized by a local contracting agency to conduct a procurement on behalf of the local
26 contracting agency.

27 (n) "Local government" has the meaning given that term in ORS 174.116.

28 (o) "Lowest responsible bidder" means the lowest bidder who:

29 (A) Has substantially complied with all prescribed public contracting procedures and re-
30 quirements;

31 (B) Has met the standards of responsibility set forth in section 59 or 117 of this 2003 Act;

32 (C) Has not been debarred or disqualified by the contracting agency under section 63 or
33 122 of this 2003 Act; and

34 (D) If the advertised contract is a public improvement contract, is not on the list created
35 by the Construction Contractors Board under ORS 701.227.

36 (p) "Lubricating oil" means any oil intended for use in an internal combustion crankcase,
37 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy
38 equipment or machinery powered by an internal combustion engine.

39 (q) "Person" means a natural person capable of being legally bound, a sole proprietorship,
40 a corporation, a partnership, a limited liability company or partnership, a limited partner-
41 ship, a for-profit or nonprofit unincorporated association, a business trust, two or more
42 persons having a joint or common economic interest, any other person with legal capacity
43 to contract or a public body.

44 (r) "Post-consumer waste" means a finished material that would normally be disposed
45 of as solid waste, having completed its life cycle as a consumer item. "Post-consumer

1 waste” does not include manufacturing waste.

2 (s) “Price agreement” means a public contract for the procurement of goods or services
3 at a set price with:

4 (A) No guarantee of a minimum or maximum purchase; or

5 (B) An initial order or minimum purchase combined with a continuing contractor obli-
6 gation to provide goods or services in which the contracting agency does not guarantee a
7 minimum or maximum additional purchase.

8 (t) “Proposer” means a person that submits a proposal in response to a request for pro-
9 posals.

10 (u) “Public body” has the meaning given that term in ORS 174.109.

11 (v) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other
12 acquisition, by a contracting agency of personal property, services, including personal ser-
13 vices, public improvements, public works, minor alterations, or ordinary repair or mainte-
14 nance necessary to preserve a public improvement. “Public contract” does not include
15 grants.

16 (w) “Public contracting” means procurement activities described in the Public Contract-
17 ing Code relating to obtaining, modifying or administering public contracts or price agree-
18 ments.

19 (x) “Public Contracting Code” or “code” means sections 1 to 46, 47 to 87 and 88 to 180 of
20 this 2003 Act.

21 (y) “Public improvement” means a project for construction, reconstruction or major
22 renovation on real property by or for a contracting agency. “Public improvement” does not
23 include:

24 (A) Projects for which no funds of a contracting agency are directly or indirectly used,
25 except for participation that is incidental or related primarily to project design or inspection;
26 or

27 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to
28 preserve a public improvement.

29 (z) “Public improvement contract” means a public contract for a public improvement.
30 “Public improvement contract” does not include a public contract for emergency work, mi-
31 nor alterations, or ordinary repair or maintenance necessary to preserve a public improve-
32 ment.

33 (aa) “Recycled material” means any material that would otherwise be a useless, un-
34 wanted or discarded material except for the fact that the material still has useful physical
35 or chemical properties after serving a specific purpose and can, therefore, be reused or re-
36 cycled.

37 (bb) “Recycled oil” means used oil that has been prepared for reuse as a petroleum
38 product by refining, rerefining, reclaiming, reprocessing or other means, provided that the
39 preparation or use is operationally safe, environmentally sound and complies with all laws
40 and regulations.

41 (cc) “Recycled paper” means a paper product with not less than:

42 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or

43 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

44 (dd) “Recycled PETE” means post-consumer polyethylene terephthalate material.

45 (ee) “Recycled product” means all materials, goods and supplies, not less than 50 percent

1 of the total weight of which consists of secondary and post-consumer waste with not less
 2 than 10 percent of its total weight consisting of post-consumer waste. “Recycled product”
 3 includes any product that could have been disposed of as solid waste, having completed its
 4 life cycle as a consumer item, but otherwise is refurbished for reuse without substantial al-
 5 teration of the product’s form.

6 (ff) “Secondary waste materials” means fragments of products or finished products of a
 7 manufacturing process that has converted a virgin resource into a commodity of real eco-
 8 nomic value. “Secondary waste materials” includes post-consumer waste. “Secondary waste
 9 materials” does not include excess virgin resources of the manufacturing process. For paper,
 10 “secondary waste materials” does not include fibrous waste generated during the manufac-
 11 turing process such as fibers recovered from waste water or trimmings of paper machine
 12 rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing
 13 process.

14 (gg) “Special government body” has the meaning given that term in ORS 174.117.

15 (hh) “State agency” means the executive department, except the Secretary of State and
 16 the State Treasurer in the performance of the duties of their constitutional offices.

17 (ii) “State contracting agency” means an executive department entity authorized by law
 18 to conduct a procurement.

19 (jj) “State government” has the meaning given that term in ORS 174.111.

20 (kk) “Used oil” has the meaning given that term in ORS 459A.555.

21 (LL) “Virgin oil” means oil that has been refined from crude oil and that has not been
 22 used or contaminated with impurities.

23 (2) Other definitions appearing in the Public Contracting Code and the sections in which
 24 they appear are:

25	“Adequate”	section 98 of this 2003 Act
26	“Administering contracting agency”	section 25 of this 2003 Act
27	“Affirmative action”	section 13 of this 2003 Act
28	“Architect”	section 89 of this 2003 Act
29	“Architectural, engineering and	
30	land surveying services”	section 89 of this 2003 Act
31	“Bid documents”	section 129 of this 2003 Act
32	“Bidder”	section 86 of this 2003 Act
33	“Bids”	section 129 of this 2003 Act
34	“Brand name”	section 84 of this 2003 Act
35	“Brand name or equal specification”	section 72 of this 2003 Act
36	“Brand name specification”	section 72 of this 2003 Act
37	“Consultant”	section 94 of this 2003 Act
38	“Cooperative procurement”	section 25 of this 2003 Act
39	“Cooperative procurement group”	section 25 of this 2003 Act
40	“Donee”	section 36 of this 2003 Act
41	“Engineer”	section 89 of this 2003 Act
42	“Established catalog price”	section 47 of this 2003 Act
43	“Findings”	section 102 of this 2003 Act
44	“Fire protection equipment”	section 24 of this 2003 Act
45	“Flagger”	section 172 of this 2003 Act

1	“Fringe benefits”	section 165 of this 2003 Act
2	“Funds of a public agency”	section 172 of this 2003 Act
3	“Good cause”	section 152 of this 2003 Act
4	“Good faith dispute”	section 151 of this 2003 Act
5	“Goods”	section 60 of this 2003 Act
6	“Goods and services” or	
7	“goods or services”	section 47 of this 2003 Act
8	“Interstate cooperative procurement”	section 25 of this 2003 Act
9	“Invitation to bid”	sections 47 and 129 of this 2003 Act
10	“Joint cooperative procurement”	section 25 of this 2003 Act
11	“Labor dispute”	section 160 of this 2003 Act
12	“Land surveyor”	section 89 of this 2003 Act
13	“Legally flawed”	section 84 of this 2003 Act
14	“Locality”	section 165 of this 2003 Act
15	“Nonprofit organization”	section 172 of this 2003 Act
16	“Nonresident bidder”	section 16 of this 2003 Act
17	“Not-for-profit organization”	section 36 of this 2003 Act
18	“Original contract”	section 25 of this 2003 Act
19	“Permissive cooperative procurement”	section 25 of this 2003 Act
20	“Person”	sections 137 and 173 of this 2003 Act
21	“Personal services”	section 89 of this 2003 Act
22	“Prevailing rate of wage”	section 165 of this 2003 Act
23	“Procurement description”	section 47 of this 2003 Act
24	“Property”	section 36 of this 2003 Act
25	“Public agency”	section 165 of this 2003 Act
26	“Public contract”	section 24 of this 2003 Act
27	“Public works”	section 165 of this 2003 Act
28	“Purchasing contracting agency”	section 25 of this 2003 Act
29	“Regularly organized fire department”	section 24 of this 2003 Act
30	“Related services”	section 89 of this 2003 Act
31	“Request for proposals”	section 47 of this 2003 Act
32	“Resident bidder”	section 16 of this 2003 Act
33	“Responsible bidder”	sections 14 and 47 of this 2003 Act
34	“Responsible proposer”	section 47 of this 2003 Act
35	“Responsive bid”	section 47 of this 2003 Act
36	“Responsive proposal”	section 47 of this 2003 Act
37	“Retainage”	section 146 of this 2003 Act
38	“Specification”	section 72 of this 2003 Act
39	“State agency”	section 36 of this 2003 Act
40	“Substantial completion”	section 135 of this 2003 Act
41	“Surplus property”	section 36 of this 2003 Act
42	“Unduly restrictive”	section 84 of this 2003 Act

SECTION 3. Policy. It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:

- (1) Simplify, clarify and modernize procurement practices so that they reflect the market

1 place and industry standards.

2 (2) Instill public confidence through ethical and fair dealing, honesty and good faith on
3 the part of government officials and those who do business with the government.

4 (3) Promote efficient use of state and local government resources, maximizing the eco-
5 nomic investment in public contracting within this state.

6 (4) Clearly identify rules and policies that implement each of the legislatively mandated
7 socioeconomic programs that overlay public contracting and accompany the expenditure of
8 public funds.

9 (5) Allow impartial and open competition, protecting both the integrity of the public
10 contracting process and the competitive nature of public procurement. In public procure-
11 ment, as set out in sections 47 to 87 of this 2003 Act, meaningful competition may be obtained
12 by evaluation of performance factors and other aspects of service and product quality, as
13 well as pricing, in arriving at best value.

14 (6) Provide a public contracting structure that can take full advantage of evolving pro-
15 curement methods as they emerge within various industries, while preserving competitive
16 bidding as the standard for public improvement contracts unless otherwise exempted.

17 **SECTION 4. Organization of the Public Contracting Code.** (1) Except as otherwise pro-
18 vided in the Public Contracting Code, all public contracting by a contracting agency is subject
19 to sections 1 to 46 of this 2003 Act.

20 (2) Public contracting involving public improvements and other construction services is
21 subject to sections 1 to 46 and 88 to 180 of this 2003 Act, but not sections 47 to 87 of this 2003
22 Act.

23 (3) Public contracting involving architects, engineers, land surveyors and related services
24 is subject to sections 1 to 46 and 88 to 180 of this 2003 Act, but not sections 47 to 87 of this
25 2003 Act.

26 (4) All other public contracting is subject to sections 1 to 46 and 47 to 87 of this 2003 Act,
27 but not sections 88 to 180 of this 2003 Act.

28 **SECTION 5. Application of the Public Contracting Code.** (1) Except as provided in sub-
29 sections (2) to (4) of this section, the Public Contracting Code applies to all public contract-
30 ing.

31 (2) The Public Contracting Code does not apply to:

32 (a) Contracts between contracting agencies or between contracting agencies and the
33 federal government;

34 (b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135
35 and 414.145 for purposes of source selection;

36 (c) Grants;

37 (d) Contracts for professional or expert witnesses or consultants to provide services or
38 testimony relating to existing or potential litigation or legal matters in which a public body
39 is or may become interested;

40 (e) Acquisitions or disposals of real property or interest in real property;

41 (f) Sole-source expenditures when rates are set by law or ordinance for purposes of
42 source selection;

43 (g) Contracts for the procurement or distribution of textbooks;

44 (h) Procurements by a contracting agency from an Oregon Corrections Enterprises pro-
45 gram;

1 (i) The procurement, transportation or distribution of distilled liquor, as defined in ORS
2 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control
3 Commission;

4 (j) Contracts entered into under ORS chapter 180 between the Attorney General and
5 private counsel or special legal assistants;

6 (k) Contracts for the sale of forest products, as defined in ORS 321.005, from lands owned
7 or managed by the State Board of Forestry and the State Forestry Department;

8 (L) Contracts for forest protection or forest related activities, as described in ORS
9 477.406, by the State Forester or the State Board of Forestry;

10 (m) Sponsorship agreements entered into by the Director of the Oregon State Fair and
11 Exposition Center in accordance with ORS 565.080 (4);

12 (n) Contracts entered into by the Housing and Community Services Department in exer-
13 cising the department's duties prescribed in ORS chapters 456 and 458, including but not
14 limited to the selection of housing sponsors and transactions relating to the development,
15 financing and support of housing projects and community development projects, except that
16 the department's public contracting for goods and services, as defined in section 47 of this
17 2003 Act, and for personal services is subject to sections 47 to 87 of this 2003 Act;

18 (o) Contracts entered into by the State Treasurer in exercising the powers of that office
19 prescribed in ORS chapters 178, 286, 287, 288, 289 and 293, including but not limited to in-
20 vestment contracts and agreements, bond documents, certificates of participation and other
21 debt repayment agreements, and any associated contracts, agreements and documents, re-
22 gardless of whether the obligations that the contracts, agreements or documents establish
23 are general, special or limited, except that the State Treasurer's public contracting for goods
24 and services, as defined in section 47 of this 2003 Act, and for personal services is subject to
25 sections 47 to 87 of this 2003 Act;

26 (p) Contracts, agreements or other documents entered into, issued or established in
27 connection with:

28 (A) The incurring of debt by a public body, including but not limited to the issuance of
29 bonds, certificates of participation and other debt repayment obligations, and any associated
30 contracts, agreements or other documents, regardless of whether the obligations that the
31 contracts, agreements or other documents establish are general, special or limited;

32 (B) The making of program loans and similar extensions or advances of funds, aid or
33 assistance by a public body to a public or private body for the purpose of carrying out, pro-
34 moting or sustaining activities or programs authorized by law; or

35 (C) The investment of funds by a public body as authorized by law, and other financial
36 transactions of a public body that by their character cannot practically be established under
37 the competitive contractor selection procedures of sections 50 to 57 of this 2003 Act; or

38 (q) Any other public contracting of a public body specifically exempted from the code by
39 another provision of law.

40 (3) The Public Contracting Code does not apply to the public contracting activities of:

41 (a) The Oregon State Lottery Commission;

42 (b) The Oregon University System and member institutions, except as provided in ORS
43 351.086;

44 (c) The legislative department;

45 (d) The judicial department;

1 (e) Semi-independent state agencies listed in ORS 182.451, 182.452 and 182.454, except as
2 provided in ORS 279.835 to 279.855 and sections 36 to 44 of this 2003 Act;

3 (f) Oregon Corrections Enterprises;

4 (g) The Oregon Film and Video Office, except as provided in sections 13 and 36 to 44 of
5 this 2003 Act;

6 (h) The Travel Information Council, except as provided in sections 36 to 44 of this 2003
7 Act;

8 (i) The Appraiser Certification and Licensure Board, except as provided in ORS 279.835
9 to 279.855 and sections 36 to 44 of this 2003 Act; or

10 (j) Any other public body specifically exempted from the code by another provision of law.

11 (4) Sections 25 to 30 and 50 to 57 of this 2003 Act do not apply to contracts made with
12 qualified nonprofit agencies providing employment opportunities for disabled individuals un-
13 der ORS 279.835 to 279.855.

14 **SECTION 6. Federal law prevails in case of conflict.** (1) Except as otherwise provided in
15 sections 165 to 179 of this 2003 Act, if a public contract involves the expenditure of federal
16 funds or federal assistance and there is a conflict between a provision of the Public Con-
17 tracting Code, or a rule adopted under a provision of the code, and a federal statute, regu-
18 lation, official written policy or funding requirement, the federal statute, regulation, official
19 written policy or funding requirement prevails to the extent of the conditions that are in
20 conflict.

21 (2) For purposes of this section, “a conflict between a provision of the Public Contracting
22 Code, or a rule adopted under a provision of the code, and a federal statute, regulation, of-
23 ficial written policy or funding requirement” means that:

24 (a) A federal statute, regulation, official written policy or funding requirement is more
25 stringent or restrictive than the code or a rule adopted under the code; or

26 (b) Compliance with the federal statute, regulation, official written policy or funding re-
27 quirement is mandatory, regardless of whether it is more restrictive than the code or a rule
28 adopted under the code, as a condition of the receipt of federal funds or federal assistance.

29
30 **AUTHORITY**

31
32 **SECTION 7. Procurement authority.** (1) Except as otherwise provided in the Public Con-
33 tracting Code, a contracting agency shall exercise all rights, powers and authority in ac-
34 cordance with the provisions of the Public Contracting Code.

35 (2) Except as otherwise provided in the Public Contracting Code, for state agencies the
36 Director of the Oregon Department of Administrative Services has all of the rights, powers
37 and authority necessary to carry out the provisions of the Public Contracting Code.

38 (3) Except as otherwise provided in the Public Contracting Code, the Director of Trans-
39 portation has all of the rights, powers and authority to:

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

44 (b) Procure or supervise the procurement of all goods, services, public improvements and
45 personal services relating to the operation, maintenance or construction of highways, bridges

1 and other transportation facilities that are subject to the authority of the Department of
2 Transportation; and

3 (c) Establish standards for, prescribe forms for and conduct the prequalification of pro-
4 spective bidders on public improvement contracts related to the operation, maintenance or
5 construction of highways, bridges and other transportation facilities that are subject to the
6 authority of the Department of Transportation.

7 (4) Except as otherwise provided in the Public Contracting Code, the Secretary of State
8 has all of the rights, powers and authority to procure or supervise the procurement of goods,
9 services and personal services related to programs under the direct authority of the Secre-
10 tary of State.

11 (5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has
12 all of the rights, powers and authority to procure or supervise the procurement of goods,
13 services and personal services related to programs under the authority of the State Treas-
14 urer.

15 (6) The following specific limited authorities are subject to the provisions of the Public
16 Contracting Code:

17 (a) The Department of Human Services to procure or supervise the procurement of
18 goods, services and personal services for the construction, demolition, exchange, mainte-
19 nance, operation and equipping of housing:

20 (A) For the chronically mentally ill, subject to applicable provisions of ORS 426.504; and

21 (B) For the purpose of providing care to individuals with mental retardation or other
22 developmental disabilities, subject to applicable provisions of ORS 427.335;

23 (b) The State Department of Fish and Wildlife to procure or supervise the procurement
24 of all goods, services, public improvements and personal services relating to dams, fishways,
25 ponds and related fish and game propagation facilities;

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

28 (d) The Oregon Department of Aviation to procure or supervise the procurement of all
29 goods, services, public improvements and personal services related to airports owned or op-
30 erated by the state;

31 (e) The Economic and Community Development Department to procure or supervise the
32 procurement of all goods, services, personal services and public improvements related to its
33 foreign trade offices operating outside the state;

34 (f) The Attorney General to enter into contracts as necessary to exercise the authority
35 granted in ORS chapter 180;

36 (g) The Housing and Community Services Department to procure or supervise the pro-
37 curement of goods, services and personal services;

38 (h) The Department of Corrections to procure or supervise the procurement of goods,
39 services and personal services for the construction of all new buildings or additions for its
40 institutions;

41 (i) The Department of Corrections, subject to any applicable provisions of ORS 283.110 to
42 283.395 and sections 16, 17 and 19 of this 2003 Act, to procure or supervise the procurement
43 of goods for its institutions;

44 (j) The Director of Veterans' Affairs to procure or supervise the procurement of real
45 estate broker and principal real estate broker services related to programs under the direc-

1 tor's authority; and

2 (k) Any state agency to make procurements when the agency is specifically authorized
3 by any provision of law other than the Public Contracting Code to enter into a contract.

4 **SECTION 8. Personal services contracts.** (1) Except as provided in section 18 of this 2003
5 Act, a contracting agency may enter into personal services contracts. The provisions of this
6 section do not relieve a contracting agency of the duty to comply with section 18 of this 2003
7 Act, any other law applicable to state agencies or applicable city or county charter pro-
8 visions.

9 (2) A local contract review board by ordinance, resolution, administrative rule or other
10 regulation may designate certain service contracts or classes of service contracts as per-
11 sonal services contracts.

12 **SECTION 9. Local contract review boards.** If the governing body of a local contracting
13 agency takes no action to provide otherwise, the governing body is the local contract review
14 board of that local contracting agency. However, the governing body of a local contracting
15 agency may, by charter, ordinance or other local legislation, authorize a body, board or
16 commission other than the governing body to serve as the local contract review board of the
17 local contracting agency. The governing body of a local contracting agency also may enter
18 into intergovernmental agreements under ORS chapter 190 to permit the local contract re-
19 view board of another local contracting agency or the Director of the Oregon Department
20 of Administrative Services to exercise authority under section 57 of this 2003 Act.

21 **SECTION 10. Model rules generally; applicability to contracting agencies.** (1) The Attor-
22 ney General shall prepare and maintain model rules of procedure appropriate for use by all
23 contracting agencies governing public contracting under the Public Contracting Code and
24 may devise and publish forms for use therewith. The Attorney General shall adopt the model
25 rules in the manner provided by ORS 183.310 to 183.550. Before adopting or amending a model
26 rule, the Attorney General shall consult with the Director of the Oregon Department of
27 Administrative Services, the Director of Transportation, representatives of county govern-
28 ments, representatives of city governments, representatives of school boards and other
29 knowledgeable persons.

30 (2) After each legislative session, the Attorney General shall review all laws passed by
31 the Legislative Assembly that affect public contracting to determine if the model rules pre-
32 pared under this section should be modified by the adoption of a new rule or by the amend-
33 ment or repeal of an existing rule. If the Attorney General determines that a modification
34 of the model rules is necessary, the Attorney General shall prepare the modification within
35 such time as to allow the modification to take effect no later than 120 days after the effective
36 date of the legislation that caused the rule to be modified. However, the Attorney General
37 may prepare a modification to take effect 121 or more days after the effective date of the
38 legislation if the Attorney General provides notice designating the time period within which
39 the modification will take effect to the state agencies and persons listed in subsection (1) of
40 this section.

41 (3) A contracting agency that has not adopted its own rules of procedure in accordance
42 with subsection (4) of this section is subject to the model rules adopted by the Attorney
43 General under this section, including all modifications to the model rules that the Attorney
44 General may adopt. This subsection does not apply to personal services contracts of local
45 contracting agencies except for contracts for architectural, engineering and land surveying

1 services and related services.

2 (4)(a) A contracting agency may, under section 11 of this 2003 Act, adopt its own rules
3 of procedure for public contracts that:

4 (A) Specifically state that the model rules adopted by the Attorney General under this
5 section do not apply to the contracting agency; and

6 (B) Prescribe the rules of procedure that the contracting agency will use for public con-
7 tracts, which may include portions of the model rules adopted by the Attorney General.

8 (b) A contracting agency that adopts rules under section 11 of this 2003 Act shall review
9 the rules each time the Attorney General modifies the model rules under this section to de-
10 termine whether the contracting agency should modify its rules to ensure compliance with
11 statutory changes.

12 **SECTION 11. Rulemaking.** Subject to section 10 (4) of this 2003 Act, a contracting agency
13 may, in the exercise of authority granted under section 7 of this 2003 Act, adopt rules nec-
14 cessary to carry out the provisions of the Public Contracting Code, including but not limited
15 to rules for the procurement, management, disposal and control of goods, services, personal
16 services and public improvements under the Public Contracting Code. Each contracting
17 agency authorized to enter into personal services contracts shall create procedures for the
18 screening and selection of persons to perform personal services.

19 **SECTION 12. Delegation.** (1) Unless otherwise provided in the Public Contracting Code,
20 the exercise of all authorities in the code may be delegated and subdelegated in whole or in
21 part. Notwithstanding delegations of authority under this section, a person's or agency's
22 exercise of the delegated authority is governed by the code and rules adopted under the code.

23 (2) The Secretary of State, State Treasurer, Director of the Oregon Department of Ad-
24 ministrative Services and Director of Transportation and other heads of state agencies with
25 specific limited authority identified in section 7 (6) of this 2003 Act may delegate their au-
26 thority to contract for and manage public contracts for their offices or agencies.

27
28 **MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES**
29

30 **SECTION 13. Affirmative action; limited competition permitted.** (1) As used in this sec-
31 tion, "affirmative action" means a program designed to ensure equal opportunity in employ-
32 ment and business for persons otherwise disadvantaged by reason of race, color, religion,
33 sex, national origin, age or physical or mental disability.

34 (2) The provisions of the Public Contracting Code may not be construed to prohibit a
35 contracting agency from engaging in public contracting practices designed to promote affir-
36 mative action goals, policies or programs for disadvantaged or minority groups.

37 (3) In carrying out the policy of affirmative action, by appropriate ordinance, resolution
38 or rule, a contracting agency may limit competition for a public contract for goods and ser-
39 vices, or for any other public contract estimated to cost \$50,000 or less, to contracting enti-
40 ties owned or controlled by persons described in subsection (1) of this section.

41 **SECTION 14. Subcontracting to emerging small businesses.** (1) A contracting agency may
42 require a contractor to subcontract some part of a contract to, or to obtain materials to be
43 used in performing the contract from, a business enterprise that is certified under ORS
44 200.055 as an emerging small business.

45 (2) A contracting agency may require a contractor to subcontract some part of a con-

1 tract to, or to obtain materials to be used in performing the contract from, a business en-
2 terprise that is certified under ORS 200.055 as an emerging small business and that, as
3 identified by the contracting agency, is located in or draws its workforce from economically
4 depressed areas, as designated by the Economic and Community Development Department.

5 (3) A contracting agency may require that a public contract be awarded to a responsible
6 bidder, as defined in ORS 200.005, who the contracting agency determines has made good
7 faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, “responsible
8 bidder” includes a responsible proposer that has made good faith efforts as prescribed in ORS
9 200.045 (3).

10 **SECTION 15. Discrimination in subcontracting prohibited; remedies.** (1) A bidder or
11 proposer who competes for or is awarded a public contract may not discriminate against a
12 subcontractor in the awarding of a subcontract because the subcontractor is a minority,
13 women or emerging small business enterprise certified under ORS 200.055.

14 (2) A contracting agency may debar or disqualify, under section 63 or 122 of this 2003 Act,
15 as appropriate, a bidder or proposer if the contracting agency finds that the bidder or
16 proposer has violated subsection (1) of this section in the awarding of a subcontract in con-
17 nection with a contract advertised by the contracting agency or a contract between the
18 contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer
19 may appeal the debarment or disqualification under section 87 of this 2003 Act or sections
20 124 and 125 of this 2003 Act, as appropriate.

21 (3) A contracting agency may not allege an occurrence of discrimination in subcontract-
22 ing as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this
23 section more than three years after the alleged discriminatory conduct occurred or more
24 than three years after the contracting agency, in the exercise of reasonable diligence, should
25 have discovered the conduct, whichever is later.

26 (4) A bidder or proposer shall certify in the documents accompanying the bidder’s or
27 proposer’s offer to enter into a public contract that the bidder or proposer has not discrim-
28 inated and will not discriminate, in violation of subsection (1) of this section, against any
29 minority, women or emerging small business enterprise in obtaining any required subcon-
30 tract.

31 (5) After a contractor is awarded a public contract, if the contractor violates the certif-
32 ication made under subsection (4) of this section, the contracting agency may regard the
33 violation as a breach of contract that permits:

34 (a) Termination of the contract; or

35 (b) The contracting agency to exercise any remedies for breach of contract that are re-
36 served in the contract.

37
38 **CONTRACT PREFERENCES**
39

40 **SECTION 16. Preference for Oregon goods and services; nonresident bidders.** (1) As used
41 in this section:

42 (a) “Nonresident bidder” means a bidder who is not a resident bidder.

43 (b) “Resident bidder” means a bidder that has paid unemployment taxes or income taxes
44 in this state during the 12 calendar months immediately preceding submission of the bid, has
45 a business address in this state and has stated in the bid whether the bidder is a “resident

1 bidder” under this paragraph.

2 (2) For the purposes of awarding a public contract, a contracting agency shall:

3 (a) Give preference to goods or services that have been manufactured or produced in this
4 state if price, fitness, availability and quality are otherwise equal; and

5 (b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any,
6 of the preference given to the bidder in the state in which the bidder resides.

7 (3) When a public contract is awarded to a nonresident bidder and the contract price
8 exceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms to
9 be provided by the department the total contract price, terms of payment, length of contract
10 and such other information as the department may require before the bidder may receive
11 final payment on the public contract. The contracting agency shall satisfy itself that the
12 requirement of this subsection has been complied with before the contracting agency issues
13 a final payment on a public contract.

14 (4) The Oregon Department of Administrative Services on or before January 1 of each
15 year shall publish a list of states that give preference to in-state bidders with the percent
16 increase applied in each state. A contracting agency may rely on the names of states and
17 percentages so published in determining the lowest responsible bidder without incurring any
18 liability to any bidder.

19 SECTION 17. Preference for recycled materials. (1) Notwithstanding provisions of law
20 requiring a contracting agency to award a contract to the lowest responsible bidder or best
21 proposer or provider of a quotation and subject to subsection (2) of this section, a contract-
22 ing agency charged with the procurement of goods for any public use shall give preference
23 to the procurement of goods manufactured from recycled materials.

24 (2) A contracting agency shall give preference to goods that are certified to be made from
25 recycled materials if:

26 (a) The recycled product is available;

27 (b) The recycled product meets applicable standards;

28 (c) The recycled product can be substituted for a comparable nonrecycled product; and

29 (d) The recycled product’s costs do not exceed the costs of nonrecycled products by more
30 than five percent, or a higher percentage if a written determination is made by the con-
31 tracting agency.

32
33 **STATE PROCUREMENT**

34
35 SECTION 18. State procurement of goods and services. (1) The Oregon Department of
36 Administrative Services shall conduct all procurements and administer the contracting for
37 goods, services and personal services, including architectural, engineering and land surveying
38 services and related services, for state agencies unless a state agency is specifically author-
39 ized by section 7 of this 2003 Act or provisions of law other than the Public Contracting Code
40 to enter into a contract. The authority described in this subsection may be delegated in
41 whole or in part in accordance with section 12 of this 2003 Act.

42 (2) The following requirements and procedures apply to all contracts of state agencies:

43 (a) A personal services contract is not valid or effective without the written approval of
44 the department unless:

45 (A) The contract is authorized under section 7 of this 2003 Act; or

1 **(B) The department has delegated authority to the contracting agency under section 12**
2 **of this 2003 Act to make the personal services contract.**

3 **(b) Neither the department nor a state agency may approve a contract before the con-**
4 **tract has been reviewed for legal sufficiency and approved by the Attorney General, if the**
5 **review and approval are required under ORS 291.047 or 291.049.**

6 **(c) Except as otherwise provided in sections 1 to 46 of this 2003 Act, a contract of a state**
7 **agency will be deemed by the department to have been executed only when all requisite ap-**
8 **provals have been obtained.**

9 **(d) Any procurement or contract by the department for a state agency must, when re-**
10 **quired by rules adopted by the department under section 11 of this 2003 Act, be made on the**
11 **basis of a requisition by the state agency.**

12 **(e) The department may use moneys from the Oregon Department of Administrative**
13 **Services Operating Fund to procure goods, services and personal services for the purpose**
14 **of supplying requirements of state agencies, the cost of which shall be reimbursed to the**
15 **fund from charges paid by state agencies on the basis of actual usage. Administrative costs**
16 **incurred in the operation of the fund may be paid from the fund and the amount of such**
17 **costs shall be added to the cost of the goods, services and personal services as charged to**
18 **the state agencies.**

19 **(f) The department shall adopt rules necessary to implement the provisions of this sub-**
20 **section, including but not limited to rules establishing:**

21 **(A) A reporting system for personal service contracts, including architectural, engineer-**
22 **ing and land surveying services contracts and related services contracts, that includes the**
23 **following:**

24 **(i) A state agency shall submit to the department personal services contract information**
25 **as directed by the department. A state agency shall file with the department a copy of each**
26 **personal services contract entered into by the state agency, including appropriate documen-**
27 **tation as required by the department. Whenever a state agency pays more in a calendar year**
28 **under a personal services contract for services historically performed by state employees**
29 **than the agency would have paid to the agency's employees performing the same work, the**
30 **agency shall so report to the department and include in the report a statement of justifica-**
31 **tion for the greater costs.**

32 **(ii) The department shall keep the copy of the contract and the department's documen-**
33 **tation on file for three years, after which the department may destroy the file. The depart-**
34 **ment shall maintain a system for filing copies of personal services contracts and**
35 **documentation submitted to the department under this paragraph. The department shall**
36 **submit a biennial report to the Legislative Assembly concerning the use of personal services**
37 **contracts by state agencies. The report must specify the name of each state agency, the**
38 **amount paid under each personal services contract entered into by the agency, the name of**
39 **the contractor, the duration of the contract and the contract's basic purpose. The report**
40 **must also include the total dollar figure of all personal services contracts for each year of**
41 **the preceding biennium.**

42 **(B) Procedures for the evaluation and award of personal services contracts when the**
43 **department authorizes a state agency to contract directly for personal services, including**
44 **architectural, engineering and land surveying services and related services, in accordance**
45 **with section 50 of this 2003 Act or sections 89 to 96 of this 2003 Act.**

1 (3) The department shall notify all state agencies of the requirements of this section.

2 **SECTION 19. Recycled product purchasing information.** The Oregon Department of Ad-
3 ministrative Services shall include recycled product purchasing information within publica-
4 tions and training programs provided to local governments requesting state government
5 purchasing assistance.

6 **SECTION 20. Procurement of goods containing recycled polyethylene material.** (1) The
7 Oregon Department of Administrative Services shall provide guidelines to state agencies and
8 contractors on the availability of necessary goods that contain recycled PETE, as well as
9 other recycled plastic resin supplies and materials.

10 (2) The department shall identify suppliers able to provide necessary goods containing
11 recycled PETE, as well as other recycled plastic resin supplies and materials.

12 **SECTION 21. State procurement of paper.** No less than 35 percent of state agency pro-
13 curements of paper products may be from recycled paper products.

14
15 **INTERGOVERNMENTAL RELATIONS**

16 (Generally)

17
18 **SECTION 22. Purchases through federal programs.** Notwithstanding any other provision
19 of the Public Contracting Code, a procurement may be made without competitive sealed
20 bidding, competitive sealed proposals or other competition required under sections 50 to 57
21 of this 2003 Act provided that:

22 (1) The procurement is made in accordance with rules adopted by the contracting agency
23 for procurements under this section; and

24 (2) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002
25 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon De-
26 partment of Administrative Services or a local contract review board, similar to 10 U.S.C.
27 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting
28 transfers of property to contracting agencies.

29 **SECTION 23. Local contracting agency arrangements for use or disposition of personal**
30 **property authorized.** (1) Notwithstanding the competitive procurement requirements of
31 sections 47 to 87 and 88 to 180 of this 2003 Act, a local contracting agency may sell, transfer
32 or dispose of personal property in accordance with rules adopted under section 11 of this 2003
33 Act.

34 (2) Notwithstanding the competitive procurement requirements of sections 47 to 87 and
35 88 to 180 of this 2003 Act, a local contracting agency may negotiate with one or more private
36 or public entities to establish contracts, agreements and other cooperative arrangements for
37 the use, operation, maintenance or ultimate lawful disposition of personal property owned
38 by or under the control of the local contracting agency, including property acquired under
39 section 38 of this 2003 Act. Before approving such a contract, agreement or arrangement, the
40 governing body of the local contracting agency must make a finding that the contract,
41 agreement or arrangement will promote the economic development of the local contracting
42 agency, of the geographical area in which the local contracting agency is situated or of other
43 public bodies that perform similar functions.

44 **SECTION 24. Transfers of fire protection equipment between fire departments.** (1) As
45 used in this section:

1 (a) "Fire protection equipment" has the meaning given that term in ORS 476.005.

2 (b) "Public contract" includes a sale at no cost.

3 (c) "Regularly organized fire department" has the meaning given that term in ORS
4 652.050.

5 (2) Notwithstanding any other provision of the Public Contracting Code, transfers of fire
6 protection equipment under public contracts between regularly organized fire departments
7 may be made without competitive sealed bidding, competitive sealed proposals or other
8 competition required in sections 50 to 57 of this 2003 Act, provided:

9 (a) The recipient regularly organized fire department makes a written request for the fire
10 protection equipment to the transferor regularly organized fire department;

11 (b) The fire protection equipment is surplus to or unusable by the transferor;

12 (c) The total fair market value of fire protection equipment received by the recipient does
13 not exceed \$50,000 per calendar year; and

14 (d) The transferor holds a public hearing, with hearing notice published in at least one
15 trade newspaper of general statewide circulation a minimum of 14 days before the hearing,
16 and finds that the public contract is in the public's interest.

17
18 (Cooperative Procurement)

19
20 SECTION 25. Definitions for sections 25 to 30 of this 2003 Act. (1) As used in sections 25
21 to 30 of this 2003 Act:

22 (a) "Administering contracting agency" means a contracting agency that solicits and es-
23 tablishes the original contract for procurement of goods, services or public improvements in
24 a cooperative procurement.

25 (b) "Cooperative procurement" means a procurement conducted by or on behalf of one
26 or more contracting agencies. "Cooperative procurement" includes but is not limited to
27 multiparty contracts and price agreements.

28 (c) "Cooperative procurement group" means a group of contracting agencies joined
29 through an intergovernmental agreement for the purposes of facilitating cooperative pro-
30 curements.

31 (d) "Interstate cooperative procurement" means a permissive cooperative procurement
32 in which the administering contracting agency is a governmental body, domestic or foreign,
33 that is authorized under the governmental body's laws, rules or regulations to enter into
34 public contracts and in which one or more of the participating agencies are located outside
35 this state.

36 (e) "Joint cooperative procurement" means a cooperative procurement in which the
37 participating contracting agencies or the cooperative procurement group and the agencies'
38 or group's contract requirements or estimated contract requirements for price agreements
39 are identified.

40 (f) "Original contract" means the initial contract or price agreement solicited and
41 awarded during a cooperative procurement by an administering contracting agency.

42 (g) "Permissive cooperative procurement" means a cooperative procurement in which the
43 purchasing contracting agencies are not identified.

44 (h) "Purchasing contracting agency" means a contracting agency that procures goods,
45 services or public improvements from a contractor based on the original contract established

1 by an administering contracting agency.

2 (2) As used in sections 27 (1)(a), 28 (1)(a) and 29 (1)(a) of this 2003 Act, an administering
3 contracting agency's solicitation and award process uses source selection methods "sub-
4 stantially equivalent" to those identified in section 51, 52 or 57 of this 2003 Act if the solic-
5 itation and award process:

6 (a) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest
7 and best bidder determination in the case of competitive bids, or on the basis of a determi-
8 nation of the proposer whose proposal is most advantageous based on evaluation factors set
9 forth in the request for proposals in the case of competitive proposals;

10 (b) Does not permit the application of any geographic preference that is more favorable
11 to bidders or proposers who reside in the jurisdiction or locality favored by the preference
12 than the preferences provided in section 16 (2) of this 2003 Act; and

13 (c) Uses reasonably clear and precise specifications that promote suitability for the pur-
14 poses intended and that reasonably encourage competition.

15 SECTION 26. Cooperative procurements authorized. A contracting agency may partic-
16 ipate in, sponsor, conduct or administer a cooperative procurement for the procurement of
17 any goods, services or public improvements.

18 SECTION 27. Joint cooperative procurements. (1) A joint cooperative procurement is
19 valid only if:

20 (a) The administering contracting agency's solicitation and award process for the original
21 contract is an open and impartial competitive process and uses source selection methods
22 substantially equivalent to those specified in section 51, 52 or 57 of this 2003 Act or uses a
23 competitive bidding process substantially equivalent to the competitive bidding process in
24 sections 88 to 180 of this 2003 Act;

25 (b) The administering contracting agency's solicitation and the original contract or price
26 agreement identifies the cooperative procurement group or each participating purchasing
27 contracting agency and specifies the estimated contract requirements; and

28 (c) No material change is made in the terms, conditions or prices of the contract between
29 the contractor and the purchasing contracting agency from the terms, conditions and prices
30 of the original contract between the contractor and the administering contracting agency.

31 (2) A joint cooperative procurement may not also be a permissive cooperative procure-
32 ment.

33 SECTION 28. Permissive cooperative procurements. (1) A contracting agency may es-
34 tablish a contract or price agreement through a permissive cooperative procurement only if:

35 (a) The administering contracting agency's solicitation and award process for the original
36 contract is an open and impartial competitive process and uses source selection methods
37 substantially equivalent to those specified in section 51 or 52 of this 2003 Act;

38 (b) The administering contracting agency's solicitation and the original contract allow
39 other contracting agencies to establish contracts or price agreements under the terms,
40 conditions and prices of the original contract;

41 (c) The contractor agrees to extend the terms, conditions and prices of the original
42 contract to the purchasing contracting agency; and

43 (d) No material change is made in the terms, conditions or prices of the contract or price
44 agreement between the contractor and the purchasing contracting agency from the terms,
45 conditions and prices of the original contract between the contractor and the administering

1 contracting agency.

2 (2)(a) A purchasing contracting agency shall provide public notice of intent to establish
3 a contract or price agreement through a permissive cooperative procurement if the esti-
4 mated amount of the procurement exceeds \$150,000.

5 (b) The notice of intent must include:

6 (A) A description of the procurement;

7 (B) An estimated amount of the procurement;

8 (C) The name of the administering contracting agency; and

9 (D) A time, place and date by which comments must be submitted to the purchasing
10 contracting agency regarding the intent to establish a contract or price agreement through
11 a permissive cooperative procurement.

12 (c) Public notice of the intent to establish a contract or price agreement through a per-
13 missive cooperative procurement must be given in the same manner as provided in section
14 51 (4)(b) and (c) of this 2003 Act.

15 (d) Unless otherwise specified in rules adopted under section 11 of this 2003 Act, the
16 purchasing contracting agency shall give public notice at least seven days before the deadline
17 for submission of comments regarding the intent to establish a contract or price agreement
18 through a permissive cooperative procurement.

19 (3) If a purchasing contracting agency is required to provide notice of intent to establish
20 a contract or price agreement through a permissive cooperative procurement under sub-
21 section (2) of this section:

22 (a) The purchasing contracting agency shall provide vendors who would otherwise be
23 prospective bidders or proposers on the contract or price agreement, if the procurement
24 were competitively procured under sections 47 to 87 of this 2003 Act, an opportunity to
25 comment on the intent to establish a contract or price agreement through a permissive co-
26 operative procurement.

27 (b) Vendors must submit comments within seven days after the notice of intent is pub-
28 lished.

29 (c) And if the purchasing contracting agency receives comments on the intent to estab-
30 lish a contract or price agreement through a permissive cooperative procurement, before the
31 purchasing contracting agency may establish a contract or price agreement through the
32 permissive cooperative procurement, the purchasing contracting agency shall make a written
33 determination that establishing a contract or price agreement through a permissive cooper-
34 ative procurement is in the best interest of the purchasing contracting agency. The pur-
35 chasing contracting agency shall provide a copy of the written determination to any vendor
36 that submitted comments.

37 **SECTION 29. Interstate cooperative procurements.** (1) A contracting agency may estab-
38 lish a contract or price agreement through an interstate cooperative procurement only if:

39 (a) The administering contracting agency's solicitation and award process for the original
40 contract is an open and impartial competitive process and uses source selection methods
41 substantially equivalent to those specified in section 51 or 52 of this 2003 Act;

42 (b) The administering contracting agency's solicitation and the original contract allows
43 other governmental bodies to establish contracts or price agreements under the terms,
44 conditions and prices of the original contract; and

45 (c) The administering contracting agency permits the contractor to extend the use of the

1 terms, conditions and prices of the original contract to the purchasing contracting agency.

2 (2) In addition to the requirements in subsection (1) of this section:

3 (a) The purchasing contracting agency, or the cooperative procurement group of which
4 the purchasing contracting agency is a member, must be listed in the solicitation of the ad-
5 ministering contracting agency as a party that may establish contracts or price agreements
6 under the terms, conditions and prices of the original contract, and the solicitation must be
7 advertised in Oregon; or

8 (b)(A) The purchasing contracting agency, or the cooperative procurement group of
9 which the purchasing contracting agency is a member, shall advertise a notice of intent to
10 establish a contract or price agreement through an interstate cooperative procurement.

11 (B) The notice of intent must include:

12 (i) A description of the procurement;

13 (ii) An estimated amount of the procurement;

14 (iii) The name of the administering contracting agency; and

15 (iv) A time, place and date by which comments must be submitted to the purchasing
16 contracting agency regarding the intent to establish a contract or price agreement through
17 an interstate cooperative procurement.

18 (C) Public notice of the intent to establish a contract or price agreement through an
19 interstate cooperative procurement must be given in the same manner as provided in section
20 51 (4)(b) and (c) of this 2003 Act.

21 (D) Unless otherwise specified in rules adopted under section 11 of this 2003 Act, the
22 purchasing contracting agency shall give public notice at least seven days before the deadline
23 for submission of comments regarding the intent to establish a contract or price agreement
24 through an interstate cooperative procurement.

25 (3) If a purchasing contracting agency is required to provide notice of intent to establish
26 a contract or price agreement through an interstate cooperative procurement under sub-
27 section (2) of this section:

28 (a) The purchasing contracting agency shall provide vendors who would otherwise be
29 prospective bidders or proposers on the contract or price agreement, if the procurement
30 were competitively procured under sections 47 to 87 of this 2003 Act, an opportunity to
31 comment on the intent to establish a contract or price agreement through an interstate
32 cooperative procurement.

33 (b) Vendors must submit comments within seven days after the notice of intent is pub-
34 lished.

35 (c) And if the purchasing contracting agency receives comments on the intent to estab-
36 lish a contract or price agreement through an interstate cooperative procurement, before
37 the purchasing contracting agency may establish a contract or price agreement through the
38 interstate cooperative procurement, the purchasing contracting agency shall make a written
39 determination that establishing a contract or price agreement through an interstate coop-
40 erative procurement is in the best interest of the purchasing contracting agency. The pur-
41 chasing contracting agency shall provide a copy of the written determination to any vendor
42 that submitted comments.

43 (4) For purposes of this section, an administering contracting agency may be any gov-
44 ernmental body, domestic or foreign, authorized under its laws, rules or regulations to enter
45 into contracts for the procurement of goods and services for use by a governmental body.

SECTION 30. Protests and disputes. (1) A protest regarding the procurement process, the contents of solicitation documents or the award or proposed award of an original contract may be directed only to the administering contracting agency. The protest must be in accordance with the provisions of sections 83 to 87 of this 2003 Act.

(2) A protest regarding the use of a cooperative procurement by a purchasing contracting agency after the execution of an original contract may be directed only to the purchasing contracting agency. The protest must be in accordance with the provisions of sections 83 to 87 of this 2003 Act and is limited in scope to the purchasing contracting agency's authority to enter into a cooperative procurement contract.

(3) The decision of a local contracting agency to use a cooperative procurement is reviewable in the circuit court of the county where the principal offices of the local contracting agency are located. The decision of a state contracting agency to use a cooperative procurement shall be reviewable by the Circuit Court for Marion County or the circuit court of the county where the principal offices of the state contracting agency are located.

(4) Disputes regarding contract performance between a purchasing contracting agency and a contractor may be resolved solely by the purchasing contracting agency and the contractor.

NOTE: Sections 31 through 35 were deleted by amendment. Subsequent sections were not re-numbered.

STATE SURPLUS PROPERTY

SECTION 36. Definitions for sections 36 to 44 of this 2003 Act. As used in sections 36 to 44 of this 2003 Act, unless the context requires otherwise:

(1) "Donee" means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire surplus property in accordance with rules adopted by the Oregon Department of Administrative Services. Entities eligible to acquire federal donation property may also acquire surplus property other than federal donation property.

(2) "Not-for-profit organization" means a nonprofit corporation as defined in ORS 307.130.

(3) "Property" means personal property.

(4) "State agency" means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(5) "Surplus property" means property received by the Oregon Department of Administrative Services or a state agency as surplus from federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities.

SECTION 37. Inspection, appraisal and inventory of state property; reports by state agencies. The Oregon Department of Administrative Services may:

(1) Provide for the periodic inspection and appraisal of state property;

(2) Provide for the maintenance of current and perpetual inventories of state property;
and

(3) Require any state agency to make reports of the property in the agency's custody at

1 such intervals and in such form as the department deems necessary.

2 **SECTION 38. Powers and duties of department; acquisitions by qualified donees.** (1) Sub-
3 ject to the power of the Governor to terminate the functions listed in this section, the
4 Oregon Department of Administrative Services may:

5 (a) Accept surplus property;

6 (b) Distribute surplus property to donees;

7 (c) Provide suitable facilities for the storage and distribution of surplus property;

8 (d) Enter into reciprocal agreements and contracts with federal government units, state
9 agencies, local governments, special government bodies, not-for-profit organizations, other
10 states and private entities, with respect to the utilization and exchange of property, facilities,
11 personnel and services, for the administration of the provisions of this section in accordance
12 with federal and state laws governing the acquisition, distribution, utilization, disposal or
13 sale of surplus property;

14 (e) Expend funds in connection with the provisions of this section;

15 (f) Adopt rules for the acquisition, distribution, utilization, disposal or sale of surplus
16 property in accordance with federal and state laws;

17 (g) Set charges, subject to federal and state laws, necessary to recover all direct and in-
18 direct costs associated with acquiring, purchasing, shipping, handling, warehousing, storing
19 and distributing surplus property;

20 (h) Cooperate with donees in locating, obtaining or warehousing surplus property; and

21 (i) Obtain surplus property on behalf of donees.

22 (2) The department shall deposit all fees or charges collected or received under this sec-
23 tion in the Oregon Department of Administrative Services Operating Fund.

24 (3) The governing board or the executive head of a donee may, by order or resolution,
25 confer upon any officer or employee thereof authority to secure the acquisition of surplus
26 property through the department in accordance with federal and state laws governing the
27 acquisition, distribution, utilization, disposal or sale of surplus property.

28 **SECTION 39. Use of Oregon Department of Administrative Services Operating Fund; cash**
29 **dividends.** (1) In addition to the other purposes for which the Oregon Department of Ad-
30 ministrative Services Operating Fund established under ORS 283.076 may be used, the fund
31 hereby is appropriated continuously for and may be used for the purposes of this section and
32 section 38 of this 2003 Act. All claims approved by the Oregon Department of Administrative
33 Services for the purposes of this section and section 38 of this 2003 Act shall be paid as
34 provided in ORS 293.295 to 293.462. The department shall draw warrants on the State Treas-
35 urer for the payment thereof payable out of the fund. All moneys received under section 38
36 of this 2003 Act shall be paid by the department to the State Treasurer for credit to the fund.

37 (2) The Director of the Oregon Department of Administrative Services may distribute in
38 the form of cash dividends accumulated surpluses in the fund that arise because the charges
39 collected from donees are in excess of the amount necessary to keep the activities under this
40 section and section 38 of this 2003 Act on a self-sustaining basis. The director shall pay the
41 cash dividends to the donees referred to in section 38 (1) of this 2003 Act. Any dividend paid
42 under this subsection shall be based on the ratio of the charges collected from each donee
43 during the preceding fiscal year to the total charges collected from all donees for the fiscal
44 year immediately preceding the fiscal year in which the dividend is authorized to be paid.

45 (3) Upon termination by the Governor of the functions of the department under section

1 38 of this 2003 Act, any balance remaining in the fund that is attributable to the activities
2 under this section and section 38 of this 2003 Act shall be refunded pro rata to the donees
3 referred to in section 38 (1) of this 2003 Act upon the basis of the total charges collected from
4 each donee during the preceding fiscal year, unless the director determines that the cost of
5 making the refund is excessive, in which case the unrefunded moneys shall be paid to the
6 Treasurer of the United States.

7 **SECTION 40. Contracts with federal government for accepting gifts and acquiring surplus**
8 **property; bids not required.** The Oregon Department of Administrative Services may enter
9 into contracts with any federal government unit for the purpose of accepting gifts and for
10 the acquisition of surplus property upon such terms and conditions as may be agreed upon,
11 without regard to the provisions of law requiring the posting of notices or public advertising
12 for bids or the soliciting or receiving of competitive bids.

13 **SECTION 41. Leasing of state property.** The Oregon Department of Administrative Ser-
14 vices may lease any state property not needed for public use, provided the law does not
15 prohibit the leasing and the authority to lease is not vested in any other state agency.

16 **SECTION 42. Disposal of surplus property; costs of disposal.** (1)(a) Without requiring
17 competitive bidding:

18 (A) The Oregon Department of Administrative Services may sell or transfer surplus
19 property to or transfer surplus property between donees. Donees may be given preference
20 to acquire surplus property. Property acquired shall be used for public purpose or benefit and
21 not for resale to a private purchaser.

22 (B) The department, or a public or private person or entity designated by the department,
23 may transfer computers and related hardware that are surplus, obsolete or unused to a
24 common or union high school district or education service district. The department, or its
25 designee, may not charge the school district a fee for the transfer.

26 (C) The department, or a public or private person or entity designated by the department,
27 may recycle or otherwise dispose of property when the department determines the value and
28 condition of the property does not warrant the cost of a sale.

29 (b) Authorized transfers under this subsection include those made with or without con-
30 sideration.

31 (2) In accordance with section 51 or 52 of this 2003 Act, the department may sell surplus
32 property.

33 (3) All proceeds derived from the disposal of property under this section, except proceeds
34 that may not under federal laws or regulations be deposited in the manner provided by this
35 section, shall be deposited in the State Treasury to the credit of the Oregon Department of
36 Administrative Services Operating Fund.

37 (4) In addition to the other purposes for which the fund may be used, the fund is appro-
38 priated continuously for and may be used for paying the administrative costs incurred in the
39 transfer or disposal of property under subsections (1) and (2) of this section, and for paying
40 the amount due to the state agency whose property has been sold. The total amount payable
41 to the agency whose property has been sold shall be the amount derived from the disposal
42 of the property less the amount of the administrative costs incurred in disposing of the
43 property. Such total amount may be deposited in the State Treasury to the credit of the
44 miscellaneous receipts account established under section 44 of this 2003 Act for the agency
45 whose property has been sold.

1 (5) The cost of services for disposal of property under this section that is not recoverable
2 from the proceeds of a sale of the property shall be charged to the state agency served and
3 paid to the department in the same manner as other claims against the agency are paid.

4 **SECTION 43. Disposition of moneys received as payment for repair or replacement of**
5 **damaged, destroyed, lost or stolen property.** All moneys received from insurers and other
6 sources as payment for the cost and expense of repair and replacement of property of state
7 agencies that has been damaged, destroyed, lost or stolen, except the particular moneys as
8 may not under federal law or regulations be deposited in the manner provided by this section,
9 may be deposited in the State Treasury to the credit of the miscellaneous receipts account
10 established under section 44 of this 2003 Act for the state agency whose property has been
11 damaged, destroyed, lost or stolen.

12 **SECTION 44. Miscellaneous receipts accounts.** (1) The State Treasurer may establish a
13 miscellaneous receipts account for any state agency and shall credit to the account any
14 amounts paid into the State Treasury under ORS 190.240 (1) or 283.110 or section 42 or 43 of
15 this 2003 Act for the state agency for which the account was established. The moneys cred-
16 ited to the miscellaneous receipts account of a state agency established under this section
17 are appropriated continuously for the payment of the expenses of the state agency, subject
18 to the allotment system provided by ORS 291.234 to 291.260.

19 (2) Laws enacted by the Legislative Assembly limiting expenditures do not limit expen-
20 ditures from miscellaneous receipts accounts established under this section except when the
21 law limiting expenditures of a state agency specifically establishes a limit for expenditures
22 from the miscellaneous receipts account of the agency.

23 **NOTE:** Section 45 was deleted by amendment. Subsequent sections were not renumbered.

24
25 **PENALTIES**

26
27 **SECTION 46. Penalties.** The provisions of ORS 291.990 apply to sections 17, 18 to 21, 37,
28 40, 41, 42, 49, 78, 79, 80 and 81 of this 2003 Act. Any violation of section 17, 18 to 21, 37, 40,
29 41, 42, 49, 78, 79, 80 or 81 of this 2003 Act shall, upon conviction, be punished as prescribed
30 in ORS 291.990.

31
32 **PART 2: PUBLIC PROCUREMENTS**
33 **(ORS Chapter 279B)**

34
35 **GENERAL PROVISIONS**

36
37 **SECTION 47. Definitions for sections 47 to 87 of this 2003 Act.** (1) As used in sections 47
38 to 87 of this 2003 Act, unless the context or a specifically applicable definition requires oth-
39 erwise:

40 (a) "Established catalog price" means the price included in a catalog, price list, schedule
41 or other form that:

42 (A) Is regularly maintained by a manufacturer or contractor;

43 (B) Is either published or otherwise available for inspection by customers; and

44 (C) States prices at which sales are currently or were last made to a significant number
45 of any category of buyers or to buyers constituting the general market, including public

1 bodies, for the goods or services involved.

2 (b) "Goods and services" or "goods or services" means supplies, equipment, materials and
3 services other than personal services designated under section 8 of this 2003 Act and any
4 personal property, including any tangible, intangible and intellectual property and rights and
5 licenses in relation thereto, that a contracting agency is authorized by law to procure.
6 "Goods and services" or "goods or services" includes combinations of any of the items iden-
7 tified in this paragraph.

8 (c) "Invitation to bid" means all documents, whether attached or incorporated by refer-
9 ence, used for soliciting bids.

10 (d) "Procurement description" means the words used in a solicitation to describe the
11 goods or services to be procured. "Procurement description" includes specifications attached
12 to or made a part of the solicitation.

13 (e) "Request for proposals" means all documents, whether attached or incorporated by
14 reference, used for soliciting proposals.

15 (f) "Responsible bidder" or "responsible proposer" means a person who meets the stan-
16 dards of responsibility described in section 59 of this 2003 Act.

17 (g) "Responsive bid" or "responsive proposal" means a bid or proposal that substantially
18 complies with the invitation to bid or request for proposals and all prescribed procurement
19 procedures and requirements.

20 (2) Section 2 (1) of this 2003 Act contains general definitions applicable throughout
21 sections 47 to 87 of this 2003 Act.

22 SECTION 48. Policy. In addition to the policy stated in section 3 of this 2003 Act, it is the
23 policy of the State of Oregon that public contracting activities should:

24 (1) Provide effective outcomes that represent optimal value to the contracting agency
25 and, to the greatest extent feasible, be consistent with market practices;

26 (2) Seek consistency in procurement practices between contracting agencies covered un-
27 der the Public Contracting Code while preserving each contracting agency's ability to adopt
28 rules to maximize the contracting agency's effectiveness; and

29 (3) Apply innovative practices while maintaining quality and integrity.

30 SECTION 48a. Applicability. As provided in section 4 of this 2003 Act, public contracting
31 under sections 47 to 87 of this 2003 Act is subject to sections 1 to 46 of this 2003 Act, but not
32 sections 88 to 180 of this 2003 Act.

33 SECTION 48b. Maximum hours of labor on public contracts; exceptions; liability to
34 workers; rules. (1) A contractor on a public contract, other than a contract for services at
35 a county fair or for other events authorized by a county fair board, shall pay employees for
36 overtime work performed under the public contract in accordance with ORS 653.010 to
37 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

38 (2) A contractor on a contract for services at a county fair or for other events authorized
39 by a county fair board shall pay persons employed under the contract at least time and a
40 half for work in excess of 10 hours in any one day or 40 hours in any one week.

41 (3) Any contractor or subcontractor or contractor's or subcontractor's surety who vio-
42 lates subsection (1) or (2) of this section is liable to the affected employees in the amount
43 of their unpaid overtime wages and in an additional amount equal to the unpaid overtime
44 wages as liquidated damages. If the violation resulted from willful falsification of payroll re-
45 cords, the contractor or subcontractor or contractor's or subcontractor's surety is liable to

1 the affected employees in the amount of their unpaid overtime wages and in an additional
2 amount equal to twice the unpaid overtime wages as liquidated damages.

3 (4) An action to enforce liability to employees under subsection (3) of this section may
4 be brought as an action on the contractor's payment bond as provided for in section 156 of
5 this 2003 Act.

6 (5) This section does not apply to:

7 (a) Financial institutions as defined in ORS 706.008.

8 (b) Labor performed in the prevention or suppression of fire under contracts and agree-
9 ments made pursuant to the authority of the State Forester or the State Board of Forestry
10 under ORS 477.406.

11 (6) In accordance with any applicable provision of ORS 183.310 to 183.550, the Commis-
12 sioner of the Bureau of Labor and Industries may adopt rules to carry out the provisions
13 of this section.

14 SECTION 49. Procurement of recyclable and reusable goods. All contracting agencies
15 shall establish procurement practices that ensure, to the maximum extent economically
16 feasible, the procurement of goods that may be recycled or reused when discarded.

17
18 **SOURCE SELECTION**
19 **(Methods of Source Selection)**
20

21 SECTION 50. Methods of source selection. (1) Except as provided in subsection (2) of this
22 section, a contracting agency shall award a public contract by competitive sealed bidding
23 under section 51 of this 2003 Act or competitive sealed proposals under section 52 of this 2003
24 Act.

25 (2) The requirements of subsection (1) of this section do not apply to public contracts
26 established as provided in section 53, 54, 55, 56 or 57 of this 2003 Act.

27 (3) Notwithstanding the applicability of section 53, 54, 55, 56 or 57 of this 2003 Act to a
28 public contract, a contracting agency nevertheless may award the public contract under
29 subsection (1) of this section.

30 (4) Notwithstanding that the term "goods and services" as defined in section 47 of this
31 2003 Act does not include personal services:

32 (a) A local contracting agency may elect, by rule, charter, ordinance or other appropriate
33 legislative action, to award contracts for personal services, as designated under section 8 of
34 this 2003 Act, under the procedures of sections 50 to 57 of this 2003 Act.

35 (b) State contracting agencies shall solicit contracts for personal services in accordance
36 with sections 50 to 57 of this 2003 Act.

37 SECTION 51. Competitive sealed bidding. (1) A contracting agency may award a public
38 contract, or may award multiple public contracts when specified in the invitation to bid, by
39 competitive sealed bidding.

40 (2) The contracting agency shall issue an invitation to bid, which must include:

41 (a) A time and date by which the bids must be received and a place at which the bids
42 must be submitted, and may, in the sole discretion of the contracting agency, direct or per-
43 mit the submission and receipt of bids by electronic means;

44 (b) The name and title of the person designated for the receipt of bids and the person
45 designated by the contracting agency as the contact person for the procurement, if different;

1 (c) A procurement description;

2 (d) A time, date and place that prequalification applications, if any, must be filed and the
3 classes of work, if any, for which bidders must be prequalified in accordance with section 61
4 of this 2003 Act;

5 (e) A statement that the contracting agency may cancel the procurement or reject any
6 or all bids in accordance with section 58 of this 2003 Act;

7 (f) A statement that "Contractors shall use recyclable products to the maximum extent
8 economically feasible in the performance of the contract work set forth in this document."
9 if the invitation to bid is issued by a state contracting agency;

10 (g) A statement that requires the contractor or subcontractor to possess an asbestos
11 abatement license, if required under ORS 468A.710; and

12 (h) All contractual terms and conditions applicable to the procurement.

13 (3)(a) The contracting agency may require bid security if the contracting agency deter-
14 mines that bid security is reasonably necessary or prudent to protect the interests of the
15 contracting agency.

16 (b) The contracting agency shall return the bid security to all bidders upon the execution
17 of the contract.

18 (c) The contracting agency shall retain the bid security if a bidder who is awarded a
19 contract fails to promptly and properly execute the contract. For purposes of this paragraph,
20 prompt and proper execution of the contract includes all action by a bidder that is necessary
21 to the formation of a contract in accordance with the invitation to bid, including the posting
22 of performance security and the submission of proof of insurance when required by the in-
23 vitation to bid.

24 (4)(a) The contracting agency shall give public notice of an invitation to bid issued under
25 this section. Public notice is intended to foster competition among prospective bidders. The
26 contracting agency shall make invitations to bid available to prospective bidders.

27 (b) A public notice must be published at least once in at least one newspaper of general
28 circulation in the area where the contract is to be performed and in as many additional is-
29 sues and publications as the contracting agency may determine.

30 (c) The Director of the Oregon Department of Administrative Services or a local contract
31 review board may, by rule or order, authorize public notice of bids or proposals to be pub-
32 lished electronically instead of in a newspaper of general circulation if the director or board
33 determines that electronically providing public notice of bids or proposals is likely to be
34 cost-effective.

35 (d) In addition to the modes of publication authorized by paragraphs (b) and (c) of this
36 subsection, the contracting agency may use any other medium reasonably calculated to
37 reach prospective bidders or proposers.

38 (e) Rules adopted under section 10 of this 2003 Act must prescribe the requirements for
39 providing public notice of solicitations.

40 (f) Unless otherwise specified in rules adopted under section 10 of this 2003 Act, the
41 contracting agency shall give public notice at least seven days before the solicitation closing
42 date.

43 (5)(a) The contracting agency shall open bids publicly at the time, date and place desig-
44 nated in the invitation to bid. When authorized by, and in accordance with, rules adopted
45 under section 10 of this 2003 Act, bids may be submitted, received and opened through elec-

1 **tronic means.**

2 **(b) The amount of a bid, the name of the bidder and other relevant information as may**
3 **be specified by rule adopted under section 10 of this 2003 Act shall be recorded by the con-**
4 **tracting agency. The record shall be open to public inspection.**

5 **(c) Notwithstanding any requirement to make bids open to public inspection after the**
6 **contracting agency's issuance of notice of intent to award a contract, a contracting agency**
7 **may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and in-**
8 **formation submitted to a public body in confidence, as described in ORS 192.502, that are**
9 **contained in a bid.**

10 **(6)(a) The contracting agency shall evaluate all bids that are received before the time and**
11 **date indicated for bid opening in the invitation to bid. The contracting agency shall evaluate**
12 **the bids based on the requirements set forth in the invitation to bid. The requirements may**
13 **include, in addition to the information described in subsection (2) of this section, criteria to**
14 **determine minimum acceptability, such as inspection, testing, quality and suitability for in-**
15 **tended use or purpose. Criteria that will affect the bid price and will be considered in evalu-**
16 **ation for award including, but not limited to, discounts, transportation costs and total costs**
17 **of ownership or operation of a product over its life shall be objectively measurable. The in-**
18 **invitation to bid shall set forth the evaluation criteria to be used. No criteria may be used in**
19 **a bid evaluation that are not set forth in the invitation to bid or in a qualified products list**
20 **maintained under section 60 of this 2003 Act. The contracting agency may not consider for**
21 **award bids received after the time and date indicated for bid opening in the invitation to bid.**
22 **The contracting agency may retain bids or copies of bids received after the bid time and date**
23 **indicated in the invitation to bid.**

24 **(b) The contracting agency shall, for the purpose of evaluating bids, apply any applicable**
25 **preference described in ORS 282.210 or section 16 or 17 of this 2003 Act.**

26 **(7) Rules adopted under section 10 of this 2003 Act shall provide for and regulate the**
27 **correction and withdrawal of bids before and after bid opening and the cancellation of awards**
28 **or contracts based on bid mistakes. After bid opening, changes in bids prejudicial to the in-**
29 **terests of the public or fair competition are not permitted. All decisions to permit the cor-**
30 **rection or withdrawal of bids, or to cancel an award or a contract based on bid mistakes,**
31 **shall be supported by a written determination by the contracting agency that states the**
32 **reasons for the action taken.**

33 **(8) The cancellation of invitations to bid and the rejection of bids must be in accordance**
34 **with section 58 of this 2003 Act.**

35 **(9) The contracting agency shall, in accordance with section 64 of this 2003 Act, issue to**
36 **each bidder or shall post, electronically or otherwise, a notice of intent to award.**

37 **(10) If a contract is awarded, the contracting agency shall award the contract:**

38 **(a) To the lowest responsible bidder whose bid substantially complies with the require-**
39 **ments and criteria set forth in the invitation to bid and with all prescribed public procure-**
40 **ment procedures and requirements; or**

41 **(b) When the invitation to bid specifies or authorizes the award of multiple contracts, to**
42 **the responsible bidders:**

43 **(A) Whose bids substantially comply with the requirements and criteria set forth in the**
44 **invitation to bid and with all prescribed public procurement procedures and requirements;**
45 **and**

1 (B) Who qualify for the award of a public contract under the terms of the invitation to
2 bid.

3 (11) The successful bidder shall promptly execute a contract. The successful bidder's
4 duty to promptly execute a contract includes the duty to take all action that is necessary
5 to the formation of a contract in accordance with the invitation to bid, including the posting
6 of performance security and the submission of proof of insurance when required by the in-
7 vitation to bid.

8 (12) When the contracting agency considers it impractical to initially prepare a procure-
9 ment description to support an award based on price, the contracting agency may issue a
10 multistep invitation to bid requesting the submission of unpriced submittals, and then later
11 issue an invitation to bid limited to the bidders whom the contracting agency officer has
12 determined to be eligible to submit a priced bid under the criteria set forth in the initial
13 solicitation of unpriced submittals.

14 (13) The contracting agency may issue a request for information, a request for interest
15 or other preliminary documents to obtain information useful in the preparation of an invi-
16 tation to bid.

17 SECTION 52. Competitive sealed proposals. (1) A contracting agency may award a public
18 contract, or may award multiple public contracts when specified in the request for proposals,
19 by competitive sealed proposals.

20 (2) The contracting agency shall issue a request for proposals, which must include:

21 (a) A time and date by which the proposals must be received, and a place at which the
22 proposals must be submitted, and may, in the sole discretion of the contracting agency, di-
23 rect or permit the submission and receipt of proposals by electronic means;

24 (b) The name and title of the person designated for receipt of proposals and the person
25 designated by the contracting agency as the contact person for the procurement, if different;

26 (c) A procurement description;

27 (d) A time, date and place that prequalification applications, if any, must be filed and the
28 classes of work, if any, for which proposers must be prequalified in accordance with section
29 61 of this 2003 Act;

30 (e) A statement that the contracting agency may cancel the procurement or reject any
31 or all proposals in accordance with section 58 of this 2003 Act;

32 (f) A statement that "Contractors shall use recyclable products to the maximum extent
33 economically feasible in the performance of the contract work set forth in this document."
34 if the request for proposals is issued by a state contracting agency;

35 (g) A statement that requires the contractor or subcontractor to possess an asbestos
36 abatement license, if required under ORS 468A.710;

37 (h) All contractual terms and conditions applicable to the procurement. The request for
38 proposals also may:

39 (A) Identify those contractual terms or conditions the contracting agency reserves, in
40 the request for proposals, for negotiation with proposers;

41 (B) Request that proposers propose contractual terms and conditions that relate to sub-
42 ject matter reasonably identified in the request for proposals;

43 (C) Contain or incorporate the form and content of the contract that the contracting
44 agency will accept, or suggested contract terms and conditions that nevertheless may be the
45 subject of negotiations with proposers; and

1 **(D) Announce the method of contractor selection that may include, but is not limited to,**
2 **negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered**
3 **competition designed to identify a class of proposers that fall within a competitive range or**
4 **to otherwise eliminate from consideration a class of lower ranked proposers, or any combi-**
5 **nation of methods, as authorized or prescribed by rules adopted under section 10 of this 2003**
6 **Act; and**

7 **(i) All evaluation factors that will be considered by the contracting agency when evalu-**
8 **ating the proposals, including the relative importance of price and any other evaluation fac-**
9 **tors.**

10 **(3)(a) The contracting agency may require proposal security, which shall serve the same**
11 **function with respect to requests for proposals as bid security serves with respect to invi-**
12 **tations to bid under section 51 of this 2003 Act, if the contracting agency determines that**
13 **proposal security is reasonably necessary or prudent to protect the interests of the con-**
14 **tracting agency.**

15 **(b) The contracting agency shall return the proposal security to all proposers upon the**
16 **execution of the contract.**

17 **(c) The contracting agency shall retain the proposal security if a proposer who is awarded**
18 **a contract fails to promptly and properly execute the contract. For purposes of this para-**
19 **graph, prompt and proper execution of the contract includes all action by a proposer that is**
20 **necessary to the formation of a contract in accordance with the request for proposals, in-**
21 **cluding the posting of performance security and the submission of proof of insurance when**
22 **required by the request for proposals. If contract negotiations or competitive negotiations**
23 **are conducted, the failure, prior to award, of a contracting agency and a proposer to reach**
24 **agreement does not constitute grounds for the retention of proposal security.**

25 **(4) Public notice of the request for proposals shall be given in the same manner as pro-**
26 **vided for public notice of invitations to bid in section 51 (4) of this 2003 Act.**

27 **(5)(a) Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to**
28 **avoid disclosure of contents to competing proposers during, when applicable, the process of**
29 **negotiation. For each request for proposals, the contracting agency shall prepare a list of**
30 **proposals. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for**
31 **public inspection until after the notice of intent to award a contract is issued. The fact that**
32 **proposals are opened at a meeting, as defined in ORS 192.610, does not make their contents**
33 **subject to disclosure, regardless of whether the public body opening the proposals fails to**
34 **give notice of or provide for an executive session for the purpose of opening proposals.**

35 **(b) The information recorded in the list of proposals under paragraph (a) of this sub-**
36 **section must be open to public inspection as soon as practical after the opening of proposals,**
37 **but before the notice of intent to award a contract is issued under section 64 of this 2003**
38 **Act. Notwithstanding any requirement to make proposals open to public inspection after the**
39 **contracting agency's issuance of notice of intent to award a contract, a contracting agency**
40 **may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and in-**
41 **formation submitted to a public body in confidence, as described in ORS 192.502, that are**
42 **contained in a proposal.**

43 **(c) If a request for proposals is canceled under section 58 of this 2003 Act after proposals**
44 **are received, the contracting agency may return a proposal to the proposer that made the**
45 **proposal. The contracting agency shall keep a list of returned proposals in the file for the**

1 solicitation.

2 (6)(a) As provided in the request for proposals, the contracting agency may conduct dis-
3 cussions with proposers who submit proposals the contracting agency has determined to be
4 closely competitive or to have a reasonable chance of being selected for award. The dis-
5 cussions may be conducted for the purpose of clarification to ensure full understanding of,
6 and responsiveness to, the solicitation requirements. The contracting agency shall accord
7 proposers fair and equal treatment with respect to any opportunity for discussion and re-
8 vision of proposals. Revisions of proposals may be permitted after the submission of pro-
9 posals and before award for the purpose of obtaining best and final offers. In conducting
10 discussions, the contracting agency may not disclose information derived from proposals
11 submitted by competing proposers.

12 (b) Notwithstanding paragraph (a) of this subsection, when provided for in the request
13 for proposals, the contracting agency may employ methods of contractor selection that in-
14 clude, but are not limited to, award based solely on the ranking of proposals, negotiation with
15 the highest ranked proposer, competitive negotiations, multiple-tiered competition designed
16 to identify a class of proposers that fall within a competitive range or to otherwise eliminate
17 from consideration a class of lower ranked proposers, or any combination of methods, as
18 authorized or prescribed by rules adopted under section 10 of this 2003 Act. When applicable,
19 in any instance in which the contracting agency determines that impasse has been reached
20 in negotiations with a highest ranked proposer, the contracting agency may terminate ne-
21 gotiations with that proposer and commence negotiations with the next highest ranked
22 proposer.

23 (7) The cancellation of requests for proposals and the rejection of proposals must be in
24 accordance with section 58 of this 2003 Act.

25 (8) The contracting agency shall, in accordance with section 64 of this 2003 Act, issue to
26 each proposer or post, electronically or otherwise, a notice of intent to award.

27 (9) If a contract is awarded, the contracting agency shall award the contract to the re-
28 sponsible proposer whose proposal the contracting agency determines in writing to be the
29 most advantageous to the contracting agency based on the evaluation factors set forth in the
30 request for proposals, any applicable preferences described in sections 16 and 17 of this 2003
31 Act and, when applicable, the outcome of any negotiations authorized by the request for
32 proposals. Other factors may not be used in the evaluation. When the request for proposals
33 specifies or authorizes the award of multiple public contracts, the contracting agency shall
34 award public contracts to the responsible proposers who qualify for the award of a contract
35 under the terms of the request for proposals.

36 (10) When the contracting agency considers it impractical to initially prepare a procure-
37 ment description to support an award based on listed selection criteria, the contracting
38 agency may issue a multistep request for proposals requesting the submission of unpriced
39 technical submittals, and then later issue a request for proposals limited to the proposers
40 whose technical submittals the contracting agency has determined to be qualified under the
41 criteria set forth in the initial request for proposals.

42 (11) The contracting agency may issue a request for information, a request for interest,
43 a request for qualifications or other preliminary documents to obtain information useful in
44 the preparation of a request for proposals.

45 **SECTION 53. Small procurements.** (1) Any procurement not exceeding \$5,000 may be

1 awarded in accordance with small procurement procedures established by rules adopted un-
2 der section 11 of this 2003 Act. A contract awarded under this section may be amended to
3 exceed \$5,000 only in accordance with rules adopted under section 11 of this 2003 Act.

4 (2) A procurement may not be artificially divided or fragmented so as to constitute a
5 small procurement under this section or to circumvent the source selection procedures in
6 sections 50 to 71 of this 2003 Act.

7 (3) Small procurements need not be made through competitive sealed bidding, competitive
8 sealed proposals or intermediate procurements under section 51, 52 or 54 of this 2003 Act.
9 However, nothing in this section may be construed as prohibiting a contracting agency from
10 conducting a procurement that does not exceed \$5,000 under the procedures established by
11 section 51, 52 or 54 of this 2003 Act.

12 **SECTION 54. Intermediate procurements.** (1) Any procurement exceeding \$5,000 but not
13 exceeding \$150,000 may be awarded in accordance with intermediate procurement procedures.
14 A contract awarded under this section may be amended to exceed \$150,000 only in accordance
15 with rules adopted under section 11 of this 2003 Act.

16 (2) A procurement may not be artificially divided or fragmented so as to constitute an
17 intermediate procurement under this section or to circumvent the source selection proce-
18 dures in sections 50 to 71 of this 2003 Act.

19 (3) When conducting an intermediate procurement, a contracting agency shall seek at
20 least three informally solicited competitive price quotes from prospective vendors. The con-
21 tracting agency shall keep a written record of the sources and amounts of the quotes re-
22 ceived. If three quotes are not reasonably available, fewer will suffice, but the contracting
23 agency shall make a written record of the effort made to obtain the quotes.

24 (4) If a contract is awarded, the contracting agency shall award the contract to the
25 vendor whose quote will best serve the interests of the contracting agency, taking into ac-
26 count price as well as considerations including, but not limited to, experience, expertise,
27 product functionality, suitability for a particular purpose and vendor responsibility under
28 section 59 of this 2003 Act.

29 (5) Intermediate procurements need not be made through competitive sealed bidding or
30 competitive sealed proposals under section 51 or 52 of this 2003 Act. However, nothing in this
31 section may be construed as prohibiting a contracting agency from conducting a procure-
32 ment that exceeds \$5,000 but does not exceed \$150,000 under the procedures established by
33 section 51 or 52 of this 2003 Act.

34 **SECTION 55. Sole-source procurements.** (1) A contracting agency may award a contract
35 for goods or services without competition when the Director of the Oregon Department of
36 Administrative Services, the local contract review board or a person designated in writing
37 by the director or board determines in writing, in accordance with rules adopted under sec-
38 tion 11 of this 2003 Act, that the goods or services, or class of goods or services, are available
39 from only one source.

40 (2) The determination of a sole source must be based on written findings that may in-
41 clude:

42 (a) That the efficient utilization of existing goods requires the acquisition of compatible
43 goods or services;

44 (b) That the goods or services required for the exchange of software or data with other
45 public or private agencies are available from only one source;

1 (c) That the goods or services are for use in a pilot or an experimental project; or

2 (d) Other findings that support the conclusion that the goods or services are available
3 from only one source.

4 (3) To the extent reasonably practical, the contracting agency shall negotiate with the
5 sole source to obtain contract terms advantageous to the contracting agency.

6 **SECTION 56. Emergency procurements.** The head of a contracting agency, or a person
7 designated under section 12 of this 2003 Act, may make or authorize others to make emer-
8 gency procurements of goods and services in an emergency. The contracting agency shall
9 document the nature of the emergency and describe the method used for the selection of the
10 particular contractor.

11 **SECTION 57. Special procurements.** (1) To seek approval of a special procurement, a
12 contracting agency shall submit a written request to the Director of the Oregon Department
13 of Administrative Services or the local contract review board, as applicable, with supportive
14 evidence that documents the proposed method for the procurement of specified goods or
15 services or a specified class of goods or services pursuant to the special procurement, and
16 that justifies the use of a special procurement under the standards set forth in subsection
17 (2) of this section.

18 (2) The director or a local contract review board may authorize a special procurement
19 method or a class of special procurements above the small procurement amount established
20 by section 53 of this 2003 Act when the director or board approves a written request sub-
21 mitted under subsection (1) of this section that demonstrates that a situation exists in which
22 the use of a special procurement method that is exempt from all or part of the requirements
23 that are applicable to competitive sealed bidding, competitive sealed proposals or intermedi-
24 ate procurements under section 51, 52 or 54 of this 2003 Act or under any rules adopted
25 thereunder will:

26 (a) Be unlikely to encourage favoritism in the awarding of public contracts or to sub-
27 stantially diminish competition for public contracts; and

28 (b)(A) Result in substantial cost savings to the contracting agency or to the public; or

29 (B) Otherwise substantially promote the public interest in a manner that could not
30 practicably be realized by complying with requirements that are applicable under section 51,
31 52 or 54 of this 2003 Act or under any rules adopted thereunder.

32 (3) Public notice of a proposed special procurement or a proposed class of special pro-
33 curements must be given in the same manner as provided in section 51 (4)(b) of this 2003
34 Act.

35 (4) If a contract is awarded, the contracting agency shall award a contract to the offeror
36 whose offer the contracting agency determines in writing to be the most advantageous to the
37 contracting agency.

38 (5) When the director or a local contract review board authorizes a class of special pro-
39 curements under this section, the contracting agency may award contracts that fall within
40 that class in accordance with the terms of the director's or the board's approval without
41 making a subsequent request for a special procurement.

42
43 (Cancellation, Rejection and Delay of
44 Invitations for Bids or Requests for Proposals)
45

SECTION 58. Cancellation, rejection, delay of invitations for bids or requests for proposals. (1) An invitation to bid, a request for proposals or another form of solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the contracting agency. The reasons for the cancellation or rejection must be made part of the solicitation file.

(2) The opening of an invitation to bid, a request for proposals or other form of solicitation may be delayed when the delay is in the best interest of the contracting agency as determined in accordance with rules adopted under section 10 of this 2003 Act.

(Qualifications and Duties)

SECTION 59. Responsibility of bidders and proposers. (1) The contracting agency shall prepare a written determination of nonresponsibility of a bidder or proposer if the bidder or proposer does not meet the standards of responsibility.

(2) In determining whether a bidder or proposer has met the standards of responsibility, the contracting agency shall consider whether a bidder or proposer has:

(a) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the bidder or proposer to meet all contractual responsibilities;

(b) A satisfactory record of performance. The contracting agency shall document the record of performance of a bidder or proposer if the contracting agency finds the bidder or proposer nonresponsible under this paragraph;

(c) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder or proposer if the contracting agency finds the bidder or proposer nonresponsible under this paragraph;

(d) Qualified legally to contract with the contracting agency;

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information or may find the bidder or proposer nonresponsible; and

(f) Not been debarred by the contracting agency under section 63 of this 2003 Act.

(3) A contracting agency may refuse to disclose outside of the contracting agency confidential information furnished by a bidder or proposer under this section when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and the contracting agency has authority under ORS 192.410 to 192.505 to withhold the identified information from disclosure.

SECTION 60. Qualified products lists. (1) A contracting agency may develop and maintain a qualified products list in instances in which the testing or examination of goods before initiating a procurement is necessary or desirable in order to best satisfy the requirements of the contracting agency. For purposes of this section, "goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

(2) In the initial development of any qualified products list, a contracting agency shall give public notice, in accordance with section 51 (4) of this 2003 Act, of the opportunity for

1 potential contractors, sellers or suppliers to submit goods for testing and examination to
2 determine their acceptability for inclusion on the list and may solicit in writing represen-
3 tative groups of potential contractors, sellers or suppliers to submit goods for the testing
4 and examination. Any potential contractor, seller or supplier, even though not solicited, may
5 offer its goods for consideration.

6 (3) A contracting agency's inclusion of goods on a qualified products list shall be based
7 on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 to
8 192.505, a contracting agency may make the test or examination results public in a manner
9 that protects the identity of the potential contractor, seller or supplier that offered the goods
10 for testing or examination, including by using only numerical designations. Notwithstanding
11 any provision of ORS 192.410 to 192.505, a contracting agency may keep confidential trade
12 secrets, test data and similar information provided by a potential contractor, seller or sup-
13 plier if so requested in writing by the potential contractor, seller or supplier.

14 (4) The inclusion of goods on a qualified products list does not constitute and may not
15 be construed as a prequalification under sections 61 and 62 of this 2003 Act of any prospective
16 contractor, seller or supplier of goods on the qualified products list.

17 **SECTION 61. Prequalification of prospective bidders and proposers.** (1) A contracting
18 agency may prequalify prospective bidders or proposers to submit bids or proposals for public
19 contracts to provide particular types of goods or services. The method of submitting pre-
20 qualification applications, the information required in order to be prequalified and the forms
21 to be used for submitting prequalification information shall be determined by the contracting
22 agency unless otherwise prescribed by rule adopted by the Director of the Oregon Depart-
23 ment of Administrative Services or the local contract review board.

24 (2) The contracting agency shall, in response to the receipt of a prequalification applica-
25 tion submitted under subsection (1) of this section, notify the prospective bidder or proposer
26 whether the prospective bidder or proposer is qualified based on the standards of responsi-
27 bility listed in section 59 (2) of this 2003 Act, the type and nature of contracts that the pro-
28 spective bidder or proposer is qualified to compete for and the time period for which the
29 prequalification is valid. If the contracting agency does not prequalify a prospective bidder
30 or proposer as to any contracts covered by the prequalification process, the notice must
31 specify which of the standards of responsibility listed in section 59 (2) of this 2003 Act the
32 prospective bidder or proposer failed to meet. Unless the reasons are specified, the prospec-
33 tive bidder or proposer shall be deemed to have been prequalified in accordance with the
34 application.

35 (3) If a contracting agency subsequently discovers that a prospective bidder or proposer
36 that prequalified under subsections (1) and (2) of this section is no longer qualified, the
37 agency may revoke the prequalification upon reasonable notice to the prospective bidder or
38 proposer, except that a revocation is invalid as to any contract for which an advertisement
39 for bids or proposals has already been issued.

40 **SECTION 62. Application for prequalification.** (1) When a contracting agency permits or
41 requires prequalification of bidders or proposers, a prospective bidder or proposer who wishes
42 to prequalify shall submit a prequalification application to the contracting agency on a form
43 prescribed under section 61 (1) of this 2003 Act. Upon receipt of a prequalification application,
44 the contracting agency shall investigate the prospective bidder or proposer as necessary to
45 determine whether the prospective bidder or proposer is qualified. The determination shall

1 be made in less than 30 days, if practicable, if the prospective bidder or proposer requests
2 an early decision to allow the prospective bidder or proposer as much time as possible to
3 prepare a bid or proposal for a contract that has been advertised. In making its determi-
4 nation, the contracting agency shall consider only the applicable standards of responsibility
5 listed in section 59 (2) of this 2003 Act. The contracting agency shall promptly notify the
6 prospective bidder or proposer whether the prospective bidder or proposer is qualified.

7 (2) If the contracting agency finds that a prospective bidder or proposer is qualified, the
8 notice must state the type and nature of contracts that the prospective bidder or proposer
9 is qualified to compete for and the period of time for which the prequalification is valid. If
10 the agency finds that the prospective bidder or proposer is not qualified as to any contracts
11 covered by the rule, resolution, ordinance or other regulation, the notice must specify the
12 reasons given under section 61 of this 2003 Act for not prequalifying the prospective bidder
13 or proposer and inform the prospective bidder or proposer of the right to a hearing under
14 section 87 of this 2003 Act. To be entitled to a hearing under section 87 of this 2003 Act, a
15 prospective bidder or proposer shall, within three business days after receipt of the notice,
16 notify the contracting agency that the prospective bidder or proposer demands a hearing
17 under section 87 of this 2003 Act.

18 (3) If a contracting agency has reasonable cause to believe that there has been a sub-
19 stantial change in the conditions of a prequalified prospective bidder or proposer and that
20 the prospective bidder or proposer is no longer qualified or is less qualified, the contracting
21 agency may revoke or may revise and reissue the prequalification after reasonable notice to
22 the prequalified prospective bidder or proposer. The notice must specify the reasons given
23 under section 61 of this 2003 Act for revocation or revision of the prequalification of the
24 prospective bidder or proposer and inform the prospective bidder or proposer of the right to
25 a hearing under section 87 of this 2003 Act. To be entitled to a hearing under section 87 of
26 this 2003 Act, a prospective bidder or proposer shall, within three business days after receipt
27 of the notice, notify the contracting agency that the prospective bidder or proposer demands
28 a hearing under section 87 of this 2003 Act. A revocation or revision does not apply to any
29 contract for which an advertisement for bids or proposals was issued before the date the
30 notice of revocation or revision was received by the prequalified prospective bidder or
31 proposer.

32 **SECTION 63. Debarment of prospective bidders and proposers.** (1)(a) A contracting
33 agency may debar a prospective bidder or proposer from consideration for award of the
34 contracting agency's contracts for the reasons listed in subsection (2) of this section after
35 providing the prospective bidder or proposer with notice and a reasonable opportunity to be
36 heard.

37 (b) A contracting agency may not debar a prospective bidder or proposer under this
38 section for more than three years.

39 (2) A prospective bidder or proposer may be debarred from consideration for award of a
40 contracting agency's contracts if:

41 (a) The prospective bidder or proposer has been convicted of a criminal offense as an
42 incident in obtaining or attempting to obtain a public or private contract or subcontract or
43 in the performance of such contract or subcontract.

44 (b) The prospective bidder or proposer has been convicted under state or federal statutes
45 of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving

1 stolen property or any other offense indicating a lack of business integrity or business hon-
2 esty that currently, seriously and directly affects the prospective bidder's or proposer's re-
3 sponsibility as a contractor.

4 (c) The prospective bidder or proposer has been convicted under state or federal antitrust
5 statutes.

6 (d) The prospective bidder or proposer has committed a violation of a contract provision
7 and debarment for such a violation was listed in the contract terms and conditions as a po-
8 tential penalty. A violation may include but is not limited to a failure to perform the terms
9 of a contract or an unsatisfactory performance in accordance with the terms of the contract.
10 However, a failure to perform or an unsatisfactory performance caused by acts beyond the
11 control of the contractor may not be considered to be a basis for debarment.

12 (e) The prospective bidder or proposer does not carry workers' compensation or unem-
13 ployment insurance as required by statute.

14 (3) A contracting agency shall issue a written decision to debar a prospective bidder or
15 proposer under this section. The decision must:

16 (a) State the reasons for the action taken; and

17 (b) Inform the debarred prospective bidder or proposer of the appeal rights of the pro-
18 spective bidder or proposer under section 87 of this 2003 Act.

19 (4) A copy of the decision issued under subsection (3) of this section must be mailed or
20 otherwise furnished immediately to the debarred prospective bidder or proposer.

21 (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three
22 business days after receipt of notice of debarment, notify the contracting agency that the
23 prospective bidder or proposer appeals the debarment as provided in section 87 of this 2003
24 Act.

25 **SECTION 64. Notice of intent to award.** At least seven days before the award of a public
26 contract, unless the contracting agency determines that seven days is impractical under
27 rules adopted under section 10 of this 2003 Act, the contracting agency shall post or provide
28 to each bidder or proposer notice of the contracting agency's intent to award a contract.
29 This section does not apply to a contract awarded as a small procurement under section 53
30 of this 2003 Act, an intermediate procurement under section 54 of this 2003 Act, a sole-source
31 procurement under section 55 of this 2003 Act, an emergency procurement under section 56
32 of this 2003 Act or a special procurement under section 57 of this 2003 Act. The notice and
33 its manner of posting or issuance must conform to rules adopted under section 10 of this
34 2003 Act.

35 **NOTE:** Section 65 was deleted by amendment. Subsequent sections were not renumbered.

36
37 **(Types of Contracts)**
38

39 **NOTE:** Section 66 was deleted by amendment. Subsequent sections were not renumbered.

40 **SECTION 67. Multiyear contracts.** (1) Unless otherwise provided by law, a contracting
41 agency may enter into a contract for goods or services for any period of time, provided that
42 the term of the contract and conditions of renewal or extension, if any, are included in the
43 solicitation and funds are available for the contracting agency's fiscal period that is in effect
44 at the time of contracting. Payment and performance obligations for succeeding fiscal peri-
45 ods are subject to the availability and appropriation of funds for the obligations.

1 (2) When funds are not appropriated or otherwise made available to support continuation
2 of the contracting agency's performance of a contract in a subsequent fiscal period, the
3 contracting agency may cancel the contract and reimburse the contractor for the reasonable
4 value of any nonrecurring costs incurred but not amortized in the price of the goods or
5 services delivered under the contract. The contracting agency may pay the reimbursement
6 only from any appropriations or funds then lawfully available for such purposes.

7 **SECTION 68. Price agreements.** (1) A price agreement constitutes a firm offer by the
8 contractor regardless of whether any order or purchase has been made or any performance
9 has been tendered under the price agreement. Unless the price agreement otherwise pro-
10 vides, a price agreement is enforceable for the period stated in the price agreement and,
11 notwithstanding ORS 72.2050, obligations thereunder are not revocable by the contractor.

12 (2) Under a price agreement, no quantity unreasonably disproportionate to any stated
13 estimate or, in the absence of a stated estimate, to any normal or otherwise comparable
14 prior requirements may be demanded unless otherwise expressly provided in the price
15 agreement. However, a contracting agency may amend or terminate a price agreement or
16 an order under a price agreement under any of the following circumstances:

17 (a) Any failure of the contracting agency to receive funding, appropriations, limitations,
18 allotments or other expenditure authority, including the continuation of program operating
19 authority sufficient, as determined in the discretion of the contracting agency, to sustain
20 purchases at the levels contemplated at the time of contracting; or

21 (b) Any change in law or program termination that makes purchases under the price
22 agreement no longer authorized or appropriate for the contracting agency's use.

23 (3) A price agreement does not constitute an exclusive dealing commitment on the part
24 of the contracting agency or the contractor unless the price agreement expressly so pro-
25 vides.

26 **NOTE:** Sections 69 and 70 and were deleted by amendment. Subsequent sections were not re-
27 numbered.

28
29 (Determinations)

30
31 **SECTION 71. Finality of determinations.** The determinations under sections 51 (3) and (7),
32 52 (3) and (9), 55, 56, 57, 59 (1) and 67 of this 2003 Act are final and conclusive unless they
33 are clearly erroneous, arbitrary, capricious or contrary to law.

34
35 SPECIFICATIONS
36 (General Provisions)

37
38 **SECTION 72. Definitions for sections 72 to 78 of this 2003 Act.** As used in sections 72 to
39 78 of this 2003 Act:

40 (1) "Brand name or equal specification" means a specification that uses one or more
41 manufacturers' names, makes, catalog numbers or similar identifying characteristics to de-
42 scribe the standard of quality, performance, functionality or other characteristics needed to
43 meet the contracting agency's requirements and that authorizes bidders or proposers to of-
44 fer goods or services that are equivalent or superior to those named or described in the
45 specification.

1 (2) “Brand name specification” means a specification limited to one or more products,
2 brand names, makes, manufacturer’s names, catalog numbers or similar identifying charac-
3 teristics.

4 (3) “Specification” means any description of the physical or functional characteristics of,
5 or of the nature of, goods or services to be procured by a contracting agency.
6 “Specification” may include a description of any requirement for inspecting, testing or pre-
7 paring goods or services for delivery. When a solicitation required or authorized by section
8 50 (4) of this 2003 Act to be conducted under section 51 or 52 of this 2003 Act calls in whole
9 or in part for the performance of personal services as designated under section 8 of this 2003
10 Act, “specification” also includes any description of the characteristics or nature of the
11 personal services.

12 NOTE: Section 73 was deleted by amendment. Subsequent sections were not renumbered.

13 SECTION 74. Specifications to encourage reasonable competition. Consistent with section
14 3 of this 2003 Act, specifications must seek to promote optimal value and suitability for the
15 purposes intended and to reasonably encourage competition in satisfying a contracting
16 agency’s needs. Subject to section 84 of this 2003 Act, the specification content must be de-
17 termined in the sole discretion of the contracting agency.

18 SECTION 75. Policy; development of specifications. It is the policy of the State of Oregon
19 to encourage the development of clear, precise and accurate specifications in solicitations for
20 public contracts. To that end, in developing specifications, contracting agencies may consult,
21 under contract or otherwise, with technical experts, suppliers, prospective contractors and
22 representatives of the industries with which the contracting agencies contract. However, a
23 contracting agency shall take reasonable measures to ensure that no person who prepares
24 or assists in the preparation of solicitation documents, specifications, plans or scopes of
25 work, and no business with which the person is associated, realizes a material competitive
26 advantage in a procurement that arises from the agency’s use of the solicitation documents,
27 specifications, plans or scopes of work. The policy against the realization of a material
28 competitive advantage from the character of the specifications developed in conjunction with
29 persons outside the contracting agency does not proscribe advantages that result incidentally
30 from a contracting agency’s specification of the characteristics of a product or work to meet
31 the contracting agency’s needs.

32 SECTION 76. Brand name or equal specification; brand name specification. (1)(a) A brand
33 name or equal specification may be used when the use of a brand name or equal specification
34 is advantageous to the contracting agency, because the brand name describes the standard
35 of quality, performance, functionality and other characteristics of the product needed by the
36 contracting agency.

37 (b) The contracting agency is entitled to determine what constitutes a product that is
38 equal or superior to the product specified, and any such determination is final.

39 (c) Nothing in this subsection may be construed as prohibiting a contracting agency from
40 specifying one or more comparable products as examples of the quality, performance,
41 functionality or other characteristics of the product needed by the contracting agency.

42 (2) A brand name specification may be prepared and used only if the contracting agency
43 determines for a solicitation or a class of solicitations that only the identified brand name
44 specification will meet the needs of the contracting agency based on one or more of the fol-
45 lowing written determinations:

1 (a) That use of a brand name specification is unlikely to encourage favoritism in the
2 awarding of public contracts or substantially diminish competition for public contracts;

3 (b) That use of a brand name specification would result in substantial cost savings to the
4 contracting agency;

5 (c) That there is only one manufacturer or seller of the product of the quality, perform-
6 ance or functionality required; or

7 (d) That efficient utilization of existing goods requires the acquisition of compatible goods
8 or services.

9 (3) A contracting agency's use of a brand name specification may be subject to review
10 only as provided in section 83 of this 2003 Act.

11 **SECTION 76a. Conditions concerning payment, contributions, liens, withholding.** Every
12 public contract shall contain a condition that the contractor shall:

13 (1) Make payment promptly, as due, to all persons supplying to the contractor labor or
14 material for the performance of the work provided for in the contract.

15 (2) Pay all contributions or amounts due the Industrial Accident Fund from the con-
16 tractor or subcontractor incurred in the performance of the contract.

17 (3) Not permit any lien or claim to be filed or prosecuted against the state or a county,
18 school district, municipality, municipal corporation or subdivision thereof, on account of any
19 labor or material furnished.

20 (4) Pay to the Department of Revenue all sums withheld from employees under ORS
21 316.167.

22 **SECTION 76b. Condition concerning salvaging, recycling, composting or mulching yard**
23 **waste material.** Every public contract for lawn and landscape maintenance shall contain a
24 condition requiring the contractor to salvage, recycle, compost or mulch yard waste material
25 at an approved site, if feasible and cost-effective.

26 **SECTION 76c. Condition concerning payment for medical care and providing workers'**
27 **compensation.** (1) Every public contract shall contain a condition that the contractor shall
28 promptly, as due, make payment to any person, copartnership, association or corporation
29 furnishing medical, surgical and hospital care services or other needed care and attention,
30 incident to sickness or injury, to the employees of the contractor, of all sums that the con-
31 tractor agrees to pay for the services and all moneys and sums that the contractor collected
32 or deducted from the wages of employees under any law, contract or agreement for the
33 purpose of providing or paying for the services.

34 (2) Every public contract shall contain a clause or condition that all subject employers
35 working under the contract are either employers that will comply with ORS 656.017 or em-
36 ployers that are exempt under ORS 656.126.

37 **SECTION 77. Condition concerning hours of labor.** (1) Every public contract, other than
38 a contract for services at a county fair or for other events authorized by a county fair board,
39 must contain a condition that the contractor shall pay employees for overtime work per-
40 formed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair
41 Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

42 (2) In the case of a contract for services at a county fair or for other events authorized
43 by a county fair board, the contract must contain a provision that employees must be paid
44 at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one
45 week. An employer shall give notice in writing to employees who work on such a contract,

1 either at the time of hire or before commencement of work on the contract, or by posting
2 a notice in a location frequented by employees, of the number of hours per day and days per
3 week that employees may be required to work.

4 **SECTION 78. Exclusion of recycled oils prohibited.** Every contracting agency shall revise
5 its procedures and specifications for the procurement of lubricating oil and industrial oil to
6 eliminate any exclusion of recycled oils and any requirement that oils be manufactured from
7 virgin materials.

8
9 (Specifications in State Contracts)

10
11 **SECTION 79. State contracting agencies to use recovered resources and recycled mate-**
12 **rials; notice to prospective contractors.** (1) A state contracting agency procuring goods,
13 materials, equipment or personal services shall:

14 (a) Review the contracting agency's current procurement specifications in order to
15 eliminate, wherever economically feasible, discrimination against the procurement of recov-
16 ered resources or recycled materials.

17 (b) Provide incentives, wherever economically feasible, in all procurement specifications
18 issued by the contracting agency for the maximum possible use of recovered resources and
19 recycled materials.

20 (c) Develop procurement practices that, to the maximum extent economically feasible,
21 ensure the procurement of materials that are recycled or that may be recycled or reused
22 when discarded.

23 (d) Establish management practices that minimize the volume of solid waste generated
24 by reusing paper, envelopes, containers and all types of packaging and by limiting the amount
25 of materials consumed and discarded.

26 (e) Use, or require persons with whom the contracting agency contracts to use in the
27 performance of the contract work, to the maximum extent economically feasible, recycled
28 paper and recycled PETE products as well as other recycled plastic resin products.

29 (2) An invitation to bid or a request for proposals issued by a state contracting agency
30 under sections 47 to 87 of this 2003 Act shall include the following language: "Vendors shall
31 use recyclable products to the maximum extent economically feasible in the performance of
32 the contract work set forth in this document."

33 (3) Each state contracting agency shall strive to meet a recycled product procurement
34 level established by rule by the Oregon Department of Administrative Services.

35 **SECTION 80. Purchase of goods containing recycled polyethylene material.** The Oregon
36 Department of Administrative Services, in consultation with the Department of Environ-
37 mental Quality, shall revise its procedures and specifications for state procurement of goods
38 containing recycled PETE, as well as other recycled plastic resins, to encourage the pro-
39 curement of such goods, provided similarities in quality and price exist between recycled
40 PETE products and products not qualifying as recycled PETE products.

41 **SECTION 81. Use of recycled products when economically feasible.** The Oregon Depart-
42 ment of Administrative Services shall review and work with state agencies to develop pro-
43 curement specifications that encourage the use of recycled products whenever economically
44 feasible, if the quality of a recycled product is functionally equal to the same product man-
45 ufactured with virgin resources, including but not limited to recycled paper, recycled oil and

1 recycled PETE products. Except for specifications that have been established to preserve the
2 public health and safety, all procurement specifications shall be established in a manner that
3 encourages the procurement of recycled products.

4 NOTE: Section 82 was deleted by amendment. Subsequent sections were not renumbered.

5
6 **LEGAL REMEDIES**
7

8 **SECTION 83. Challenges to special procurements.** (1) The rules adopted under section 10
9 of this 2003 Act shall provide a reasonable time and manner for affected persons to challenge
10 the use of a special procurement under section 57 of this 2003 Act. Before seeking judicial
11 relief, a person must file a challenge with the Director of the Oregon Department of Ad-
12 ministrative Services or the local contracting agency, as applicable, and exhaust all available
13 administrative remedies.

14 (2) The approval of a class of special procurements by the Director of the Oregon De-
15 partment of Administrative Services pursuant to section 57 of this 2003 Act constitutes
16 rulemaking and not a contested case under ORS 183.310 to 183.550. Any affected person ex-
17 cept the state contracting agency that requested the class of special procurements, or any-
18 one representing the state contracting agency, may petition the Court of Appeals in the
19 manner provided in ORS 183.400 to test the validity of any rule adopted under this sub-
20 section. A proceeding under ORS 183.400 does not affect the validity of any contract executed
21 pursuant to a class of special procurements before the petition is filed. Notwithstanding ORS
22 183.400 (1), a person first must file a challenge with the director in accordance with the rules
23 adopted under section 10 of this 2003 Act, and exhaust all available administrative remedies,
24 before seeking judicial relief under this subsection.

25 (3) The approvals of contract-specific determinations by state contracting agencies to use
26 a special procurement are reviewable under ORS 183.484, but only if judicial relief is sought
27 before the contract is awarded. Otherwise, a contract awarded pursuant to the special pro-
28 curement determination is conclusively presumed valid and may not, in any future judicial
29 or administrative proceeding, be challenged on the ground that the contract was awarded
30 under an invalid special procurement determination.

31 (4) After administrative remedies have been exhausted, any affected person, other than
32 the local contracting agency or any person representing the local contracting agency, may
33 challenge a local contracting agency's determination to use a class of special procurements
34 or contract-specific special procurement under section 57 of this 2003 Act by filing a writ of
35 review under ORS chapter 34, but only if the writ of review is filed before the contract is
36 awarded. The action does not affect the validity of any contract awarded pursuant to a spe-
37 cial procurement determination made before the writ of review is filed. Otherwise, a contract
38 awarded pursuant to the determination is conclusively presumed valid and may not, in any
39 future judicial or administrative proceeding, be challenged on the ground that the contract
40 was awarded under an invalid special procurement determination.

41 (5) Challenges to state contracting agency determinations to use a contract-specific spe-
42 cial procurement under section 57 of this 2003 Act are reviewable by the Circuit Court for
43 Marion County or the circuit court for the county in which the principal offices of the state
44 contracting agency are located. Challenges to local contracting agency determinations to use
45 a special procurement under section 57 of this 2003 Act are reviewable by the circuit court

1 for the county in which the principal offices of the local contracting agency are located.

2 (6) If timely judicial relief is sought regarding a determination to use a special procure-
3 ment under section 57 of this 2003 Act, the contracting agency may not proceed with exe-
4 cution unless the contracting agency determines that there is a compelling governmental
5 interest in proceeding or that the goods and services are urgently needed. If the contracting
6 agency makes such a determination, the contracting agency shall set forth those reasons in
7 writing and immediately provide them to the person who filed the challenge. Thereafter, af-
8 ter joining the prospective contractor as a party to the litigation and upon motion from the
9 person filing the challenge, the court may nonetheless stay the performance of the contract
10 if the court determines that there is an overriding public interest that requires a stay. In
11 granting a stay, the court may, in its discretion, require the person seeking the stay to post
12 a bond in an amount sufficient to protect the contracting agency and the public from costs
13 associated with delay in contract performance.

14 (7) In its review, the court shall give due deference to any factual contracting decision
15 made by the contracting agency and may not substitute its judgment for that of the con-
16 tracting agency, but shall review all questions of law de novo. Thereafter:

17 (a) If a contract has not been executed and the court rules in favor of the party that
18 sought judicial relief, the court shall remand the procurement to the contracting agency for
19 a determination of whether to continue with the procurement process in light of the court's
20 decision.

21 (b) In addition to the relief provided for in paragraph (a) of this subsection, if a contract
22 has been executed and the court rules in favor of the party that sought judicial relief, the
23 court shall include in its order a determination whether the party that signed the contract
24 with the contracting agency is entitled to reimbursement under the conditions of, and cal-
25 culated in the same manner as provided in, section 136 of this 2003 Act. Notwithstanding
26 that section 136 of this 2003 Act otherwise applies only to public improvement contracts,
27 under this paragraph the court shall apply section 136 of this 2003 Act to both public im-
28 provement contracts and other public contracts of contracting agencies.

29 (c) The court may award costs and attorney fees to the prevailing party.

30 **SECTION 84. Protests regarding formal solicitations.** (1) As used in this section:

31 (a) "Brand name" means a brand name specification as defined in section 72 of this 2003
32 Act.

33 (b) "Legally flawed" means that a solicitation document contains terms or conditions
34 that are contrary to law.

35 (c) "Unduly restrictive" means that specifications unreasonably limit free and open
36 competition in light of the procurement needs of a contracting agency.

37 (2) A prospective bidder, proposer or offeror for a public contract solicited under section
38 51, 52 or 57 of this 2003 Act may file a protest with the contracting agency if the prospective
39 bidder, proposer or offeror believes that the procurement process is contrary to law or that
40 a solicitation document is unduly restrictive, is legally flawed or improperly specifies a brand
41 name. If a prospective bidder, proposer or offeror fails to timely file such a protest, the
42 prospective bidder, proposer or offeror may not challenge the contract on grounds under this
43 subsection in any future legal or administrative proceeding.

44 (3) The contracting agency, pursuant to rules adopted under section 10 of this 2003 Act,
45 shall notify prospective bidders, proposers or offerors of the time and manner in which a

1 protest under this section may be filed and considered. Before seeking judicial relief, a pro-
2 spective bidder, proposer or offeror must file a protest with the contracting agency and ex-
3 haust all available administrative remedies.

4 (4) The contracting agency shall consider the protest if the protest is timely filed and
5 contains the following:

6 (a) Sufficient information to identify the solicitation that is the subject of the protest;

7 (b) The grounds that demonstrate how the procurement process is contrary to law or
8 how the solicitation document is unduly restrictive, is legally flawed or improperly specifies
9 a brand name;

10 (c) Evidence or supporting documentation that supports the grounds on which the pro-
11 test is based; and

12 (d) The relief sought.

13 (5) If the protest meets the requirements of subsection (4) of this section, the contract-
14 ing agency shall consider the protest and issue a decision in writing. Otherwise, the con-
15 tracting agency shall promptly notify the prospective bidder, proposer or offeror that the
16 protest is untimely or that the protest failed to meet the requirements of subsection (4) of
17 this section and give the reasons for the failure.

18 (6) The contracting agency shall issue a decision on the protest in accordance with rules
19 adopted under section 10 of this 2003 Act no less than three days before bids, proposals or
20 offers are due, unless a written determination is made by the agency that circumstances
21 exist that require a shorter time limit.

22 (7)(a) A decision of a state contracting agency on a protest under this section is review-
23 able by the Circuit Court for Marion County or the circuit court for the county in which the
24 principal offices of the state contracting agency are located if the action is filed before the
25 opening of bids, proposals or offers.

26 (b) A decision of a local contracting agency on a protest under this section is reviewable
27 by the circuit court for the county in which the principal offices of the local contracting
28 agency are located if the action is filed before the opening of bids, proposals or offers.

29 (8) If judicial review of a contracting agency's decision on a protest under this section
30 is sought, the contracting agency may not proceed with execution unless the contracting
31 agency determines that there is a compelling governmental interest in proceeding or that the
32 goods and services are urgently needed. If the contracting agency makes such a determi-
33 nation, the contracting agency shall set forth its reasons in writing and immediately provide
34 the determination to the prospective bidder, proposer or offeror that filed the protest.
35 Thereafter, after joining the contractor as a party to the litigation and upon motion from
36 the person filing the protest, the court may nonetheless stay the performance of the con-
37 tract if the court determines that there is an overriding public interest that requires a stay.
38 In granting a stay, the court may require the party seeking the stay to post a bond in an
39 amount sufficient to protect the contracting agency and the public from costs associated
40 with delay in contract performance.

41 (9) In its review, the court shall give due deference to any factual decision made by the
42 contracting agency and may not substitute its judgment for that of the contracting agency,
43 but shall review all questions of law de novo. Thereafter:

44 (a) If a contract has not been executed and the court rules in favor of the party that
45 sought judicial review, the court shall remand the procurement process to the contracting

1 agency for a determination of whether and how to continue with the procurement process
2 in light of the court's decision.

3 (b) In addition to the relief provided for in paragraph (a) of this subsection, if a contract
4 has been executed, the court shall include in its order a determination whether the party
5 that signed the contract with the contracting agency is entitled to reimbursement under the
6 conditions of, and calculated in the same manner as provided in, section 136 of this 2003 Act.
7 Notwithstanding that section 136 of this 2003 Act otherwise applies only to public improve-
8 ment contracts, under this paragraph the court shall apply section 136 of this 2003 Act to
9 both public improvement contracts and other public contracts of contracting agencies.

10 (c) The court may award costs and attorney fees to the prevailing party.

11 **SECTION 85. Protests regarding contract award.** (1) An adversely affected bidder or
12 proposer may protest the award of a public contract or a notice of intent to award a public
13 contract, whichever occurs first, if:

14 (a) The bidder or proposer would be eligible to be awarded the public contract in the
15 event that the protest were successful; and

16 (b) The purpose of the protest is:

17 (A) To require compliance with with sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and
18 81 of this 2003 Act;

19 (B) To prevent violations of sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and 81 of this
20 2003 Act; or

21 (C) To determine the applicability of sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and
22 81 of this 2003 Act to matters or decisions of the contracting agency.

23 (2) The bidder or proposer shall submit the protest to the contracting agency in writing
24 and shall specify the grounds for the protest to be considered by the contracting agency.

25 (3) The contracting agency shall, in rules adopted under section 10 of this 2003 Act, es-
26 tablish a reasonable time and manner for protests to be submitted. The contracting agency
27 may not consider late protests.

28 (4) The contracting agency shall consider and respond in writing to a protest in a timely
29 manner. After the contracting agency issues the response, the bidder or proposer may seek
30 judicial relief in the manner provided in section 86 of this 2003 Act.

31 **SECTION 86. Judicial relief for protests of contract award.** (1) As used in this section,
32 "bidder" includes a person who submits a proposal to a public contracting agency pursuant
33 to a request for proposals.

34 (2) A decision by a state contracting agency on a protest is reviewable by the Circuit
35 Court for Marion County or the circuit court for the county in which the principal offices
36 of the state contracting agency are located. A decision by a local contracting agency on a
37 protest is reviewable by the circuit court for the county in which the principal offices of the
38 local contracting agency are located.

39 (3) To obtain review, a complainant shall file a complaint with the court before the con-
40 tract that is the subject of the protest is both approved by the Attorney General, if required
41 by ORS 291.047, and executed by the contracting agency. In the complaint, the complainant
42 shall state the nature of the complainant's interest, the facts showing how the complainant
43 is adversely affected or aggrieved by the contracting agency's decision and the basis upon
44 which the decision should be reversed or remanded. The complainant shall join as parties all
45 bidders that would be in line for an award of the contract ahead of the complainant. If

1 injunctive relief is sought, the court may require the complainant to post a bond in an
2 amount sufficient to protect the contracting agency and the public from costs associated
3 with delay in execution of the contract.

4 (4) When judicial relief is sought, the contracting agency may not proceed with contract
5 execution unless the contracting agency determines that there is either a compelling gov-
6 ernmental interest in proceeding or that the goods and services are urgently needed. If the
7 contracting agency makes such a determination, the contracting agency shall set forth the
8 reasons for the determination in writing and immediately provide them to the complainant.
9 Thereafter, upon motion from the complainant, the court may nonetheless stay the per-
10 formance of the contract if the court determines that an overriding public interest requires
11 a stay. In granting a stay, the court may require the complainant to post a bond in an
12 amount sufficient to protect the contracting agency and the public from costs associated
13 with delay in contract performance.

14 (5) The court shall review the matter without a jury and shall consider only those
15 grounds the complainant raised in the protest to the contracting agency.

16 (6) The court shall remand the matter to the contracting agency for a further decision
17 if:

18 (a) Substantial evidence does not exist to support the contracting agency's decision.
19 Substantial evidence exists to support a finding of fact when the record, viewed as a whole,
20 would permit a reasonable person to make that finding;

21 (b) The contracting agency's decision was outside the range of discretion delegated to the
22 contracting agency by law;

23 (c) The decision was inconsistent with a contracting agency rule, an officially stated
24 contracting agency position or an officially stated prior contracting agency practice, if the
25 inconsistency is not explained by the contracting agency; or

26 (d) The decision was in violation of a constitutional or statutory provision.

27 (7)(a) In addition to remanding the decision to the contracting agency, the court may
28 order such ancillary relief, such as the cost of bid preparation, as the court finds necessary
29 to redress the effects of official action wrongfully taken or withheld. Ancillary relief does
30 not include the award of a contract to the complainant or the award of lost profits or other
31 damages.

32 (b) If a contract has not been executed and the court rules in favor of the complainant,
33 the court shall remand the matter to the contracting agency for a determination of whether
34 to continue with the procurement process in light of the court's decision.

35 (c) If a contract has been executed, in addition to the relief provided for in paragraph (a)
36 of this subsection, the court shall include in its order a determination whether the party who
37 signed the contract with the contracting agency is entitled to reimbursement under the
38 conditions of, and calculated in the same manner as provided in, section 136 of this 2003 Act.
39 Notwithstanding that section 136 of this 2003 Act otherwise applies only to public improve-
40 ment contracts, under this paragraph the court shall apply section 136 of this 2003 Act to
41 both public improvement contracts and other public contracts of contracting agencies.

42 (d) The court may award costs and attorney fees to the prevailing party.

43 **SECTION 87. Review of prequalification and debarment decisions.** (1) The procedure for
44 appeal from the denial, revocation or revision of a prequalification under section 62 of this
45 2003 Act, or from a debarment under section 63 of this 2003 Act, shall be in accordance with

1 this section and is not subject to ORS 183.310 to 183.550 except as specifically provided by this
2 section.

3 (2) Upon receipt of a notice from a contracting agency of a prequalification decision un-
4 der section 62 of this 2003 Act or of a decision to debar under section 63 of this 2003 Act, a
5 prospective bidder or proposer that wishes to appeal the decision shall, within three business
6 days after receipt of the notice, notify the contracting agency that the prospective bidder
7 or proposer appeals the decision as provided in this section.

8 (3) Immediately upon receipt of the prospective bidder's or proposer's notice of appeal,
9 the contracting agency shall:

10 (a) If the contracting agency is a state contracting agency, notify the Director of the
11 Oregon Department of Administrative Services.

12 (b) If the contracting agency is a local contracting agency, notify the appropriate local
13 contract review board.

14 (4) Upon the receipt of notice from the contracting agency under subsection (3) of this
15 section, the director or board shall promptly notify the person appealing and the contracting
16 agency of the time and place of the hearing. The director or board shall conduct the hearing
17 and decide the appeal within 30 days after receiving the notice from the contracting agency.
18 The director or board shall set forth in writing the reasons for the hearing decision.

19 (5) At the hearing the director or board shall consider de novo the notice of denial, re-
20 vocation or revision of a prequalification or the notice of debarment, the standards of re-
21 sponsibility listed in section 59 (2) of this 2003 Act on which the contracting agency based the
22 denial, revocation or revision of the prequalification or the reasons listed in section 63 (2)
23 of this 2003 Act on which the contracting agency based the debarment, and any evidence
24 provided by the parties. In all other respects, a hearing before the director shall be con-
25 ducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425,
26 183.440, 183.450 and 183.452. Hearings before a board shall be conducted under rules of pro-
27 cedure adopted by the board.

28 (6) The director may allocate the director's costs for the hearing between the person
29 appealing and the contracting agency whose prequalification or debarment decision is being
30 appealed. The allocation shall be based upon facts found by the director and stated in the
31 final order that, in the director's opinion, warrant such allocation of costs. If the final order
32 does not allocate the director's costs for the hearing, the costs shall be paid as follows:

33 (a) If the decision to deny, revoke or revise a prequalification of a person as a bidder or
34 the decision to debar a person is upheld, the director's costs shall be paid by the person ap-
35 pealing the decision.

36 (b) If the decision to deny, revoke or revise a prequalification of a person as a bidder or
37 the decision to debar a person is reversed by the director, the director's costs shall be paid
38 by the contracting agency whose decision is the subject of the appeal.

39 (7) A decision of the director or board may be reviewed only upon a petition, filed within
40 15 days after the date of the decision, in the circuit court of the county in which the director
41 or board has its principal office. The circuit court shall reverse or modify the decision only
42 if it finds:

43 (a) The decision was obtained through corruption, fraud or undue means;

44 (b) There was evident partiality or corruption on the part of the director or board or any
45 of the board's members; or

1 (c) There was an evident material miscalculation of figures or an evident material mis-
2 take in the description of any person, thing or property referred to in the decision.

3 (8) The procedure provided in this section is the exclusive means of judicial review of the
4 decision of the director or board. The judicial review provisions of ORS 183.480 and writs of
5 review and mandamus as provided in ORS chapter 34, and other legal, declaratory and
6 injunctive remedies, are not available.

7 (9) The circuit court may, in its discretion, stay the letting of the contract that is the
8 subject of the petition in the same manner as a suit in equity. When the court determines
9 that there has been an improper debarment or denial, revocation or revision of a prequali-
10 fication and the contract has been let, the court may proceed to take evidence to determine
11 the damages, if any, suffered by the petitioner and may award such damages as the court
12 finds as a judgment against the director or board. The court may award costs and attorney
13 fees to the prevailing party.

14
15 **PART 3: PUBLIC IMPROVEMENTS AND RELATED CONTRACTS**
16 **(ORS Chapter 279C)**

17
18 **GENERAL PROVISIONS**

19
20 **SECTION 88. Definitions for sections 88 to 180 of this 2003 Act.** Section 2 (1) of this 2003
21 Act contains general definitions applicable throughout sections 88 to 180 of this 2003 Act.

22 **SECTION 88a. Applicability.** As provided in section 4 of this 2003 Act, public contracting
23 under sections 88 to 180 of this 2003 Act is subject to sections 1 to 46 of this 2003 Act, but
24 not sections 47 to 87 of this 2003 Act.

25
26 **ARCHITECTURAL, ENGINEERING, LAND SURVEYING**
27 **AND RELATED SERVICES**

28
29 **SECTION 89. Definitions for sections 89 to 96 of this 2003 Act.** As used in sections 89 to
30 96 of this 2003 Act:

31 (1) "Architect" means a person who is registered and holds a valid certificate in the
32 practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and
33 includes without limitation the terms "architect," "licensed architect" and "registered ar-
34 chitect."

35 (2) "Architectural, engineering and land surveying services" means professional services
36 that are required to be performed by an architect, engineer or land surveyor.

37 (3) "Engineer" means a person who is registered and holds a valid certificate in the
38 practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and
39 includes all terms listed in ORS 672.002 (2).

40 (4) "Land surveyor" means a person who is registered and holds a valid certificate in the
41 practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325,
42 and includes all terms listed in ORS 672.002 (4).

43 (5) "Personal services" mean the services of a person or persons that are designated by
44 the Oregon Department of Administrative Services or a local contract review board as per-
45 sonal services under section 8 of this 2003 Act. "Personal services" includes architectural,

1 engineering and land surveying services procured under section 90 or 91 of this 2003 Act and
2 related services procured under section 95 of this 2003 Act.

3 (6) "Related services" means personal services, other than architectural, engineering and
4 land surveying services, that are related to the planning, design, engineering or oversight
5 of public improvement projects or components thereof, including but not limited to landscape
6 architectural services, facilities planning services, energy planning services, space planning
7 services, environmental impact studies, hazardous substances or hazardous waste or toxic
8 substances testing services, wetland delineation studies, wetland mitigation studies, Native
9 American studies, historical research services, endangered species studies, rare plant
10 studies, biological services, archaeological services, cost estimating services, appraising ser-
11 vices, material testing services, mechanical system balancing services, commissioning ser-
12 vices, project management services, construction management services and owner's
13 representative services or land-use planning services.

14 SECTION 90. Contracts for architectural, engineering, land surveying and related ser-
15 VICES; PROCEDURES. (1) Except as provided in section 18 of this 2003 Act, contracting agencies
16 may enter into contracts for architectural, engineering and land surveying services and re-
17 lated services. The Oregon Department of Administrative Services shall enter into contracts
18 for architectural, engineering and land surveying services and related services on behalf of
19 state contracting agencies that are subject to section 18 of this 2003 Act. The provisions of
20 this section do not relieve the contracting agency of the duty to comply with section 18 of
21 this 2003 Act, any other law applicable to state contracting agencies, or any applicable city
22 or county charter provisions. Each contracting agency authorized to enter into contracts for
23 architectural, engineering and land surveying services and related services shall adopt pro-
24 cedures for the screening and selection of persons to perform those services under section
25 91 or 95 of this 2003 Act.

26 (2) The Director of the Oregon Department of Administrative Services or a local contract
27 review board by ordinance, resolution, administrative rule or other regulation may designate
28 certain personal services contracts or classes of personal services contracts as contracts for
29 architectural, engineering and land surveying services or related services.

30 SECTION 91. Contracts for services of architects, engineers and land surveyors; selection
31 PROCEDURE; COMPENSATION; APPLICABILITY. (1) A state contracting agency shall select consult-
32 ants to provide architectural, engineering or land surveying services on the basis of quali-
33 fications for the type of professional service required. A state contracting agency may solicit
34 or use pricing policies and proposals or other pricing information to determine consultant
35 compensation only after the agency has selected a candidate pursuant to subsection (3) of
36 this section.

37 (2) This section applies only if the architectural, engineering or land surveying services
38 contract is issued by a state contracting agency and does not apply to any such contract is-
39 sued by a local contracting agency unless the following conditions apply:

40 (a) The local contracting agency receives moneys from the State Highway Fund under
41 ORS 366.525 or 366.800 or a grant or loan from the state that will be used to pay for any
42 portion of the design and construction of the project;

43 (b) The total amount of any grants, loans or moneys from the State Highway Fund and
44 from the state for the project exceeds 35 percent of the value of the project; and

45 (c) The value of the project exceeds \$400,000.

1 **(3) Subject to the requirements of subsections (1) and (2) of this section, the procedures**
2 **that a contracting agency creates for the screening and selection of consultants and the se-**
3 **lection of a candidate under this section shall be within the sole discretion of the contracting**
4 **agency and may be adjusted to accommodate the contracting agency's scope, schedule and**
5 **budget objectives for a particular project. Adjustments to accommodate a contracting agen-**
6 **cy's objectives may include provision for the direct appointment of a consultant if the value**
7 **of the project does not exceed a threshold amount as determined by the contracting agency.**
8 **Screening and selection procedures may include a consideration of each candidate's:**

9 **(a) Specialized experience, capabilities and technical competence that may be demon-**
10 **strated by the proposed approach and methodology to meet the project requirements;**

11 **(b) Resources available to perform the work and the proportion of the candidate staff's**
12 **time that would be spent on the project, including any specialized services, within the appli-**
13 **cable time limits;**

14 **(c) Record of past performance, including but not limited to price and cost data from**
15 **previous projects, quality of work, ability to meet schedules, cost control and contract ad-**
16 **ministration;**

17 **(d) Ownership status and employment practices regarding minority, women and emerging**
18 **small businesses or historically underutilized businesses;**

19 **(e) Availability to the project locale;**

20 **(f) Familiarity with the project locale; and**

21 **(g) Proposed project management techniques.**

22 **(4) If the screening and selection procedures created by a contracting agency under**
23 **subsection (3) of this section result in the determination by the contracting agency that two**
24 **or more candidates are equally qualified, the contracting agency may select a candidate**
25 **through any process adopted by the contracting agency.**

26 **(5) The contracting agency and the selected candidate shall mutually discuss and refine**
27 **the scope of services for the project and shall negotiate conditions, including but not limited**
28 **to compensation level and performance schedule, based on the scope of services. The com-**
29 **penetration level paid must be reasonable and fair to the contracting agency as determined**
30 **solely by the contracting agency. Authority to negotiate a contract under this section does**
31 **not supersede any provision of section 18 or 141 of this 2003 Act.**

32 **(6) If the contracting agency and the selected candidate are unable for any reason to**
33 **negotiate a contract at a compensation level that is reasonable and fair to the contracting**
34 **agency, the contracting agency shall, either orally or in writing, formally terminate negoti-**
35 **ations with the selected candidate. The contracting agency may then negotiate with another**
36 **candidate. The negotiation process may continue in this manner through successive candi-**
37 **dates until an agreement is reached or the contracting agency terminates the consultant**
38 **contracting process.**

39 **(7) It is the goal of this state to promote a sustainable economy in the rural areas of the**
40 **state. In order to monitor progress toward this goal, a state contracting agency to which this**
41 **section applies shall keep a record of the locations for the architectural, engineering and land**
42 **surveying services contracts and related services contracts to be performed throughout the**
43 **state, the locations of the selected consultants and the direct expenses on each contract.**
44 **This record shall include the total number of contracts over a 10-year period for each con-**
45 **sultant firm. The record of direct expenses shall include all personnel travel expenses as a**

1 **separate and identifiable expense on the contract. Upon request, the state contracting**
2 **agency shall make these records available to the public.**

3 **SECTION 92.** Section 91 of this 2003 Act is amended to read:

4 **Sec. 91.** (1) A state contracting agency shall select consultants to provide architectural, engi-
5 neering or land surveying services on the basis of qualifications for the type of professional service
6 required. A state contracting agency may solicit or use pricing policies and proposals or other
7 pricing information to determine consultant compensation only after the agency has selected a
8 candidate pursuant to subsection [(3)] (2) of this section.

9 [(2) *This section applies only if the architectural, engineering or land surveying services contract*
10 *is issued by a state contracting agency and does not apply to any such contract issued by a local con-*
11 *tracting agency unless the following conditions apply:]*

12 [(a) *The local contracting agency receives moneys from the State Highway Fund under ORS*
13 *366.525 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the*
14 *design and construction of the project;]*

15 [(b) *The total amount of any grants, loans or moneys from the State Highway Fund and from the*
16 *state for the project exceeds 35 percent of the value of the project; and]*

17 [(c) *The value of the project exceeds \$400,000.*]

18 [(3)] (2) Subject to the requirements of [subsections (1) and (2)] **subsection (1)** of this section,
19 the procedures that a contracting agency creates for the screening and selection of consultants and
20 the selection of a candidate under this section shall be within the sole discretion of the contracting
21 agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget
22 objectives for a particular project. Adjustments to accommodate a contracting agency's objectives
23 may include provision for the direct appointment of a consultant if the value of the project does not
24 exceed a threshold amount as determined by the contracting agency. Screening and selection pro-
25 cedures may include a consideration of each candidate's:

26 (a) Specialized experience, capabilities and technical competence that may be demonstrated by
27 the proposed approach and methodology to meet the project requirements;

28 (b) Resources available to perform the work and the proportion of the candidate staff's time that
29 would be spent on the project, including any specialized services, within the applicable time limits;

30 (c) Record of past performance, including but not limited to price and cost data from previous
31 projects, quality of work, ability to meet schedules, cost control and contract administration;

32 (d) Ownership status and employment practices regarding minority, women and emerging small
33 businesses or historically underutilized businesses;

34 (e) Availability to the project locale;

35 (f) Familiarity with the project locale; and

36 (g) Proposed project management techniques.

37 [(4)] (3) If the screening and selection procedures created by a contracting agency under sub-
38 section [(3)] (2) of this section result in the determination by the contracting agency that two or
39 more candidates are equally qualified, the contracting agency may select a candidate through any
40 process adopted by the contracting agency.

41 [(5)] (4) The contracting agency and the selected candidate shall mutually discuss and refine the
42 scope of services for the project and shall negotiate conditions, including but not limited to com-
43 pensation level and performance schedule, based on the scope of services. The compensation level
44 paid must be reasonable and fair to the contracting agency as determined solely by the contracting
45 agency. Authority to negotiate a contract under this section does not supersede any provision of

1 section 18 or 141 of this 2003 Act.

2 [(6)] (5) If the contracting agency and the selected candidate are unable for any reason to ne-
3 gotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the
4 contracting agency shall, either orally or in writing, formally terminate negotiations with the se-
5 lected candidate. The contracting agency may then negotiate with another candidate. The negoti-
6 ation process may continue in this manner through successive candidates until an agreement is
7 reached or the contracting agency terminates the consultant contracting process.

8 [(7)] (6) It is the goal of this state to promote a sustainable economy in the rural areas of the
9 state. In order to monitor progress toward this goal, a state contracting agency to which this section
10 applies shall keep a record of the locations for the architectural, engineering and land surveying
11 services contracts and related services contracts to be performed throughout the state, the locations
12 of the selected consultants and the direct expenses on each contract. This record shall include the
13 total number of contracts over a 10-year period for each consultant firm. The record of direct ex-
14 penses shall include all personnel travel expenses as a separate and identifiable expense on the
15 contract. Upon request, the state contracting agency shall make these records available to the
16 public.

17 **SECTION 93.** (1) **The amendments to section 91 of this 2003 Act by section 92 of this 2003**
18 **Act become operative on July 1, 2008.**

19 (2) **Section 91 of this 2003 Act, as amended by section 92 of this 2003 Act, applies only to**
20 **public contracts for personal services advertised or solicited on or after July 1, 2008.**

21 **SECTION 94. Direct contracts for services of architects, engineers and land surveyors.**

22 (1) **As used in this section, “consultant” means an architect, engineer or land surveyor.**

23 (2) **A local contracting agency may enter into an architectural, engineering or land sur-
24 veying services contract directly with a consultant if the project described in the contract
25 consists of work that has been substantially described, planned or otherwise previously
26 studied or rendered in an earlier contract with the consultant that was awarded under rules
27 adopted under section 10 of this 2003 Act and the new contract is a continuation of that
28 project.**

29 (3) **A local contracting agency may adopt criteria for determining when this section ap-
30 plies to an architectural, engineering or land surveying services contract.**

31 **SECTION 95. Selection procedure for related services.** (1) **A contracting agency may se-
32 lect consultants to perform related services:**

33 (a) **In accordance with screening and selection procedures adopted under section 90 of
34 this 2003 Act;**

35 (b) **On the basis of the qualifications of the consultants for the types of related services
36 required, under the requirements of section 91 of this 2003 Act; or**

37 (c) **On the basis of price competition, price and performance evaluations, an evaluation
38 of the capabilities of bidders to perform the needed related services or an evaluation of the
39 capabilities of the bidders to perform the needed related services followed by negotiations
40 between the parties on the price for those related services.**

41 (2) **Subject to the requirements of subsection (1) of this section, the procedures that a
42 contracting agency adopts for the screening and selection of consultants and the selection
43 of a candidate under this section is within the sole discretion of the contracting agency and
44 may be adjusted to accommodate the contracting agency’s scope, schedule and budget ob-
45 jectives for a particular project. Adjustments to accommodate a contracting agency’s objec-**

1 tives may include provision for the direct appointment of a consultant if the value of the
2 project does not exceed a threshold amount as determined by the contracting agency.

3 SECTION 96. Architectural, engineering and land surveying services selection process for
4 local government public improvements procured through state agency; rules. (1) The De-
5 partment of Transportation, the Oregon Department of Administrative Services or any other
6 state contracting agency shall adopt rules establishing a two-tiered selection process for
7 contracts with architects, engineers and land surveyors to perform personal services con-
8 tracts. The selection process shall apply only if:

9 (a) A public improvement is owned and maintained by a local government; and

10 (b) The Department of Transportation, the Oregon Department of Administrative Ser-
11 vices or another state contracting agency will serve as the lead state contracting agency and
12 will execute personal services contracts with architects, engineers and land surveyors for
13 work on the public improvement project.

14 (2) The selection process required by subsection (1) of this section must require the lead
15 state contracting agency to select no fewer than the three most qualified consultants when
16 feasible in accordance with section 91 of this 2003 Act.

17 (3) The local government is responsible for the final selection of the consultant from the
18 list of qualified consultants selected by the lead state contracting agency or through an al-
19 ternative process adopted by the local government.

20 (4) Nothing in this section applies to the selection process used by a local contracting
21 agency when the contracting agency executes a contract directly with architects, engineers
22 or land surveyors.

23
24 **PROCUREMENT OF CONSTRUCTION SERVICES**

25 **(General Policies)**

26
27 SECTION 97. Policy on competition. It is the policy of the State of Oregon that public
28 improvement contracts awarded under sections 88 to 180 of this 2003 Act must be based on
29 competitive bidding, except as otherwise specifically provided in section 103 of this 2003 Act
30 for exceptions and formal exemptions from competitive bidding requirements.

31 SECTION 98. Least-cost policy for public improvements; costs estimates in budget pro-
32 cess; use of agency forces; record of costs. (1) It is the policy of the State of Oregon that
33 contracting agencies shall make every effort to construct public improvements at the least
34 cost to the contracting agency.

35 (2) Not less than 30 days prior to adoption of the contracting agency's budget for the
36 subsequent budget period, each contracting agency shall prepare and file with the Commis-
37 sioner of the Bureau of Labor and Industries a list of every public improvement known to
38 the contracting agency that the contracting agency plans to fund in the budget period,
39 identifying each improvement by name and estimating the total on-site construction costs.
40 The list shall also contain a statement as to whether the contracting agency intends to
41 perform the construction through a private contractor. If the contracting agency intends to
42 perform construction work using the contracting agency's own equipment and personnel on
43 a project estimated to cost more than \$125,000, the contracting agency shall also show that
44 the contracting agency's decision conforms to the policy stated in subsection (1) of this
45 section. The list is a public record and may be revised periodically by the agency.

1 (3) Before a contracting agency constructs a public improvement with its own equipment
2 or personnel:

3 (a) If the estimated cost exceeds \$125,000, the contracting agency shall prepare adequate
4 plans and specifications and the estimated unit cost of each classification of work. The esti-
5 mated cost of the work must include a reasonable allowance for the cost, including invest-
6 ment cost, of any equipment used. As used in this paragraph, "adequate" means sufficient
7 to control the performance of the work and to ensure satisfactory quality of construction
8 by the contracting agency personnel.

9 (b) The contracting agency shall cause to be kept and preserved a full, true and accurate
10 account of the costs of performing the work, including all engineering and administrative
11 expenses and the cost, including investment costs, of any equipment used. The final account
12 of the costs is a public record.

13 (4) Subsections (2) and (3) of this section do not apply to a contracting agency when the
14 public improvement is to be used for the distribution or transmission of electric power.

15 (5) For purposes of this section, resurfacing of highways, roads or streets at a depth of
16 two or more inches and at an estimated cost that exceeds \$125,000 is a public improvement.

17 **SECTION 99. Limitation on contracting agency constructing public improvement.** If a
18 contracting agency fails to adopt and apply a cost accounting system that substantially
19 complies with the model cost accounting guidelines developed by the Oregon Department of
20 Administrative Services pursuant to section 3, chapter 869, Oregon Laws 1979, as determined
21 by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555
22 (Municipal Audit Law), the contracting agency may not construct a public improvement with
23 the contracting agency's own equipment or personnel if the cost exceeds \$5,000.

24 **SECTION 100. Waiver of damages for unreasonable delay by contracting agency against**
25 **public policy.** (1) Any clause in a public improvement contract that purports to waive, release
26 or extinguish the rights of a contractor to damages or an equitable adjustment arising out
27 of unreasonable delay in performing the contract, if the delay is caused by acts or omissions
28 of the contracting agency or persons acting therefor, is against public policy and is void and
29 unenforceable.

30 (2) Subsection (1) of this section is not intended to render void any contract provision
31 that:

32 (a) Requires notice of any delay;

33 (b) Provides for arbitration or other procedures for settlement of contract disputes; or

34 (c) Provides for reasonable liquidated damages.

35 **SECTION 101. Contracts for construction other than public improvements.** (1) Contract-
36 ing agencies shall enter into contracts for minor alteration, ordinary repair or maintenance
37 of public improvements, as well as any other construction contract that is not defined as a
38 public improvement under section 2 of this 2003 Act, in accordance with the provisions of
39 sections 47 to 87 of this 2003 Act. This subsection does not apply to emergency contracts
40 regulated under section 103 of this 2003 Act.

41 (2) Nothing in this section relieves contracting agencies or contractors of any other rel-
42 evant requirements under sections 88 to 180 of this 2003 Act, including payment of prevailing
43 wage rates when applicable.

44 (3) When construction services are not considered to be a public improvement under
45 sections 88 to 180 of this 2003 Act because no funds of a public agency are directly or indi-

1 rectly used, except for participation that is incidental or related primarily to project design
2 or inspection, the benefiting public body may nonetheless condition acceptance of the ser-
3 vices on receipt of such protections as the public body considers to be in the public interest,
4 including a performance bond, a payment bond and appropriate insurance.

5
6 (Competitive Bidding; Contract Specifications;
7 Exceptions; Exemptions)
8

9 **SECTION 102. “Findings” defined.** As used in sections 103, 107 and 108 of this 2003 Act,
10 “findings” means the justification for a contracting agency conclusion that includes, but is
11 not limited to, information regarding:

- 12 (1) Operational, budget and financial data;
- 13 (2) Public benefits;
- 14 (3) Value engineering;
- 15 (4) Specialized expertise required;
- 16 (5) Public safety;
- 17 (6) Market conditions;
- 18 (7) Technical complexity; and
- 19 (8) Funding sources.

20 **SECTION 103. Competitive bidding; exceptions; exemptions.** (1) All public improvement
21 contracts shall be based upon competitive bids except:

22 (a) Contracts entered into with qualified nonprofit agencies providing employment op-
23 portunities for disabled individuals under ORS 279.835 to 279.855.

24 (b) A public improvement contract exempt under subsection (2) of this section.

25 (c) A contract for goods or services if the value of the contract is less than \$5,000.

26 (d) A contract not to exceed \$100,000, or not to exceed \$50,000 in the case of a contract
27 for a highway, bridge or other transportation project, made under procedures for competitive
28 quotes in sections 132 and 133 of this 2003 Act.

29 (e) Contracts for repair, maintenance, improvement or protection of property obtained
30 by the Director of Veterans’ Affairs under ORS 407.135 and 407.145 (1).

31 (2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department
32 of Administrative Services, a local contract review board or, for contracts described in sec-
33 tion 7 (3)(b) of this 2003 Act, the Director of Transportation may exempt a public improve-
34 ment contract or a class of public improvement contracts from the competitive bidding
35 requirements of subsection (1) of this section upon approval of the following findings sub-
36 mitted by the contracting agency seeking the exemption:

37 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public
38 improvement contracts or substantially diminish competition for public improvement con-
39 tracts; and

40 (b) The awarding of public improvement contracts under the exemption will result in
41 substantial cost savings to the contracting agency or, if the contracts are for public im-
42 provements described in section 7 (3)(b) of this 2003 Act, to the contracting agency or the
43 public. In making the finding, the Director of the Oregon Department of Administrative
44 Services, the Director of Transportation or the local contract review board may consider the
45 type, cost and amount of the contract, the number of persons available to bid and such other

1 factors as may be deemed appropriate.

2 (3) In granting exemptions under subsection (2) of this section, the Director of the
3 Oregon Department of Administrative Services, the Director of Transportation or the local
4 contract review board shall:

5 (a) When appropriate, direct the use of alternate contracting methods that take account
6 of market realities and modern practices and are consistent with the public policy of en-
7 couraging competition.

8 (b) Require and approve or disapprove written findings by the contracting agency that
9 support the awarding of a particular public improvement contract or a class of public im-
10 provement contracts, without the competitive bidding requirement of subsection (1) of this
11 section. The findings must show that the exemption of a contract or class of contracts
12 complies with the requirements of subsection (2) of this section.

13 (4)(a) Before final adoption of the findings required by subsection (2) of this section ex-
14 empting a public improvement contract or a class of public improvement contracts from the
15 requirement of competitive bidding, a contracting agency shall hold a public hearing.

16 (b) Notification of the public hearing shall be published in at least one trade newspaper
17 of general statewide circulation a minimum of 14 days before the hearing.

18 (c) The notice shall state that the public hearing is for the purpose of taking comments
19 on the contracting agency's draft findings for an exemption from the competitive bidding
20 requirement. At the time of the notice, copies of the draft findings shall be made available
21 to the public. At the option of the contracting agency, the notice may describe the process
22 by which the findings are finally adopted and may indicate the opportunity for any further
23 public comment.

24 (d) At the public hearing, the contracting agency shall offer an opportunity for any in-
25 terested party to appear and present comment.

26 (e) If a contracting agency is required to act promptly due to circumstances beyond the
27 contracting agency's control that do not constitute an emergency, notification of the public
28 hearing may be published simultaneously with the contracting agency's solicitation of con-
29 tractors for the alternative public contracting method, as long as responses to the solici-
30 tation are due at least five days after the meeting and approval of the findings.

31 (5) A public improvement contract may be exempted from the requirement of subsection
32 (1) of this section if emergency conditions require prompt execution of the contract. In ac-
33 cordance with rules adopted under section 10 of this 2003 Act, a contracting agency may
34 declare that an emergency exists. If an emergency is declared, any contract awarded under
35 this subsection must be awarded within 60 days following declaration of the emergency, un-
36 less the Director of the Oregon Department of Administrative Services or the local contract
37 review board grants an extension.

38 **SECTION 104.** Section 103 of this 2003 Act is amended to read:

39 **Sec. 103.** (1) All public improvement contracts shall be based upon competitive bids except:

40 (a) Contracts entered into with qualified nonprofit agencies providing employment opportunities
41 for disabled individuals under ORS 279.835 to 279.855.

42 (b) A public improvement contract exempt under subsection (2) of this section.

43 (c) A contract for goods or services if the value of the contract is less than \$5,000.

44 (d) A contract not to exceed \$100,000, or not to exceed \$50,000 in the case of a contract for a
45 highway, bridge or other transportation project, made under procedures for competitive quotes in

1 sections 132 and 133 of this 2003 Act.

2 (e) Contracts for repair, maintenance, improvement or protection of property obtained by the
3 Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

4 (2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department of Ad-
5 ministrative Services[,] **or** a local contract review board [*or, for contracts described in section 7 (3)(b)*
6 *of this 2003 Act, the Director of Transportation*] may exempt a public improvement contract or a class
7 of public improvement contracts from the competitive bidding requirements of subsection (1) of this
8 section upon approval of the following findings submitted by the contracting agency seeking the
9 exemption:

10 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
11 provement contracts or substantially diminish competition for public improvement contracts; and

12 (b) The awarding of public improvement contracts under the exemption will result in substantial
13 cost savings to the contracting agency [*or, if the contracts are for public improvements described in*
14 *section 7 (3)(b) of this 2003 Act, to the contracting agency or the public*]. In making the finding, the
15 director [*of the Oregon Department of Administrative Services, the Director of Transportation*] or the
16 local contract review board may consider the type, cost and amount of the contract, the number of
17 persons available to bid and such other factors as may be deemed appropriate.

18 (3) In granting exemptions under subsection (2) of this section, the director [*of the Oregon De-*
19 *partment of Administrative Services, the Director of Transportation*] or the local contract review
20 board shall:

21 (a) When appropriate, direct the use of alternate contracting methods that take account of
22 market realities and modern practices and are consistent with the public policy of encouraging
23 competition.

24 (b) Require and approve or disapprove written findings by the contracting agency that support
25 the awarding of a particular public improvement contract or a class of public improvement con-
26 tracts, without the competitive bidding requirement of subsection (1) of this section. The findings
27 must show that the exemption of a contract or class of contracts complies with the requirements
28 of subsection (2) of this section.

29 (4)(a) Before final adoption of the findings required by subsection (2) of this section exempting
30 a public improvement contract or a class of public improvement contracts from the requirement of
31 competitive bidding, a contracting agency shall hold a public hearing.

32 (b) Notification of the public hearing shall be published in at least one trade newspaper of
33 general statewide circulation a minimum of 14 days before the hearing.

34 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
35 contracting agency's draft findings for an exemption from the competitive bidding requirement. At
36 the time of the notice, copies of the draft findings shall be made available to the public. At the op-
37 tion of the contracting agency, the notice may describe the process by which the findings are finally
38 adopted and may indicate the opportunity for any further public comment.

39 (d) At the public hearing, the contracting agency shall offer an opportunity for any interested
40 party to appear and present comment.

41 (e) If a contracting agency is required to act promptly due to circumstances beyond the con-
42 tracting agency's control that do not constitute an emergency, notification of the public hearing may
43 be published simultaneously with the contracting agency's solicitation of contractors for the alter-
44 native public contracting method, as long as responses to the solicitation are due at least five days
45 after the meeting and approval of the findings.

1 (5) A public improvement contract may be exempted from the requirement of subsection (1) of
2 this section if emergency conditions require prompt execution of the contract. In accordance with
3 rules adopted under section 10 of this 2003 Act, a contracting agency may declare that an emer-
4 gency exists. If an emergency is declared, any contract awarded under this subsection must be
5 awarded within 60 days following declaration of the emergency, unless the director [*of the Oregon*
6 *Department of Administrative Services*] or the local contract review board grants an extension.

7 **SECTION 105. The amendments to section 103 of this 2003 Act by section 104 of this 2003**
8 **Act become operative on July 1, 2005.**

9 **SECTION 105a.** Section 103 of this 2003 Act, as amended by section 104 of this 2003 Act, is
10 amended to read:

11 **Sec. 103.** (1) All public improvement contracts shall be based upon competitive bids except:

12 (a) Contracts entered into with qualified nonprofit agencies providing employment opportunities
13 for disabled individuals under ORS 279.835 to 279.855.

14 (b) A public improvement contract exempt under subsection (2) of this section.

15 (c) A contract for goods or services if the value of the contract is less than \$5,000.

16 [(d) A contract not to exceed \$100,000, or not to exceed \$50,000 in the case of a contract for a
17 highway, bridge or other transportation project, made under procedures for competitive quotes in
18 sections 132 and 133 of this 2003 Act.]

19 [(e)] (d) Contracts for repair, maintenance, improvement or protection of property obtained by
20 the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

21 (2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department of Ad-
22 ministrative Services or a local contract review board may exempt a public improvement contract
23 or a class of public improvement contracts from the competitive bidding requirements of subsection
24 (1) of this section upon approval of the following findings submitted by the contracting agency
25 seeking the exemption:

26 (a) It is unlikely that the exemption will encourage favoritism in the awarding of public im-
27 provement contracts or substantially diminish competition for public improvement contracts; and

28 (b) The awarding of public improvement contracts under the exemption will result in substantial
29 cost savings to the contracting agency. In making the finding, the director or the local contract
30 review board may consider the type, cost and amount of the contract, the number of persons avail-
31 able to bid and such other factors as may be deemed appropriate.

32 (3) In granting exemptions under subsection (2) of this section, the director or the local contract
33 review board shall:

34 (a) When appropriate, direct the use of alternate contracting methods that take account of
35 market realities and modern practices and are consistent with the public policy of encouraging
36 competition.

37 (b) Require and approve or disapprove written findings by the contracting agency that support
38 the awarding of a particular public improvement contract or a class of public improvement con-
39 tracts, without the competitive bidding requirement of subsection (1) of this section. The findings
40 must show that the exemption of a contract or class of contracts complies with the requirements
41 of subsection (2) of this section.

42 (4)(a) Before final adoption of the findings required by subsection (2) of this section exempting
43 a public improvement contract or a class of public improvement contracts from the requirement of
44 competitive bidding, a contracting agency shall hold a public hearing.

45 (b) Notification of the public hearing shall be published in at least one trade newspaper of

1 general statewide circulation a minimum of 14 days before the hearing.

2 (c) The notice shall state that the public hearing is for the purpose of taking comments on the
3 contracting agency's draft findings for an exemption from the competitive bidding requirement. At
4 the time of the notice, copies of the draft findings shall be made available to the public. At the op-
5 tion of the contracting agency, the notice may describe the process by which the findings are finally
6 adopted and may indicate the opportunity for any further public comment.

7 (d) At the public hearing, the contracting agency shall offer an opportunity for any interested
8 party to appear and present comment.

9 (e) If a contracting agency is required to act promptly due to circumstances beyond the con-
10 tracting agency's control that do not constitute an emergency, notification of the public hearing may
11 be published simultaneously with the contracting agency's solicitation of contractors for the alter-
12 native public contracting method, as long as responses to the solicitation are due at least five days
13 after the meeting and approval of the findings.

14 (5) A public improvement contract may be exempted from the requirement of subsection (1) of
15 this section if emergency conditions require prompt execution of the contract. In accordance with
16 rules adopted under section 10 of this 2003 Act, a contracting agency may declare that an emer-
17 gency exists. If an emergency is declared, any contract awarded under this subsection must be
18 awarded within 60 days following declaration of the emergency, unless the director or the local
19 contract review board grants an extension.

20 **SECTION 105b. The amendments to section 103 of this 2003 Act by section 105a of this**
21 **2003 Act become operative on July 30, 2009.**

22 **SECTION 106. Contract negotiations. If a public improvement contract is competitively**
23 **bid and all responsive bids from responsible bidders exceed the contracting agency's cost**
24 **estimate, the contracting agency, in accordance with rules adopted by the contracting**
25 **agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the**
26 **contract, in order to solicit value engineering and other options to attempt to bring the**
27 **contract within the contracting agency's cost estimate. A negotiation with the lowest re-**
28 **sponsive, responsible bidder under this section may not result in the award of the contract**
29 **to that bidder if the scope of the project is significantly changed from the original bid pro-**
30 **posal. Notwithstanding any other provision of law, the records of a bidder used in contract**
31 **negotiation under this section are not subject to public inspection until after the negotiated**
32 **contract has been awarded or the negotiation process has been terminated.**

33 **SECTION 107. Specifications for contracts; exemptions. (1) Specifications for public im-**
34 **provement contracts may not expressly or implicitly require any product by any brand name**
35 **or mark, nor the product of any particular manufacturer or seller unless the product is ex-**
36 **empt under subsection (2) of this section.**

37 **(2) The Director of the Oregon Department of Administrative Services or a local contract**
38 **review board may exempt certain products or classes of products from subsection (1) of this**
39 **section upon any of the following findings:**

40 **(a) It is unlikely that the exemption will encourage favoritism in the awarding of public**
41 **improvement contracts or substantially diminish competition for public improvement con-**
42 **tracts;**

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

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

1 (d) Efficient utilization of existing equipment or supplies requires the acquisition of
2 compatible equipment or supplies.

3 **SECTION 108. Exemption procedure; appeal.** (1) Exemptions granted by the Director of
4 the Oregon Department of Administrative Services under section 103 (2) or 107 (2) of this
5 2003 Act constitute rulemaking and not contested cases under ORS 183.310 to 183.550. How-
6 ever, an exemption granted with regard to a specific public improvement contract by the
7 Director of the Oregon Department of Administrative Services, or an exemption granted by
8 the Director of Transportation with regard to a specific public improvement contract or class
9 of public improvement contracts described in section 7 (3)(b) of this 2003 Act, shall be
10 granted by order. The order shall set forth findings supporting the decision to grant or deny
11 the request for the exemption. The order is reviewable under ORS 183.484 and does not con-
12 stitute a contested case order. Jurisdiction for review of the order is with the Circuit Court
13 of Marion County. The court may award costs and attorney fees to the prevailing party.

14 (2) Any person except the contracting agency or anyone representing the contracting
15 agency may bring a petition for a declaratory judgment to test the validity of any rule
16 adopted by the Director of the Oregon Department of Administrative Services under section
17 103 or 107 of this 2003 Act in the manner provided in ORS 183.400.

18 (3) Any person except the contracting agency or anyone representing the contracting
19 agency may bring an action for writ of review under ORS chapter 34 to test the validity of
20 an exemption granted under section 103 or 107 of this 2003 Act by a local contract review
21 board.

22 **SECTION 109.** Section 108 of this 2003 Act is amended to read:

23 **Sec. 108.** (1) Exemptions granted by the Director of the Oregon Department of Administrative
24 Services under section 103 (2) or 107 (2) of this 2003 Act constitute rulemaking and not contested
25 cases under ORS 183.310 to 183.550. However, an exemption granted with regard to a specific public
26 improvement contract by the director [*of the Oregon Department of Administrative Services, or an*
27 *exemption granted by the Director of Transportation with regard to a specific public improvement*
28 *contract or class of public improvement contracts described in section 7 (3)(b) of this 2003 Act,*] shall
29 be granted by order **of the director**. The order shall set forth findings supporting the decision **of**
30 **the director** to grant or deny the request for the exemption. The order is reviewable under ORS
31 183.484 and does not constitute a contested case order. Jurisdiction for review of the order is with
32 the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing
33 party.

34 (2) Any person except the contracting agency or anyone representing the contracting agency
35 may bring a petition for a declaratory judgment to test the validity of any rule adopted by the di-
36 rector [*of the Oregon Department of Administrative Services*] under section 103 or 107 of this 2003
37 Act in the manner provided in ORS 183.400.

38 (3) Any person except the contracting agency or anyone representing the contracting agency
39 may bring an action for writ of review under ORS chapter 34 to test the validity of an exemption
40 granted under section 103 or 107 of this 2003 Act by a local contract review board.

41 **SECTION 110.** The amendments to section 108 of this 2003 Act by section 109 of this 2003
42 Act become operative on July 1, 2005.

43 **SECTION 111. Evaluation of public improvement projects not contracted by competitive**
44 **bidding.** (1) Upon completion of and final payment for any public improvement contract, or
45 class of public improvement contracts described in section 7 (3)(b) of this 2003 Act, in excess

1 of \$100,000 for which the contracting agency did not use the competitive bidding process, the
2 contracting agency shall prepare and deliver to the Director of the Oregon Department of
3 Administrative Services, the local contract review board or, for a class of public improve-
4 ment contracts described in section 7 (3)(b) of this 2003 Act, the Director of Transportation
5 an evaluation of the public improvement contract or the class of public improvement con-
6 tracts.

7 (2) The evaluation must include but is not limited to the following matters:

8 (a) The actual project cost as compared with original project estimates;

9 (b) The amount of any guaranteed maximum price;

10 (c) The number of project change orders issued by the contracting agency;

11 (d) A narrative description of successes and failures during the design, engineering and
12 construction of the project; and

13 (e) An objective assessment of the use of the alternative contracting process as com-
14 pared to the findings required by section 103 of this 2003 Act.

15 (3) The evaluations required by this section:

16 (a) Must be made available for public inspection; and

17 (b) Must be completed within 30 days of the date the contracting agency accepts:

18 (A) The public improvement project; or

19 (B) The last public improvement project if the project falls within a class of public im-
20 provement contracts described in section 7 (3)(b) of this 2003 Act.

21 **SECTION 112.** Section 111 of this 2003 Act is amended to read:

22 **Sec. 111.** (1) Upon completion of and final payment for any public improvement contract, or
23 class of public improvement contracts [*described in section 7 (3)(b) of this 2003 Act*], in excess of
24 \$100,000 for which the contracting agency did not use the competitive bidding process, the con-
25 tracting agency shall prepare and deliver to the Director of the Oregon Department of Administra-
26 tive Services[,] **or** the local contract review board [*or, for a class of public improvement contracts*
27 *described in section 7 (3)(b) of this 2003 Act, the Director of Transportation*] an evaluation of the
28 public improvement contract or the class of public improvement contracts.

29 (2) The evaluation shall include but is not limited to the following matters:

30 (a) The actual project cost as compared with original project estimates;

31 (b) The amount of any guaranteed maximum price;

32 (c) The number of project change orders issued by the contracting agency;

33 (d) A narrative description of successes and failures during the design, engineering and con-
34 struction of the project; and

35 (e) An objective assessment of the use of the alternative contracting process as compared to the
36 findings required by section 103 of this 2003 Act.

37 (3) The evaluations required by this section:

38 (a) Must be made available for public inspection; and

39 (b) Must be completed within 30 days of the date the contracting agency accepts:

40 (A) The public improvement project; or

41 (B) The last public improvement project if the project falls within a class of public improvement
42 contracts [*described in section 7 (3)(b) of this 2003 Act*].

43 **SECTION 113.** The amendments to section 111 of this 2003 Act by section 112 of this 2003
44 Act become operative on July 1, 2005.

45

(Solicitation and Contract Award)

1
2
3 **SECTION 114. Requirement for public improvement advertisements.** (1) An advertisement
4 for public improvement contracts must be published at least once in at least one newspaper
5 of general circulation in the area where the contract is to be performed and in as many ad-
6 ditional issues and publications as the contracting agency may determine. The Director of
7 the Oregon Department of Administrative Services or a local contract review board, by rule
8 or order, may authorize advertisements for public improvement contracts to be published
9 electronically instead of in a newspaper of general circulation if the director or board de-
10 termines that electronic advertisements are likely to be cost-effective. If the public im-
11 provement contract has an estimated cost in excess of \$125,000, the advertisement must be
12 published in at least one trade newspaper of general statewide circulation. The director or
13 board may, by rule or order, require an advertisement to be published more than once or in
14 one or more additional publications.

15 (2) All advertisements for public improvement contracts must state:

16 (a) The public improvement project;

17 (b) The office where the specifications for the project may be reviewed;

18 (c) The date that prequalification applications must be filed under section 123 of this 2003
19 Act and the class or classes of work for which bidders must be prequalified if prequalification
20 is a requirement;

21 (d) The date and time after which bids will not be received, which must be at least five
22 days after the date of the last publication of the advertisement;

23 (e) The name and title of the person designated for receipt of bids;

24 (f) The date, time and place that the contracting agency will publicly open the bids; and

25 (g) If the contract is for a public works subject to sections 165 to 179 of this 2003 Act or
26 the Davis-Bacon Act (40 U.S.C. 276a).

27 **SECTION 115. Requirements for solicitation documents and bids and proposals.** (1) A
28 contracting agency preparing solicitation documents for a public improvement contract shall,
29 at a minimum, include:

30 (a) The public improvement project;

31 (b) The office where the specifications for the project may be reviewed;

32 (c) The date that prequalification applications must be filed under section 123 of this 2003
33 Act and the class or classes of work for which bidders must be prequalified if prequalification
34 is a requirement;

35 (d) The date and time after which bids will not be received, which must be at least five
36 days after the date of the last publication of the advertisement;

37 (e) The name and title of the person designated for receipt of bids;

38 (f) The date, time and place that the contracting agency will publicly open the bids;

39 (g) A statement that, if the contract is for a public works subject to sections 165 to 179
40 of this 2003 Act or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered
41 by the contracting agency unless the bid contains a statement by the bidder that section 167
42 of this 2003 Act or 40 U.S.C. 276a will be complied with;

43 (h) A statement that each bid must identify whether the bidder is a resident bidder, as
44 defined in section 16 of this 2003 Act;

45 (i) A statement that the contracting agency may reject any bid not in compliance with

1 all prescribed public contracting procedures and requirements and may reject for good cause
2 all bids upon a finding of the agency that it is in the public interest to do so;

3 (j) Information addressing whether a contractor or subcontractor must be licensed under
4 ORS 468A.720; and

5 (k) A statement that a bid for a public improvement contract may not be received or
6 considered by the contracting agency unless the bidder is licensed by the Construction Con-
7 tractors Board or the State Landscape Contractors Board.

8 (2) All bids made to the contracting agency under section 103 or 129 of this 2003 Act must
9 be:

10 (a) In writing;

11 (b) Filed with the person designated for receipt of bids by the contracting agency; and

12 (c) Opened publicly by the contracting agency at the time designated in the advertise-
13 ment.

14 (3) After having been opened, the bids must be made available for public inspection.

15 (4) A surety bond, irrevocable letter of credit issued by an insured institution as defined
16 in ORS 706.008, cashier's check or certified check of each bidder shall be attached to all bids
17 as bid security unless the contract for which a bid is submitted has been exempted from this
18 requirement under section 120 of this 2003 Act. The security may not exceed 10 percent of
19 the amount bid for the contract.

20 SECTION 116. First-tier subcontractor disclosure. (1)(a) Within four working hours after
21 the date and time of the deadline when bids are due to a contracting agency for a public
22 improvement contract, a bidder shall submit to the contracting agency a disclosure of the
23 first-tier subcontractors that:

24 (A) Will be furnishing labor or will be furnishing labor and materials in connection with
25 the public improvement contract; and

26 (B) Will have a contract value that is equal to or greater than five percent of the total
27 project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the
28 total project bid.

29 (b) For each contract to which this subsection applies, the contracting agency shall des-
30 ignate a deadline for submission of bids that has a date and time that is on Monday through
31 Thursday or that is on Friday before 12 noon.

32 (c) This subsection applies only to public improvement contracts with an estimated value
33 of more than \$75,000.

34 (d) This subsection does not apply to public improvement contracts that have been ex-
35 empted from competitive bidding requirements under section 103 (2) of this 2003 Act.

36 (2) The disclosure of first-tier subcontractors under subsection (1) of this section must
37 include:

38 (a) The name of each subcontractor; and

39 (b) The category of work that each subcontractor will be performing.

40 (3) A contracting agency shall accept the subcontractor disclosure. The contracting
41 agency shall consider the bid of any contractor that does not submit a subcontractor dis-
42 closure to the contracting agency to be a nonresponsive bid and may not award the contract
43 to the contractor. A contracting agency is not required to determine the accuracy or the
44 completeness of the subcontractor disclosure.

45 (4) After the bids are opened, the subcontractor disclosures must be made available for

1 public inspection.

2 (5) A contractor may substitute a first-tier subcontractor under the provisions of section
3 152 of this 2003 Act.

4 (6) A subcontractor may file a complaint under section 153 of this 2003 Act based on the
5 disclosure requirements of subsection (1) of this section.

6 **SECTION 117. Award of contract; bonds.** (1) After bids are opened and a determination
7 is made that a public improvement contract is to be awarded, the contracting agency shall
8 award the contract to the lowest responsible bidder.

9 (2) In determining the lowest responsible bidder, a contracting agency shall:

10 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for
11 bidders who are not qualified to hold a public improvement contract; and

12 (b) Determine whether the prospective bidder has met the standards of responsibility. In
13 making the determination, the contracting agency shall consider whether a prospective bid-
14 der has:

15 (A) Available the appropriate financial, material, equipment, facility and personnel re-
16 sources and expertise, or the ability to obtain the resources and expertise, necessary to in-
17 dicate the capability of the prospective bidder to meet all contractual responsibilities;

18 (B) A satisfactory record of performance. The contracting agency shall document the
19 record of performance of a prospective bidder if the contracting agency finds the prospective
20 bidder not to be responsible under this subparagraph;

21 (C) A satisfactory record of integrity. The contracting agency shall document the record
22 of integrity of a prospective bidder if the contracting agency finds the prospective bidder not
23 to be responsible under this subparagraph;

24 (D) Qualified legally to contract with the contracting agency; and

25 (E) Supplied all necessary information in connection with the inquiry concerning re-
26 sponsibility. If a prospective bidder fails to promptly supply information requested by the
27 contracting agency concerning responsibility, the contracting agency shall base the deter-
28 mination of responsibility upon any available information, or may find the prospective bidder
29 not to be responsible.

30 (3) The successful bidder shall:

31 (a) Promptly execute a formal contract; and

32 (b) Execute and deliver to the contracting agency a performance bond and a payment
33 bond as described in section 118 of this 2003 Act.

34 **SECTION 118. Performance bond; payment bond; waiver of bonds in case of emergency.**

35 (1) A successful bidder for a public improvement contract shall promptly execute and deliver
36 to the contracting agency the following bonds:

37 (a) A performance bond in an amount equal to the full contract price conditioned on the
38 faithful performance of the contract in accordance with the plans, specifications and condi-
39 tions of the contract. The performance bond must be solely for the protection of the con-
40 tracting agency that awarded the contract and any public agency or agencies for whose
41 benefit the contract was awarded. If the public improvement contract is with a single person
42 to provide both design and construction of a public improvement, the obligation of the per-
43 formance bond for the faithful performance of the contract required by this paragraph must
44 also be for the preparation and completion of the design and related services covered under
45 the contract. Notwithstanding when a cause of action, claim or demand accrues or arises,

1 the surety is not liable after final completion of the contract, or longer if provided for in the
2 contract, for damages of any nature, economic or otherwise and including corrective work,
3 attributable to the design aspect of a design-build project, or for the costs of design revisions
4 needed to implement corrective work. A contracting agency may waive the requirement of
5 a performance bond.

6 (b) A payment bond in an amount equal to the full contract price, solely for the pro-
7 tection of claimants under section 154 of this 2003 Act.

8 (2) If the public improvement contract is with a single person to provide construction
9 manager and general contractor services, in which a guaranteed maximum price may be es-
10 tablished by an amendment authorizing construction period services following precon-
11 struction period services, the contractor shall provide the bonds required by subsection (1)
12 of this section upon execution of an amendment establishing the guaranteed maximum price.
13 The contracting agency shall also require the contractor to provide bonds equal to the value
14 of construction services authorized by any early work amendment in advance of the guar-
15 anteed maximum price amendment. Such bonds must be provided before construction starts.

16 (3) Each performance bond and each payment bond must be executed solely by a surety
17 company or companies holding a certificate of authority to transact surety business in this
18 state. The bonds may not constitute the surety obligation of an individual or individuals. The
19 performance and payment bonds must be payable to the contracting agency or to the public
20 agency or agencies for whose benefit the contract was awarded, as specified in the sollicita-
21 tion documents, and shall be in a form approved by the contracting agency.

22 (4) In cases of emergency, or when the interest or property of the contracting agency
23 or the public agency or agencies for whose benefit the contract was awarded probably would
24 suffer material injury by delay or other cause, the requirement of furnishing a good and
25 sufficient performance bond and a good and sufficient payment bond for the faithful per-
26 formance of any public improvement contract may be excused, if a declaration of such
27 emergency is made in accordance with rules adopted under section 10 of this 2003 Act.

28 SECTION 119. Return or retention of bid security. Upon the execution of a public im-
29 provement contract and delivery of a good and sufficient performance bond and a good and
30 sufficient payment bond by the successful bidder, the bid security of the successful bidder
31 shall be returned to the bidder. A bidder who is awarded a contract and who fails promptly
32 and properly to execute the contract and to deliver the performance bond and the payment
33 bond shall forfeit the bid security that accompanied the successful bid. The bid security shall
34 be taken and considered as liquidated damages and not as a penalty for failure of the bidder
35 to execute the contract and bonds. The bid security of unsuccessful bidders may be returned
36 to them when the bids have been opened and the contract has been awarded, and may not
37 be retained by the contracting agency after the contract has been duly signed.

38 SECTION 120. Exemption of contracts from bid security and bonds. (1) Subject to the
39 provisions of subsection (2) of this section, the Director of the Oregon Department of Ad-
40 ministrative Services or a local contract review board may exempt certain contracts or
41 classes of contracts from the requirement for bid security and from the requirement that
42 good and sufficient bonds be furnished to ensure performance of the contract and payment
43 of obligations incurred in the performance.

44 (2) The contracting agency may require bid security and a good and sufficient perform-
45 ance bond, a good and sufficient payment bond, or any combination of such bonds, even

1 though the public improvement contract is of a class exempted by the director or board.

2
3 (Rejection; Prequalification and Disqualification)
4

5 **SECTION 121. Rejection of bids.** A contracting agency may reject any bid not in compli-
6 **ance with all prescribed public bidding procedures and requirements, and may, for good**
7 **cause, reject all bids upon a finding of the contracting agency it is in the public interest to**
8 **do so. In any case where competitive bids are required and all bids are rejected, and the**
9 **proposed project is not abandoned, new bids may be called for as in the first instance.**

10 **SECTION 122. Disqualification from consideration for award of contracts.** (1)(a) A con-
11 **tracting agency may disqualify a person from consideration for award of the contracting**
12 **agency's contracts for the reasons listed in subsection (2) of this section after providing the**
13 **person with notice and a reasonable opportunity to be heard.**

14 (b) In lieu of the disqualification process described in paragraph (a) of this subsection, a
15 contracting agency contracting for a public improvement may petition the Construction
16 Contractors Board to disqualify a person from consideration for award of the contracting
17 agency's public improvement contracts for the reasons listed in subsection (2) of this section.
18 The Construction Contractors Board shall provide the person with notice and a reasonable
19 opportunity to be heard.

20 (c) A contracting agency or the Construction Contractors Board may not disqualify a
21 person under this section for a period of more than three years.

22 (2) A person may be disqualified from consideration for award of a contracting agency's
23 contracts for any of the following reasons:

24 (a) The person has been convicted of a criminal offense as an incident in obtaining or
25 attempting to obtain a public or private contract or subcontract, or in the performance of
26 such contract or subcontract.

27 (b) The person has been convicted under state or federal statutes of embezzlement, theft,
28 forgery, bribery, falsification or destruction of records, receiving stolen property or any
29 other offense indicating a lack of business integrity or business honesty that currently, se-
30 riously and directly affects the person's responsibility as a contractor.

31 (c) The person has been convicted under state or federal antitrust statutes.

32 (d) The person has committed a violation of a contract provision that is regarded by the
33 contracting agency or the Construction Contractors Board to be so serious as to justify
34 disqualification. A violation may include but is not limited to a failure to perform the terms
35 of a contract or an unsatisfactory performance in accordance with the terms of the contract.
36 However, a failure to perform or an unsatisfactory performance caused by acts beyond the
37 control of the contractor may not be considered to be a basis for disqualification.

38 (e) The person does not carry workers' compensation or unemployment insurance as re-
39 quired by statute.

40 (3) A contracting agency or the Construction Contractors Board shall issue a written
41 decision to disqualify a person under this section. The decision shall:

42 (a) State the reasons for the action taken; and

43 (b) Inform the disqualified person of the appeal right of the person under:

44 (A) Sections 124 and 125 of this 2003 Act if the decision to disqualify was issued by a
45 contracting agency; or

1 (B) ORS 183.310 to 183.550 if the decision to disqualify was issued by the Construction
2 Contractors Board.

3 (4) A copy of the decision issued under subsection (3) of this section must be mailed or
4 otherwise furnished immediately to the disqualified person.

5 **SECTION 123. Prequalification of bidders.** (1) A contracting agency may adopt a rule,
6 resolution, ordinance or other regulation requiring mandatory prequalification for all persons
7 desiring to bid for public improvement contracts that are to be let by the agency. The rule,
8 resolution, ordinance or other regulation authorized by this section must include the time
9 for submitting prequalification applications and a general description of the type and nature
10 of the contracts that may be let. The prequalification application must be in writing on a
11 standard form prescribed under the authority of section 7 of this 2003 Act.

12 (2) When a contracting agency permits or requires prequalification of bidders, a person
13 who wishes to prequalify shall submit a prequalification application to the contracting agency
14 on a standard form prescribed under subsection (1) of this section. Within 30 days after re-
15 ceipt of a prequalification application, the contracting agency shall investigate the applicant
16 as necessary to determine if the applicant is qualified. The determination shall be made in
17 less than 30 days, if practicable, if the applicant requests an early decision to allow the ap-
18 plicant as much time as possible to prepare a bid on a contract that has been advertised. In
19 making its determination, the contracting agency shall consider only the applicable stan-
20 dards of responsibility listed in section 117 (2)(b) of this 2003 Act. The agency shall promptly
21 notify the applicant whether or not the applicant is qualified.

22 (3) If the contracting agency finds that the applicant is qualified, the notice must state
23 the nature and type of contracts that the person is qualified to bid on and the period of time
24 for which the qualification is valid under the contracting agency's rule, resolution, ordinance
25 or other regulation. If the contracting agency finds the applicant is not qualified as to any
26 contracts covered by the rule, resolution, ordinance or other regulation, the notice must
27 specify the reasons found under section 117 (2)(b) of this 2003 Act for not prequalifying the
28 applicant and inform the applicant of the right to a hearing under sections 124 and 125 of this
29 2003 Act.

30 (4) If a contracting agency has reasonable cause to believe that there has been a sub-
31 stantial change in the conditions of a prequalified person and that the person is no longer
32 qualified or is less qualified, the agency may revoke or may revise and reissue the prequali-
33 fication after reasonable notice to the prequalified person. The notice shall state the reasons
34 found under section 117 (2)(b) of this 2003 Act for revocation or revision of the prequalifica-
35 tion of the person and inform the person of the right to a hearing under sections 124 and 125
36 of this 2003 Act. A revocation or revision does not apply to any public improvement contract
37 for which publication of an advertisement, in accordance with section 114 of this 2003 Act,
38 commenced before the date the notice of revocation or revision was received by the pre-
39 qualified person.

40 **SECTION 124. Appeal of disqualification.** Any person who wishes to appeal disqualifica-
41 tion shall, within three business days after receipt of notice of disqualification, notify the
42 contracting agency that the person appeals the disqualification. Immediately upon receipt
43 of the notice of appeal:

44 (1) A state contracting agency shall notify the Director of the Oregon Department of
45 Administrative Services.

1 (2) All contracting agencies other than state contracting agencies shall notify the ap-
2 propriate local contract review board.

3 **SECTION 125. Appeal procedure; hearing; costs; judicial review.** (1) The procedure for
4 appeal from a disqualification or denial, revocation or revision of a prequalification by a
5 contracting agency shall be in accordance with this section and is not subject to ORS 183.310
6 to 183.550 except when specifically provided by this section.

7 (2) Promptly upon receipt of notice of appeal from a contracting agency as provided for
8 by section 124 of this 2003 Act, the Director of the Oregon Department of Administrative
9 Services or the local contract review board shall notify the person appealing and the con-
10 tracting agency of the time and place of the hearing. The director or board shall conduct the
11 hearing and decide the appeal within 30 days after receiving the notification from the con-
12 tracting agency. The director or board shall set forth in writing the reasons for the decision.

13 (3) In the hearing the director or board shall consider de novo the notice of disqualifica-
14 tion or denial, revocation or revision of a prequalification, the reasons listed in section 122
15 (2) of this 2003 Act on which the contracting agency based the disqualification or the stan-
16 dards of responsibility listed in section 117 (2)(b) of this 2003 Act on which the contracting
17 agency based the denial, revocation or revision of the prequalification and any evidence pro-
18 vided by the parties. In all other respects, a hearing before the director shall be conducted
19 in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425, 183.440,
20 183.450 and 183.452.

21 (4) The director may allocate the director's cost for the hearing between the person ap-
22 pealing and the contracting agency whose disqualification or prequalification decision is being
23 appealed. The allocation shall be based upon facts found by the director and stated in the
24 final order that, in the director's opinion, warrant such allocation of the costs. If the final
25 order does not allocate the director's costs for the hearing, the costs shall be paid as follows:

26 (a) If the decision to disqualify or deny, revoke or revise a prequalification of a person
27 is upheld, the director's costs shall be paid by the person appealing the disqualification or
28 prequalification decision.

29 (b) If the decision to disqualify or deny, revoke or revise a prequalification of a person
30 as a bidder is reversed by the director, the director's costs shall be paid by the contracting
31 agency whose disqualification or prequalification decision is the subject of the appeal.

32 (5) The decision of the director or board may be reviewed only upon a petition, filed
33 within 15 days after the date of the decision, in the circuit court of the county in which the
34 director or board has its principal office. The circuit court shall reverse or modify the deci-
35 sion only if it finds:

36 (a) The decision was obtained through corruption, fraud or undue means.

37 (b) There was evident partiality or corruption on the part of the director or board or any
38 of its members.

39 (c) There was an evident material miscalculation of figures or an evident material mis-
40 take in the description of any person, thing or property referred to in the decision.

41 (6) The procedure provided in this section is the exclusive means of judicial review of the
42 decision of the director or board. The judicial review provisions of ORS 183.480 and writs of
43 review and mandamus as provided in ORS chapter 34, and other legal, declaratory and
44 injunctive remedies, are not available.

45 (7) The circuit court may, in its discretion, stay the letting of the contract that is the

1 **subject of the petition in the same manner as a suit in equity. When the court determines**
 2 **that there has been an improper disqualification or denial, revocation or revision of a pre-**
 3 **qualification and the contract has been let, the court may proceed to take evidence to de-**
 4 **termine the damages, if any, suffered by the petitioner and award such damages as the court**
 5 **may find as a judgment against the director or board. The court may award costs and at-**
 6 **torney fees to the prevailing party.**

7 **SECTION 126.** Section 125 of this 2003 Act is amended to read:

8 **Sec. 125.** (1) The procedure for appeal from a disqualification or denial, revocation or revision
 9 of a prequalification by a contracting agency shall be in accordance with this section and is not
 10 subject to ORS 183.310 to 183.550 except when specifically provided by this section.

11 (2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by sec-
 12 tion 124 of this 2003 Act, the Director of the Oregon Department of Administrative Services or the
 13 local contract review board shall notify the person appealing and the contracting agency of the time
 14 and place of the hearing. The director or board shall conduct the hearing and decide the appeal
 15 within 30 days after receiving the notification from the contracting agency. The director or board
 16 shall set forth in writing the reasons for the decision.

17 (3) In the hearing the director or board shall consider de novo the notice of disqualification or
 18 denial, revocation or revision of a prequalification, the reasons listed in section 122 (2) of this 2003
 19 Act on which the contracting agency based the disqualification or the standards of responsibility
 20 listed in section 117 (2)(b) of this 2003 Act on which the contracting agency based the denial, revo-
 21 cation or revision of the prequalification and any evidence provided by the parties. In all other re-
 22 spects, a hearing before the director shall be conducted in the same manner as a contested case
 23 under ORS 183.415 (3) to (6) and (9), 183.425, 183.440, 183.450 and 183.452. **Hearings before a board**
 24 **shall be conducted under rules of procedure adopted by the board.**

25 (4) The director may allocate the director's cost for the hearing between the person appealing
 26 and the contracting agency whose disqualification or prequalification decision is being appealed. The
 27 allocation shall be based upon facts found by the director and stated in the final order that, in the
 28 director's opinion, warrant such allocation of the costs. If the final order does not allocate the di-
 29 rector's costs for the hearing, the costs shall be paid as follows:

30 (a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld,
 31 the director's costs shall be paid by the person appealing the disqualification or prequalification
 32 decision.

33 (b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a
 34 bidder is reversed by the director, the director's costs shall be paid by the contracting agency whose
 35 disqualification or prequalification decision is the subject of the appeal.

36 (5) The decision of the director or board may be reviewed only upon a petition, filed within 15
 37 days after the date of the decision, in the circuit court of the county in which the director or board
 38 has its principal office. The circuit court shall reverse or modify the decision only if it finds:

39 (a) The decision was obtained through corruption, fraud or undue means.

40 (b) There was evident partiality or corruption on the part of the director or board or any of its
 41 members.

42 (c) There was an evident material miscalculation of figures or an evident material mistake in
 43 the description of any person, thing or property referred to in the decision.

44 (6) The procedure provided in this section is the exclusive means of judicial review of the deci-
 45 sion of the director or board. The judicial review provisions of ORS 183.480 and writs of review

1 and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies,
2 are not available.

3 (7) The circuit court may, in its discretion, stay the letting of the contract that is the subject
4 of the petition in the same manner as a suit in equity. When the court determines that there has
5 been an improper disqualification or denial, revocation or revision of a prequalification and the
6 contract has been let, the court may proceed to take evidence to determine the damages, if any,
7 suffered by the petitioner and award such damages as the court may find as a judgment against the
8 director or board. The court may award costs and attorney fees to the prevailing party.

9 **SECTION 127. The amendments to section 125 of this 2003 Act by section 126 of this 2003**
10 **Act become operative on June 30, 2005.**

11 **SECTION 128. Effect of prequalification by Department of Transportation or Oregon De-**
12 **partment of Administrative Services. If a person is prequalified with the Department of**
13 **Transportation or with the Oregon Department of Administrative Services, the person is**
14 **rebuttably presumed qualified with any other contracting agency for the same kind of work.**
15 **When qualifying for the same kind of work with another contracting agency, the person may**
16 **submit proof of the prequalification in lieu of a prequalification application as required by**
17 **section 123 of this 2003 Act.**

18
19 (Competitive Proposals)
20

21 **SECTION 129. Competitive proposals; procedure. (1) When authorized or required by an**
22 **exemption granted under section 103 of this 2003 Act, a contracting agency may award a**
23 **public improvement contract by competitive proposals. A contract awarded under this sec-**
24 **tion may be amended only in accordance with rules adopted under section 10 of this 2003 Act.**

25 (2) Except as provided in sections 102 to 113, 114 to 120 and 121 to 128 of this 2003 Act,
26 competitive proposals shall be subject to the following requirements of competitive bidding:

27 (a) Advertisement under section 114 of this 2003 Act;

28 (b) Requirements for solicitation documents under section 115 of this 2003 Act;

29 (c) Disqualification due to a Construction Contractors Board listing as described in sec-
30 tion 117 (2)(a) of this 2003 Act;

31 (d) Contract execution and bonding requirements under sections 117 and 118 of this 2003
32 Act;

33 (e) Determination of responsibility under section 117 (2)(b) of this 2003 Act;

34 (f) Rejection of bids under section 121 of this 2003 Act; and

35 (g) Disqualification and prequalification under sections 122, 123 and 128 of this 2003 Act.

36 (3) For the purposes of applying the requirements listed in subsection (2) of this section
37 to competitive proposals, when used in the sections listed in subsection (2) of this section,
38 "bids" includes proposals, and "bid documents" and "invitation to bid" include requests for
39 proposals.

40 (4) Competitive proposals are not subject to the following requirements of competitive
41 bidding:

42 (a) First-tier subcontractor disclosure under section 116 of this 2003 Act; and

43 (b) Reciprocal preference under section 16 of this 2003 Act.

44 (5) When award of a public improvement contract advertised by the issuance of a request
45 for proposals may be made without negotiation, the contracting agency may require proposal

1 security that serves the same function with respect to proposals as bid security serves with
2 respect to bids under sections 115 (4), 118 and 119 of this 2003 Act, as follows:

3 (a) The contracting agency may require proposal security in a form and amount as may
4 be determined to be reasonably necessary or prudent to protect the interests of the con-
5 tracting agency.

6 (b) The contracting agency shall retain the proposal security if a proposer who is
7 awarded a contract fails to promptly and properly execute the contract and provide any re-
8 quired bonds or insurance.

9 (c) The contracting agency shall return the proposal security to all proposers upon the
10 execution of the contract, or earlier in the selection process.

11 (6) In all other respects, and subject to rules adopted under section 10 of this 2003 Act,
12 references in sections 88 to 180 of this 2003 Act to invitations to bid, bids or bidders shall,
13 to the extent practicable within the proposal process, be deemed equally applicable to re-
14 quests for proposals, proposals or proposers. However, notwithstanding section 117 (1) of
15 this 2003 Act, a contracting agency may not be required to award a contract advertised under
16 the competitive proposal process based on price, but may award the contract in accordance
17 with section 131 (8) of this 2003 Act.

18 **SECTION 130. Requirements for requests for proposals.** In addition to the general re-
19 quirements of section 115 of this 2003 Act, a contracting agency preparing a request for
20 proposals shall include:

21 (1) All required contractual terms and conditions. The request for proposals also may:

22 (a) Identify those contractual terms or conditions the contracting agency reserves, in the
23 request for proposals, for negotiation with proposers;

24 (b) Request that proposers propose contractual terms and conditions that relate to sub-
25 ject matter reasonably identified in the request for proposals; and

26 (c) Contain or incorporate the form and content of the contract that the contracting
27 agency will accept, or suggested contract terms and conditions that nevertheless may be the
28 subject of negotiations with proposers.

29 (2) The method of contractor selection, which may include but is not limited to award
30 without negotiation, negotiation with the highest ranked proposer, competitive negotiations,
31 multiple-tiered competition designed either to identify a class of proposers that fall within a
32 competitive range or to otherwise eliminate from consideration a class of lower ranked
33 proposers, or any combination of methods, as authorized or prescribed by rules adopted un-
34 der section 10 of this 2003 Act.

35 (3) All evaluation factors that will be considered by the contracting agency when evalu-
36 ating the proposals, including the relative importance of price and any other evaluation fac-
37 tors.

38 **SECTION 131. Receipt of proposals; evaluation and award.** (1) Notwithstanding the public
39 records law, ORS 192.410 to 192.505:

40 (a) Proposals may be opened so as to avoid disclosure of contents to competing proposers
41 during, when applicable, the process of negotiation.

42 (b) Proposals are not required to be open for public inspection until after the notice of
43 intent to award a contract is issued.

44 (2) For each request for proposals, the contracting agency shall prepare a list of pro-
45 posals.

1 (3) Notwithstanding any requirement to make proposals open to public inspection after
2 the contracting agency's issuance of notice of intent to award a contract, a contracting
3 agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501,
4 and information submitted to a public body in confidence, as described in ORS 192.502, that
5 are contained in a proposal. The fact that proposals are opened at a public meeting as defined
6 in ORS 192.610 does not make their contents subject to disclosure, regardless of whether the
7 public body opening the proposals fails to give notice of or provide for an executive session
8 for the purpose of opening proposals. If a request for proposals is canceled after proposals
9 are received, the contracting agency may return a proposal to the proposer that made the
10 proposal. The contracting agency shall keep a list of returned proposals in the file for the
11 solicitation.

12 (4) As provided in the request for proposals, a contracting agency may conduct dis-
13 cussions with proposers who submit proposals the agency has determined to be closely
14 competitive or to have a reasonable chance of being selected for award. The discussions may
15 be conducted for the purpose of clarification to ensure full understanding of, and respon-
16 siveness to, the solicitation requirements. The contracting agency shall accord proposers fair
17 and equal treatment with respect to any opportunity for discussion and revision of proposals.
18 Revisions of proposals may be permitted after the submission of proposals and before award
19 for the purpose of obtaining best and final offers. In conducting discussions, the contracting
20 agency may not disclose information derived from proposals submitted by competing
21 proposers.

22 (5) When provided for in the request for proposals, the contracting agency may employ
23 methods of contractor selection including but not limited to award based solely on the
24 ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations,
25 multiple-tiered competition designed to identify a class of proposers that fall within a com-
26 petitive range or to otherwise eliminate from consideration a class of lower ranked
27 proposers, or any combination of methods, as authorized or prescribed by rules adopted un-
28 der section 10 of this 2003 Act. When applicable, in any instance in which the contracting
29 agency determines that impasse has been reached in negotiations with a highest ranked
30 proposer, the contracting agency may terminate negotiations with that proposer and com-
31 mence negotiations with the next highest ranked proposer.

32 (6) The cancellation of requests for proposals and the rejection of proposals shall be in
33 accordance with section 121 of this 2003 Act.

34 (7) At least seven days before the award of a public contract, unless the contracting
35 agency determines that seven days is impractical under rules adopted under section 10 of
36 this 2003 Act, the contracting agency shall issue to each proposer or post, electronically or
37 otherwise, a notice of intent to award.

38 (8) If a public contract is awarded, the contracting agency shall award a public contract
39 to the responsible proposer whose proposal is determined in writing to be the most advan-
40 tageous to the contracting agency based on the evaluation factors set forth in the request
41 for proposals and, when applicable, the outcome of any negotiations authorized by the re-
42 quest for proposals. Other factors may not be used in the evaluation.

43 (9) The contracting agency may issue a request for information, a request for interest,
44 a request for qualifications or other preliminary documents to obtain information useful in
45 the preparation or distribution of a request for proposals.

1 equitable relief is available.

2 (3) If the contracting agency is successful in defending the contracting agency's actions
3 against claims of violation or potential violation of sections 97 to 136 of this 2003 Act, the
4 court may award to the aggrieved contracting agency any damages suffered as a result of
5 the suit.

6 (4) The court may order payment of reasonable attorney fees and costs on trial and on
7 appeal to a successful party in a suit brought under this section.

8 (5) This section does not apply to personal services contracts under sections 89 to 96 of
9 this 2003 Act.

10 **SECTION 135. Action against successful bidder; amount of damages; when action to be**
11 **commenced; defenses.** (1) Any person that loses a competitive bid or proposal for a contract
12 involving the construction, repair, remodeling, alteration, conversion, modernization, im-
13 provement, rehabilitation, replacement or renovation of a building or structure may bring
14 an action for damages against another person who is awarded the contract for which the bid
15 or proposal was made if the person making the losing bid or proposal can establish that the
16 other person knowingly violated section 167 of this 2003 Act or ORS 656.017, 657.505 or 701.055
17 while performing the work under the contract, or knowingly failed to pay to the Department
18 of Revenue all sums withheld from employees under ORS 316.167.

19 (2) A person bringing an action under this section must establish a violation of section
20 167 of this 2003 Act or ORS 316.167, 656.017, 657.505 or 701.055 by a preponderance of the ev-
21 idence.

22 (3) Upon establishing that the violation occurred, the person shall recover, as liquidated
23 damages, 10 percent of the total amount of the contract or \$5,000, whichever is greater.

24 (4) In any action under this section, the prevailing party is entitled to an award of rea-
25 sonable attorney fees.

26 (5) An action under this section must be commenced within two years of the substantial
27 completion of the construction, repair, remodeling, alteration, conversion, modernization,
28 improvement, rehabilitation, replacement or renovation. For the purposes of this subsection,
29 "substantial completion" has the meaning given that term in ORS 12.135.

30 (6) A person may not recover any amounts under this section if the defendant in the
31 action establishes by a preponderance of the evidence that the plaintiff:

32 (a) Was in violation of ORS 701.055 at the time of making the bid or proposal on the
33 contract;

34 (b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of
35 the plaintiff as of the time of making the bid or proposal on the contract; or

36 (c) Was in violation of section 167 of this 2003 Act with respect to any contract performed
37 by the plaintiff within one year before making the bid or proposal on the contract at issue
38 in the action.

39 **SECTION 136. Compensation for contractor on contracts declared void by court; ex-**
40 **ceptions; applicability.** (1) If a court determines that a public improvement contract is void
41 because the contracting agency letting the contract failed to comply with any statutory or
42 regulatory competitive bidding or other procurement requirements, and the contractor en-
43 tered into the contract without intentionally violating the laws regulating public improve-
44 ment contracts, then, unless the court determines that substantial injustice would result,
45 the contractor is entitled to reimbursement for work performed under the contract as fol-

1 lows:

2 (a) If the work under the public improvement contract is substantially complete, the
3 contracting agency shall ratify the contract.

4 (b) If the work under the public improvement contract is not substantially complete, the
5 contracting agency shall ratify the contract and the contract shall be deemed terminated.
6 Upon termination, the contractor shall be paid in accordance with section 162 of this 2003
7 Act, unless the court determines that payment under section 162 of this 2003 Act would be
8 a substantial injustice to the contracting agency or the contractor, in which case the con-
9 tractor shall be paid as the court deems equitable.

10 (c) For the purposes of this section, a ratified contract shall be deemed valid, binding and
11 legally enforceable, and the contractor's payment and performance bonds shall remain in full
12 force and effect.

13 (2) Notwithstanding subsection (1) of this section, if a court determines that a public
14 improvement contract is void as a result of fraudulent or criminal acts or omissions of the
15 contractor or of both the contracting agency letting the contract and the contractor, the
16 contractor is not entitled to reimbursement for work performed under the contract.

17 (3) This section does not apply to a public improvement contract if:

18 (a) The contracting agency's employee that awarded the public improvement contract did
19 not have the authority to do so under law, ordinance, charter, contract or agency rule; or

20 (b) Payment is otherwise prohibited by Oregon law.

21 (4) The contractor and all subcontractors under a public improvement contract are pro-
22 hibited from asserting that the public improvement contract is void for any reason described
23 in this section.

24
25 **CONSTRUCTION CONTRACTS GENERALLY**
26 **(Required Contract Conditions)**
27

28 **SECTION 137. "Person" defined.** As used in sections 137 to 143 of this 2003 Act, unless
29 the context otherwise requires, "person" includes the State Accident Insurance Fund Cor-
30 poration and the Department of Revenue.

31 **SECTION 138. Conditions concerning payment, contributions, liens, withholding, drug**
32 **testing.** (1) Every public contract shall contain a condition that the contractor shall:

33 (a) Make payment promptly, as due, to all persons supplying to the contractor labor or
34 material for the performance of the work provided for in the contract.

35 (b) Pay all contributions or amounts due the Industrial Accident Fund from the con-
36 tractor or subcontractor incurred in the performance of the contract.

37 (c) Not permit any lien or claim to be filed or prosecuted against the state or a county,
38 school district, municipality, municipal corporation or subdivision thereof, on account of any
39 labor or material furnished.

40 (d) Pay to the Department of Revenue all sums withheld from employees under ORS
41 316.167.

42 (2) In addition to the conditions specified in subsection (1) of this section, every public
43 improvement contract shall contain a condition that the contractor shall demonstrate that
44 an employee drug testing program is in place.

45 **SECTION 139. Demolition contracts to require material salvage; lawn and landscape**

1 maintenance contracts to require composting or mulching. (1) Every public improvement
2 contract for demolition shall contain a condition requiring the contractor to salvage or re-
3 cycle construction and demolition debris, if feasible and cost-effective.

4 (2) Every public improvement contract for lawn and landscape maintenance shall contain
5 a condition requiring the contractor to compost or mulch yard waste material at an approved
6 site, if feasible and cost-effective.

7 SECTION 140. Conditions concerning payment of claims by public officers, payment to
8 persons furnishing labor or materials and complaints. (1) Every public contract shall contain

9 a clause or condition that, if the contractor fails, neglects or refuses to make prompt pay-
10 ment of any claim for labor or services furnished to the contractor or a subcontractor by
11 any person in connection with the public contract as the claim becomes due, the proper of-
12 ficer or officers representing the state or a county, school district, municipality, municipal
13 corporation or subdivision thereof, as the case may be, may pay such claim to the person
14 furnishing the labor or services and charge the amount of the payment against funds due
15 or to become due the contractor by reason of the contract.

16 (2) Every public improvement contract shall contain a clause or condition that, if the
17 contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a per-
18 son furnishing labor or materials in connection with the public improvement contract within
19 30 days after receipt of payment from the contracting agency or a contractor, the contractor
20 or first-tier subcontractor shall owe the person the amount due plus interest charges com-
21 mencing at the end of the 10-day period that payment is due under section 151 (4) of this 2003
22 Act and ending upon final payment, unless payment is subject to a good faith dispute as de-
23 fined in section 151 of this 2003 Act. The rate of interest charged to the contractor or first-
24 tier subcontractor on the amount due shall equal three times the discount rate on 90-day
25 commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that
26 includes Oregon on the date that is 30 days after the date when payment was received from
27 the contracting agency or from the contractor, but the rate of interest may not exceed 30
28 percent. The amount of interest may not be waived.

29 (3) Every public improvement contract and every contract related to the public im-
30 provement contract shall contain a clause or condition that, if the contractor or a subcon-
31 tractor fails, neglects or refuses to make payment to a person furnishing labor or materials
32 in connection with the public improvement contract, the person may file a complaint with
33 the Construction Contractors Board, unless payment is subject to a good faith dispute as
34 defined in section 151 of this 2003 Act.

35 (4) The payment of a claim in the manner authorized in this section does not relieve the
36 contractor or the contractor's surety from obligation with respect to any unpaid claims.

37 SECTION 141. Condition concerning hours of labor. (1) Every public contract subject to
38 sections 88 to 180 of this 2003 Act must contain a condition that a person may not be em-
39 ployed for more than 10 hours in any one day, or 40 hours in any one week, except in cases
40 of necessity, emergency or when the public policy absolutely requires it, and in such cases,
41 except in cases of contracts for personal services designated under section 8 of this 2003 Act,
42 the employee shall be paid at least time and a half pay:

43 (a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one
44 week when the work week is five consecutive days, Monday through Friday; or

45 (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week

1 when the work week is four consecutive days, Monday through Friday; and

2 (b) For all work performed on Saturday and on any legal holiday specified in section 144
3 of this 2003 Act.

4 (2) An employer must give notice in writing to employees who work on a public contract,
5 either at the time of hire or before commencement of work on the contract, or by posting
6 a notice in a location frequented by employees, of the number of hours per day and days per
7 week that the employees may be required to work.

8 (3) In the case of contracts for personal services as described in section 8 of this 2003
9 Act, the contract shall contain a provision that the employee shall be paid at least time and
10 a half for all overtime worked in excess of 40 hours in any one week, except for individuals
11 under personal services contracts who are excluded under ORS 653.010 to 653.261 or under
12 29 U.S.C. 201 to 209 from receiving overtime.

13 (4) In the case of a contract for services at a county fair or for other events authorized
14 by a county fair board, the contract must contain a provision that employees must be paid
15 at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one
16 week. An employer shall give notice in writing to employees who work on such a contract,
17 either at the time of hire or before commencement of work on the contract, or by posting
18 a notice in a location frequented by employees, of the number of hours per day and days per
19 week that employees may be required to work.

20 (5)(a) Except as provided in subsection (4) of this section, contracts for services must
21 contain a provision that requires that persons employed under the contracts shall receive
22 at least time and a half pay for work performed on the legal holidays specified in a collective
23 bargaining agreement or in section 144 (1)(b)(B) to (G) of this 2003 Act and for all time
24 worked in excess of 10 hours in any one day or in excess of 40 hours in any one week,
25 whichever is greater.

26 (b) An employer shall give notice in writing to employees who work on a contract for
27 services, either at the time of hire or before commencement of work on the contract, or by
28 posting a notice in a location frequented by employees, of the number of hours per day and
29 days per week that the employees may be required to work.

30 SECTION 142. Provisions concerning environmental and natural resources laws; reme-
31 dies. (1) Solicitation documents for a public improvement contract shall make specific ref-
32 erence to federal, state and local agencies that have enacted ordinances, rules or regulations
33 dealing with the prevention of environmental pollution and the preservation of natural re-
34 sources that affect the performance of the contract. If the successful bidder awarded the
35 project is delayed or must undertake additional work by reason of existing ordinances, rules
36 or regulations of agencies not cited in the public improvement contract or due to the
37 enactment of new or the amendment of existing statutes, ordinances, rules or regulations
38 relating to the prevention of environmental pollution and the preservation of natural re-
39 sources occurring after the submission of the successful bid, the contracting agency may:

40 (a) Terminate the contract;

41 (b) Complete the work itself;

42 (c) Use nonagency forces already under contract with the contracting agency;

43 (d) Require that the underlying property owner be responsible for cleanup;

44 (e) Solicit bids for a new contractor to provide the necessary services under the com-
45 petitive bid requirements of sections 88 to 180 of this 2003 Act; or

1 (f) Issue the contractor a change order setting forth the additional work that must be
2 undertaken.

3 (2) In addition to the obligation imposed under subsection (1) of this section to refer to
4 federal, state and local agencies with ordinances, rules or regulations dealing with the pre-
5 vention of environmental pollution and the preservation of natural resources, a solicitation
6 document must also make specific reference to known conditions at the construction site
7 that may require the successful bidder to comply with the ordinances, rules or regulations
8 identified under subsection (1) of this section.

9 (3) If the successful bidder encounters a condition not referred to in the solicitation
10 documents, not caused by the successful bidder and not discoverable by a reasonable prebid
11 visual site inspection, and the condition requires compliance with the ordinances, rules or
12 regulations referred to under subsection (1) of this section, the successful bidder shall im-
13 mediately give notice of the condition to the contracting agency.

14 (4) Except in the case of an emergency and except as may otherwise be required by any
15 environmental or natural resource ordinance, rule or regulation, the successful bidder may
16 not commence work nor incur any additional job site costs in regard to the condition en-
17 countered and described in subsection (3) of this section without written direction from the
18 contracting agency.

19 (5) Upon request by the contracting agency, the successful bidder shall estimate the
20 emergency or regulatory compliance costs as well as the anticipated delay and costs result-
21 ing from the encountered condition. This cost estimate shall be promptly delivered to the
22 contracting agency for resolution.

23 (6) Within a reasonable period of time following delivery of an estimate under subsection
24 (5) of this section, the contracting agency may:

25 (a) Terminate the contract;

26 (b) Complete the work itself;

27 (c) Use nonagency forces already under contract with the contracting agency;

28 (d) Require that the underlying property owner be responsible for cleanup;

29 (e) Solicit bids for a new contractor to provide the necessary services under the com-
30 petitive bid requirements of sections 88 to 180 of this 2003 Act; or

31 (f) Issue the contractor a change order setting forth the additional work that must be
32 undertaken.

33 (7)(a) If the contracting agency chooses to terminate the contract under subsection (1)(a)
34 or (6)(a) of this section, the successful bidder shall be entitled to all costs and expenses in-
35 curred to the date of termination, including overhead and reasonable profits, on the per-
36 centage of the work completed. The contracting agency shall have access to the contractor's
37 bid documents when making the contracting agency's determination of the additional com-
38 pensation due to the contractor.

39 (b) If the contracting agency causes work to be done by another contractor under sub-
40 section (1)(c) or (e) or (6)(c) or (e) of this section, the initial contractor may not be held liable
41 for actions or omissions of the other contractor.

42 (c) The change order under subsection (1)(f) or (6)(f) of this section shall include the ap-
43 propriate extension of contract time and compensate the contractor for all additional costs,
44 including overhead and reasonable profits, reasonably incurred as a result of complying with
45 the applicable statutes, ordinances, rules or regulations. The contracting agency shall have

1 access to the contractor's bid documents when making the contracting agency's determi-
2 nation of the additional compensation due to the contractor.

3 (8) Notwithstanding subsections (1) to (7) of this section, a contracting agency:

4 (a) May allocate all or a portion of the known environmental and natural resource risks
5 to a contractor by listing such environmental and natural resource risks with specificity in
6 the solicitation documents; and

7 (b) In a local improvement district, may allocate all or a portion of the known and un-
8 known environmental and natural resource risks to a contractor by so stating in the solici-
9 tation documents.

10 SECTION 143. Condition concerning payment for medical care and providing workers'
11 compensation. (1) Every public contract shall contain a condition that the contractor shall
12 promptly, as due, make payment to any person, copartnership, association or corporation
13 furnishing medical, surgical and hospital care services or other needed care and attention,
14 incident to sickness or injury, to the employees of the contractor, of all sums that the con-
15 tractor agrees to pay for the services and all moneys and sums that the contractor collected
16 or deducted from the wages of employees under any law, contract or agreement for the
17 purpose of providing or paying for the services.

18 (2) Every public contract shall contain a clause or condition that all subject employers
19 working under the contract are either employers that will comply with ORS 656.017 or em-
20 ployers that are exempt under ORS 656.126.

21
22 (Hours of Labor)
23

24 SECTION 144. Maximum hours of labor on public contracts; holidays; exceptions; liability
25 to workers. (1) When labor is employed by the state or a county, school district, munici-
26 pality, municipal corporation or subdivision thereof through a contractor, a person may not
27 be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one
28 week, except in cases of necessity or emergency or when the public policy absolutely requires
29 it, in which event, the person so employed for excessive hours shall receive at least time and
30 a half pay:

31 (a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one
32 week when the work week is five consecutive days, Monday through Friday; or

33 (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week
34 when the work week is four consecutive days, Monday through Friday; and

35 (b) For all work performed on Saturday and on the following legal holidays:

36 (A) Each Sunday.

37 (B) New Year's Day on January 1.

38 (C) Memorial Day on the last Monday in May.

39 (D) Independence Day on July 4.

40 (E) Labor Day on the first Monday in September.

41 (F) Thanksgiving Day on the fourth Thursday in November.

42 (G) Christmas Day on December 25.

43 (2) An employer shall give notice in writing to employees who perform work under sub-
44 section (1) of this section, either at the time of hire or before commencement of work on the
45 contract, or by posting a notice in a location frequented by employees, of the number of

1 hours per day and days per week that employees may be required to work.

2 (3) For the purpose of this section, each time a legal holiday, other than Sunday, listed
3 in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized
4 as a legal holiday. Each time a legal holiday listed in subsection (1) of this section falls on
5 Saturday, the preceding Friday shall be recognized as a legal holiday.

6 (4) Subsections (1) and (2) of this section do not apply to a public improvement contract
7 or a contract for services if the contractor is a party to a collective bargaining agreement
8 in effect with any labor organization.

9 (5) When specifically agreed to under a written labor-management negotiated labor
10 agreement, an employee may be paid at least time and a half pay for work performed on any
11 legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this
12 section.

13 (6) This section does not apply to labor performed in the prevention or suppression of fire
14 under contracts and agreements made under the authority of the State Forester or the State
15 Board of Forestry, under ORS 477.406.

16 (7) This section does not apply to contracts for personal services designated under sec-
17 tion 8 of this 2003 Act, provided that persons employed under such contracts shall receive
18 at least time and a half pay for work performed on the legal holidays specified in subsection
19 (1)(b)(B) to (G) of this section and for all overtime worked in excess of 40 hours in any one
20 week, except for individuals under personal services contracts who are excluded under ORS
21 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

22 (8) Subsections (1) and (2) of this section do not apply to contracts for services at a
23 county fair or for other events authorized by a county fair board if persons employed under
24 the contract receive at least time and a half for work in excess of 10 hours in any one day
25 or 40 hours in any one week.

26 (9)(a) Subsections (1) and (2) of this section do not apply to contracts for services. How-
27 ever, persons employed under such contracts shall receive at least time and a half pay for
28 work performed on the legal holidays specified in a collective bargaining agreement or in
29 subsection (1)(b)(B) to (G) of this section and for all time worked in excess of 10 hours in
30 any one day or in excess of 40 hours in any one week, whichever is greater.

31 (b) An employer shall give notice in writing to employees who work on a contract for
32 services, either at the time of hire or before commencement of work on the contract, or by
33 posting a notice in a location frequented by employees, of the number of hours per day and
34 days per week that the employees may be required to work.

35 (10) Any contractor or subcontractor or contractor's or subcontractor's surety that vi-
36 olates the provisions of this section is liable to the affected employees in the amount of their
37 unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as
38 liquidated damages. If the violation results from willful falsification of payroll records, the
39 contractor or subcontractor or contractor's or subcontractor's surety is liable to the af-
40 fected employees in the amount of their unpaid overtime wages and an additional amount
41 equal to twice the unpaid overtime wages as liquidated damages.

42 (11) An action to enforce liability to employees under subsection (10) of this section may
43 be brought as an action on the contractor's payment bond as provided for in section 156 of
44 this 2003 Act.

45 (12) This section does not apply to financial institutions as defined in ORS 706.008.

1 (13) In accordance with ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor
2 and Industries may adopt rules to carry out the provisions of this section.

3 **SECTION 145. Time limitation on claim for overtime; posting of circular by contractor.**

4 When labor is employed by the state or a county, school district, municipality, municipal
5 corporation or subdivision thereof through another as a contractor, any worker employed
6 by the contractor shall be foreclosed from the right to collect for any overtime provided in
7 section 144 of this 2003 Act unless a claim for payment is filed with the contractor within
8 90 days from the completion of the contract, providing the contractor has:

9 (1) Caused a circular clearly printed in boldfaced 12-point type and containing a copy of
10 this section to be posted in a prominent place alongside the door of the timekeeper's office
11 or in a similar place that is readily available and freely visible to workers employed on the
12 work.

13 (2) Maintained the circular continuously posted from the inception to the completion of
14 the contract on which workers are or have been employed.

15
16 (Retainage and Payments)

17
18 **SECTION 146. "Retainage" defined.** As used in sections 146 to 150 of this 2003 Act,
19 "retainage" means the difference between the amount earned by a contractor on a public
20 contract and the amount paid on the contract by the contracting agency.

21 **SECTION 147. Withholding of retainage.** The withholding of retainage by a contractor or
22 subcontractor on public improvement contracts shall be in accordance with ORS 701.420 and
23 701.430 except when the charter of the contracting agency contains provisions requiring
24 retainage by the contracting agency of more than five percent of the contract price of the
25 work completed.

26 **SECTION 148. Form of retainage.** (1) Moneys retained by a contracting agency under
27 section 150 (7) of this 2003 Act shall be:

28 (a) Retained in a fund by the contracting agency and paid to the contractor in accordance
29 with section 150 of this 2003 Act; or

30 (b) At the option of the contractor, paid to the contractor in accordance with subsection
31 (3) or (4) of this section and in a manner authorized by the Director of the Oregon Depart-
32 ment of Administrative Services.

33 (2) If the contracting agency incurs additional costs as a result of the exercise of the
34 options described in subsection (1) of this section, the contracting agency may recover such
35 costs from the contractor by reduction of the final payment. As work on the contract
36 progresses, the contracting agency shall, upon demand, inform the contractor of all accrued
37 costs.

38 (3) The contractor may deposit bonds or securities with the contracting agency or in any
39 bank or trust company to be held in lieu of the cash retainage for the benefit of the con-
40 tracting agency. In such event the contracting agency shall reduce the retainage in an
41 amount equal to the value of the bonds and securities and pay the amount of the reduction
42 to the contractor in accordance with section 150 of this 2003 Act. Interest on the bonds or
43 securities shall accrue to the contractor.

44 (4) If the contractor elects, the retainage as accumulated shall be deposited by the con-
45 tracting agency in an interest-bearing account in a bank, savings bank, trust company or

1 savings association for the benefit of the contracting agency. When the contracting agency
 2 is a state contracting agency, the account shall be established through the State Treasurer.
 3 Earnings on the account shall accrue to the contractor.

4 (5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this
 5 section, shall be of a character approved by the Director of the Oregon Department of Ad-
 6 ministrative Services, including but not limited to:

7 (a) Bills, certificates, notes or bonds of the United States.

8 (b) Other obligations of the United States or its agencies.

9 (c) Obligations of any corporation wholly owned by the federal government.

10 (d) Indebtedness of the Federal National Mortgage Association.

11 (6) The contractor, with the approval of the contracting agency, may deposit a surety
 12 bond for all or any portion of the amount of funds retained, or to be retained, by the con-
 13 tracting agency in a form acceptable to the contracting agency. The bond and any proceeds
 14 therefrom shall be made subject to all claims and liens and in the same manner and priority
 15 as set forth for retainage under sections 146 to 150 and 154 to 159 of this 2003 Act. The con-
 16 tracting agency shall reduce the retainage in an amount equal to the value of the bond and
 17 pay the amount of the reduction to the contractor in accordance with section 150 of this 2003
 18 Act. Whenever a contracting agency accepts a surety bond from a contractor in lieu of
 19 retainage, the contractor shall accept like bonds from any subcontractor or supplier from
 20 which the contractor has retainage. The contractor shall then reduce the retainage in an
 21 amount equal to the value of the bond and pay the amount of the reduction to the subcon-
 22 tractor or supplier.

23 **SECTION 149. Limitation on retainage requirements.** Unless otherwise specifically in-
 24 cluded by statute, the provisions of section 148 or 159 of this 2003 Act apply only as between
 25 the contracting agency or public body and the party with whom it contracts.

26 **SECTION 150. Prompt payment policy; progress payments; retainage; interest; exception;**
 27 **settlement of compensation disputes.** (1) It is the policy of the State of Oregon that all pay-
 28 ments due on a public improvement contract and owed by a contracting agency shall be paid
 29 promptly. No contracting agency is exempt from the provisions of this section.

30 (2) Contracting agencies shall make progress payments on the contract monthly as work
 31 progresses on a public improvement contract. Payments shall be based upon estimates of
 32 work completed that are approved by the contracting agency. A progress payment is not
 33 considered acceptance or approval of any work or waiver of any defects therein. The con-
 34 tracting agency shall pay to the contractor interest on the progress payment, not including
 35 retainage, due the contractor. The interest shall commence 30 days after receipt of the in-
 36 voice from the contractor or 15 days after the payment is approved by the contracting
 37 agency, whichever is the earlier date. The rate of interest charged to the contracting agency
 38 on the amount due shall equal three times the discount rate on 90-day commercial paper in
 39 effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on
 40 the date that is 30 days after receipt of the invoice from the contractor or 15 days after the
 41 payment is approved by the contracting agency, whichever is the earlier date, but the rate
 42 of interest may not exceed 30 percent.

43 (3) Interest shall be paid automatically when payments become overdue. The contracting
 44 agency shall document, calculate and pay any interest due when payment is made on the
 45 principal. Interest payments shall accompany payment of net due on public contracts. The

1 contracting agency may not require the contractor to petition, invoice, bill or wait additional
2 days to receive interest due.

3 (4) When an invoice is filled out incorrectly, when there is any defect or impropriety in
4 any submitted invoice or when there is a good faith dispute, the contracting agency shall so
5 notify the contractor within 15 days stating the reason or reasons the invoice is defective
6 or improper or the reasons for the dispute. A defective or improper invoice, if corrected by
7 the contractor within seven days of being notified by the contracting agency, may not cause
8 a payment to be made later than specified in this section unless interest is also paid.

9 (5) If requested in writing by a first-tier subcontractor, the contractor, within 10 days
10 after receiving the request, shall send to the first-tier subcontractor a copy of that portion
11 of any invoice, request for payment submitted to the contracting agency or pay document
12 provided by the contracting agency to the contractor specifically related to any labor or
13 materials supplied by the first-tier subcontractor.

14 (6) Payment of interest may be postponed when payment on the principal is delayed be-
15 cause of disagreement between the contracting agency and the contractor. Whenever a
16 contractor brings formal administrative or judicial action to collect interest due under this
17 section, the prevailing party is entitled to costs and reasonable attorney fees.

18 (7) A contracting agency may reserve as retainage from any progress payment on a
19 public contract an amount not to exceed five percent of the payment. As work progresses,
20 a contracting agency may reduce the amount of the retainage and the contracting agency
21 may eliminate retainage on any remaining monthly contract payments after 50 percent of
22 the work under the contract is completed if, in the contracting agency's opinion, such work
23 is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon
24 written application by the contractor, and the application shall include written approval of
25 the contractor's surety. However, when the contract work is 97.5 percent completed the
26 contracting agency may, at the contracting agency's discretion and without application by
27 the contractor, reduce the retained amount to 100 percent of the value of the contract work
28 remaining to be done. Upon receipt of a written application by the contractor, the contract-
29 ing agency shall respond in writing within a reasonable time.

30 (8) The retainage held by a contracting agency shall be included in and paid to the con-
31 tractor as part of the final payment of the contract price. The contracting agency shall pay
32 to the contractor interest at the rate of 1.5 percent per month on the final payment due the
33 contractor, interest to commence 30 days after the work under the contract has been com-
34 pleted and accepted and to run until the date when the final payment is tendered to the
35 contractor. The contractor shall notify the contracting agency in writing when the contrac-
36 tor considers the work complete and the contracting agency shall, within 15 days after re-
37 ceiving the written notice, either accept the work or notify the contractor of work yet to
38 be performed on the contract. If the contracting agency does not, within the time allowed,
39 notify the contractor of work yet to be performed to fulfill contractual obligations, the in-
40 terest provided by this subsection shall commence to run 30 days after the end of the 15-day
41 period.

42 (9)(a) The contracting agency shall pay, upon settlement or judgment in favor of the
43 contractor regarding any dispute as to the compensation due a contractor for work per-
44 formed under the terms of a public contract, the amount due plus interest at the rate of two
45 times the discount rate, but not to exceed 30 percent, on 90-day commercial paper in effect

1 at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date
2 of the settlement or judgment, and accruing from the later of:

3 (A) The due date of any progress payment received under the contract for the period in
4 which such work was performed; or

5 (B) Thirty days after the date on which the claim for the payment under dispute was
6 presented to the contracting agency by the contractor in writing or in accordance with ap-
7 plicable provisions of the contract.

8 (b) Interest shall be added to and not made a part of the settlement or judgment.

9
10 (Subcontractors)

11
12 SECTION 151. Contractor's relations with subcontractors. (1) A contractor may not re-
13 quest payment from the contracting agency of any amount withheld or retained in accord-
14 ance with subsection (5) of this section until such time as the contractor has determined and
15 certified to the contracting agency that the subcontractor has determined and certified to
16 the contracting agency that the subcontractor is entitled to the payment of such amount.

17 (2) A dispute between a contractor and first-tier subcontractor relating to the amount
18 or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty
19 under a clause included in the subcontract under subsection (3) or (4) of this section does
20 not constitute a dispute to which the contracting agency is a party. The contracting agency
21 may not be included as a party in any administrative or judicial proceeding involving such a
22 dispute.

23 (3) Each public contract awarded by a contracting agency shall include a clause that re-
24 quires the contractor to include in each subcontract for property or services entered into
25 by the contractor and a first-tier subcontractor, including a material supplier, for the pur-
26 pose of performing a construction contract:

27 (a) A payment clause that obligates the contractor to pay the first-tier subcontractor for
28 satisfactory performance under its subcontract within 10 days out of such amounts as are
29 paid to the contractor by the contracting agency under the contract; and

30 (b) An interest penalty clause that obligates the contractor, if payment is not made
31 within 30 days after receipt of payment from the contracting agency, to pay to the first-tier
32 subcontractor an interest penalty on amounts due in the case of each payment not made in
33 accordance with the payment clause included in the subcontract under paragraph (a) of this
34 subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest
35 penalty if the only reason that the contractor or first-tier subcontractor did not make pay-
36 ment when payment was due is that the contractor or first-tier subcontractor did not receive
37 payment from the contracting agency or contractor when payment was due. The interest
38 penalty shall be:

39 (A) For the period beginning on the day after the required payment date and ending on
40 the date on which payment of the amount due is made; and

41 (B) Computed at the rate specified in section 140 (2) of this 2003 Act.

42 (4) The contract awarded by the contracting agency shall require the contractor to in-
43 clude in each of the contractor's subcontracts, for the purpose of performance of such con-
44 tract condition, a provision requiring the first-tier subcontractor to include a payment clause
45 and an interest penalty clause conforming to the standards of subsection (3) of this section

1 in each of the first-tier subcontractor's subcontracts and to require each of the first-tier
2 subcontractor's subcontractors to include such clauses in their subcontracts with each
3 lower-tier subcontractor or supplier.

4 (5)(a) The clauses required by subsections (3) and (4) of this section are not intended to
5 impair the right of a contractor or a subcontractor at any tier to negotiate, and to include
6 in the subcontract, provisions that:

7 (A) Permit the contractor or a subcontractor to retain, in the event of a good faith dis-
8 pute, an amount not to exceed 150 percent of the amount in dispute from the amount due a
9 subcontractor under the subcontract without incurring any obligation to pay a late payment
10 interest penalty, in accordance with terms and conditions agreed to by the parties to the
11 subcontract, giving such recognition as the parties consider appropriate to the ability of a
12 subcontractor to furnish a performance bond and a payment bond;

13 (B) Permit the contractor or subcontractor to make a determination that part or all of
14 the subcontractor's request for payment may be withheld in accordance with the subcontract
15 agreement; and

16 (C) Permit such withholdings without incurring any obligation to pay a late payment in-
17 terest penalty if:

18 (i) A notice conforming to the standards of subsection (8) of this section has been pre-
19 viously furnished to the subcontractor; and

20 (ii) A copy of any notice issued by a contractor under sub-subparagraph (i) of this sub-
21 paragraph has been furnished to the contracting agency.

22 (b) As used in this subsection, "good faith dispute" means a documented dispute con-
23 cerning:

24 (A) Unsatisfactory job progress.

25 (B) Defective work not remedied.

26 (C) Third-party claims filed or reasonable evidence that claims will be filed.

27 (D) Failure to make timely payments for labor, equipment and materials.

28 (E) Damage to the prime contractor or subcontractor.

29 (F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance
30 of the subcontract sum.

31 (6) If, after making application to a contracting agency for payment under a contract but
32 before making a payment to a subcontractor for the subcontractor's performance covered
33 by such application, a contractor discovers that all or a portion of the payment otherwise
34 due the subcontractor is subject to withholding from the subcontractor in accordance with
35 the subcontract agreement, the contractor shall:

36 (a) Furnish to the subcontractor a notice conforming to the standards of subsection (8)
37 of this section as soon as practicable upon ascertaining the cause giving rise to a withhold-
38 ing, but prior to the due date for subcontractor payment;

39 (b) Furnish to the contracting agency, as soon as practicable, a copy of the notice fur-
40 nished to the subcontractor under paragraph (a) of this subsection;

41 (c) Reduce the subcontractor's progress payment by an amount not to exceed the amount
42 specified in the notice of withholding furnished under paragraph (a) of this subsection;

43 (d) Pay the subcontractor as soon as practicable after the correction of the identified
44 subcontract performance deficiency;

45 (e) Make such payment within:

1 (A) Seven days after correction of the identified subcontract performance deficiency un-
2 less the funds therefor must be recovered from the contracting agency because of a re-
3 duction under paragraph (f)(A) of this subsection; or

4 (B) Seven days after the contractor recovers such funds from the contracting agency;

5 (f) Notify the contracting agency upon:

6 (A) Reduction of the amount of any subsequent certified application for payment; or

7 (B) Payment to the subcontractor of any withheld amounts of a progress payment,
8 specifying:

9 (i) The amounts of the progress payments withheld under paragraph (a) of this sub-
10 section; and

11 (ii) The dates that such withholding began and ended; and

12 (g) Be obligated to pay to the contracting agency an amount equal to interest on the
13 withheld payments computed in the manner provided in section 150 of this 2003 Act from the
14 11th day after receipt of the withheld amounts from the contracting agency until:

15 (A) The day the identified subcontractor performance deficiency is corrected; or

16 (B) The date that any subsequent payment is reduced under paragraph (f)(A) of this
17 subsection.

18 (7)(a) If a contractor, after making payment to a first-tier subcontractor, receives from
19 a supplier or subcontractor of the first-tier subcontractor a written notice asserting a defi-
20 ciency in such first-tier subcontractor's performance under the contract for which the con-
21 tractor may be ultimately liable and the contractor determines that all or a portion of future
22 payments otherwise due such first-tier subcontractor is subject to withholding in accordance
23 with the subcontract agreement, the contractor may, without incurring an obligation to pay
24 a late payment interest penalty under subsection (6)(e) of this section:

25 (A) Furnish to the first-tier subcontractor a notice conforming to the standards of sub-
26 section (8) of this section as soon as practicable upon making such determination; and

27 (B) Withhold from the first-tier subcontractor's next available progress payment or
28 payments an amount not to exceed the amount specified in the notice of withholding fur-
29 nished under subparagraph (A) of this paragraph.

30 (b) As soon as practicable, but not later than 10 days after receipt of satisfactory written
31 notification that the identified subcontract performance deficiency has been corrected, the
32 contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such
33 first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty
34 to such first-tier subcontractor computed at the rate specified in section 150 of this 2003 Act.

35 (8) A written notice of any withholding shall be issued to a subcontractor, with a copy
36 to the contracting agency of any such notice issued by a contractor, specifying:

37 (a) The amount to be withheld;

38 (b) The specified causes for the withholding under the terms of the subcontract; and

39 (c) The remedial actions to be taken by the subcontractor in order to receive payment
40 of the amounts withheld.

41 (9) Except as provided in subsection (2) of this section, this section does not limit or
42 impair any contractual, administrative or judicial remedies otherwise available to a con-
43 tractor or a subcontractor in the event of a dispute involving late payment or nonpayment
44 by a contractor or deficient performance or nonperformance by a subcontractor.

45 (10) A contractor's obligation to pay a late payment interest penalty to a subcontractor

1 under the clause included in a subcontract under subsection (3) or (4) of this section is not
2 intended to be an obligation of the contracting agency. A contract modification may not be
3 made for the purpose of providing reimbursement of such late payment interest penalty. A
4 cost reimbursement claim may not include any amount for reimbursement of such late
5 payment interest penalty.

6 **SECTION 152. Authority to substitute undisclosed first-tier subcontractor; circum-**
7 **stances; rules.** A contractor whose bid is accepted may substitute a first-tier subcontractor
8 that was not disclosed under section 116 of this 2003 Act by submitting the name of the new
9 subcontractor and the reason for the substitution in writing to the contracting agency. A
10 contractor may substitute a first-tier subcontractor under this section in the following cir-
11 cumstances:

12 (1) When the subcontractor disclosed under section 116 of this 2003 Act fails or refuses
13 to execute a written contract after having had a reasonable opportunity to do so after the
14 written contract, which must be reasonably based upon the general terms, conditions, plans
15 and specifications for the public improvement project or the terms of the subcontractor's
16 written bid, is presented to the subcontractor by the contractor.

17 (2) When the disclosed subcontractor becomes bankrupt or insolvent.

18 (3) When the disclosed subcontractor fails or refuses to perform the subcontract.

19 (4) When the disclosed subcontractor fails or refuses to meet the bond requirements of
20 the contractor that had been identified prior to the bid submittal.

21 (5) When the contractor demonstrates to the contracting agency that the subcontractor
22 was disclosed as the result of an inadvertent clerical error.

23 (6) When the disclosed subcontractor does not hold a license from the Construction
24 Contractors Board and is required to be licensed by the board.

25 (7) When the contractor determines that the work performed by the disclosed subcon-
26 tractor is substantially unsatisfactory and not in substantial accordance with the plans and
27 specifications or that the subcontractor is substantially delaying or disrupting the progress
28 of the work.

29 (8) When the disclosed subcontractor is ineligible to work on a public improvement con-
30 tract under applicable statutory provisions.

31 (9) When the substitution is for good cause. The Construction Contractors Board shall
32 define "good cause" by rule. "Good cause" includes but is not limited to the financial insta-
33 bility of a subcontractor. The definition of "good cause" must reflect the least-cost policy for
34 public improvements established in section 98 of this 2003 Act.

35 (10) When the substitution is reasonably based on the contract alternates chosen by the
36 contracting agency.

37 **SECTION 153. Complaint process for substitutions of subcontractors; civil penalties.**

38 (1)(a) A subcontractor disclosed under section 116 of this 2003 Act may file a complaint based
39 on the subcontractor disclosure requirements under section 116 of this 2003 Act with the
40 Construction Contractors Board about a contractor if the contractor has substituted another
41 subcontractor for the complaining subcontractor.

42 (b) If more than one subcontractor files a complaint with the board under paragraph (a)
43 of this subsection relating to a single subcontractor disclosure, the board shall consolidate
44 the complaints into one proceeding. If the board imposes a civil penalty under this section
45 against a contractor, the amount collected by the board shall be divided evenly among all of

1 the complaining subcontractors.

2 (c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall
3 post a deposit of \$500 with the board upon filing the complaint.

4 (d) If the board determines that a contractor's substitution was not in compliance with
5 section 152 of this 2003 Act, the board shall return the full amount of the deposit posted
6 under paragraph (c) of this subsection to the complaining subcontractor.

7 (e) If the board determines that a contractor has not substituted a subcontractor or that
8 the contractor's substitution was in compliance with section 152 of this 2003 Act, the board
9 shall award the contractor \$250 of the deposit and shall retain the other \$250, which may be
10 expended by the board.

11 (2) Upon receipt of a complaint under subsection (1) of this section, the board shall in-
12 vestigate the complaint. If the board determines that a contractor has substituted a sub-
13 contractor in a manner not in compliance with section 152 of this 2003 Act, the board may
14 impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil
15 penalties under this section shall be imposed in the manner provided under ORS 183.090.

16 (3) If the board imposes a civil penalty under subsection (2) of this section and it is the
17 first time the board has imposed a civil penalty under subsection (2) of this section against
18 the contractor during a three-year period, the board shall:

19 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the
20 subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000,
21 whichever is less. Amounts collected by the board under this paragraph shall be awarded to
22 the complaining subcontractor or subcontractors; and

23 (b) Impose a civil penalty on the contractor of up to \$1,000. Amounts collected by the
24 board under this paragraph shall be retained by the board and may be expended by the board.

25 (4) If the board imposes a civil penalty under subsection (2) of this section and it is the
26 second time the board has imposed a civil penalty under subsection (2) of this section against
27 the contractor during a three-year period, the board may:

28 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the
29 subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000,
30 whichever is less. Amounts collected by the board under this paragraph shall be awarded to
31 the complaining subcontractor or subcontractors; and

32 (b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor
33 on the list established under ORS 701.227 for up to six months. Amounts collected by the
34 board under this paragraph shall be retained by the board and may be expended by the board.

35 (5) If the board imposes a civil penalty under subsection (2) of this section and the board
36 has imposed a civil penalty under subsection (2) of this section against the contractor three
37 or more times during a three-year period, the board may:

38 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the
39 subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000,
40 whichever is less. Amounts collected by the board under this paragraph shall be awarded to
41 the complaining subcontractor or subcontractors; and

42 (b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor
43 on the list established under ORS 701.227 for up to one year. Amounts collected by the board
44 under this paragraph shall be retained by the board and may be expended by the board.

45 (6) Within 10 working days after receiving a complaint under subsection (1) of this sec-

1 tion, the board shall notify, in writing, any contracting agency that is a party to the contract
2 for which the complaint has been filed that the complaint has been filed.

3
4 (Action on Payment Bonds)

5
6 **SECTION 154. Right of action against payment bond of contractor or subcontractor; no-**
7 **tice of claim.** (1) A person claiming to have supplied labor or materials for the performance
8 of the work provided for in a public contract, including any person having a direct contrac-
9 tual relationship with the contractor furnishing the payment bond or a direct contractual
10 relationship with any subcontractor, or an assignee of such person, or a person claiming
11 moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensa-
12 tion Trust Fund or the Department of Revenue in connection with the performance of the
13 contract, has a right of action on the contractor's payment bond as provided for in sections
14 118 and 129 of this 2003 Act only if:

15 (a) The person or the assignee of the person has not been paid in full; and

16 (b) The person gives written notice of claim, as prescribed in section 155 of this 2003 Act,
17 to the contractor and the contracting agency.

18 (2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries
19 has received information indicating that one or more workers providing labor on a public
20 works have not been paid in full at the prevailing rate of wage or overtime wages, the com-
21 missioner has a right of action on the contractor's payment bond, as provided in sections 118
22 and 129 of this 2003 Act. The commissioner's right of action exists without necessity of an
23 assignment and extends to workers on the project who are not identified when the written
24 notice of claim is given, but for whom the commissioner has received information indicating
25 that the workers have provided labor on the public works and have not been paid in full. The
26 commissioner shall give written notice of the claim, as prescribed in section 155 of this 2003
27 Act, to the contractor and the contracting agency.

28 **SECTION 155. Notice of claim.** (1) The notice of claim required by section 154 of this 2003
29 Act must be sent by registered or certified mail or hand delivered no later than 120 days
30 after the day the person last provided labor or furnished materials or 120 days after the
31 worker listed in the notice of claim by the Commissioner of the Bureau of Labor and In-
32 dustries last provided labor. The notice may be sent or delivered to the contractor at any
33 place the contractor maintains an office or conducts business or at the residence of the
34 contractor.

35 (2) Notwithstanding subsection (1) of this section, if the claim is for a required contri-
36 bution to a fund of any employee benefit plan, the notice required by section 154 of this 2003
37 Act must be sent or delivered within 150 days after the employee last provided labor or ma-
38 terials.

39 (3) The notice must be in writing substantially as follows:

40
41
42 _____
43 To (here insert the name of the contractor and the name of the public body):

44 Notice hereby is given that the undersigned (here insert the name of the claimant) has
45 a claim for (here insert a brief description of the labor or materials performed or furnished
and the person by whom performed or furnished; if the claim is for other than labor or ma-

1 terials, insert a brief description of the claim) in the sum of (here insert the amount) dollars
2 against the payment bond taken from (here insert the name of the principal and, if known,
3 the surety or sureties upon the payment bond) for the work of (here insert a brief de-
4 scription of the work concerning which the payment bond was taken). Such material or labor
5 was supplied to (here insert the name of the contractor or subcontractor).

6 _____ (here to be signed)
7 _____
8

9 (4) When notice of claim is given by the commissioner and if the claim includes a worker
10 who is then unidentified, the commissioner shall include in the notice a statement that the
11 claim includes an unidentified worker for whom the commissioner has received information
12 indicating that the worker has not been paid in full at the prevailing rate of wage required
13 by section 167 of this 2003 Act or overtime wages required by section 144 of this 2003 Act.

14 (5) The notice shall be signed by the person making the claim or giving the notice.

15 **SECTION 156. Action on contractor's payment bond; time limitation.** (1) The Commis-
16 sioner of the Bureau of Labor and Industries or a person who has a right of action on the
17 payment bond under section 154 of this 2003 Act and, where required, who has filed and
18 served the notice or notices of claim, as required under sections 154 and 155 of this 2003 Act,
19 or that person's assignee, may institute an action on the contractor's payment bond in a
20 circuit court of this state or the federal district court of the district.

21 (2) The action shall be on the relation of the commissioner, the claimant, or that person's
22 assignee, as the case may be, and shall be in the name of the contracting agency that let the
23 contract or, when applicable, the public agency or agencies for whose benefit the contract
24 was let. It may be prosecuted to final judgment and execution for the use and benefit of the
25 commissioner or the claimant, or that person's assignee, as the fact may appear.

26 (3) The action shall be instituted no later than two years after the person last provided
27 labor or materials or two years after the worker listed in the commissioner's notice of claim
28 last provided labor.

29 **SECTION 157. Preference of labor and material liens.** All labor and material liens have
30 preference and are superior to all other liens and claims of any kind or nature created by
31 sections 137 to 143 and 154 to 159 of this 2003 Act.

32 **SECTION 158. Rights of person providing medical care to employees of contractor.** A
33 person providing medical, surgical or hospital care services or other needed care and atten-
34 tion, incident to sickness or injury, to the employees of a contractor or subcontractor on a
35 public contract is deemed to have performed labor on the public contract for the purposes
36 of sections 154 to 159 of this 2003 Act.

37 **SECTION 159. Joint liability when payment bond not executed.** If the public contract is
38 one for which a payment bond as provided for in sections 118 and 129 of this 2003 Act is re-
39 quired and the contractor fails to pay for labor or materials or to pay claims due the In-
40 dustrial Accident Fund, the Unemployment Compensation Trust Fund or the Department of
41 Revenue and the officers of the public body that authorized the contract fail or neglect to
42 require the person entering into the contract to execute the payment bond:

43 (1) The State of Oregon and the officers authorizing the contract shall be jointly liable
44 for the labor and materials used in the performance of any work under the contract, and for
45 claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and

1 the Department of Revenue, if the contract was entered into with the State of Oregon.

2 (2) The public body and the officers authorizing the contract shall be jointly liable for the
3 labor and materials used in the performance of any work under the contract and for claims
4 due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and the
5 Department of Revenue, if the contract was entered into on behalf of a public body other
6 than the state.

7
8 (Termination of Contract for Public Interest Reasons)
9

10 SECTION 160. "Labor dispute" defined. As used in sections 160 to 164 of this 2003 Act,
11 "labor dispute" has the meaning given that term in ORS 662.010.

12 SECTION 161. Extension and compensation when work suspended. If a public contract
13 is not terminated but work under the contract is suspended by an order of a contracting
14 agency for any reason considered to be in the public interest other than a labor dispute or
15 any third-party judicial proceeding relating to the work other than a suit or action filed in
16 regards to a labor dispute, the contractor is entitled to a reasonable extension of the con-
17 tract time and reasonable compensation for all costs resulting from the suspension plus a
18 reasonable allowance for overhead with respect to such costs.

19 SECTION 162. Compensation when contract terminated due to public interest. When a
20 public contract is terminated by mutual agreement, provision shall be made for the payment
21 of compensation to the contractor. In addition to a reasonable amount of compensation for
22 preparatory work and for all costs and expenses arising out of termination, the amount to
23 be paid to the contractor:

24 (1) Shall be determined on the basis of the contract price in the case of any fully com-
25 pleted separate item or portion of the work for which there is a separate or unit contract
26 price; and

27 (2) May, with respect to any other work, be a percent of the contract price equal to the
28 percentage of the work completed.

29 SECTION 163. Contractual provisions for compensation when contract terminated due to
30 public interest. A contracting agency may provide in a public improvement contract detailed
31 provisions under which the contractor shall be entitled, as a matter of right, to compen-
32 sation upon termination of the contract on account of any reason considered to be in the
33 public interest.

34 SECTION 164. Application of sections 160 to 164 of this 2003 Act. Sections 160 to 164 of
35 this 2003 Act do not apply to suspension of the work or termination of the contract that
36 occurs as a result of the contractor's violation of federal, state or local statutes, ordinances,
37 rules or regulations in existence at the time the contract was executed or as a result of vi-
38 olations of the terms of the contract.

39
40 **PREVAILING WAGE RATE**
41

42 SECTION 165. Definitions for sections 165 to 179 of this 2003 Act. As used in sections 165
43 to 179 of this 2003 Act, unless the context requires otherwise:

44 (1) "Fringe benefits" means the amount of:

45 (a) The rate of contribution irrevocably made by a contractor or subcontractor to a

1 trustee or to a third person under a plan, fund or program; and

2 (b) The rate of costs to the contractor or subcontractor that may be reasonably antic-
3 ipated in providing benefits to workers pursuant to an enforceable commitment to carry out
4 a financially responsible plan or program that is committed in writing to the workers af-
5 fected, for medical or hospital care, pensions on retirement or death, compensation for in-
6 juries or illness resulting from occupational activity, or insurance to provide any of the
7 foregoing, for unemployment benefits, life insurance, disability and sickness insurance or
8 accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or
9 other similar programs or for other bona fide fringe benefits, but only when the contractor
10 or subcontractor is not required by other federal, state or local law to provide any of these
11 benefits.

12 (2) "Locality" means the following district in which the public works, or the major por-
13 tion thereof, is to be performed:

14 (a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

15 (b) District 2, composed of Clackamas, Multnomah and Washington Counties;

16 (c) District 3, composed of Marion, Polk and Yamhill Counties;

17 (d) District 4, composed of Benton, Lincoln and Linn Counties;

18 (e) District 5, composed of Lane County;

19 (f) District 6, composed of Douglas County;

20 (g) District 7, composed of Coos and Curry Counties;

21 (h) District 8, composed of Jackson and Josephine Counties;

22 (i) District 9, composed of Hood River, Sherman and Wasco Counties;

23 (j) District 10, composed of Crook, Deschutes and Jefferson Counties;

24 (k) District 11, composed of Klamath and Lake Counties;

25 (L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

26 (m) District 13, composed of Baker, Union and Wallowa Counties; and

27 (n) District 14, composed of Harney and Malheur Counties.

28 (3) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits,
29 paid in the locality to the majority of workers employed on projects of similar character in
30 the same trade or occupation, as determined by the Commissioner of the Bureau of Labor
31 and Industries. In making such determinations, the commissioner shall rely on an inde-
32 pendent wage survey to be conducted once each year. However, if it appears to the commis-
33 sioner that the data derived from the survey alone are insufficient to establish the rate, the
34 commissioner also shall consider additional information such as collective bargaining agree-
35 ments, other independent wage surveys and the prevailing rates of wage determined by ap-
36 propriate federal agencies or agencies of adjoining states. If there is not a majority in the
37 same trade or occupation paid at the same rate, the average rate of hourly wage, including
38 all fringe benefits, paid in the locality to workers in the same trade or occupation shall be
39 the prevailing rate. If the wage paid by any contractor or subcontractor to workers on any
40 public works is based on some period of time other than an hour, the hourly wage shall be
41 mathematically determined by the number of hours worked in that period of time.

42 (4) "Public agency" means the State of Oregon or any political subdivision thereof or any
43 county, city, district, authority, public corporation or entity and any of their instrument-
44 alities organized and existing under law or charter.

45 (5) "Public works" includes, but is not limited to, roads, highways, buildings, structures

1 and improvements of all types, the construction, reconstruction, major renovation or paint-
2 ing of which is carried on or contracted for by any public agency to serve the public interest
3 but does not include the reconstruction or renovation of privately owned property that is
4 leased by a public agency.

5 **SECTION 166. Policy.** The Legislative Assembly declares that the purposes of the pre-
6 vailing rate of wage law are:

7 (1) To ensure that contractors compete on the ability to perform work competently and
8 efficiently while maintaining community-established compensation standards.

9 (2) To recognize that local participation in publicly financed construction and family wage
10 income and benefits are essential to the protection of community standards.

11 (3) To encourage training and education of workers to industry skills standards.

12 (4) To encourage employers to use funds allocated for employee fringe benefits for the
13 actual purchase of those benefits.

14 **SECTION 167. Payment of prevailing rate of wage; posting of rates and fringe benefit plan**
15 **provisions.** (1) The hourly rate of wage to be paid by any contractor or subcontractor to
16 workers upon all public works shall be not less than the prevailing rate of wage for an hour's
17 work in the same trade or occupation in the locality where the labor is performed. The ob-
18 ligation of a contractor or subcontractor to pay the prevailing rate of wage may be dis-
19 charged by making the payments in cash, by the making of contributions of a type referred
20 to in section 165 (1)(a) of this 2003 Act, or by the assumption of an enforceable commitment
21 to bear the costs of a plan or program of a type referred to in section 165 (1)(b) of this 2003
22 Act, or any combination thereof, where the aggregate of any such payments, contributions
23 and costs is not less than the prevailing rate of wage.

24 (2) After a contract for public works is executed with any contractor or work is com-
25 menced upon any public works, the amount of the prevailing rate of wage is not subject to
26 attack in any legal proceeding by any contractor or subcontractor in connection with that
27 contract.

28 (3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than
29 the amount required to be in the specifications of a contract for public works, or that there
30 was an agreement between the employee and the employer to work at less than the wage
31 rates required to be paid under this section.

32 (4) Every contractor or subcontractor engaged on a project for which there is a contract
33 for a public works shall keep the prevailing rates of wage for that project posted in a con-
34 spicuous and accessible place in or about the project. The Commissioner of the Bureau of
35 Labor and Industries shall furnish without charge copies of the prevailing rates of wage to
36 contractors and subcontractors.

37 (5) Every contractor or subcontractor engaged on a project for which there is a contract
38 for a public works to which the prevailing wage requirements apply that also provides or
39 contributes to a health and welfare plan or a pension plan, or both, for the contractor or
40 subcontractor's employees on the project shall post a notice describing the plan in a con-
41 spicuous and accessible place in or about the project. The notice preferably shall be posted
42 in the same place as the notice required under subsection (4) of this section. In addition to
43 the description of the plan, the notice shall contain information on how and where to make
44 claims and where to obtain further information.

45 (6)(a) Except as provided in paragraph (c) of this subsection, no person other than the

1 contractor or subcontractor may pay or contribute any portion of the prevailing rate of wage
2 paid by the contractor or subcontractor to workers employed in the performance of a public
3 works contract.

4 (b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate
5 of wage specified in the contract.

6 (c) This subsection is not intended to prohibit payments to a worker who is enrolled in
7 any government-subsidized training or retraining program.

8 (7) A person may not take any action that circumvents the payment of the prevailing
9 rate of wage to workers employed on a public works contract, including, but not limited to,
10 reducing an employee's regular rate of pay on any project not subject to sections 165 to 179
11 of this 2003 Act in a manner that has the effect of offsetting the prevailing rate of wage on
12 a public works project.

13 SECTION 168. Contractual provisions regarding prevailing rates of wage and fee for ad-
14 ministration of law. (1) The specifications for every contract for public works shall contain
15 a provision stating the existing prevailing rate of wage that may be paid to workers in each
16 trade or occupation required for the public works employed in the performance of the con-
17 tract either by the contractor or subcontractor or other person doing or contracting to do
18 the whole or any part of the work contemplated by the contract. The contract shall contain
19 a provision that the workers shall be paid not less than the specified minimum hourly rate
20 of wage.

21 (2) The specifications for every contract for public works shall contain a provision stating
22 that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries
23 as provided in section 178 (1) of this 2003 Act. The contract shall contain a provision that the
24 fee shall be paid to the commissioner under the administrative rule of the commissioner.

25 SECTION 169. Certified statements regarding payment of prevailing rates of wage. (1)
26 The contractor or the contractor's surety and every subcontractor or the subcontractor's
27 surety shall file certified statements with the public agency in writing, on a form prescribed
28 by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of
29 wage paid each worker whom the contractor or the subcontractor has employed upon the
30 public works, and further certifying that no worker employed upon the public works has been
31 paid less than the prevailing rate of wage or less than the minimum hourly rate of wage
32 specified in the contract. The certificate and statement shall be verified by the oath of the
33 contractor or the contractor's surety or subcontractor or the subcontractor's surety that
34 the contractor or subcontractor has read the statement and certificate and knows the con-
35 tents thereof and that the same is true to the contractor or subcontractor's knowledge. The
36 certified statements shall set out accurately and completely the payroll records for the prior
37 week, including the name and address of each worker, the worker's correct classification,
38 rate of pay, daily and weekly number of hours worked, deductions made and actual wages
39 paid.

40 (2) The contractor or subcontractor shall deliver or mail each certified statement re-
41 quired by subsection (1) of this section to the public agency. Certified statements for each
42 week during which the contractor or subcontractor employs a worker upon the public works
43 shall be submitted once a month, by the fifth business day of the following month. Informa-
44 tion submitted on certified statements may be used only to ensure compliance with the
45 provisions of sections 165 to 179 of this 2003 Act.

1 (3) Each contractor or subcontractor shall preserve the certified statements for a period
2 of three years from the date of completion of the contract.

3 (4) Certified statements received by a public agency are public records subject to the
4 provisions of ORS 192.410 to 192.505.

5 SECTION 170. Inspection to determine whether prevailing rate of wage being paid; civil
6 action for failure to pay prevailing rate of wage or overtime. (1) At any reasonable time the
7 Commissioner of the Bureau of Labor and Industries may enter the office or business es-
8 tablishment of any contractor or subcontractor performing public works and gather facts
9 and information necessary to determine whether the prevailing rate of wage is actually being
10 paid by such contractor or subcontractor to workers upon public works.

11 (2) Upon request by the commissioner, every contractor or subcontractor performing
12 work on public works shall make available to the commissioner for inspection during normal
13 business hours any payroll or other records in the possession or under the control of the
14 contractor or subcontractor that are deemed necessary by the commissioner to determine
15 whether the prevailing rate of wage is actually being paid by such contractor or subcon-
16 tractor to workers upon public works. The commissioner's request must be made a reason-
17 able time in advance of the inspection.

18 (3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commis-
19 sioner under this section is not open to inspection by the public.

20 (4) The commissioner may, without necessity of an assignment, initiate legal proceedings
21 against employers to enjoin future failures to pay required prevailing rates of wage or over-
22 time pay and to require the payment of prevailing rates of wage or overtime pay due em-
23 ployees. The commissioner is entitled to recover, in addition to other costs, such sum as the
24 court or judge may determine reasonable as attorney fees. If the commissioner does not
25 prevail in the action, the commissioner shall pay all costs and disbursements from the Bu-
26 reau of Labor and Industries Account.

27 SECTION 171. Liability for violations. (1) Any contractor or subcontractor or contrac-
28 tor's or subcontractor's surety that violates the provisions of section 167 of this 2003 Act is
29 liable to the workers affected in the amount of their unpaid minimum wages, including all
30 fringe benefits as defined in section 165 of this 2003 Act, and in an additional amount equal
31 to the unpaid wages as liquidated damages.

32 (2) Actions to enforce liability to workers under subsection (1) of this section may be
33 brought as actions on contractors' bonds as provided for in section 156 of this 2003 Act.

34 (3) If the public agency fails to include a provision that the contractor and any subcon-
35 tractor shall comply with section 167 of this 2003 Act in the advertisement for bids, the re-
36 quest for bids, the contract specifications, the accepted bid or elsewhere in the contract
37 documents, the liability of the public agency for unpaid minimum wages, as described in
38 subsection (1) of this section, is joint and several with any contractor or subcontractor that
39 had notice of the requirement to comply with section 167 of this 2003 Act. The Commissioner
40 of the Bureau of Labor and Industries may enforce the provisions of this subsection by a civil
41 action under section 170 (4) of this 2003 Act, by a civil action on an assigned wage claim
42 under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS
43 652.332.

44 SECTION 172. Exemptions. (1) Sections 165 to 179 of this 2003 Act do not apply to:

45 (a) Projects for which the contract price does not exceed \$25,000.

1 (b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such
2 regulation, contractors and subcontractors shall pay individuals employed as flaggers on the
3 projects not less than the prevailing rate of wage as determined by the Commissioner of the
4 Bureau of Labor and Industries for that classification of work. As used in this paragraph,
5 “flagger” means a person who controls the movement of vehicular traffic through con-
6 struction projects using sign, hand or flag signals.

7 (c)(A) Projects for which no funds of a public agency are directly or indirectly used. In
8 accordance with ORS 183.310 to 183.550, the commissioner shall adopt rules to carry out the
9 provisions of this paragraph.

10 (B) As used in this paragraph:

11 (i) “Funds of a public agency” does not include funds provided in the form of a govern-
12 ment grant to a nonprofit organization, unless the government grant is issued for the pur-
13 pose of construction.

14 (ii) “Nonprofit organization” means an organization or group of organizations described
15 in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under
16 section 501(a) of the Internal Revenue Code.

17 (2)(a) A public agency may not divide a public works project into more than one contract
18 for the purpose of avoiding compliance with sections 165 to 179 of this 2003 Act.

19 (b) When the commissioner determines that a public agency has divided a public works
20 project for the purpose of avoiding compliance with sections 165 to 179 of this 2003 Act, the
21 commissioner shall issue an order compelling compliance.

22 (c) In making determinations under this subsection, the commissioner shall consider:

23 (A) The physical separation of the project structures;

24 (B) The timing of the work on project phases or structures;

25 (C) The continuity of project contractors and subcontractors working on project parts
26 or phases; and

27 (D) The manner in which the public agency and the contractors administer and imple-
28 ment the project.

29 SECTION 173. Determination of prevailing rates of wage; providing information to com-
30 missioner. (1) As used in this section, “person” includes any employer, labor organization or
31 any official representative of an employee or employer association.

32 (2) The Commissioner of the Bureau of Labor and Industries shall determine the pre-
33 vailing rate of wage for workers in each trade or occupation in each locality described in
34 section 165 of this 2003 Act at least once each year by means of an independent wage survey
35 and make this information available at least twice each year. The commissioner may amend
36 the rate at any time.

37 (3) A person shall make such reports and returns to the Bureau of Labor and Industries
38 as the commissioner may require to determine the prevailing rates of wage. The reports and
39 returns shall be made upon forms furnished by the bureau and within the time prescribed
40 therefor by the commissioner. The person or an authorized representative of the person shall
41 certify to the accuracy of the reports and returns.

42 (4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information
43 provided to the commissioner under this section are confidential and not available for in-
44 spection by the public.

45 (5) In order to assist the commissioner in making determinations of the prevailing rates

1 of wage, the commissioner may enter into contracts with public or private parties to obtain
 2 relevant data and information. Any such contract may include provisions for the manner and
 3 extent of the market review of affected trades and occupations and such other requirements
 4 regarding timelines of reports, accuracy of data and information and supervision and review
 5 as the commissioner may prescribe.

6 **SECTION 174. Ineligibility for public works contracts for failure to pay or post notice of**
 7 **prevailing rates of wage; certified payroll reports to commissioner.** (1) When the Commis-
 8 sioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS
 9 183.310 to 183.550, determines that a contractor or subcontractor has intentionally failed or
 10 refused to pay the prevailing rate of wage to workers employed upon public works, a sub-
 11 contractor has failed to pay to its employees amounts required by section 167 of this 2003
 12 Act and the contractor has paid those amounts on the subcontractor's behalf, or a contrac-
 13 tor or subcontractor has intentionally failed or refused to post the prevailing rates of wage
 14 as required by section 167 (4) of this 2003 Act, the contractor, subcontractor or any firm,
 15 corporation, partnership or association in which the contractor or subcontractor has a fi-
 16 nancial interest shall be ineligible, for a period not to exceed three years from the date of
 17 publication of the name of the contractor or subcontractor on the ineligible list as provided
 18 in this section, to receive any contract or subcontract for public works. The commissioner
 19 shall maintain a written list of the names of those contractors and subcontractors deter-
 20 mined to be ineligible under this section and the period of time for which they are ineligible.
 21 A copy of the list shall be published, furnished upon request and made available to con-
 22 tracting agencies.

23 (2) When the contractor or subcontractor is a corporation, the provisions of subsection
 24 (1) of this section apply to any corporate officer or corporate agent who is responsible for
 25 the failure or refusal to pay or post the prevailing rate of wage or the failure to pay to a
 26 subcontractor's employees amounts required by section 167 of this 2003 Act that are paid by
 27 the contractor on the subcontractor's behalf.

28 (3) For good cause shown, the commissioner may direct the removal of the name of a
 29 contractor or subcontractor from the ineligible list.

30 (4) To assist the commissioner in determining whether the contractor or subcontractor
 31 is paying the prevailing rate of wage, when a prevailing rate of wage claim is filed, or evi-
 32 dence indicating a violation has occurred, a contractor or subcontractor required to pay the
 33 prevailing rate of wage to workers employed upon public works under sections 165 to 179 of
 34 this 2003 Act shall send a certified copy of the payroll for those workers when the commis-
 35 sioner requests the certified copy.

36 **SECTION 175. Notifying commissioner of public works contract.** Public agencies shall
 37 notify the Commissioner of the Bureau of Labor and Industries in writing, on a form pre-
 38 scribed by the commissioner, whenever a contract subject to the provisions of sections 165
 39 to 179 of this 2003 Act has been awarded. The notification shall be made within 30 days of the
 40 date that the contract is awarded. The notification shall include a copy of the disclosure of
 41 first-tier subcontractors that was submitted under section 116 of this 2003 Act.

42 **SECTION 176. Civil action to enforce payment of prevailing rates of wage.** (1) The Com-
 43 missioner of the Bureau of Labor and Industries or any other person may bring a civil action
 44 in any court of competent jurisdiction to require a public agency under a public contract with
 45 a contractor to withhold twice the wages in dispute if it is shown that the contractor or

1 subcontractor on the contract has intentionally failed or refused to pay the prevailing rate
 2 of wage to workers employed on that contract and to require the contractor to pay the
 3 prevailing rate of wage and any deficiencies that can be shown to exist because of improper
 4 wage payments already made. In addition to other relief, the court may also enjoin the con-
 5 tractor or subcontractor from committing future violations. The contractor or subcontractor
 6 involved shall be named as a party in all civil actions brought under this section. In addition
 7 to other costs, the court may award the prevailing party reasonable attorney fees at the trial
 8 and on appeal. However, attorney fees may not may be awarded against the commissioner
 9 under this section.

10 (2) The court shall require any party, other than the commissioner, that brings a civil
 11 action under this section to post a bond sufficient to cover the estimated attorney fees and
 12 costs to the public agency and to the contractor or subcontractor of any temporary re-
 13 straining order, preliminary injunction or permanent injunction awarded in the action, in the
 14 event that the party bringing the action does not ultimately prevail.

15 (3) In addition to any other relief, the court in a civil action brought under this section
 16 may enjoin the public agency from contracting with the contractor or subcontractor if the
 17 court finds that the commissioner would be entitled to place the contractor or subcontractor
 18 on the ineligible list established under section 174 (1) of this 2003 Act. If the court issues
 19 such an injunction, the commissioner shall place the contractor or subcontractor on the list
 20 for a period of three years, subject to the provision of section 174 (2) of this 2003 Act.

21 **SECTION 177. Civil penalties.** (1) In addition to any other penalty provided by law, the
 22 Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed
 23 \$5,000 for each violation of any provision of sections 165 to 179 of this 2003 Act or any rule
 24 of the commissioner adopted thereunder.

25 (2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

26 (3) All moneys collected as penalties under this section shall be first applied toward re-
 27 imbursement of costs incurred in determining violations, conducting hearings and assessing
 28 and collecting the penalties. The remainder, if any, of moneys collected as penalties under
 29 this section shall be paid into the State Treasury and credited to the General Fund and are
 30 available for general governmental expenses.

31 **SECTION 178. Fees; rules.** (1)(a) The Commissioner of the Bureau of Labor and Indus-
 32 tries, by rule, shall establish a fee to be paid by the contractor to whom a public works
 33 contract subject to sections 165 to 179 of this 2003 Act has been awarded. The fee shall be
 34 used to pay the costs of:

35 (A) Surveys to determine the prevailing rates of wage;

36 (B) Administering and providing investigations under and enforcement of sections 165 to
 37 179 of this 2003 Act; and

38 (C) Providing educational programs on public contracting law under the Public Con-
 39 tracting Code.

40 (b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee
 41 be charged and collected that is more than \$5,000 or less than \$100.

42 (2) The commissioner shall pay moneys received under this section into the State
 43 Treasury. The moneys shall be credited to the Prevailing Wage Education and Enforcement
 44 Account created by ORS 651.185.

45 (3) The contractor shall pay the fee at the time of the first progress payment or 60 days

1 after work on the contract has begun, whichever date is earlier.

2 (4) Failure to make timely payment under subsection (3) of this section shall subject the
3 contractor to a civil penalty under section 177 of this 2003 Act in such amount as the com-
4 missioner, by rule, shall specify.

5 SECTION 179. Advisory committee to assist commissioner. (1) The Commissioner of the
6 Bureau of Labor and Industries shall appoint an advisory committee to assist the commis-
7 sioner in the administration of sections 165 to 179 of this 2003 Act.

8 (2) The advisory committee must include equal representation of members from man-
9 agement and labor in the building and construction industry who perform work on public
10 works contracts and such other interested parties as the commissioner shall appoint.

11
12 **PENALTIES**

13
14 SECTION 180. Penalties. (1) Any contractor, subcontractor, agent or person in authority
15 or in charge who violates any of the provisions of sections 141 and 144 of this 2003 Act as to
16 hours of employment of labor shall, upon conviction, be fined not less than \$50 nor more than
17 \$1,000 or imprisoned in the county jail for not less than five days nor more than one year,
18 or both.

19 (2) Any contractor or subcontractor subject to section 167 of this 2003 Act who fails to
20 pay the prevailing rate of wage as required by section 167 of this 2003 Act shall be punished,
21 upon conviction, by a fine of not more than \$1,000 or by imprisonment in the county jail for
22 not more than six months, or both.

23
24 **PART 4: OTHER PROVISIONS**

25
26 SECTION 181. Section 182 of this 2003 Act is added to and made a part of ORS chapter
27 198.

28 SECTION 182. District authority to enter into property purchase contracts. (1) A district
29 may enter into a contract for the purchase or for the lease with option to purchase of real
30 or personal property when the period of time allowed for payment under the contract does
31 not exceed 30 years. A district entering into a contract authorized by this subsection may
32 budget funds annually for payment of amounts due under the contract in each year during
33 the term of the contract, unless the contract is terminated sooner in accordance with its
34 terms.

35 (2) The powers granted to districts by this section are in addition to any other powers
36 possessed by districts in this state, and this section may not be construed to limit such
37 powers.

38 SECTION 183. Section 184 of this 2003 Act is added to and made a part of ORS chapter
39 203.

40 SECTION 184. County authority to enter into property purchase contracts. (1) A county
41 may enter into a contract for the purchase or for the lease with option to purchase of real
42 or personal property when:

43 (a) The period of time allowed for payment under the contract does not exceed 30 years;
44 and

45 (b) The county is not obligated to make payments under the contract in any fiscal year

1 unless the county governing body includes such payments in the county's budget for that
2 fiscal year and makes an appropriation therefor.

3 (2) The powers granted to counties by this section are in addition to any other powers
4 possessed by counties in this state, and this section may not be construed to limit such
5 powers.

6 SECTION 185. Notwithstanding any other provision of law, ORS 279.340, 279.342, 279.625
7 and 279.795 may not be considered to have been added to or made a part of ORS chapter 279
8 or any smaller series therein for the purpose of statutory compilation, for the application
9 of definitions, penalties or administrative provisions or for any other purpose.

10 SECTION 186. ORS 279.340 and 279.342 are added to and made a part of ORS 653.010 to
11 653.545.

12 SECTION 187. ORS 279.625 is added to and made a part of ORS 282.010 to 282.050.

13 SECTION 188. Policy; findings. The Legislative Assembly finds and declares that:

14 (1) It is the policy of the State of Oregon to conserve and protect its resources. The
15 maintenance of a quality environment for the people of this state now and in the future is
16 a matter of statewide concern.

17 (2) The volume of solid waste generated within the state, an increased rate in the con-
18 sumption of products and materials, including paper products, and the absence of adequate
19 programs and procedures for the reuse and recycling of these products and materials
20 threaten the quality of the environment and well-being of the people of Oregon.

21 SECTION 189. State government recycling program requirements. (1) For the current
22 state waste paper collection program, the Oregon Department of Administrative Services, in
23 consultation with the Department of Environmental Quality, shall provide participating lo-
24 cations with public awareness information and training to state and legislative employees,
25 including but not limited to the proper separation and disposal of recycled resources. Addi-
26 tionally, the Oregon Department of Administrative Services, in consultation with the De-
27 partment of Environmental Quality, shall provide training for personnel, including but not
28 limited to state buildings and grounds personnel responsible for the collection of waste ma-
29 terials. This training shall include but is not be limited to educating and training the per-
30 sonnel concerning the separation and collection of recyclable materials.

31 (2) The Oregon Department of Administrative Services shall continue the current state
32 waste paper collection program for employees of state government, as defined in ORS 174.111.
33 This program shall include recycling opportunities for office paper, corrugated cardboard,
34 newsprint, beverage containers as defined in ORS 459A.700, container glass, mixed waste
35 paper, plastic bottles, waste oil, clay-coated materials, batteries, toner and printer cartridges
36 and any other material at the discretion of the Director of the Oregon Department of Ad-
37 ministrative Services, in consultation with the Department of Environmental Quality.

38 (3) The Oregon Department of Administrative Services may contract as necessary for the
39 recycling of products returned under subsections (1) and (2) of this section.

40 SECTION 190. Rules for recycling and reusing solid waste; exemption. (1)
41 Notwithstanding ORS 183.335 (5), the Oregon Department of Administrative Services shall
42 adopt rules pursuant to ORS 183.310 to 183.550 that:

43 (a) Establish procedures for the separation of solid waste generated by state agencies
44 that can be recycled or reused.

45 (b) Establish a system for the collection of solid waste generated by state agencies that

1 can be recycled or reused. The system shall ensure that the material is made available to
2 appropriate agencies or private industries for reuse or recycling at the greatest economic
3 value and to the greatest extent feasible for recycling.

4 (2) All state agencies shall comply with the procedures and systems established under
5 subsection (1) of this section.

6 (3) The Governor may exempt any single activity or facility of any state agency from
7 compliance under this section if the Governor determines it to be in the paramount interest
8 of the state. Any exemption shall be for a period not in excess of one year, but additional
9 exemptions may be granted for periods not to exceed one year. The Governor shall make
10 public all exemptions together with the reasons for granting such exemptions.

11 **SECTION 191. Guidelines and procedures to encourage paper conservation.** (1) The
12 Oregon Department of Administrative Services shall encourage paper conservation.

13 (2) The department shall provide guidelines to state agencies and contractors on the
14 availability of recycled paper and paper products, including the sources of supply and the
15 potential uses of various grades of recycled paper.

16 (3) The department shall review the total paper purchases and utilization of each state
17 agency.

18 (4) The department shall, in conjunction with the administrative heads of state agencies,
19 develop procedures to eliminate excessive or unnecessary paper use, including but not limited
20 to overpurchase of paper, overprinting of materials, purchase of too high a grade of paper,
21 purchase of paper that is not recyclable and purchase of virgin paper when recycled paper
22 is available in the same grade.

23 **SECTION 192. Title to property acquired by state agency in name of state.** A state
24 agency, as defined in section 36 of this 2003 Act, authorized by law to acquire real or personal
25 property or any interest therein shall take title to the property or the interest therein in the
26 name of the State of Oregon.

27
28 **PART 5: CONFORMING AMENDMENTS**
29

30 **SECTION 193.** ORS 7.250 is amended to read:

31 7.250. (1) The State Court Administrator and the courts of this state shall encourage persons
32 who make filings in the courts, including all pleadings, motions, copies and other documents, to use
33 paper that has been printed on both sides of each sheet. The courts of this state may not decline
34 to accept any filing because the filing is printed on both sides of each sheet of paper.

35 (2) All filings in the courts of this state, including all pleadings, motions, copies and other doc-
36 uments, shall be printed on recycled paper if recycled paper is readily available at a reasonable
37 price. The State Court Administrator and the courts of this state shall encourage persons who make
38 filings in the courts to use recycled paper that has the highest available content of post-consumer
39 waste, as defined in [ORS 279.545] **section 2 of this 2003 Act**, and that is recyclable in office paper
40 recycling programs in the community in which the filing is made. A court of this state may not de-
41 cline to accept any filing because the paper does not comply with the requirements of this sub-
42 section.

43 **SECTION 194.** ORS 9.010 is amended to read:

44 9.010. (1) An attorney, admitted to practice in this state, is an officer of the court; and the
45 Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the

1 government of the State of Oregon and is authorized to carry out the provisions of ORS 9.005 to
 2 9.755. The bar is subject to the following statutes applicable to public bodies: ORS 30.210 to 30.250,
 3 30.260 to 30.300, 30.310, 30.312, 30.390, 30.400, the Oregon Rules of Civil Procedure, ORS 192.410 to
 4 192.505, 192.610 to 192.690, 244.010 to 244.040, 297.110 to 297.230, ORS chapters 307, 308 and 311,
 5 ORS 731.036 and 737.600. However, the bar is not subject to any other statute applicable to a state
 6 agency, department, board or commission or public body unless such statute expressly provides that
 7 it is applicable to the Oregon State Bar.

8 (2) The Oregon State Bar has perpetual succession and a seal, and it may sue and be sued.
 9 Notwithstanding the provisions of ORS 270.020 and ORS [*chapters*] **chapter** 278 and [279] **sections**
 10 **1 to 46, 47 to 87 and 88 to 180 of this 2003 Act**, it may, in its own name, for the purpose of carry-
 11 ing into effect and promoting its objectives, enter into contracts and lease, acquire, hold, own,
 12 encumber, insure, sell, replace, deal in and with and dispose of real and personal property. [*ORS*
 13 *279.011 to 279.067, 279.310 to 279.542, 279.710 and 279.711 shall not apply to any contract for purchase,*
 14 *lease or sale of personal property, public improvements or services entered into before, on or after July*
 15 *9, 1985.*]

16 (3) No obligation of any kind incurred or created under this section shall be, or be considered,
 17 an indebtedness or obligation of the State of Oregon.

18 **SECTION 195.** ORS 65.813 is amended to read:

19 65.813. (1) Within the time periods specified in ORS 65.809, and for the purpose of evaluating the
 20 factors identified in ORS 65.811, the Attorney General may do any of the following:

21 (a) Contract with, consult with or receive advice from any state agency pursuant to those terms
 22 and conditions that the Attorney General considers appropriate.

23 (b) In the Attorney General's sole discretion, contract with, consult with or receive advice from
 24 consultants to assist in the Attorney General's review of the proposed transaction. The consultants
 25 shall be qualified and expert in the type of transactions under review. Before engaging any con-
 26 sultant, the Attorney General shall communicate with the parties to the proposed transaction re-
 27 garding the engagement.

28 (2) The cost of any contract authorized under subsection (1) of this section shall be no more than
 29 is reasonably necessary to conduct the Attorney General's review and evaluation. Any contract en-
 30 tered into by the Attorney General under this section shall be exempt from the requirements of
 31 [*ORS 279.005 to 279.111*] **sections 1 to 46 and 47 to 87 of this 2003 Act, except section 77**. All
 32 contract costs incurred by the Attorney General under this section must be paid by the party to
 33 whom the transfer is to be made as described in ORS 65.803 (1).

34 (3) The Attorney General, by rule, may impose an application fee for costs incurred in reviewing
 35 and evaluating the proposed transaction. The fee must be paid by the party to whom the transfer
 36 is to be made as described in ORS 65.803 (1).

37 **SECTION 196.** ORS 105.435 is amended to read:

38 105.435. (1) A receiver appointed by the court, pursuant to ORS 105.420 to 105.455, shall have
 39 the authority to do any or all of the following unless specifically limited by the court:

40 (a) Take possession and control of the property including the right to enter, modify and termi-
 41 nate tenancies pursuant to ORS 105.105 to 105.161 and to charge and collect rents derived there-
 42 from, applying said sum to the costs incurred due to the abatement and receivership;

43 (b) Negotiate contracts and pay all expenses associated with the operation and conservation of
 44 the property including, but not limited to, all utility, fuel, custodial, repair or insurance costs;

45 (c) Pay all accrued property taxes, penalties, assessments and other charges imposed on the

1 property by a unit of government as well as any accruing charge of like nature accruing during the
2 pendency of the receivership;

3 (d) Dispose of any or all abandoned personal property found at the structure; and

4 (e) Enter into contracts and pay for the performance of any work necessary to complete the
5 abatement.

6 (2) In addition to the powers set forth in subsection (1) of this section, the receiver may, under
7 such terms and condition as a court shall allow, enter into financing agreements with public or
8 private lenders and encumber the property therewith so as to have moneys available to correct the
9 conditions at the property giving rise to the abatement.

10 (3) A receiver may charge an administrative fee at an hourly rate approved by the court or at
11 a rate of 15 percent of the total cost of the abatement, whichever the court deems more appropriate.

12 (4) All abatement work done under ORS 105.420 to 105.455 is exempt from the public contracting
13 statutes set forth in [ORS 279.011 to 279.063] **sections 1 to 46 and 47 to 87 of this 2003 Act and**
14 **sections 88, 89 to 96 and 97 to 136 of this 2003 Act, except sections 17, 36 to 44 and 77 of this**
15 **2003 Act.**

16 **SECTION 197.** ORS 173.500 is amended to read:

17 173.500. (1) There is established within the legislative department the Oregon State Capitol
18 Foundation. The foundation shall be composed of not fewer than nine and not more than 25 voting
19 members, who shall each serve a term of four years. The President of the Senate shall appoint three
20 voting members from members of the Senate. The Speaker of the House of Representatives shall
21 appoint three voting members from members of the House of Representatives. The Legislative Ad-
22 ministration Committee shall appoint the remaining voting members. A member is eligible for reap-
23 pointment. At all times there shall be appointed to the foundation an odd number of voting members.
24 The foundation may appoint honorary, nonvoting members to the foundation.

25 (2) The Oregon State Capitol Foundation shall:

26 (a) Advise the Legislative Administration Committee on the terms and conditions of contracts
27 or agreements entered into under ORS 276.002.

28 (b) Recommend to the committee renovations, repairs and additions to the State Capitol.

29 (c) Recommend to the committee exhibits and events for the State Capitol.

30 (d) Deposit gifts, grants, donations and moneys converted from gifts or donations of other than
31 money into separate trust accounts reserved for the purposes of the gifts, grants and donations.

32 (e) Develop, maintain and implement plans to:

33 (A) Enhance and embellish the State Capitol in keeping with the design and purpose of the
34 building and adjacent areas; and

35 (B) Preserve the history of activities of state government that have occurred in the State Capitol
36 and of persons who have participated in state government in the State Capitol.

37 (f) Adopt rules to guide the foundation and implement the foundation's responsibilities under this
38 subsection and the foundation's authority under subsections (3) to (5) of this section.

39 (g) Consult with any advisory committees the Legislative Administration Committee may desig-
40 nate before the foundation makes a recommendation required by this subsection.

41 (3) The Oregon State Capitol Foundation may:

42 (a) Solicit and accept gifts, grants and donations from public and private sources in the name
43 of the foundation.

44 (b) Under guidelines adopted by the Legislative Administration Committee, expend moneys from
45 the Oregon State Capitol Foundation Fund for the purposes set out in subsection (2) of this section,

1 including but not limited to the reasonable and necessary operating expenses of the foundation.

2 (c) Convert gifts or donations other than money into moneys.

3 (d) Become or create an organization under section 501(c)(3) of the Internal Revenue Code.

4 (4)(a) As used in this subsection, "community foundation" has the meaning given that term in
5 ORS 348.580.

6 (b) The Oregon State Capitol Foundation may enter into agreements with a person, including a
7 community foundation in Oregon, for the person to assume the management of the moneys in the
8 Oregon State Capitol Foundation Fund. The Oregon State Capitol Foundation may transfer to the
9 person any moneys in the fund.

10 (c) The Oregon State Capitol Foundation shall include in any agreement entered into under this
11 subsection a requirement that:

12 (A) The person conduct a periodic independent financial audit of the moneys transferred to the
13 person.

14 (B) The person prepare an annual financial report according to generally accepted accounting
15 principles.

16 (C) The person submit an annual financial report to the Oregon State Capitol Foundation, the
17 Legislative Administration Committee and the Oregon Investment Council.

18 (d) If a provision of an agreement entered into under this subsection would cause the person to
19 be out of compliance with a federal law, the Oregon State Capitol Foundation may waive the pro-
20 vision.

21 (5) The Oregon State Capitol Foundation may, through the Legislative Administrator, enter into
22 contracts or agreements to implement the foundation's responsibilities and authority. [*ORS chapter*
23 *279 does*] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act**
24 **do not apply to a contract or agreement entered into by the foundation.**

25 (6) The Oregon State Capitol Foundation may take action under this section upon a majority
26 vote of a quorum of members. A majority of the voting members of the foundation constitutes a
27 quorum for the transaction of business.

28 **SECTION 198.** ORS 177.120 is amended to read:

29 177.120. (1) The Secretary of State shall compile and issue biennially on or about February 15
30 of the same year as the regular sessions of the Legislative Assembly, an official directory of all state
31 officers, state institutions, boards and commissions and district and county officers of the state, to
32 be known as the Oregon Blue Book, and include therein the information regarding their functions
33 that the secretary considers most valuable to the people of the state, together with such other data
34 and information as usually is included in similar publications. The Secretary of State may cause the
35 Oregon Blue Book to be copyrighted.

36 (2) In order to fully carry out the intent and purposes of this section, the Secretary of State
37 may request of any state, district and county officials any information concerning their offices, in-
38 stitutions or departments that the secretary desires to include in the Oregon Blue Book. The offi-
39 cials shall furnish the information.

40 (3) The Secretary of State may distribute the Oregon Blue Book free of charge, under such
41 regulations as the secretary may establish, to schools and to federal, state, county and city officials
42 of the State of Oregon. The copies distributed under this subsection shall not be sold.

43 (4) The Secretary of State shall determine a reasonable price, and charge such price, for each
44 copy of the Oregon Blue Book distributed to the general public. The secretary may also establish
45 a discount price for dealers and shall set the price for resale by dealers in order to maintain a

1 uniform price. The sum collected shall be paid over to the State Treasurer and credited to the Sec-
2 retary of State Miscellaneous Receipts Account established under [ORS 279.833] **section 44 of this**
3 **2003 Act.**

4 **SECTION 199.** ORS 177.150 is amended to read:

5 177.150. The Secretary of State shall cause a record to be kept of all moneys paid into the
6 Secretary of State Miscellaneous Receipts Account established under [ORS 279.833] **section 44 of**
7 **this 2003 Act.** Together with other matters, the record shall indicate, by separate account, the
8 source from which the moneys paid in are derived and the activity or program against which any
9 payment or withdrawal is charged.

10 **SECTION 200.** ORS 179.040 is amended to read:

11 179.040. (1) The Department of Corrections and the Department of Human Services shall:

12 (a) Govern, manage and administer the affairs of the public institutions and works within their
13 respective jurisdictions.

14 (b) Enter into contracts for the planning, erection, completion and furnishings of all new
15 buildings or additions at their respective institutions.

16 (c) Subject to any applicable provisions of ORS [279.545 to 279.746, 279.805, 279.826 to 279.833
17 and] 283.110 to 283.395 **and sections 17, 37, 41, 42, 43, 44, 49, 78, 79, 80 and 81 of this 2003 Act,**
18 enter into contracts for the purchase of supplies for their respective institutions.

19 (d) Make and adopt rules, not inconsistent with law, for the guidance of the Department of
20 Corrections or the Department of Human Services and for the government of their respective insti-
21 tutions.

22 (2) The Department of Corrections and the Department of Human Services, respectively, may:

23 (a) Sue and plead in all courts of law and equity.

24 (b) Perform all legal and peaceful acts requisite and necessary for the successful management
25 and maintenance of the institutions within their respective jurisdictions.

26 **SECTION 201.** ORS 179.140 is amended to read:

27 179.140. Subject to any applicable provision of ORS [279.545 to 279.746, 279.805, 279.826 to
28 279.833,] 283.110 to 283.395 and 291.232 to 291.260 **and sections 17, 37, 41, 42, 43, 44, 49, 78, 79,**
29 **80 and 81 of this 2003 Act,** all claims for supplies or materials furnished or services rendered to
30 institutions shall be audited and approved as provided by law, upon the presentation of duly verified
31 vouchers therefor, approved in writing by the Director of the Department of Corrections or by the
32 Director of Human Services, or by their designees.

33 **SECTION 202.** ORS 181.150 is amended to read:

34 181.150. (1) The state shall provide the members of the state police with emergency and first aid
35 outfits, weapons, motor vehicles, and all other supplies and equipment necessary to carry out the
36 objects of the Department of State Police. This property shall remain the property of the state with
37 the exception of a retiring or deceased officer's department-issued service revolver, which may be
38 sold by the department to the officer or, in the case of a deceased officer, to a member of the offi-
39 cer's family, upon the officer's retirement or death, and the officer's badge, which may be given to
40 the officer or, in the case of a deceased officer, to a member of the deceased officer's family, upon
41 the officer's retirement or death. When a service revolver is sold pursuant to this section, it shall
42 be sold for its fair market value. The badge shall be marked to indicate the officer's retirement
43 status and under no circumstance shall it be used for official police identification other than as a
44 memento of service to the department.

45 (2) When any of the property, supplies or equipment becomes surplus, obsolete or unused it shall

1 be disposed of by the Oregon Department of Administrative Services as provided in [ORS 279.828]
2 **section 42 of this 2003 Act.**

3 (3) For purposes of [ORS 279.011 to 279.063] **sections 1 to 46 and 47 to 87 of this 2003 Act,**
4 the sale of a service revolver to a retiring officer by the department is not a public contract and
5 shall not be subject to the competitive bidding requirements of [ORS 279.011 to 279.063] **sections 1**
6 **to 46 and 47 to 87 of this 2003 Act.** The provisions of ORS 166.412 do not apply to transfers of
7 firearms pursuant to this section.

8 **SECTION 203.** ORS 182.375 is amended to read:

9 182.375. (1) There is created in the State Treasury, separate and distinct from the General Fund,
10 an Oregon State Productivity Improvement Revolving Fund. All moneys in the fund are appropriated
11 continuously to the Oregon Department of Administrative Services for making loans, grants,
12 matching funds or cash awards available to state agencies or units for implementation of produc-
13 tivity improvement projects, including training and workforce development, upon authorization of
14 the Oregon Department of Administrative Services, subject to ORS 243.650 to 243.782 when appli-
15 cable. Interest on earnings of the fund shall be credited to the fund.

16 (2) The Oregon State Productivity Improvement Revolving Fund shall consist of:

17 (a) Moneys transferred from the Oregon Department of Administrative Services Operating Fund,
18 as provided in ORS 240.170, in a sum not to exceed \$500,000 to establish the fund.

19 (b) Savings realized from implementation of productivity improvement projects which may in-
20 clude existing and future projects authorized by the department.

21 *[(c) Any unexpended revenues transferred in accordance with ORS 279.645 (2).]*

22 (3) Fifty percent of the agency or unit budget savings resulting from improved efficiency shall
23 be credited to the Oregon State Productivity Improvement Revolving Fund to be used for program
24 improvement by the agency or unit. If not used in the biennium in which the savings occur, the
25 amount of credit to an agency or unit may be treated as if it were continuously appropriated to the
26 agency or unit and may be expended in the following biennium without resulting in any budget
27 justification for the agency or unit. Expenditures from the fund are not subject to allotment or other
28 budgetary procedures.

29 (4) None of the expenditures in a biennium by the agency or unit under this section shall be
30 considered to be within any appropriation or expenditure limitation in the agency's base budget for
31 the biennium.

32 (5) A productivity improvement project may include training and employee development author-
33 ized by the department and intended to lead to improved productivity.

34 (6) The department may require a different repayment schedule for training and employee de-
35 velopment than for other productivity improvement projects.

36 (7) Agencies and units shall report to the department quarterly on project implementation,
37 savings realized to date, or projected, and repayment of moneys to the fund.

38 **SECTION 204.** ORS 182.460 is amended to read:

39 182.460. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276,
40 [279,] 282, 283, 291, 292 and 293 **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do
41 not apply to a board. A board is subject to all other statutes governing a state agency that do not
42 conflict with ORS 182.456 to 182.472, including the tort liability provisions of ORS 30.260 to 30.300
43 and the provisions of ORS 183.310 to 183.550, and a board's employees are included within the Public
44 Employees Retirement System.

45 (2) Notwithstanding subsection (1) of this section, the following provisions shall apply to a

1 board:

2 (a) ORS 240.309 (1) to (6) and 240.321;

3 [(b) *ORS 279.800 to 279.830*];

4 [(c)] (b) ORS 279.835 to 279.855;

5 (c) **Sections 36 to 44 of this 2003 Act**;

6 (d) ORS 282.210 to 282.230; and

7 (e) ORS 293.240.

8 (3) In carrying out the duties, functions and powers of a board, the board may contract with any
9 state agency for the performance of duties, functions and powers as the board considers appropriate.
10 A state agency shall not charge a board an amount that exceeds the actual cost of those services.
11 ORS 182.456 to 182.472 do not require an agency to provide services to a board other than pursuant
12 to a voluntary interagency agreement or contract.

13 (4) A board shall adopt personnel policies and contracting and purchasing procedures. The
14 Oregon Department of Administrative Services shall review those policies and procedures for com-
15 pliance with applicable state and federal laws and collective bargaining contracts.

16 (5) Except as otherwise provided by law, directors and employees of a board are eligible to re-
17 ceive the same benefits as state employees and are entitled to retain their State of Oregon hire
18 dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer
19 of all accumulated state agency leaves.

20 **SECTION 205.** ORS 182.466 is amended to read:

21 182.466. In addition to other powers granted by ORS 182.456 to 182.472 and by the statutes
22 specifically applicable to a board, a board may:

23 (1) Sue and be sued in its own name.

24 (2) Notwithstanding [*ORS chapter 279*] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87**
25 **and 88 to 180 of this 2003 Act**, enter into contracts and acquire, hold, own, encumber, issue, re-
26 place, deal in and with and dispose of real and personal property.

27 (3) Notwithstanding ORS 670.300, fix a per diem amount to be paid to board members for each
28 day or portion thereof during which the member is actually engaged in the performance of official
29 duties. Board members may also receive actual and necessary travel expenses or other expenses
30 actually incurred in the performance of their duties. If an advisory council or peer review committee
31 is established under the law that governs the board, the board may also fix and pay amounts and
32 expenses for members thereof.

33 (4) Set the amount of any fee required by statute and establish by rule and collect other fees
34 as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying
35 out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this sub-
36 section, a board shall hold a public hearing prior to adopting or modifying any fee without regard
37 to the number of requests received to hold a hearing. A board shall give notice to all licensees of
38 the board prior to holding a hearing on the adoption or modification of any fee. A board may adopt
39 fees in conjunction with the budget adoption process described in ORS 182.462.

40 (5) Subject to any other statutory provisions, adopt procedures and requirements governing the
41 manner of making application for issuance, renewal, suspension, revocation, restoration and related
42 activities concerning licenses that are under the jurisdiction of a board.

43 **SECTION 206.** ORS 183.335 is amended to read:

44 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
45 of its intended action:

1 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
2 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

3 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

4 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
5 subsection (8) of this section; and

6 (d) At least 49 days before the effective date, to the persons specified in subsection (15) of this
7 section.

8 (2)(a) The notice required by subsection (1) of this section shall state the subject matter and
9 purpose of the intended action in sufficient detail to inform a person that the person's interests may
10 be affected, and the time, place and manner in which interested persons may present their views on
11 the intended action.

12 (b) The agency shall include with the notice of intended action given under subsection (1) of this
13 section:

14 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
15 promulgation of the rule;

16 (B) A citation of the statute or other law the rule is intended to implement;

17 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
18 need;

19 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
20 the agency in considering the need for and in preparing the rule, and a statement of the location
21 at which those documents are available for public inspection. The list may be abbreviated if neces-
22 sary, and if so abbreviated there shall be identified the location of a complete list;

23 (E) A statement of fiscal impact identifying state agencies, units of local government and the
24 public which may be economically affected by the adoption, amendment or repeal of the rule and
25 an estimate of that economic impact on state agencies, units of local government and the public. In
26 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
27 able information to project any significant economic effect of that action on businesses which shall
28 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
29 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
30 scribed in ORS 183.534; and

31 (F) If an advisory committee is not appointed under the provisions of ORS 183.025 (2), an ex-
32 planation as to why no advisory committee was used to assist the agency in drafting the rule.

33 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
34 section from publication in the bulletin referred to in ORS 183.360.

35 (d) When providing notice of an intended action under the provisions of subsection (1)(c) of this
36 section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or
37 repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended
38 rule shall show all changes to the rule by bracketing material to be deleted and showing all new
39 material in boldfaced type.

40 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
41 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
42 request received from 10 persons or from an association having not less than 10 members before the
43 earliest date that the rule could become effective after the giving of notice pursuant to subsection
44 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
45 notice of the hearing at least 21 days before the hearing to the person who has requested the

1 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
2 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
3 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
4 consider fully any written or oral submission.

5 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
6 and the rule for which the hearing is to be conducted applies only to a limited geographical area
7 within this state, or affects only a limited geographical area within this state, the hearing shall be
8 conducted within the geographical area at the place most convenient for the majority of the resi-
9 dents within the geographical area. At least 14 days before a hearing conducted under this para-
10 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
11 in a newspaper of general circulation published within the geographical area that is affected by the
12 rule or to which the rule applies. If a newspaper of general circulation is not published within the
13 geographical area that is affected by the rule or to which the rule applies, the publication shall be
14 made in the newspaper of general circulation published closest to the geographical area.

15 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
16 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
17 in the proposed adoption, amendment or repeal of any rule to written submissions.

18 (d) An agency that receives data or views concerning proposed rules from interested persons
19 shall maintain a record of the data or views submitted. The record shall contain:

20 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
21 amend or repeal a rule.

22 (B) A recording or summary of oral submissions received at hearings held for the purpose of
23 receiving those submissions.

24 (C) Comments of the committees submitted under subsection (16) of this section.

25 (4) Upon request of an interested person received before the earliest date that the rule could
26 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
27 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
28 requesting person an opportunity to submit data, views or arguments concerning the proposed
29 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
30 to subsection (5) of this section.

31 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
32 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
33 practicable, if the agency prepares:

34 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
35 the public interest or the interest of the parties concerned and the specific reasons for its findings
36 of prejudice;

37 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
38 promulgation of the rule;

39 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
40 need;

41 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
42 the agency in considering the need for and in preparing the rule, and a statement of the location
43 at which those documents are available for public inspection; and

44 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
45 183.534.

1 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
2 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
3 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
4 (4) of this section.

5 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
6 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

7 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
8 prior notice or hearing if the amendment is solely for the purpose of:

9 (a) Changing the name of an agency by reason of a name change prescribed by law;

10 (b) Correcting spelling;

11 (c) Correcting grammatical mistakes in a manner that does not alter the scope, application or
12 meaning of the rule; or

13 (d) Correcting statutory references.

14 (8) Any person may request in writing that an agency mail to the person copies of its notices
15 of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the
16 agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings
17 made pursuant to the request. Agencies may establish procedures for establishing and maintaining
18 the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and
19 maintenance of the lists.

20 (9) This section does not apply to rules establishing an effective date for a previously effective
21 rule or establishing a period during which a provision of a previously effective rule will apply.

22 (10) This section does not apply to [ORS 279.025 to 279.031 and 279.310 to 279.990] **ORS 279.835**
23 **to 279.855 and sections 18 to 21, 36 to 44, 46, 50 to 57, 72 to 78, 79, 80, 81, 114, 115, 116, 117,**
24 **118, 119, 137 to 143, 144, 145, 146 to 150, 151, 152, 153, 154 to 159, 160 to 164, 165 to 179 and 180**
25 **of this 2003 Act** relating to public contracts and purchasing.

26 (11)(a) No rule is valid unless adopted in substantial compliance with the provisions of this
27 section in effect on the date the rule is adopted.

28 (b) In addition to all other requirements with which rule adoptions must comply, no rule adopted
29 after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

30 (12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its
31 failure to substantially comply with the requirements of subsections (2) and (5) of this section in
32 adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice
33 the interests of persons to be affected by the rule. However, this subsection does not authorize
34 correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a
35 fiscal impact statement with the notice required by subsection (1) of this section.

36 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
37 agency need not be based upon or supported by an evidentiary record.

38 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
39 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
40 agency or person unless the extension applies equally to all interested agencies and persons. An
41 agency shall not consider any submission made by another agency after the final deadline has
42 passed.

43 (15) The notices required under subsections (1) and (3) of this section must be given by the
44 agency to the following persons:

45 (a) If the proposed adoption, amendment or repeal results from legislation that was passed

1 within two years before notice is given under subsection (1) of this section, notice shall be given to
2 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
3 cochair of all committees that reported the bill out, except for those committees whose sole action
4 on the bill was referral to another committee.

5 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
6 passed within two years before notice is given under subsection (1) of this section, notice shall be
7 given to the chair or cochair of any interim or session committee with authority over the subject
8 matter of the rule.

9 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
10 to the Speaker of the House of Representatives and to the President of the Senate who are in office
11 on the date the notice is given.

12 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
13 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
14 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
15 with the legislation from which the proposed adoption, amendment or repeal results.

16 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
17 to the agency proposing the adoption, amendment or repeal.

18 **SECTION 207.** ORS 183.355 is amended to read:

19 183.355. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of
20 each rule adopted by it.

21 (b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule
22 incorporating published standards by reference is not required to file a copy of those standards with
23 the Secretary of State if:

24 (A) The standards adopted are unusually voluminous and costly to reproduce; and

25 (B) The rule filed with the Secretary of State identifies the location of the standards so incor-
26 porated and the conditions of their availability to the public.

27 (2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

28 (a) If a later effective date is required by statute or specified in the rule, the later date is the
29 effective date.

30 (b) A temporary rule becomes effective upon filing with the Secretary of State, or at a desig-
31 nated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency
32 shall take appropriate measures to make temporary rules known to the persons who may be affected
33 by them.

34 (3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of
35 the amendment or notice of repeal with the Secretary of State who shall appropriately amend the
36 compilation required by ORS 183.360 (1).

37 (4) A certified copy of each executive order issued, prescribed or promulgated by the Governor
38 shall be filed in the office of the Secretary of State.

39 (5) No rule of which a certified copy is required to be filed shall be valid or effective against
40 any person or party until a certified copy is filed in accordance with this section. However, if an
41 agency, in disposing of a contested case, announces in its decision the adoption of a general policy
42 applicable to such case and subsequent cases of like nature the agency may rely upon such decision
43 in disposition of later cases.

44 (6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated
45 parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts

1 from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of
2 State Miscellaneous Receipts Account established under [ORS 279.833] **section 44 of this 2003**
3 **Act.**

4 **SECTION 208.** ORS 190.110 is amended to read:

5 190.110. (1) In performing a duty imposed upon it, in exercising a power conferred upon it or in
6 administering a policy or program delegated to it, a unit of local government or a state agency of
7 this state may cooperate for any lawful purpose, by agreement or otherwise, with a unit of local
8 government or a state agency of this or another state, or with the United States, or with a United
9 States governmental agency, or with an American Indian tribe or an agency of an American Indian
10 tribe. This power includes power to provide jointly for administrative officers.

11 (2) The power conferred by subsection (1) of this section to enter into an agreement with an
12 American Indian tribe or an agency of an American Indian tribe extends to any unit of local gov-
13 ernment or state agency that is not otherwise expressly authorized to enter into an agreement with
14 an American Indian tribe or an agency of an American Indian tribe.

15 (3) With regard to an American Indian tribe, the power described in subsections (1) and (2) of
16 this section includes the power of the Governor or the designee of the Governor to enter into
17 agreements to ensure that the state, a state agency or unit of local government does not interfere
18 with or infringe on the exercise of any right or privilege of an American Indian tribe or members
19 of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or
20 any other authority. Nothing in this subsection shall be construed to modify the obligations of the
21 United States to an American Indian tribe or its members concerning real or personal property, title
22 to which is held in trust by the United States.

23 (4) A unit of local government or state agency of this state may exclude any clause or condition
24 required by [ORS 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] **section 79**
25 **of this 2003 Act or sections 137 to 143 of this 2003 Act** from an agreement under subsection (1)
26 of this section if the agreement is with:

- 27 (a) A unit of local government of another state.
- 28 (b) A state agency of another state.
- 29 (c) The United States.
- 30 (d) A United States governmental agency.
- 31 (e) An American Indian tribe.
- 32 (f) An agency of an American Indian tribe.

33 **SECTION 209.** ORS 190.240 is amended to read:

34 190.240. (1) Subject to rules prescribed by the Oregon Department of Administrative Services,
35 any state agency as defined in ORS 291.002 may, upon request, furnish to the federal government
36 or a city, county, district or other municipal corporation or political subdivision in Oregon the same
37 or similar services, other than materials, equipment and supplies, having a single unit price of less
38 than \$500, furnished under the laws of this state to other state agencies. Equipment does not include
39 used goods; material and supplies do not include goods produced by the State of Oregon. The cost
40 of the services provided under this subsection shall be charged to the federal government, city,
41 county, district or other municipal corporation or political subdivision for which the services are
42 performed.

43 (2) Except as provided in subsection (3) of this section, in the case of state agencies, the cost
44 of services furnished pursuant to subsection (1) of this section may be paid out of the miscellaneous
45 receipts account established pursuant to [ORS 279.833] **section 44 of this 2003 Act** for such agen-

1 cies. All moneys received by an agency in payment of such services shall be paid into the State
2 Treasury for deposit to the credit of the miscellaneous receipts account established pursuant to
3 [ORS 279.833] **section 44 of this 2003 Act** for the agency furnishing the service.

4 (3) In the case of the Oregon Department of Administrative Services, the cost of services fur-
5 nished pursuant to subsection (1) of this section may be advanced from the Oregon Department of
6 Administrative Services Operating Fund and reimbursed to the fund from the charges paid to the
7 department by the federal government, city, county, district or other municipal corporation or poli-
8 tical subdivision for which the services are performed.

9 **SECTION 210.** ORS 190.420 is amended to read:

10 190.420. (1) Any power or powers, privileges or authority exercised or capable of exercise by a
11 public agency in this state may be exercised and enjoyed jointly with any public agency in another
12 state to the extent that the laws of the other state permit such joint exercise or enjoyment.

13 (2) Public agencies in this state and in another state may enter into agreements with one an-
14 other for joint or cooperative action. Such action must be recorded by ordinance, resolution or in
15 other lawful manner by the governing bodies of the participating public agencies.

16 (3) An agreement under subsection (2) of this section must specify its duration, the organization,
17 composition and nature of any separate legal or administrative entity created to exercise the func-
18 tions agreed upon, the purpose of the agreement, the method of financing the joint or cooperative
19 undertaking, the methods to be employed to terminate the agreement, and any other necessary and
20 proper matters.

21 (4) No agreement under subsection (2) of this section shall relieve any public agency of any
22 obligation or responsibility imposed on it by law.

23 (5) Notwithstanding subsection (4) of this section, a public agency in this state may exclude from
24 an agreement under subsection (2) of this section any clause or condition required by [ORS 279.312,
25 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] **section 79 of this 2003 Act or**
26 **sections 137 to 143 of this 2003 Act.**

27 **SECTION 211.** ORS 190.485 is amended to read:

28 190.485. (1) Any power or powers, privileges or authority exercised or capable of exercise by a
29 state agency in this state may be exercised and enjoyed jointly with a nation or a public agency in
30 any nation other than the United States, to the extent that the laws of the United States and of the
31 other nation do not prohibit such joint exercise or enjoyment.

32 (2) A state agency may enter into an agreement with another nation or public agency of another
33 nation for joint and cooperative action.

34 (3) An agreement described in subsection (2) of this section must specify its duration, the or-
35 ganization, composition and nature of any separate legal or administrative entity created to exercise
36 the functions agreed upon, the purpose of the agreement, the method of financing the joint or co-
37 operative undertaking, the methods to be employed to terminate the agreement and other necessary
38 and proper matters.

39 (4) No agreement described in subsection (2) of this section shall relieve any state agency of any
40 obligation or responsibility imposed upon it by the laws of this state or of the United States.

41 (5) Notwithstanding subsection (4) of this section, a state agency may exclude from an agree-
42 ment under subsection (2) of this section any clause or condition required by [ORS 279.312, 279.313,
43 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] **section 79 of this 2003 Act or sections 137**
44 **to 143 of this 2003 Act.**

45 **SECTION 212.** ORS 192.240 is amended to read:

1 192.240. To comply with the state policy relating to reports outlined in ORS 192.235, a state
2 agency shall do the following:

3 (1) Use electronic communications whenever the agency determines that such use reduces cost
4 and still provides public access to information.

5 (2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and
6 use recycled paper in accordance with [ORS 279.545 to 279.650 and 279.729] **sections 7 (2), 49, 79,**
7 **81, 188 and 191 of this 2003 Act** and rules adopted pursuant thereto.

8 (3) Insure that public documents are furnished to the State Librarian, as required in ORS
9 357.090.

10 **SECTION 213.** ORS 200.005 is amended to read:

11 200.005. As used in ORS 200.005 to 200.075[,] **and** 200.200 and [279.059] **section 14 of this 2003**
12 **Act:**

13 (1) "Disadvantaged business enterprise" means a small business concern which is at least 51
14 percent owned by one or more socially and economically disadvantaged individuals, or, in the case
15 of any corporation, at least 51 percent of the stock of which is owned by one or more socially and
16 economically disadvantaged individuals and whose management and daily business operations are
17 controlled by one or more of the socially and economically disadvantaged individuals who own it.

18 (2) "Economically disadvantaged individual" means an individual who is socially disadvantaged
19 and whose ability to compete in the free enterprise system has been impaired due to diminished
20 capital and credit opportunities as compared to another in the same business area who is not so-
21 cially disadvantaged.

22 (3) "Emerging small business" means:

23 (a) A business with its principal place of business located in this state;

24 (b) A business with average annual gross receipts over the last three years not exceeding \$1
25 million for construction firms and \$300,000 for nonconstruction firms;

26 (c) A business which has fewer than 20 employees;

27 (d) An independent business; and

28 (e) A business properly licensed and legally registered in this state.

29 (4) "Emerging small business" does not mean a subsidiary or parent company belonging to a
30 group of firms which are owned and controlled by the same individuals which have aggregate annual
31 gross receipts in excess of \$1 million for construction or \$300,000 for nonconstruction firms over the
32 last three years.

33 (5) A business may be certified as an emerging small business for no more than seven years.

34 (6) "Minority or women business enterprise" means a small business concern which is at least
35 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51
36 percent of the stock of which is owned by one or more minorities or women, and whose management
37 and daily business operations are controlled by one or more of such individuals.

38 (7) "Minority individual" means a person who is a citizen or lawful permanent resident of the
39 United States, who is:

40 (a) Black who is a person having origins in any of the black racial groups of Africa;

41 (b) Hispanic who is a person of Mexican, Puerto Rican, Cuban, Central or South American or
42 other Spanish culture or origin, regardless of race;

43 (c) Asian American who is a person having origins in any of the original peoples of the Far East,
44 Southeast Asia, the Indian subcontinent or the Pacific Islands;

45 (d) Portuguese who is a person of Portuguese, Brazilian or other Portuguese culture or origin,

1 regardless of race;

2 (e) American Indian or Alaskan Native who is a person having origins in any of the original
3 peoples of North America; or

4 (f) A member of another group, or another individual who is socially and economically disad-
5 vantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

6 (8) "Small business concern" means a small business as defined by the United States Small
7 Business Administration per C.F.R. 121, as amended.

8 (9) "Socially disadvantaged individual" means an individual who has been subjected to racial or
9 ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual's
10 identity as a member of a group.

11 (10) "Woman" means a person of the female sex who is a citizen or lawful permanent resident
12 of the United States.

13 (11) "Responsible bidder" means one who, in the determination of the office of the Advocate for
14 Minority, Women and Emerging Small Business, has undertaken both a policy and practice of ac-
15 tively pursuing participation by minority and women businesses in all bids, both public and private,
16 submitted by such bidder.

17 **SECTION 214.** ORS 200.025 is amended to read:

18 200.025. (1) There is created in the Office of the Governor, the Advocate for Minority, Women
19 and Emerging Small Business who shall be appointed by the Governor.

20 (2) There is created in the Department of Consumer and Business Services the Office for Mi-
21 nority, Women and Emerging Small Business, the employees of which shall be appointed by the Di-
22 rector of the Department of Consumer and Business Services.

23 (3) The Advocate for Minority, Women and Emerging Small Business shall:

24 (a) Advise the Governor and the director on activities and initiatives that may promote the
25 economic integration of minorities, women and emerging small businesses into the business sector;

26 (b) Prepare an annual report to the Governor, director and Legislative Assembly on the status
27 of minorities and women in the marketplace, accomplishments and resolutions of issues of concern
28 to minority and women's enterprises and recommendations for executive and legislative actions; and

29 (c) Carry out other duties that may be assigned by the Governor.

30 (4) The Office for Minority, Women and Emerging Small Business shall:

31 (a) Provide assistance and information to minority, women and emerging small businesses;

32 (b) Assist in the development and implementation of an aggressive strategy for this state, based
33 on research and monitoring, that encourages participation of minorities, women and emerging small
34 businesses in the state's economy;

35 (c) Make recommendations to the director on the research, development and implementation of
36 the plan for the involvement of disadvantaged and minority groups and emerging small businesses
37 in all state programs;

38 (d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public
39 agency and other contract solicitations for professional services, supplies and services and other bid
40 opportunities, in consultation with the State Board of Higher Education, the Department of Trans-
41 portation and other entities;

42 (e) Monitor the certification and compliance program for disadvantaged, minority, women and
43 emerging small businesses under [ORS 279.059] **section 14 of this 2003 Act;**

44 (f) Investigate complaints and possible abuses of the certification program; and

45 (g) Assist in the promotion and coordination of plans, programs and operations of state govern-

1 ment that strengthen minority and women participation in the economic life of this state.

2 **SECTION 215.** ORS 200.045 is amended to read:

3 200.045. (1) To determine whether a bidder that has failed to meet emerging small business en-
4 terprise contract requirements, as described in [ORS 279.059] **section 14 of this 2003 Act**, may be
5 awarded the contract, the public contracting agency must decide whether the bidder's efforts to
6 obtain participation by emerging small business enterprises were good faith efforts to meet the re-
7 quirements.

8 (2) Performing all of the following actions by a bidder constitutes a rebuttable presumption that
9 the bidder has made a good faith effort to satisfy the subcontracting requirement for emerging small
10 businesses. It shall be a rebuttable presumption that the bidder has not made a good faith effort if
11 the bidder has not acted consistently with such actions. Efforts that are merely superficial are not
12 good faith efforts:

13 (a) The bidder attended any presolicitation or prebid meetings that were scheduled by the con-
14 tracting agency to inform emerging small business enterprises of contracting and subcontracting or
15 material supply opportunities available on the project;

16 (b) The bidder identified and selected specific economically feasible units of the project to be
17 performed by emerging small business enterprises in order to increase the likelihood of participation
18 by such enterprises;

19 (c) The bidder advertised in general circulation, trade association, minority and trade oriented,
20 women-focus publications, if any, concerning the subcontracting or material supply opportunities;

21 (d) The bidder provided written notice to a reasonable number of specific emerging small busi-
22 ness enterprises, identified from a list of certified emerging small business enterprises provided or
23 maintained by the Department of Consumer and Business Services for the selected subcontracting
24 or material supply work, in sufficient time to allow the enterprises to participate effectively;

25 (e) The bidder followed up initial solicitations of interest by contacting the enterprises to de-
26 termine with certainty whether the enterprises were interested;

27 (f) The bidder provided interested emerging small business enterprises with adequate information
28 about the plans, specifications and requirements for the selected subcontracting or material supply
29 work;

30 (g) The bidder negotiated in good faith with the enterprises, and did not without justifiable
31 reason reject as unsatisfactory bids prepared by any emerging small business enterprises;

32 (h) Where applicable, the bidder advised and made efforts to assist interested emerging small
33 business enterprises in obtaining bonding, lines of credit or insurance required by the contracting
34 agency or contractor;

35 (i) The bidder's efforts to obtain emerging small business enterprise participation were reason-
36 ably expected to produce a level of participation sufficient to meet the goals or requirement of the
37 public contracting agency; and

38 (j) The bidder used the services of minority community organizations, minority contractor
39 groups, local, state and federal minority business assistance offices and other organizations identi-
40 fied by the Advocate for Minority, Women and Emerging Small Business that provide assistance in
41 the recruitment and placement of emerging small business enterprises.

42 (3) To determine whether a bidder is a responsible bidder, the performance of all the following
43 actions constitutes a rebuttable presumption that the bidder is responsible. It shall be a rebuttable
44 presumption that the bidder is not responsible if the bidder has not acted consistently with the
45 actions described in this subsection. Efforts that are merely superficial are not good faith efforts.

1 (a) The bidder attended any presolicitation or prebid meetings that were scheduled by the con-
2 tracting agency to inform minority or women business enterprises of contracting and subcontracting
3 or material supply opportunities available on the project;

4 (b) The bidder identified and selected specific economically feasible units of the project to be
5 performed by minority or women business enterprises in order to increase the likelihood of partic-
6 ipation by such enterprises;

7 (c) The bidder advertised in general circulation, trade association, minority and trade oriented,
8 women-focus publications, if any, concerning the subcontracting or material supply opportunities;

9 (d) The bidder provided written notice to a reasonable number of specific minority or women
10 business enterprises, identified from a list of certified minority or women business enterprises pro-
11 vided or maintained by the Department of Consumer and Business Services for the selected sub-
12 contracting or material supply work, in sufficient time to allow the enterprises to participate
13 effectively;

14 (e) The bidder followed up initial solicitations of interest by contacting the enterprises to de-
15 termine with certainty whether the enterprises were interested;

16 (f) The bidder provided interested minority or women business enterprises with adequate infor-
17 mation about the plans, specifications and requirements for the selected subcontracting or material
18 supply work;

19 (g) The bidder negotiated in good faith with interested, capable and competitive minority or
20 women business enterprises submitting bids;

21 (h) Where applicable, the bidder advised and made efforts to assist interested minority or women
22 business enterprises in obtaining bonding, lines of credit or insurance required by the contracting
23 agency or contractor;

24 (i) The bidder's efforts to obtain minority or women business enterprise participation were rea-
25 sonably expected to produce a level of participation sufficient to meet the goals of the public con-
26 tracting agency; and

27 (j) The bidder used the services of minority community organizations, minority contractor
28 groups, local, state and federal minority business assistance offices and other organizations identi-
29 fied by the Advocate for Minority, Women and Emerging Small Business that provide assistance in
30 the recruitment and placement of disadvantaged, minority or women business enterprises.

31 **SECTION 216.** ORS 200.055 is amended to read:

32 200.055. (1) Any disadvantaged, minority, women or emerging small business enterprise is enti-
33 tled to be certified as such upon application to the Department of Consumer and Business Services.
34 If the application is approved by the department, the department shall certify the applicant as a
35 disadvantaged, minority, women or emerging small business enterprise. The enterprise shall be con-
36 sidered so certified by any public contracting agency.

37 (2) In consultation with the State Board of Higher Education and the Department of Transpor-
38 tation, and with the approval of the Advocate for Minority, Women and Emerging Small Business,
39 the Department of Consumer and Business Services by rule shall adopt a uniform standard form and
40 procedure designed to provide complete documentation that a business enterprise is certified as a
41 disadvantaged, minority, women or emerging small business enterprise. The Department of Consumer
42 and Business Services shall compile and make available upon request a list of certified disadvan-
43 taged, minority, women or emerging small business enterprises.

44 (3) Any business enterprise that is refused certification as a disadvantaged business enterprise
45 or denied recertification as such or whose certification is revoked may appeal directly to the United

1 States Department of Transportation.

2 (4) Any business enterprise that is refused certification as a minority, women or emerging small
3 business enterprise or has its certification revoked may request a contested case hearing as pro-
4 vided in ORS 183.310 to 183.550.

5 (5) The Department of Consumer and Business Services shall be the sole agency authorized to
6 certify enterprises as disadvantaged, minority, women or emerging small business enterprises eligi-
7 ble to perform on public contracts in this state.

8 (6) The Department of Consumer and Business Services by rule may establish a fee not to exceed
9 \$100 for a copy of the list of certified disadvantaged, minority, women and emerging small business
10 enterprises and may assess state agencies for services under ORS 200.005 to 200.075 and [279.059]
11 **section 14 of this 2003 Act.**

12 (7) The Department of Transportation may collect a fee, not to exceed \$200, from a bidder upon
13 bidder prequalifications to cover the costs of the Department of Consumer and Business Services in
14 administering ORS 200.005 to 200.075 and [279.059] **section 14 of this 2003 Act.** The Department
15 of Transportation shall transfer such fees to the credit of the account established under subsection
16 (8) of this section.

17 (8) The Department of Consumer and Business Services shall establish a special account in
18 which to deposit fees and assessments. The special account is continuously appropriated to the De-
19 partment of Consumer and Business Services to meet its expenses in administering ORS 200.005 to
20 200.075 and [279.059] **section 14 of this 2003 Act.**

21 **SECTION 217.** ORS 200.200 is amended to read:

22 200.200. (1) When any requirement exists under [ORS chapter 279] **sections 1 to 46, 47 to 87**
23 **or 88 to 180 of this 2003 Act** to provide a surety bond or other security for the faithful performance
24 of a public contract, an emerging small business may provide:

25 (a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as
26 defined in ORS 731.186;

27 (b) A stipulation or undertaking with one or more individual sureties; or

28 (c) Any other form of security specified in the statute requiring the security.

29 (2) When the security for the faithful performance of a public contract is in the form of a stip-
30 ulation or undertaking with one or more individual sureties, the individual sureties must be resi-
31 dents of this state. The total net worth of all the individual sureties on the stipulation or
32 undertaking must be at least twice the sum specified in the stipulation or undertaking. The public
33 agency requiring the security shall determine if the sureties possess the qualifications prescribed
34 by this subsection.

35 **SECTION 218.** ORS 238.260 is amended to read:

36 238.260. (1) The purpose of this section is to establish a well balanced, broadly diversified in-
37 vestment program for certain contributions and portions of the member accounts so as to provide
38 retirement benefits for members of the system that will fluctuate as the value and earnings of the
39 investments vary in relation to changes in the general economy. It is anticipated that investment
40 of those contributions and portions of the member accounts in equities will result in the accumu-
41 lation of larger deposit reserves for those members during their working years, tend to preserve the
42 purchasing power of those reserves and the retirement benefits provided thereby and afford better
43 protection in periods of economic inflation.

44 (2) There is established in the Public Employees Retirement Fund an account, separate and
45 distinct from the General Fund, to be known as the Variable Annuity Account. Interest earned by

1 the account shall be credited to the account.

2 (3) A member may elect at any time to have 25, 50 or 75 percent of contributions by the member
3 to the fund on and after the effective date of the election paid into the Variable Annuity Account,
4 credited to a variable account, and reserved for the purchase of a variable annuity. A member who
5 has elected to have a percentage of contributions so paid, credited and reserved may elect at any
6 time thereafter to have an additional 25 or 50 percent of contributions by the member, but not to
7 exceed a maximum of 75 percent, so paid, credited and reserved. An election shall be in writing on
8 a form furnished by the board and be filed with the board. An election shall be effective on January
9 1 following the filing thereof.

10 (4) A member who has elected to have contributions paid into the Variable Annuity Account
11 under subsection (3) of this section may thereafter cause the contributions to cease being paid into
12 the member's variable account by filing a request in writing on a form furnished by the board and
13 filed with the board. The contributions shall cease being paid into the member's variable account
14 after December 31 following the filing of the request. Contributions paid into the member's variable
15 account before the effective date of the request for cessation shall remain in the member's variable
16 account.

17 (5)(a) An employee who is a member of the system on January 1, 1968, and who thereafter files
18 an election under subsection (3) of this section, may elect at any time to have an amount equal to
19 10 percent per year, for not more than five years, of the balance of the regular account of the
20 member in the fund on the effective date of an election filed under subsection (3) of this section,
21 transferred from the regular account of the member to the Variable Annuity Account, credited to
22 the member's variable account, and reserved for the purchase of a variable annuity. An election
23 shall be in writing on a form furnished by the board and be filed with the board. An election is final
24 and irrevocable upon the filing thereof. The first transfer pursuant to an election shall be made on
25 July 1 following the filing of the election, but may be made, in the discretion of the board, on an
26 earlier date.

27 (b) If the transfers elected by a member under this subsection have not been completed at the
28 time of retirement, a transfer equal to one annual transfer shall be made pursuant to an election
29 by the member made and filed as provided in this subsection.

30 (c) No transfer shall be made under this subsection after the first payment of the service re-
31 tirement allowance of the member becomes normally due.

32 (6) Moneys in the Variable Annuity Account may be invested in investments authorized by law
33 for investment of moneys in the Public Employees Retirement Fund; but, notwithstanding any other
34 general or specific law, moneys in the account shall be invested primarily in equities, including
35 common stock, securities convertible into common stock, real property and other recognized forms
36 of equities, whether or not subject to indebtedness. Not more than five percent of the amortized
37 value of all the investments of the Variable Annuity Account and of moneys in the account imme-
38 diately available for investment may be invested in the obligations of or equities in a single, primary
39 obligor or issuer. A pro rata share of the administrative expenses of the system shall be paid from
40 interest earned by the Variable Annuity Account.

41 (7)(a) Except as provided in subsection (8) of this section, the policy-making investment authority
42 for the Public Employees Retirement Fund shall enter into contracts with one or more persons
43 whom the authority determines to be qualified, whereby the persons undertake to invest and rein-
44 vest moneys in the Variable Annuity Account available for investment and acquire, retain, manage
45 and dispose of investments of the account in accordance with subsections (1) and (6) of this section

1 and to the extent provided in the contracts.

2 (b) Performance of functions under contracts so entered into shall be paid for out of the gross
3 interest or other income of the investments with respect to which the functions are performed, and
4 the net interest or other income of the investments after that payment shall be considered income
5 of the Variable Annuity Account.

6 (c) The policy-making investment authority may require a person contracted with to give to the
7 state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by
8 the authority, with corporate surety authorized to do business in this state.

9 (d) Contracts so entered into and functions performed thereunder are not subject to the State
10 Personnel Relations Law or [ORS 279.545 to 279.746] **sections 7 (2) and 18 of this 2003 Act.**

11 (e) A person contracted with shall report to the policy-making investment authority as often as
12 the authority may require, but at least annually, the earnings of the moneys invested during the
13 period covered by the report, the capital gains and losses of the Variable Annuity Account during
14 the period, the changes in the market value of the investments of the account during the period and
15 such other information as the authority may require.

16 (8) The policy-making investment authority for the Public Employees Retirement Fund, for and
17 on behalf of the Public Employees Retirement System and Public Employees Retirement Board, may
18 enter into group annuity contracts with one or more insurance companies authorized to do business
19 in this state. In lieu of any investment of moneys in the Variable Annuity Account as provided in
20 subsections (6) and (7) of this section, the authority may pay, from time to time under contracts so
21 entered into, any moneys in that account available for investment purposes. Contracts so entered
22 into:

23 (a) May provide that annuities purchased thereunder be payable in variable dollar amounts, but
24 if that provision is made, provision also shall be made that a member of the system who has a vari-
25 able account, upon retiring from service and before the first payment of retirement allowance be-
26 comes normally due, may elect an option to have the annuities payable to the member or the
27 beneficiary of the member in fixed or variable dollar amounts or both.

28 (b) May provide that payment of annuities purchased thereunder may be made by the insurance
29 company directly to persons entitled thereto or to the Variable Annuity Account for payment
30 therefrom to those persons.

31 (c) Are not subject to [ORS 279.545 to 279.746] **sections 7 (2) and 18 of this 2003 Act.**

32 (9) Upon retiring from service but within 60 days after the date of the first benefit payment, a
33 member of the system who has a variable account may elect to transfer the balance in the variable
34 account to the regular account of the member, and by that transfer the annuity shall be based on
35 the amount in the regular account of the member as otherwise provided in this chapter and the
36 member shall not receive a variable annuity as provided in this section.

37 (10) When an annuity is payable under this chapter to a member of the system who has a vari-
38 able account, or is payable to a beneficiary of that person, the portion of the annuity payable from
39 the Variable Annuity Account shall be proportionately increased or decreased for a calendar year
40 when, as of October 31 of the preceding calendar year, the balance of the member's variable account
41 exceeds or is less than the current value of the annuity, determined in accordance with the rate of
42 interest and approved actuarial tables then in effect.

43 (11) Notwithstanding subsection (10) of this section, the board, in the event of extraordinary
44 fluctuation in the market value of investments of the Variable Annuity Account and in order to
45 avoid substantial inequities, may increase or decrease the portions of annuities paid from the ac-

1 count for periods less than a calendar year and determined as of dates other than October 31.

2 (12) Notwithstanding any other provision of this chapter, the retirement allowance to which a
3 member of the system who has a variable account or who made contributions on salary in excess
4 of \$4,800 per year during the period January 1, 1956, through December 31, 1967, and whose effec-
5 tive date of retirement is January 1, 1982, or later, is otherwise entitled under this chapter shall
6 be subject to the following adjustment:

7 (a) The board shall determine the difference between the member account of the member and
8 what the member account of the member would have been had the member not participated in the
9 variable annuity program on or after January 1, 1982, plus the contributions made on salary in ex-
10 cess of \$4,800 per year during the period January 1, 1956, through December 31, 1967.

11 (b) If the member account of the member due to participation in the variable annuity program
12 or due to the contributions made on salary in excess of \$4,800 per year is greater, the monthly re-
13 tirement allowance of the member shall be increased by the value of the difference, using the an-
14 nuity tables applicable to the plan selected by the member.

15 (c) If the member account of the member due to participation in the variable annuity program
16 or due to the contributions made on salary in excess of \$4,800 per year is lesser, the monthly re-
17 tirement allowance of the member shall be decreased by the value of the difference, using the an-
18 nuity tables applicable to the plan selected by the member.

19 (13) Except as otherwise specifically provided in this section, the rights and benefits under this
20 chapter of an active or retired member of the system or of a beneficiary of the member are not af-
21 fected by this section and the provisions of this chapter applicable to regular accounts of active and
22 retired members of the system in the fund are also applicable to variable accounts.

23 (14)(a) In addition to the transfer provided for in subsection (9) of this section, a member of the
24 system who has a variable account may at any time prior to retirement elect to transfer the balance
25 in that account to the regular account of the member in the fund if:

26 (A) The member is other than a police officer or firefighter and has attained the age of 50;

27 (B) The member is a police officer or firefighter and has attained the age of 45; or

28 (C) The member has a combined total of 25 years or more of creditable service in the system
29 and prior service credit.

30 (b) An election under paragraph (a) of this subsection is irrevocable, and a member who has so
31 elected may not thereafter elect to make contributions to the Variable Annuity Account under
32 subsection (3) of this section.

33 (c) An election under paragraph (a) of this subsection shall be in writing and shall be filed with
34 the board. The board by rule shall prescribe a form for the purposes of application. An election so
35 made shall be effective on January 1 of the year following the year in which the election is made,
36 except that an election shall have no effect whatsoever unless the member account of the member
37 as of the effective date of the election is greater than what the member account of the member
38 would have been had the member not participated in the variable annuity program on or after Jan-
39 uary 1, 1982, not including the contributions made on salary in excess of \$4,800 per year during the
40 period January 1, 1956, through December 31, 1967.

41 (d) As of the effective date of an election under this subsection, the board shall credit all
42 earnings to the member's variable account based on the actual calendar year variable earnings rate
43 for the year in which the election is made. This account balance shall:

44 (A) Be used by the board in determining whether the member's election is effective under par-
45 agraph (c) of this subsection; and

1 (B) Be the account balance credited by the board to the regular account of the member in the
2 fund if the election is determined to be effective.

3 (e) The annuity of a member who makes an effective transfer under this subsection shall be
4 based on the amount in the regular account of the member in the fund as otherwise provided in this
5 chapter, and the member shall not receive a variable annuity as provided in this section.

6 **SECTION 219.** ORS 238.410 is amended to read:

7 238.410. (1) As used in this section:

8 (a) "Carrier" means an insurance company or health care service contractor holding a valid
9 certificate of authority from the Director of the Department of Consumer and Business Services, an
10 insurance company or health care service contractor licensed or certified in another state that is
11 operating under the laws of that state, or two or more of those companies or contractors acting
12 together pursuant to a joint venture, partnership or other joint means of operation.

13 (b) "Eligible person" means:

14 (A) A member of the Public Employees Retirement System who is retired for service or disability
15 and is receiving a retirement allowance or benefit under the system, and a spouse or dependent of
16 that member;

17 (B) A person who is a surviving spouse or dependent of a deceased retired member of the system
18 or the surviving spouse or dependent of a member of the system who had not retired but who had
19 reached earliest retirement age at the time of death;

20 (C) A person who is receiving retirement pay or a pension calculated under ORS 1.314 to 1.380
21 (1989 Edition), and a spouse or dependent of that person; or

22 (D) A surviving spouse or dependent of a deceased retired member of the system or of a person
23 who was receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition)
24 if the surviving spouse or dependent was covered at the time of the decedent's death by a health
25 care insurance plan contracted for under this section.

26 (c) "Health care" means medical, surgical, hospital or any other remedial care recognized by
27 state law and related services and supplies and includes comparable benefits for persons who rely
28 on spiritual means of healing.

29 (2) The Public Employees Retirement Board shall conduct a continuing study and investigation
30 of all matters connected with the providing of health care insurance protection to eligible persons.
31 The board shall design benefits, devise specifications, invite proposals, analyze carrier responses to
32 advertisements for proposals and do acts necessary to award contracts to provide health care in-
33 surance, including insurance that provides coverage supplemental to federal Medicare coverage,
34 with emphasis on features based on health care cost containment principles, for eligible persons.
35 The board is not subject to the provisions of [*ORS 279.005 to 279.111*] **sections 1 to 46 and 47 to**
36 **87 of this 2003 Act, except section 77 of this 2003 Act** in awarding contracts under the provisions
37 of this section. The board shall establish procedures for inviting proposals and awarding contracts
38 under this section.

39 (3) The board shall enter into a contract with a carrier to provide health care insurance for
40 eligible persons for a one or two-year period. The board may enter into more than one contract with
41 one or more carriers, contracting jointly or severally, if in the opinion of the board it is necessary
42 to do so to obtain maximum coverage at minimum cost and consistent with the health care insurance
43 needs of eligible persons. The board periodically shall review a current contract or contracts and
44 make suitable study and investigation for the purpose of determining whether a different contract
45 or contracts can and should, in the best interest of eligible persons, be entered into. If it would be

1 advantageous to eligible persons to do so, the board shall enter into a different contract or con-
 2 tracts. Contracts shall be signed by the chairperson on behalf of the board.

3 (4) Except as provided in ORS 238.415 and 238.420, the board may deduct monthly from the re-
 4 tirement allowance or benefit, retirement pay or pension payable to an eligible person who elects
 5 to participate in a health care insurance plan the monthly cost of the coverage for the person under
 6 a health care insurance contract entered into under this section and the administrative costs in-
 7 curred by the board under this section, and shall pay those amounts into the Standard Retiree
 8 Health Insurance Account established under subsection (7) of this section. The board by rule may
 9 establish other procedures for collecting the monthly cost of the coverage and the administrative
 10 costs incurred by the board under this section if the board does not deduct those costs from the
 11 retirement allowance or benefit, retirement pay or pension payable to an eligible person.

12 (5) Subject to applicable provisions of ORS 183.310 to 183.550, the board may make rules not
 13 inconsistent with this section to determine the terms and conditions of eligible person participation
 14 and coverage and otherwise to implement and carry out the purposes and provisions of this section
 15 and ORS 238.420.

16 (6) The board may retain consultants, brokers or other advisory personnel, organizations spe-
 17 cializing in health care cost containment or other administrative services when it determines the
 18 necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are
 19 required to assist in performing the functions of the board under this section.

20 (7) The Standard Retiree Health Insurance Account is established within the Public Employees
 21 Retirement Fund, separate and distinct from the General Fund. All payments made by eligible per-
 22 sons for health insurance coverage provided under this section shall be held in the account. Interest
 23 earned by the account shall be credited to the account. All moneys in the account are continuously
 24 appropriated to the Public Employees Retirement Board and may be used by the board only to pay
 25 the cost of health insurance coverage under this section and to pay the administrative costs in-
 26 curred by the board under this section.

27 (8) The sum of all amounts paid by eligible persons into the Standard Retiree Health Insurance
 28 Account, by participating public employers into the Retiree Health Insurance Premium Account
 29 under ORS 238.415, and by participating public employers into the Retirement Health Insurance
 30 Account under ORS 238.420, may not exceed 25 percent of the aggregate contributions made by
 31 participating public employers to the Public Employees Retirement Fund on or after July 11, 1987,
 32 not including contributions made by participating public employers to fund prior service credits.

33 (9) Until all liabilities for health benefits under the system are satisfied, contributions and
 34 earnings in the Standard Retiree Health Insurance Account, the Retiree Health Insurance Premium
 35 Account under ORS 238.415 and the Retirement Health Insurance Account under ORS 238.420 may
 36 not be diverted or otherwise put to any use other than providing health benefits and payment of
 37 reasonable costs incurred in administering this section and ORS 238.415 and 238.420. Upon satis-
 38 faction of all liabilities for providing health benefits under this section, any amount remaining in the
 39 Standard Retiree Health Insurance Account shall be returned to the participating public employers
 40 who have made contributions to the account. The distribution shall be made in such equitable
 41 manner as the board determines appropriate.

42 **SECTION 220.** ORS 246.170 is amended to read:

43 246.170. All moneys received by the Secretary of State under ORS 246.160 shall be deposited into
 44 the Secretary of State Miscellaneous Receipts Account established under [ORS 279.833] **section 44**
 45 **of this 2003 Act.** All moneys received by the Secretary of State under ORS 246.160 and deposited

1 in the account are appropriated continuously to the Secretary of State for the payment of expenses
2 incurred in performing the functions described in ORS 246.160.

3 **SECTION 221.** ORS 261.253 is amended to read:

4 261.253. (1) No public contract entered into by a noninvestor-owned electric utility shall contain
5 a clause or condition that imposes an unconditional and unlimited financial obligation on the elec-
6 tric utility that is party to the contract unless the terms and conditions of the contract are subject
7 to approval and are approved by the electors of the people's utility district or municipality that
8 owns the electric utility.

9 (2) Nothing in subsection (1) of this section is intended to affect provisions of law requiring
10 approval of electors for any particular type of public contract that are in effect on October 15, 1983,
11 or that are later enacted.

12 (3) Nothing in subsection (1) of this section is intended to conflict with [*ORS 279.324 to*
13 *279.332*] **sections 160 to 164 of this 2003 Act.**

14 (4) As used in this section:

15 (a) "Public contract" includes a contract, note, general obligation bond or revenue bond by
16 which the people's utility district or municipality or any subdivision of any of them is obligated to
17 pay for or finance the acquisition of goods, services, materials, real property or any interest therein,
18 improvement, betterments or additions from any funds, including receipts from rates or charges as-
19 sessed to or collected from its customers.

20 (b) "Unconditional and unlimited financial obligation" means a public contract containing a
21 provision that the people's utility district or municipality that is party to the contract is obligated
22 to make payments required by the contract whether or not the project to be undertaken thereunder
23 is undertaken, completed, operable or operating notwithstanding the suspension, interruption, inter-
24 ference, reduction or curtailment of the output or product of the project.

25 **SECTION 222.** ORS 261.335 is amended to read:

26 261.335. People's utility districts are subject to the public contracting and purchasing require-
27 ments of [*ORS 279.011 to 279.063*] **sections 1 to 46 and 47 to 87 of this 2003 Act and sections 88,**
28 **89 to 96 and 97 to 136 of this 2003 Act, except sections 17, 36 to 44 and 77 of this 2003 Act.**

29 **SECTION 223.** ORS 261.345 is amended to read:

30 261.345. (1) All labor employed by a district, directly or indirectly, shall be employed under and
31 in pursuance of the provisions of ORS [*279.334, 279.336,*] 279.340 and 279.342 **and sections 77, 144**
32 **and 145 of this 2003 Act.**

33 (2) The minimum scale of wages to be paid by a people's utility district or by any contractor
34 or subcontractor for such district shall be not less than the prevailing wage for the character of
35 work in the same trade in the largest city having a population of 5,000 or more in the district, or
36 if there is none, the nearest to the district.

37 (3) The board of directors of any utility district may negotiate, sign and maintain collective
38 bargaining agreements concerning employment, rates of pay and working conditions with the rep-
39 resentatives of its employees. Notice in writing of any intended change in rates of pay, or working
40 conditions, or both, shall be given in accordance with the provisions of the agreements. The pro-
41 visions of ORS 243.650 to 243.782 shall govern the negotiation of a collective bargaining agreement
42 and any changes to an existing agreement. The mutual rights and obligations of the board and the
43 employees or their representatives shall be those provided under ORS 243.650 to 243.782.

44 (4) Whenever any district acquires any utility which at the time of acquisition is in private
45 ownership:

1 (a) The district shall, within financial and organizational limitations, offer employment to all
2 employees of the private utility whose work primarily served the affected territory.

3 (b) Where the employees of the private utility are, at the time of acquisition, covered by any
4 collective bargaining contract, plan for individual annuity contracts, retirement income policies,
5 group annuity contract or group insurance for the benefit of employees, the district shall[:]

6 [(A)] maintain any benefits or privileges [*which*] **that** employees of the acquired utility would
7 receive or be entitled to had the acquisition not occurred[; *and*] **by:**

8 [(B)] **(A)** [*Assume*] **Assuming** for one year all of the rights, obligations and liabilities of the
9 acquired private utility in regard to that collective bargaining contract or plan for the employees
10 covered thereby at the time of acquisition; or

11 [(C)] **(B)** [*By agreement with a majority of the employees affected, substitute*] **Substituting** a sim-
12 ilar plan or contract **under an agreement with a majority of the affected employees.**

13 (c) The district may pay all or part of the premiums or other payments required under paragraph
14 (b) of this subsection out of the revenue derived from the operation of its properties.

15 (d) The district shall recognize the collective bargaining agent of the employees if the district
16 retains a majority of the employees of the private utility working in the affected territory.

17 **SECTION 224.** ORS 270.005 is amended to read:

18 270.005. For purposes of ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to
19 273.436 and 273.551:

20 (1) "Department" means the Oregon Department of Administrative Services.

21 (2) "Improvements" means any and all structures on or attachments to state-owned real prop-
22 erty, but excluding public improvements as defined in [*ORS 279.011*] **section 2 of this 2003 Act.**

23 (3) "Real property" means all real property together with any and all improvements thereon.

24 (4) "Surplus real property" means all state-owned real property and improvements surplus to
25 agency and state need.

26 **SECTION 225.** ORS 276.071 is amended to read:

27 276.071. ORS 276.073 to 276.090, [*279.005 to 279.111, 279.310 to 279.323, 279.324 to 279.332,*
28 *279.333, 279.334, 279.336, 279.338, 279.340, 279.342, 279.348 to 279.380, 279.400, 279.410, 279.420,*
29 *279.430, 279.435 and 279.445*] **279.340 and 279.342 and sections 1 to 6, 7 to 12, 13, 14, 15, 16, 17**
30 **and 88 to 180 of this 2003 Act, except sections 154 to 159 of this 2003 Act** apply to all public
31 improvements that are being constructed, reconstructed or renovated for use by a state agency un-
32 der a lease-purchase agreement or under any other agreement whereby ultimate state ownership is
33 contemplated or expected.

34 **SECTION 226.** Section 4, chapter 628, Oregon Laws 2001, is amended to read:

35 **Sec. 4.** The Bureau of Labor and Industries may not initiate or continue any action to enforce
36 compliance with [*ORS 279.348 to 279.380*] **sections 165 to 179 of this 2003 Act** against any con-
37 tractor, subcontractor or public agency involved with a project to which [*ORS 279.348 to 279.380*]
38 **sections 165 to 179 of this 2003 Act** would not apply under [*ORS 279.357, as amended by section*
39 *1 of this 2001 Act,*] **section 172 of this 2003 Act** if the project were started on or after January 1,
40 2002.

41 **SECTION 227.** Section 5, chapter 628, Oregon Laws 2001, is amended to read:

42 **Sec. 5.** (1) Notwithstanding section 4, **chapter 628, Oregon Laws 2001,** [*of this 2001 Act,*] the
43 Bureau of Labor and Industries may accept and enforce wage claims filed by workers who are en-
44 titled to be paid the prevailing rate of wage on a project if:

45 (a) The project was started before January 1, 2002; and

1 (b) [ORS 279.348 to 279.380] **Sections 165 to 179 of this 2003 Act** would not have applied to the
2 project under [ORS 279.357, as amended by section 1 of this 2001 Act] **section 172 of this 2003**
3 **Act**, if the project had been started on or after January 1, 2002.

4 (2) If a contractor, subcontractor or public agency mails to a worker a notice of the right to file
5 a wage claim on a project described in subsection (1) of this section, the employee must file the
6 wage claim with the bureau within 30 days after the date the notice is mailed.

7 **SECTION 228.** Section 1, chapter 937, Oregon Laws 2001, is amended to read:

8 **Sec. 1.** (1) As used in this section and section 2, **chapter 937, Oregon Laws 2001** [of this 2001
9 Act]:

10 (a) "Best value procurement" means a method of selecting a vendor based on a determination
11 of which vendor's proposal offers the best trade-off between price and performance, in which quality
12 is considered an integral performance factor. The selection may be based on evaluation factors in-
13 cluding but not limited to:

14 (A) The total cost of ownership, including the cost of acquiring, operating, maintaining and
15 supporting a product or service over its projected lifetime;

16 (B) The technical merit of the vendor's proposal; and

17 (C) The probability of the vendor performing the requirements stated in the solicitation on time,
18 with high quality and in a manner that accomplishes the stated business objectives.

19 (b) "Government-vendor partnership" means a mutually beneficial contractual relationship be-
20 tween a state agency and a vendor, in which the two share risk and reward and in which value is
21 added to the procurement of information technology.

22 (c) "Information technology" has the meaning given that term in ORS 291.038.

23 (d) "Solution-based solicitation" means a solicitation whose requirements are stated in terms of
24 how the product or service being purchased should accomplish a business objective, rather than in
25 terms of the technical design of the product or service.

26 (e) "State agency" includes every state officer, board, commission, department, institution,
27 branch or agency of the state government whose costs are paid wholly or in part from funds held
28 in the State Treasury, except the Legislative Assembly, the courts and their officers and committees,
29 and except the Secretary of State and the State Treasurer in the performance of their duties.

30 (2) The intent of best value procurement of information technology is to enable vendors to offer,
31 and a state agency to select, the most appropriate solution to meet the business objectives identified
32 in a solicitation and to keep all parties focused on the desired outcome of a procurement. Business
33 process reengineering, system design and technology implementation may be combined into a single
34 solicitation.

35 (3) The acquisition of information technology by a state agency may be conducted using any
36 procurement method available that is best suited to the intended purpose of the state, subject to
37 [ORS chapter 279] **sections 1 to 46 and 47 to 87 of this 2003 Act**, including the best value pro-
38 curement method. When a state agency and the Oregon Department of Administrative Services de-
39 termine that acquisitions are highly complex or that the optimal solution to a business problem is
40 not known, the state agency and the department may use solution-based solicitations and
41 government-vendor partnerships, subject to [ORS chapter 279] **sections 1 to 46 and 47 to 87 of this**
42 **2003 Act**.

43 **SECTION 229.** Section 3, chapter 937, Oregon Laws 2001, is amended to read:

44 **Sec. 3.** (1) The Oregon Department of Administrative Services shall develop and implement the
45 policies, procedures and programs described in section 2 (1), **chapter 937, Oregon Laws 2001**, [of

1 *this 2001 Act*] no later than December 31, 2003.

2 (2) The Oregon Department of Administrative Services shall report by January 15, 2003, to the
3 Joint Legislative Committee on Information Management and Technology on the results of the im-
4 plementation of sections 1 and 2, **chapter 937, Oregon Laws 2001**, [*of this 2001 Act*] and on the
5 relationship between the implementation of sections 1 and 2, **chapter 937, Oregon Laws 2001**, [*of*
6 *this 2001 Act*] and a comprehensive evaluation of [*ORS chapter 279*] **sections 1 to 46, 47 to 87 or**
7 **88 to 180 of this 2003 Act.**

8 **SECTION 229a.** ORS 279.835 is amended to read:

9 279.835. As used in ORS 279.835 to 279.855:

10 (1) "Department" means the Oregon Department of Administrative Services.

11 (2) "Direct labor" includes all work required for preparation, processing and packing, but not
12 supervision, administration, inspection and shipping.

13 (3) "Disabled individual" means an individual who, because of the nature of disabilities, is not
14 able to participate fully in competitive employment, and for whom specialized employment opportu-
15 nities must be provided.

16 (4) "Public agency" or "public contracting agency" [*has the same meaning contained in ORS*
17 *279.011*] **means any agency of the State of Oregon or any political subdivision thereof au-**
18 **thorized by law to enter into public contracts and any public body created by intergovern-**
19 **mental agreement.**

20 (5) "Qualified nonprofit agency for disabled individual" means a nonprofit activity center or re-
21 habilitation facility:

22 (a) Organized under the laws of the United States or of this state and operated in the interest
23 of disabled individuals, and the net income of which does not inure in whole or in part to the benefit
24 of any shareholder or other individual;

25 (b) That complies with any applicable occupational health and safety standard required by the
26 laws of the United States or of this state; and

27 (c) That in the manufacture of products and in the provision of services, whether or not the
28 products or services are procured under ORS [*279.015 and*] 279.835 to 279.855, during the fiscal year
29 employs disabled individuals for not less than 75 percent of the work hours of direct labor required
30 for the manufacture or provision of the products or services.

31 **SECTION 229b.** ORS 279.840 is amended to read:

32 279.840. The purpose of ORS [*279.015 and*] 279.835 to 279.855 is to further the policy of this state
33 to encourage and assist disabled individuals to achieve maximum personal independence through
34 useful and productive gainful employment by assuring an expanded and constant market for shel-
35 tered workshop and activity center products and services, thereby enhancing their dignity and ca-
36 pacity for self-support and minimizing their dependence on welfare and need for costly
37 institutionalization.

38 **SECTION 229c.** ORS 279.845 is amended to read:

39 279.845. (1) It shall be the duty of the Oregon Department of Administrative Services to:

40 (a) Determine the price of all products manufactured and services offered for sale to the various
41 public agencies by any qualified nonprofit agency for disabled individuals. The price shall recover
42 for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in
43 reserve for inventory and equipment replacement;

44 (b) To revise such prices from time to time in accordance with changing cost factors; and

45 (c) To make such rules regarding specifications, time of delivery and other relevant matters of

1 procedure as shall be necessary to carry out the purposes of ORS [279.015 and] 279.835 to 279.855.

2 (2) The department shall establish and publish a list of sources or potential sources of products
3 produced by any qualified nonprofit agency for disabled individuals and the services provided by any
4 such agency, which the department determines are suitable for procurement by public agencies
5 pursuant to ORS [279.015 and] 279.835 to 279.855. This procurement list and revisions thereof shall
6 be distributed to all public purchasing officers.

7 **SECTION 229d.** ORS 279.850 is amended to read:

8 279.850. (1) If any public agency intends to procure any product or service on the procurement
9 list, that **public** agency shall, in accordance with rules of the Oregon Department of Administrative
10 Services, procure such product or service, at the price established by the department, from a quali-
11 fied nonprofit agency for disabled individuals provided the product or service is of the appropriate
12 specifications and is available within the period required by that public agency.

13 (2) In furthering the purposes of ORS [279.015 and] 279.835 to 279.855, it is the intent of the
14 Legislative Assembly that there be close cooperation between the department, public contracting
15 agencies and qualified nonprofit agencies for disabled individuals. The department on behalf of
16 public contracting agencies and qualified nonprofit agencies for disabled individuals is authorized
17 to enter into such contractual agreements, cooperative working relationships or other arrangements
18 as may be determined to be necessary for effective coordination and efficient realization of the ob-
19 jectives of ORS [279.015 and] 279.835 to 279.855 and any other law requiring procurement of pro-
20 ducts or services.

21 **SECTION 229e.** ORS 279.855 is amended to read:

22 279.855. The following may purchase equipment, materials, supplies and services through the
23 Oregon Department of Administrative Services in the same manner as state agencies as provided in
24 [ORS 279.545 to 279.746 and 279.800 to 279.833] **sections 18 to 21 and 36 to 44 of this 2003 Act:**

25 (1) Qualified nonprofit agencies for disabled individuals participating in the program set forth
26 in ORS [279.015 and] 279.835 to [279.850] **279.855.**

27 (2) Residential programs when under contract with the Department of Human Services to pro-
28 vide services to youth in the custody of the state.

29 (3) Public benefit corporations, as defined in ORS 65.001, that provide public services either
30 under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local
31 government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds.

32 **SECTION 230.** ORS 283.110 is amended to read:

33 283.110. (1) Subject to rules prescribed by the Oregon Department of Administrative Services,
34 any state agency shall, as its own facilities permit, furnish to any other state agency such services
35 (including labor), facilities and materials as are requisitioned by the head of another agency. The
36 expense shall be charged to the agency served, which shall pay the expense to the agency furnishing
37 the services, facilities or materials in the manner other claims are paid. Agencies shall, as far as
38 practicable, cooperate with one another in the use of services, quarters and equipment.

39 (2) Except as provided in ORS 283.076 (3), all moneys received by an agency in payment of ser-
40 vices, facilities or materials furnished to another state agency as provided in this section, or in
41 payment of services, facilities or materials furnished to other persons may be, or if required by the
42 Oregon Department of Administrative Services, shall be paid into the State Treasury for deposit to
43 the credit of the miscellaneous receipts account established pursuant to [ORS 279.833] **section 44**
44 **of this 2003 Act** for the agency furnishing the services, facilities or materials.

45 (3) The constitutional state officers and the Legislative Assembly or any of its statutory, stand-

ing, special or interim committees, unless prohibited by law, may elect to furnish services, facilities and materials to one another and to state agencies and officers as defined in ORS 291.002, and the courts, constitutional state officers and the Legislative Assembly or any of its statutory, standing, special or interim committees may elect to requisition services, facilities and materials as provided in this section.

SECTION 231. ORS 283.120 is amended to read:

283.120. Subject to rules prescribed by the Oregon Department of Administrative Services, any state agency may establish a service unit within the agency to furnish to other units of such agency the services, facilities and materials that the service unit is established to provide. The expenses of the service unit shall be charged to the units served and, except as provided in ORS 283.076 (3), the amounts so charged shall be credited to the miscellaneous receipts account established pursuant to [ORS 279.833] **section 44 of this 2003 Act** and hereby are appropriated continuously for expenditure by the state agency subject to the allotment system provided by ORS 291.234 to 291.260.

SECTION 232. ORS 283.150 is amended to read:

283.150. The Oregon Department of Administrative Services may operate central repair and maintenance services for the general repair and servicing of office equipment belonging to the various state agencies. The cost of such services shall be charged to the various agencies served and paid to the department in the same manner as other claims against the agencies are paid. It shall also be the function of the department to salvage office equipment, in so far as is practicable and economical. Salvaged equipment shall be disposed of in accordance with [ORS 279.828] **section 42 of this 2003 Act.**

SECTION 233. ORS 283.510 is amended to read:

283.510. (1) As used in this section:

(a) "Advanced digital communications" means equipment, facilities and capability to distribute digital communications signals for the transmission of voice, data, image and video over distance.

(b) "Telecommunications provider" means any person capable of providing advanced digital communications including, but not limited to, a telecommunications utility as defined in ORS 759.005, a competitive telecommunications provider as defined in ORS 759.005, a cable television provider or an interstate telecommunications provider.

(2) Notwithstanding [ORS 279.005 to 279.111 and 279.310 to 279.323] **sections 1 to 46 and 47 to 87 of this 2003 Act**, the Oregon Department of Administrative Services by contract shall acquire advanced digital communications services from telecommunications providers or a consortium of such providers. Contracts under this section shall provide that all responsibility for construction, installation, operation and maintenance of the network shall remain with the contracting provider.

(3) Upon installation of an advanced digital communications network, the Oregon Department of Administrative Services shall provide all telecommunications services and operations for the state and its agencies. The department shall not approve the procurement of any telecommunications system or equipment that is incompatible with the network.

SECTION 234. ORS 284.375 is amended to read:

284.375. (1) Except as otherwise provided by law, ORS chapters 240, 276, [279,] 282, 283, 291, 292 and 293 **and ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply to the Oregon Film and Video Office.

(2) Notwithstanding subsection (1) of this section, ORS [279.053, 279.800 to 279.830,] 282.210 to 282.230, 293.235, 293.240, 293.245, 293.260, 293.262, 293.611, 293.625 and 293.630, **section 13 of this 2003 Act and sections 36 to 44 of this 2003 Act** apply to the Oregon Film and Video Office.

1 **SECTION 235.** ORS 285A.075 is amended to read:

2 285A.075. (1) The Economic and Community Development Department, through research, pro-
3 motion and coordination of activities in this state, shall foster the most desirable growth and ge-
4 ographical distribution of agriculture, industry and commerce in the state. The department shall
5 serve as a central coordinating agency and clearinghouse for activities and information concerning
6 the resources and economy of the state.

7 (2) The department shall have no regulatory power over the activities of private persons. Its
8 functions shall be solely advisory, coordinative and promotional.

9 (3) The department shall administer the state's participation in the federal Community Devel-
10 opment Block Grant funding program authorized by 42 U.S.C. 5301 et seq.

11 (4) In order to accomplish the purposes of ORS chapters 285A and 285B and ORS 329.905 to
12 329.975, the department may expend moneys duly budgeted to pay the travel and various other ex-
13 penses of industrial or commercial site location agents, film or video production location agents,
14 business journal writers, elected state officials or other state personnel whom the Director of the
15 Economic and Community Development Department determines may promote the purposes of this
16 subsection.

17 (5) In accordance with applicable provisions of ORS 183.310 to 183.550, the department may
18 adopt rules necessary for the administration of laws that the department is charged with adminis-
19 tering.

20 (6) ORS 276.428, [279.021, 279.310 to 279.323, 279.334, 279.336, 279.338, 279.340, 279.342, 279.348
21 to 279.363, 279.365, 279.545 to 279.650, 279.712, 279.826,] **279.340, 279.342**, 282.020, 282.050, 282.210,
22 282.220, 282.230 and 283.140 **and sections 7, 18, 21, 41, 49, 77, 79, 81, 137 to 143, 144, 145, 165 to**
23 **179 of this 2003 Act, except sections 177, 178, 179, 188 and 191 of this 2003 Act**, do not apply
24 to the department's operation of foreign trade offices outside the state.

25 (7) Notwithstanding [*ORS 279.712*] **sections 7 and 18 of this 2003 Act**, the department may
26 enter into contracts for personal services as necessary or appropriate to carry out the duties,
27 functions and powers vested in the department by law.

28 (8)(a) The department may contract directly with the Oregon Downtown Development Associ-
29 ation, or its successor entity, to provide downtown development and redevelopment assistance and
30 similar services to municipalities in Oregon.

31 (b) The department may contract directly with Rural Development Initiatives, or its successor
32 entity, to provide training, technical assistance, planning assistance and other support and services
33 to municipalities in Oregon to build economic and community development capacity.

34 (c) Contracts entered into under this subsection are exempt from the requirements of [*ORS*
35 *chapter 279*] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act**.

36 (9) If the director determines that moneys are available, the department may transfer funds from
37 the Special Public Works Fund created under ORS 285B.455 or from the Water Fund established
38 under ORS 285B.563 to a state agency to provide financial assistance in the delivery of technical
39 assistance or other services to one or more water systems for evaluation of water quality or services
40 or for planning the improvement of water quality or services. The department may structure the fi-
41 nancial assistance under this subsection in the form of an interagency grant or loan or in any other
42 manner the director considers necessary or appropriate.

43 **SECTION 236.** ORS 285A.227 is amended to read:

44 285A.227. (1) There is created within the State Treasury, separate and distinct from the General
45 Fund, the Oregon Community Development Fund. The fund is created to provide a flexible funding

1 source for financing those programs and projects that are determined by the Oregon Economic and
 2 Community Development Commission under the policies, criteria and standards set forth in ORS
 3 285A.020, 285A.045 and 285A.055 to further economic and community development. The Economic
 4 and Community Development Department may finance programs and projects determined by the
 5 commission to further economic and community development by making grants or loans using mon-
 6 eys in the fund. Notwithstanding [*ORS 279.712*] **sections 7 and 18 of this 2003 Act**, the department
 7 may enter into contracts for personal services as necessary or appropriate to implement programs
 8 and projects determined by the commission to further economic and community development using
 9 moneys in the fund. The Oregon Community Development Fund shall consist of all moneys credited
 10 to the fund, including moneys from the Administrative Services Economic Development Fund, federal
 11 funds collected or received, and fees, moneys or other revenues, including Miscellaneous Receipts,
 12 collected or received by the Economic and Community Development Department, and all interest
 13 earnings that accrue to the fund. The moneys in the Oregon Community Development Fund are
 14 continuously appropriated to the Economic and Community Development Department to promote
 15 economic and community development.

16 (2) The Oregon Economic and Community Development Commission, by rule, shall adopt stan-
 17 dards, objectives and criteria for use of the moneys in the Oregon Community Development Fund.

18 **SECTION 237.** ORS 285A.273 is amended to read:

19 285A.273. The Oregon Tourism Program is established as an administrative section of the Eco-
 20 nomic and Community Development Department. The following are the duties and powers of the
 21 Oregon Tourism Program:

22 (1) Collecting, analyzing and disseminating data that accurately measure the economic and so-
 23 cial impact of tourism on this state and that may be used in marketing efforts.

24 (2) Carrying out a program of media advertising, promotion of Oregon to the travel trade and
 25 other promotional development activities as directed by the Oregon Tourism Commission and in
 26 compliance with the marketing plan established by the tourism commission under ORS 285A.264.

27 (3) Providing information on vacationing in Oregon to travel writers, travel agents and tour
 28 operators. The tourism program may expend moneys duly budgeted to pay the travel and various
 29 other expenses of travel writers, travel agents and tour operators.

30 (4) Answering requests for information about Oregon.

31 (5) Printing, publishing and distributing all the information required by this section in a manner
 32 that will best serve the traveling public. In carrying out this subsection, the tourism program is not
 33 subject to ORS chapter 282.

34 (6) Notwithstanding [*ORS chapter 279*] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
 35 **Act**, accepting or providing travel, lodging, meals, entertainment, meetings and other services from
 36 or to public and private entities or persons in order to carry out the duties and functions of the
 37 tourism commission under ORS 285A.264.

38 (7) Entering into agreements and cooperating with political subdivisions of this state, state
 39 agencies, other states, federal agencies, governments of foreign countries and private individuals,
 40 corporations or other persons in the publication or distribution of information relating to recre-
 41 ational activities and tourist facilities or of other information or materials of interest or service to
 42 the traveling public and in activities related to developing and promoting tourism in this state.

43 **SECTION 238.** ORS 285A.276 is amended to read:

44 285A.276. (1) The Public-Private Partnership is hereby established as a program of the Oregon
 45 Tourism Commission.

1 (2) The tourism commission shall adopt a biennial budget for the Public-Private Partnership us-
2 ing the classifications of expenditures and revenues required by ORS 291.206 (1).

3 (3) The tourism commission shall adopt the budget for the Public-Private Partnership only after
4 holding a public hearing on the proposed budget. At least 15 days prior to any public hearing on the
5 proposed budget, the tourism commission shall give notice of the hearing to all persons known to
6 be interested in the proceedings of the tourism commission and to any person who requests notice.

7 (4) All moneys collected, received or appropriated for the purposes of the Public-Private Part-
8 nership shall be deposited in an account established in a depository bank insured by the Federal
9 Deposit Insurance Corporation. In a manner consistent with the requirements of ORS chapter 295,
10 the chair of the tourism commission shall ensure that sufficient collateral secures any amount of
11 funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corpo-
12 ration. Subject to approval by the tourism commission, the commission may invest moneys collected
13 or received for the Public-Private Partnership. Investments made by the tourism commission are
14 limited to the types of investments listed in ORS 294.035 (1) to (9). Interest earned from any amounts
15 invested shall be made available to the tourism commission in a manner consistent with the biennial
16 budget for the Public-Private Partnership.

17 (5) Moneys in the account established under subsection (4) of this section for the Public-Private
18 Partnership shall consist of:

- 19 (a) Gifts, grants and other contributions from private and nonprofit entities;
- 20 (b) Grants, loans and other revenue transfers from public entities, including the State of Oregon;
- 21 (c) Interest earned on moneys in the account; and
- 22 (d) Revenues generated by the tourism commission or by Oregon Tourism Program activities.

23 (6) Notwithstanding [*ORS chapter 279*] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
24 **Act**, all expenditures from the account established under subsection (4) of this section shall be in
25 conformance with the duties of the tourism commission set forth in ORS 285A.264. All expenditures
26 from the account are exempt from any state expenditure limitation. The Public-Private Partnership
27 is exempt from ORS 291.050 to 291.060. The tourism commission shall follow generally accepted ac-
28 counting principles and keep such financial and statistical information that is necessary to com-
29 pletely and accurately disclose the financial condition of the account as may be required by the
30 Secretary of State.

31 **SECTION 239.** ORS 285B.341 is amended to read:

32 285B.341. Except as provided in ORS 285B.335 and 285B.338, the state shall not have power to
33 operate any eligible project as a business or in any manner whatsoever, and except as provided in
34 ORS 285B.335, 285B.338, 285B.374 and 285B.377, nothing in ORS 285B.320 to 285B.377 authorizes the
35 state to expend any funds on any eligible project, other than the revenues of such projects, or the
36 proceeds of revenue bonds issued hereunder, or other funds granted to the state for the purposes
37 of an eligible project. For the purpose of exercising the powers and authority granted under ORS
38 285B.335 or 285B.338, the state and the Oregon Economic and Community Development Commission
39 are not subject to the requirements of [*ORS chapter 279*] **sections 1 to 46, 47 to 87 or 88 to 180**
40 **of this 2003 Act.**

41 **SECTION 240.** ORS 285B.344 is amended to read:

42 285B.344. (1) If the State Treasurer determines that bonds should be issued:

43 (a) The State Treasurer may authorize and issue in the name of the State of Oregon bonds se-
44 cured by revenues from eligible economic development projects or from other financing sources, and
45 where applicable, secured as provided in ORS 285B.374 and 285B.377, to finance or refinance in

1 whole or part the cost of acquisition, construction, reconstruction, improvement or extension of
 2 projects. The bonds shall be identified by project and issued in the manner prescribed by ORS
 3 286.010, 286.020 and 286.105 to 286.135, and refunding bonds may be issued to refinance such bonds.

4 (b) The State Treasurer shall designate the underwriter, vendor, lender or other financing party,
 5 if any, and enter into appropriate agreements with each to carry out the provisions of ORS 285B.320
 6 to 285B.377. The Economic and Community Development Department, with the approval of the State
 7 Treasurer, shall designate the trustee and enter into appropriate agreements with the trustee to
 8 carry out the provisions of ORS 285B.320 to 285B.377. The department may appoint bond counsel
 9 as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond
 10 counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and
 11 the appointment is approved by the Attorney General as required by ORS 288.523. The department
 12 may not make an appointment or enter into an agreement under this paragraph unless the State
 13 Treasurer has reviewed and approved the terms and conditions of the appointment or agreement.
 14 [ORS 279.712 does] **Sections 7 and 18 of this 2003 Act do** not apply to any appointment or agree-
 15 ment described in this paragraph.

16 (2) Any escrow agent, bond registrar, paying agent or trustee, if any, designated by the State
 17 Treasurer to carry out all or part of the powers specified in ORS 285B.335 must agree to furnish
 18 financial statements and audit reports for each bond issue.

19 **SECTION 241.** ORS 285B.473 is amended to read:

20 285B.473. If the State Treasurer determines that revenue bonds should be issued:

21 (1) The State Treasurer may authorize and issue in the name of the State of Oregon revenue
 22 bonds secured by moneys paid to the Special Public Works Fund pledged therefor to finance or re-
 23 finance in whole or part the cost of acquisition, construction, reconstruction, improvement or ex-
 24 tension of infrastructure projects. The bonds shall be issued in the manner prescribed by ORS
 25 chapter 286, and refunding bonds may be issued to refinance such revenue bonds.

26 (2) The State Treasurer shall designate the underwriter and enter into appropriate agreements
 27 with the underwriter to carry out the provisions of ORS 285B.467 to 285B.479. The Economic and
 28 Community Development Department, with the approval of the State Treasurer, shall designate the
 29 trustee and enter into appropriate agreements with the trustee to carry out the provisions of ORS
 30 285B.467 to 285B.479. The department may appoint bond counsel as authorized by ORS 288.523, or
 31 the State Treasurer may enter into an agreement with bond counsel if the services provided under
 32 the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the
 33 Attorney General as required by ORS 288.523. The department may not make an appointment or
 34 enter into an agreement under this subsection unless the State Treasurer has reviewed and approved
 35 the terms and conditions of the appointment or agreement. [ORS 279.712 does] **Sections 7 and 18**
 36 **of this 2003 Act do** not apply to any appointment or agreement described in this subsection.

37 **SECTION 242.** ORS 285B.575 is amended to read:

38 285B.575. If the State Treasurer determines that revenue bonds shall be issued:

39 (1) The State Treasurer may authorize and issue in the name of the State of Oregon revenue
 40 bonds secured by moneys paid to the Water Fund and pledged to finance or refinance in whole or
 41 in part the cost of a water project. The revenue bonds issued under this section shall be issued in
 42 the manner prescribed by ORS chapter 286, and refunding bonds may be issued to refinance the re-
 43 venue bonds.

44 (2) The State Treasurer shall designate and enter into agreements with the underwriter to carry
 45 out the provisions of ORS 285B.560 to 285B.599. The Economic and Community Development De-

1 department, with the approval of the State Treasurer, shall designate the trustee and enter into ap-
 2 propriate agreements with the trustee to carry out the provisions of ORS 285B.560 to 285B.599. The
 3 department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may
 4 enter into an agreement with bond counsel if the services provided under the agreement comply with
 5 the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required
 6 by ORS 288.523. The department may not make an appointment or enter into an agreement under
 7 this subsection unless the State Treasurer has reviewed and approved the terms and conditions of
 8 the appointment or agreement. [ORS 279.712 does] **Sections 7 and 18 of this 2003 Act do** not apply
 9 to any appointment or agreement described in this subsection.

10 **SECTION 243.** ORS 286.066 is amended to read:

11 286.066. Each respective general obligation bonding agency shall enter into an agreement with
 12 and provide for the appointment of bond counsel for a period of not less than one year during any
 13 biennium in which the agency has bonds outstanding or expects to issue bonds. An agency may not
 14 enter into an agreement for the appointment of bond counsel under this section unless the State
 15 Treasurer and the Attorney General have reviewed and approved the terms and conditions of the
 16 agreement as required by ORS 288.523. [ORS 279.712 does] **Sections 7 and 18 of this 2003 Act do**
 17 not apply to an agreement for the appointment of bond counsel entered into under this section.

18 **SECTION 244.** ORS 286.071 is amended to read:

19 286.071. (1) The State Treasurer may, or an agency authorized to use bond proceeds may, with
 20 the approval of the State Treasurer, enter into an agreement with and retain the services of a fi-
 21 nancial consultant. The State Treasurer, in granting approval for the retention of a financial con-
 22 sultant authorized by this section, shall consider:

23 (a) The reputation, experience and credentials of the consultant, including the individuals ex-
 24 pected to actually fulfill the contract work; and

25 (b) The willingness of the consultant to consider the impact of the agency's bond program on
 26 overall state resources, levels of bonded indebtedness, and statewide bond issuance procedures and
 27 policies.

28 (2) An agency may not enter into an agreement to retain the services of a financial consultant
 29 unless the State Treasurer reviews and approves the terms and conditions of the agreement. [ORS
 30 279.712 does] **Sections 7 and 18 of this 2003 Act do** not apply to an agreement described in this
 31 section.

32 **SECTION 245.** ORS 288.523 is amended to read:

33 288.523. (1) Notwithstanding any other provision of law relating to the appointment of bond
 34 counsel, a public body may provide for the appointment of bond counsel to advise and assist the
 35 public body in the issuance of bonds or certificates of participation, including the issuance of re-
 36 funding bonds and obligations, and in the lawful administration of outstanding bonds or certificates
 37 of participation. The services provided by an appointed bond counsel may include:

38 (a) Advising the public body concerning the legality of specific proposed taxable or tax-exempt
 39 obligations and the compliance, in substance and procedure, of those obligations with law, including
 40 but not limited to federal securities laws and regulations and federal and state tax laws and regu-
 41 lations;

42 (b) Issuing legal opinions, including opinions on the authorization, tax status and the binding
 43 effect of the obligations and their associated documents and on the lawful use of the proceeds of the
 44 obligations, as may be required by the demands of the bond market for the obligations;

45 (c) Advising the public body on legal procedures and practices in the bond market for the obli-

1 gations, including advice on the structuring and marketing of the obligations;

2 (d) Preparing or assisting in the preparation of any document related to a specific issue of ob-
3 ligations, including but not limited to a bond authorization, bond resolution, indenture, prospectus,
4 preliminary official statement, official statement, bond sale notice, bond form, bid form or bond
5 purchase agreement;

6 (e) Advising the public body concerning the maintenance of the tax status of specific obligations,
7 compliance with any requirements for representations or disclosures relating to the obligations and
8 compliance with any documents issued or executed with respect to the obligations; and

9 (f) Advising the public body concerning accounting and investment procedures recommended or
10 required for compliance with tax and federal securities and rebate requirements.

11 (2) No appointment of bond counsel under this section shall be construed as authorizing bond
12 counsel to advise or represent the public body on matters that are committed by statute to the At-
13 torney General or by local law to counsel for the public body. An appointment of bond counsel by
14 a state agency or institution shall be subject to the prior approval of the State Treasurer and the
15 Attorney General.

16 (3) [ORS 279.712 does] **Sections 7 and 18 of this 2003 Act do** not apply to an appointment of
17 bond counsel under this section.

18 **SECTION 246.** ORS 291.990 is amended to read:

19 291.990. (1) Any person who makes or orders or votes to make any expenditure in violation of
20 any of the provisions of ORS [279.805, 279.826, 279.828,] 283.010, 283.020, 283.110, 283.130 to 283.160
21 and 283.305 to 283.390 or 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260 and 291.307 **and**
22 **sections 17, 18 to 21, 37, 40, 41, 42, 49, 78, 79, 80 and 81 of this 2003 Act**, or who makes or au-
23 thORIZES or causes to be made any disbursement of funds from the State Treasury in violation of any
24 of the provisions of ORS [279.805, 279.826, 279.828,] 283.010, 283.020, 283.110, 283.130 to 283.160 and
25 283.305 to 283.390 or 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260 and 291.307 **and**
26 **sections 17, 18 to 21, 37, 40, 41, 42, 49, 78, 79, 80 and 81 of this 2003 Act**, commits a violation,
27 and shall, upon conviction, be punished by a fine of not less than \$500 nor more than \$3,000.

28 (2) If any person incurs or orders or votes to incur an obligation in violation of any of the
29 provisions of ORS [279.805, 279.826, 279.828,] 283.010, 283.020, 283.110, 283.130 to 283.160 and 283.305
30 to 283.390 or 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260 and 291.307 **and sections 17,**
31 **18 to 21, 37, 40, 41, 42, 49, 78, 79, 80 and 81 of this 2003 Act**, the person and the sureties on the
32 bond of the person shall be jointly and severally liable therefor to the person in whose favor the
33 obligation was incurred.

34 (3) Upon certification by the Oregon Department of Administrative Services that any state offi-
35 cer or employee of a state agency has failed or refused to comply with any order, rule or regulation
36 made by the department in accordance with the provisions of ORS [279.805, 279.826, 279.828,]
37 283.010, 283.020, 283.110, 283.130 to 283.160 and 283.305 to 283.390 or 291.001 to 291.034, 291.201 to
38 291.222, 291.232 to 291.260 and 291.307 **and sections 17, 18 to 21, 37, 40, 41, 42, 49, 78, 79, 80 and**
39 **81 of this 2003 Act**, the salary of such officer or employee shall not be paid until such order, rule
40 or regulation is complied with.

41 (4) Any violation of ORS [279.805, 279.826, 279.828,] 283.010, 283.020, 283.110, 283.130 to 283.160
42 and 283.305 to 283.390 or 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260 and 291.307 **and**
43 **sections 17, 18 to 21, 37, 40, 41, 42, 49, 78, 79, 80 and 81 of this 2003 Act**, for which no other
44 penalty is provided in this section, is a Class A violation.

45 **SECTION 247.** ORS 292.990 is amended to read:

1 292.990. (1) The provisions of ORS 291.990 shall apply to ORS 292.220 and 292.230 the same as
 2 such provisions apply to ORS [279.805, 279.826, 279.828,] 283.010, 283.020, 283.110, 283.130 to 283.160
 3 and 283.305 to 283.390 or 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260 and 291.307 **and**
 4 **sections 37, 41 and 42 of this 2003 Act.**

5 (2) If any of the officers mentioned in ORS 292.316 fails to pay over to the State Treasurer any
 6 and all moneys collected by virtue of office, the officer shall be deemed guilty of theft, and shall be
 7 punished accordingly.

8 **SECTION 248.** ORS 293.741 is amended to read:

9 293.741. The Oregon Investment Council may enter into contracts with one or more persons
 10 whom the council determines to be qualified, whereby the persons undertake, in lieu of the invest-
 11 ment officer, to perform the functions specified in ORS 293.736 to the extent provided in the con-
 12 tract. Performance of functions under contract so entered into shall be paid for out of the gross
 13 interest or other income of the investments with respect to which the functions are performed, and
 14 the net interest or other income of the investments after that payment shall be considered income
 15 of the investment funds. The council may require a person contracted with to give to the state a
 16 fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the
 17 council, with corporate surety authorized to do business in this state. Contracts so entered into and
 18 functions performed thereunder are not subject to the State Personnel Relations Law or [ORS
 19 279.545 to 279.746] **section 7 or 18 of this 2003 Act.**

20 **SECTION 249.** ORS 293.746 is amended to read:

21 293.746. (1) In the acquisition or disposition of bonds with which approving legal opinions ordi-
 22 narily are furnished, the investment officer may require an original or certified copy of the written
 23 opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General,
 24 certifying to the legality of the bonds.

25 (2) The Oregon Investment Council may arrange for the furnishing to the investment officer of
 26 investment counseling services. The furnishing and acquisition of those services are not subject to
 27 the State Personnel Relations Law or [ORS 279.545 to 279.746] **section 7 or 18 of this 2003 Act.**

28 (3) The investment officer, with the approval of the council, may arrange for services with re-
 29 spect to mortgages in which moneys in the investment funds are invested. Those services shall be
 30 paid for out of the gross interest of the mortgages with respect to which the services are furnished,
 31 and the net interest of the mortgages after that payment shall be considered income of the invest-
 32 ment funds. The furnishing and acquisition of those services are not subject to the State Personnel
 33 Relations Law or [ORS 279.545 to 279.746] **section 7 or 18 of this 2003 Act.**

34 **SECTION 250.** ORS 293.780 is amended to read:

35 293.780. The Oregon Investment Council, for and on behalf of the Public Employees Retirement
 36 System and Public Employees Retirement Board, may enter into group annuity contracts with one
 37 or more insurance companies authorized to do business in this state. In lieu of any investment of
 38 moneys in the Public Employees Retirement Fund as provided in ORS 293.701 to 293.820, the council
 39 may pay, from time to time under contracts so entered into, any moneys in that fund available for
 40 investment purposes. Contracts so entered into are not subject to [ORS 279.545 to 279.746] **section**
 41 **7 or 18 of this 2003 Act.**

42 **SECTION 251.** ORS 294.850 is amended to read:

43 294.850. The Oregon Investment Council may enter into contracts with one or more persons
 44 whom the council determines to be qualified, whereby the persons undertake, in lieu of the invest-
 45 ment officer, to perform the functions specified in ORS 294.845 to the extent provided in the con-

1 tract. Performance of functions under contract so entered into shall be paid for out of the gross
 2 interest or other income of the investments with respect to which the functions are performed, and
 3 the net interest or other income of the investments after that payment shall be considered income
 4 of the investment pool. The council may require a person contracted with to give to the state a fi-
 5 delity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the council,
 6 with corporate surety authorized to do business in this state. Contracts so entered into and func-
 7 tions performed thereunder are not subject to the State Personnel Relations Law or [ORS 279.545
 8 to 279.746] **section 7 or 18 of this 2003 Act.**

9 **SECTION 252.** ORS 294.855 is amended to read:

10 294.855. (1) In the acquisition or disposition of bonds with which approving legal opinions ordi-
 11 narily are furnished, the investment officer may require an original or certified copy of the written
 12 opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General,
 13 certifying to the legality of the bonds.

14 (2) The Oregon Investment Council may arrange for the furnishing to the investment officer of
 15 investment counseling services. The furnishing and acquisition of those services are not subject to
 16 the State Personnel Relations Law or [ORS 279.545 to 279.746] **section 7 or 18 of this 2003 Act.**

17 (3) The investment officer, with the approval of the council, may arrange for services with re-
 18 spect to mortgages in which moneys in the investment pool are invested. Those services shall be
 19 paid for out of the gross interest of the mortgages with respect to which the services are furnished,
 20 and the net interest of the mortgages after that payment shall be considered income of the invest-
 21 ment pool. The furnishing and acquisition of those services are not subject to the State Personnel
 22 Relations Law or [ORS 279.545 to 279.746] **section 7 or 18 of this 2003 Act.**

23 **SECTION 253.** ORS 305.085 is amended to read:

24 305.085. The Department of Revenue is hereby authorized to charge a reasonable sum reflecting
 25 its costs, for each copy sold of maps, documents, or publications such as those containing its laws
 26 and administrative rules or reports. The proceeds from such sales are to be deposited in the de-
 27 partment's miscellaneous receipts account established under the authority of [ORS 279.833] **section**
 28 **44 of this 2003 Act.**

29 **SECTION 254.** ORS 305.612 is amended to read:

30 305.612. (1) The Director of the Department of Revenue may enter into an intergovernmental
 31 agreement with the United States Financial Management Service and the Internal Revenue Service
 32 for the purpose of engaging in the reciprocal offset of federal tax refunds in payment of liquidated
 33 state tax obligations and the offset of state tax refunds in payment of liquidated federal tax obli-
 34 gations.

35 (2) The director may pay a fee charged by the federal government for the processing of an offset
 36 request. The fee may be deducted from amounts remitted to the state by the federal government
 37 pursuant to an intergovernmental agreement.

38 (3) The Department of Revenue may by rule establish a fee to be charged to the federal gov-
 39 ernment for the provision of state offset services.

40 (4) All moneys received by the department in payment of charges made pursuant to subsection
 41 (3) of this section shall be deposited in a department miscellaneous receipts account established
 42 under [ORS 279.833] **section 44 of this 2003 Act.**

43 **SECTION 255.** ORS 332.155 is amended to read:

44 332.155. A district school board:

45 (1) May furnish, equip, repair, lease, purchase and build schoolhouses, including high schools,

1 junior high schools, professional technical schools, gymnasiums, houses for teachers and other em-
 2 ployees, and like buildings; and locate, buy and lease lands for all school purposes. Leases author-
 3 ized by this section include lease-purchase agreements whereunder the district may acquire
 4 ownership of the leased property at a nominal price. Such leases and lease-purchase agreements may
 5 be for a term of up to 30 years.

6 (2) May contract for the removal or containment of asbestos substances in school buildings and
 7 for repairs made necessary by such removal or containment. Contracts authorized by this section
 8 may be for a term exceeding one year.

9 (3) May construct or cooperate in the construction of schools for training of student teachers
 10 on state or district owned lands, for any state institution of higher education in or contiguous to the
 11 district, and to expend district funds in so doing.

12 (4) May acquire personal property by a lease-purchase agreement or contract of purchase for a
 13 term exceeding one year. A lease-purchase agreement is one in which the rent payable by the dis-
 14 trict is expressly agreed to have been established to reflect the savings resulting from the exemption
 15 from taxation, and the district is entitled to ownership of the property at a nominal or other price
 16 which is stated or determinable by the terms of the agreement and was not intended to reflect the
 17 true value of the property.

18 (5) May lease, sell and convey all property of the district as may not in the judgment of the
 19 district school board be required for school purposes.

20 (6) May sell property of the district in transactions whereby the district has the right to lease,
 21 occupy or reacquire the property following the sale or have facilities constructed thereon or fur-
 22 nished to the specifications of the district. The construction or furnishing of such facilities shall be
 23 subject to: [ORS 279.011 to 279.063.]

24 (a) **Sections 1 to 46 of this 2003 Act, except sections 17 and 36 to 44 of this 2003 Act;**

25 (b) **Sections 47 to 87 of this 2003 Act, except sections 77, 78, 79, 80 and 81 of this 2003 Act;**
 26 **and**

27 (c) **Sections 88, 89 to 96 and 97 to 136 of this 2003 Act.**

28 (7) Shall furnish the schools with supplies, equipment, apparatus and services essential to
 29 meeting the requirements of a standard school and may furnish such other supplies, equipment, ap-
 30 paratus and services as the board considers advisable.

31 (8) May construct, purchase or lease in cooperation with other school districts or community
 32 college districts facilities for secondary professional technical programs for pupils of more than one
 33 district and may furnish or cooperate in furnishing supplies and equipment for such facilities, to be
 34 financed in the same manner as other school buildings and supplies are financed.

35 (9) May purchase real property upon a contractual basis when the period of time allowed for
 36 payment under the contract does not exceed 30 years.

37 (10) May purchase relocatable classrooms and other relocatable structures in installment
 38 transactions in which deferred installments of the purchase price are payable over not more than
 39 10 years from the date such property is delivered to the district for occupancy and are secured by
 40 a security interest in such property. Such transactions may take the form of, but are not limited to,
 41 lease-purchase agreements.

42 (11) May enter into rental or lease-purchase agreements covering motor vehicles operated by the
 43 district.

44 **SECTION 256.** Section 1, chapter 847, Oregon Laws 1999, is amended to read:

45 **Sec. 1.** (1) Subject to the terms of the governing instruments and applicable law, a school dis-

1 trict may enter into agreements with one or more community foundations or nonprofit corporations
 2 to complete school facility projects. School districts may not enter into an agreement under this
 3 subsection with a community foundation or nonprofit corporation that has been in existence for less
 4 than one year. A school district may transfer to the community foundation or nonprofit corporation
 5 the ownership of a school facility for the purpose of completion of a school facility project under
 6 this section.

7 (2) Any agreement between a school district and a community foundation or nonprofit corpo-
 8 ration entered into pursuant to subsection (1) of this section shall include:

9 (a)(A) A requirement that if the school district transfers ownership of a school facility to a
 10 community foundation or nonprofit corporation, the community foundation or nonprofit corporation
 11 shall transfer the school facility back to the school district for an amount that does not exceed the
 12 cost of the school facility project plus 10 percent; and

13 (B) A requirement that the school district may lease the school facility from the community
 14 foundation or nonprofit corporation and that if the school district has paid to the community foun-
 15 dation or nonprofit corporation, through a lease, an amount that equals the cost of the school fa-
 16 cility project plus 10 percent, the community foundation or nonprofit corporation shall transfer the
 17 school facility back to the school district.

18 (b) A requirement that any amount received by a community foundation or nonprofit corporation
 19 from the school district for a school facility project shall be allocated as follows:

20 (A) Sixty percent of the amount shall be used to start new school facility projects; and

21 (B) Forty percent of the amount shall be used for maintenance of existing school facilities.

22 (c) A requirement that the community foundation or nonprofit corporation use all volunteer la-
 23 bor.

24 (d) A provision that a community foundation or nonprofit corporation may purchase building
 25 materials at reduced cost or use other cost saving measures or community based resources to com-
 26 plete the school facility project.

27 (e) A requirement that the school facility project shall be completed based on the specifications
 28 of the school district.

29 (f) A requirement that the school facility project shall be completed within three years of the
 30 transfer of ownership of the school facility from the school district to the community foundation or
 31 nonprofit corporation. If the project is not completed within three years, the ownership of the school
 32 facility shall be transferred back to the school district.

33 (3) The following laws do not apply to a school facility project that is the subject of an agree-
 34 ment that meets the requirements of this section:

35 (a) ORS 332.155 (6); and

36 [(b) *ORS chapter 279.*]

37 **(b) Sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act.**

38 (4) A school district may enter into an agreement with a community foundation or nonprofit
 39 corporation under this section to complete a school facility project only if the school district sub-
 40 mitted the question of incurring bonded indebtedness for the school facility project to the electors
 41 of the school district in the prior 12 months and the electors of the school district did not approve
 42 the contracting of bonded indebtedness.

43 (5) Any community foundation or nonprofit corporation that does not use all volunteer labor is
 44 subject to the provisions of [*ORS chapter 279*] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
 45 **Act.**

1 (6) As used in this section:

2 (a) "Community foundation" has the meaning given that term in ORS 348.580.

3 (b) "Nonprofit corporation" means:

4 (A) A corporation as defined in ORS 65.001; or

5 (B) A foreign corporation as defined in ORS 65.001.

6 (c) "School facility project" includes, but is not limited to:

7 (A) The construction of a new school facility; or

8 (B) The completion of capital improvements to an existing school facility.

9 **SECTION 257.** ORS 344.750 is amended to read:

10 344.750. In addition to the provisions of ORS 344.745, in each program:

11 (1) The State Apprenticeship and Training Council shall establish by rule appropriate youth
12 apprentice or trainee ratios.

13 (2) The employer shall provide workers' compensation coverage for the youth apprentices and
14 trainees as required by ORS 656.033.

15 (3) The youth apprentice or trainee shall begin at a wage that is not less than the state mini-
16 mum wage.

17 (4) Youth apprentices and trainees shall be evaluated for wage increases consistent with the
18 policies established by the participating local apprenticeship or training committee.

19 (5) Youth apprentices and trainees shall not be employed on projects subject to the federal
20 Davis-Bacon Act or on projects subject to [ORS 279.348 to 279.363] **sections 165 to 179 of this 2003**
21 **Act, except sections 176, 177, 178 and 179 of this 2003 Act.**

22 (6) The youth apprentice's or trainee's combined in-school coursework and related training, as
23 well as on-the-job training and other training experiences, shall not exceed 44 hours per week.

24 (7) Employment with the employer shall not exceed 20 hours per week while the student is en-
25 rolled in school classes. All or a portion of the on-the-job training shall be used to meet graduation
26 requirements.

27 (8) Participating students who fail to regularly attend and make satisfactory progress in in-
28 school courses and required related training or who leave high school prior to graduation or com-
29 pletion of their high school requirements shall automatically be removed from the youth
30 apprenticeship program.

31 **SECTION 258.** ORS 348.703, as amended by section 5, chapter 6, Oregon Laws 2002 (third spe-
32 cial session), is amended to read:

33 348.703. (1) The Oregon Growth Account Board shall contract with one or more management
34 companies to manage and invest the moneys in the Oregon Growth Account. For purposes of this
35 subsection, a contract with a management company may consist of a partnership agreement under
36 which the Oregon Growth Account Board is the limited partner and the management company is the
37 general partner.

38 (2) The provisions of ORS 293.726 do not apply to those assets of the Education Stability Fund
39 that are held in the Oregon Growth Account. The limitations of ORS 293.726 (6) shall be calculated
40 based only on the balance of the Education Stability Fund that does not include the Oregon Growth
41 Account.

42 (3) A management company selected to manage the Oregon Growth Account shall manage the
43 moneys in the account, subject to investment policies established by the State Treasurer and the
44 investment directives or strategies of the Oregon Growth Account Board, with the care, skill and
45 diligence that a prudent investor acting in a similar capacity and familiar with such investments

1 would use in managing and investing a similar account. The management company shall invest in
 2 Oregon an amount that is at least equal to the amount of the principal transferred from the Oregon
 3 Growth Account to the management company for investment.

4 (4) The contract between the board and a management company to manage the Oregon Growth
 5 Account and the functions performed under the contract are not subject to the State Personnel Re-
 6 lations Law or [ORS chapter 279] **sections 1 to 46 and 47 to 87 of this 2003 Act.**

7 (5) Notwithstanding ORS 348.702 (2), a management company selected to manage the Oregon
 8 Growth Account may maintain a portion of the moneys allocated to the account under ORS 348.702
 9 (1) in short-term securities in investments other than those specified in ORS 348.702 (2) during such
 10 times as a management company is seeking investments that meet the requirements of ORS 348.702
 11 (2).

12 (6) The State Treasurer shall annually submit a report to the Governor and to the Legislative
 13 Assembly on the investment of moneys in the Oregon Growth Account. The report required by this
 14 subsection shall include a summary of the amount of money invested by industrial sector or business
 15 classification, by region of this state, by size of investment and by type of investment.

16 (7) The State Treasurer shall provide to other state agencies any reports on the investment of
 17 moneys in the Oregon Growth Account that are necessary to fulfill audit, financial, investment or
 18 other reporting requirements to which the Education Stability Fund is subject by law or standard
 19 accounting principles.

20 (8) The office of the State Treasurer shall provide staff to the board.

21 (9) There is continuously appropriated to the board from the Oregon Growth Account those
 22 amounts necessary to meet the expenses of the board and the State Treasurer in carrying out the
 23 operations of the Oregon Growth Account and the duties of the board and the State Treasurer. The
 24 cost to the office of the State Treasurer of providing staff to the board shall be deducted from those
 25 amounts paid to the State Treasurer pursuant to ORS 293.718 as reimbursement for expenses in-
 26 curred as investment officer for the Education Stability Fund.

27 (10) The board may enter into contracts for the provision of investment advice or other services
 28 that the board deems reasonable and necessary to fulfill the duties of the board. The State Treasurer
 29 may enter into contracts for the provision of investment advice or other services that the State
 30 Treasurer deems reasonable and necessary to fulfill the duties of the State Treasurer with respect
 31 to the Oregon Growth Account. Such contracts are not subject to the State Personnel Relations Law
 32 or [ORS chapter 279] **sections 1 to 46 and 47 to 87 of this 2003 Act.**

33 **SECTION 259.** ORS 351.086 is amended to read:

34 351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions
 35 of ORS chapters 240, [279,] 282 and 292 **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
 36 **Act** do not apply to the Oregon University System.

37 (2) Notwithstanding subsection (1) of this section, ORS 240.167, 240.185, [279.029 (4) and (5),
 38 279.321, 279.348, 279.350, 279.352, 279.354, 279.355, 279.356, 279.357, 279.361, 279.363, 279.365, 279.370,
 39 279.375, 279.526 to 279.542,] 279.835 to 279.855 and 292.043 **and sections 50 (3), 51 (3), 118 (1)(a)**
 40 **and (3), 154 to 159, 165, 167, 168, 169, 170, 171, 172, 174, 175, 176, 177 and 178 of this 2003 Act**
 41 shall apply to the Oregon University System.

42 (3) Notwithstanding any other law, the following provisions shall not apply to the Oregon Uni-
 43 versity System:

44 (a) ORS 182.310 to 182.400; and

45 (b) ORS 276.071 and 276.072.

1 (4) In carrying out the duties, functions and powers imposed by law upon the Oregon University
2 System, the State Board of Higher Education or the Chancellor of the Oregon University System
3 may contract with any public agency for the performance of such duties, functions and powers as
4 the Oregon University System considers appropriate.

5 **SECTION 260.** ORS 351.155 is amended to read:

6 351.155. Notwithstanding the applicable provisions of [ORS 279.025 to 279.031, 279.310 to 279.356
7 and 279.400 to 279.990] **ORS 279.835 to 279.855 and sections 18 to 21, 36 to 44, 46, 72 to 78, 79,
8 80, 81, 114, 115, 116, 117, 118, 119, 137 to 143, 144, 145, 154 to 159, 160 to 164, 165 to 179 and 180
9 of this 2003 Act**, the State Board of Higher Education may, in the management of all forestlands
10 under its control and supervision, sell the forest products on such lands in the same manner as is
11 provided in ORS 530.059, and for that purpose the State Board of Higher Education shall have the
12 same powers with respect to experimental or research projects in the field of forestland management
13 or for forest product utilization on forestlands under its control as the State Forester has pursuant
14 to the provisions of ORS 530.050 and 530.059. In the management of its forestlands, the State Board
15 of Higher Education may lease mineral and geothermal resource rights as provided in ORS 351.060
16 (5).

17 **SECTION 261.** ORS 351.689 is amended to read:

18 351.689. The provisions of [ORS chapter 279] **ORS 279.835 to 279.855 and sections 1 to 46, 47
19 to 87 and 88 to 180 of this 2003 Act** do not apply to the Higher Education Technology Transfer
20 Fund Board.

21 **SECTION 262.** Section 5, chapter 835, Oregon Laws 2001, is amended to read:

22 **Sec. 5.** (1) The Higher Education Technology Transfer Account Board shall:

23 (a) Adopt investment policies for the purpose of maintaining, investing and reinvesting assets
24 to earn a return on investments in the Higher Education Technology Transfer Account to further
25 technology transfer programs and other public education activities.

26 (b) Manage the account in accordance with policies adopted under paragraph (a) of this sub-
27 section.

28 (c) Transfer to a state institution of higher education those declared earnings from the account
29 that the board can identify as having been credited to the account as proceeds, dividends or secu-
30 rities received as a result of securities received in exchange for technology transfer by that state
31 institution of higher education. Amounts transferred to a state institution of higher education under
32 this paragraph are continuously appropriated to the Department of Higher Education for use by the
33 state institution of higher education.

34 (2) In managing the account, the board may:

35 (a) Make and enter into contracts, agreements and arrangements as necessary or desirable for
36 carrying out the duties of the board.

37 (b) Retain, employ and contract for the services of private and public financial institutions, in-
38 vestment advisors and managers, depositories and consultants, and for research, technical and other
39 services necessary or desirable for carrying out the purposes of the account and to fulfill the duties
40 of the board.

41 (c) Adopt, amend and repeal rules as necessary for the administration of sections 1 to 6, **chapter
42 835, Oregon Laws 2001** [of this 2001 Act].

43 (d) Take any intellectual property asset of whatever character transferred from a state institu-
44 tion of higher education as part of a technology transfer activity. A transfer of such an intellectual
45 property asset shall not be accepted if such restriction would be contrary to the laws of this state

1 or policies of the board. The account shall be credited with the revenues or other property received
2 in exchange for intellectual property assets received under this paragraph.

3 (e) Solicit and accept gifts, bequests or devises of money, securities or other property of what-
4 ever character to further the mission of the board. A restricted gift, bequest or devise shall not be
5 accepted if such restriction would be contrary to the laws of this state or the policies of the board.
6 The account shall be credited with the money, securities or other property solicited or accepted by
7 the board.

8 (f) Disburse to state institutions of higher education those declared earnings from the account
9 that are appropriated continuously to the board under section 2, **chapter 835, Oregon Laws 2001**
10 *[of this 2001 Act]*.

11 (3) In managing the account, the board shall:

12 (a) Be the custodian of any securities or other property that the board accepts under subsection
13 (2)(d) and (e) of this section. The board shall hold such property as trustee for the Higher Education
14 Technology Transfer Account and shall conserve and administer such property. Except as prohibited
15 by law or restricted by the terms of a transfer, gift, bequest or devise, the board may sell or ex-
16 change such property as the board may from time to time determine. The income from property shall
17 be credited to the Higher Education Technology Transfer Account; and

18 (b) Hold and dispose of securities received in exchange for a technology transfer from a state
19 institution of higher education to a private entity and invest and reinvest such securities or any
20 moneys, proceeds, dividends or securities received as a result of those securities.

21 (4) The provisions of [*ORS chapter 279*] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87**
22 **and 88 to 180 of this 2003 Act** do not apply to the board.

23 **SECTION 263.** ORS 353.100 is amended to read:

24 353.100. (1) The provisions of ORS chapters 35, 190, 192, 244, 281 and 295 and ORS 30.260 to
25 30.460, 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.782, 297.040, 307.090
26 and 307.112 shall apply to Oregon Health and Science University under the same terms as they ap-
27 ply to public bodies other than the state.

28 (2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270, 273,
29 276, [279,] 283, 291, 292, 293, 294 and 297 and ORS 180.060, 180.210 to 180.235, 184.305 to 184.345,
30 190.430, 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120,
31 278.315 to 278.415, **279.835 to 279.855**, 281.210 to 281.260, 282.010 to 282.150, 357.805 to 357.895 and
32 656.017 (2) **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** shall not apply to the
33 university or any not-for-profit organization or other entity, if the equity of the entity is owned ex-
34 clusively by the university, and if the organization or entity is created by the university to advance
35 any of the university's statutory missions.

36 (3) The university, as a distinct governmental entity, or any organization or entity described in
37 subsection (2) of this section shall not be subject to any provision of law enacted after January 1,
38 1995, with respect to any governmental entity, unless the provision specifically provides that it ap-
39 plies to the university or to the organization or entity.

40 **SECTION 264.** ORS 353.130 is amended to read:

41 353.130. The Oregon Health and Science University subscribes to the policy set forth under
42 [*ORS 279.005*] **section 3 of this 2003 Act** regarding public contracting, and shall develop contract
43 policies that support openness, impartiality and competition in the awarding of contracts in ac-
44 cordance with that provision. The university subscribes to the intent of the social policies of [*ORS*
45 *chapter 279*] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act**

1 and shall develop contract policies that are appropriate to the university and are designed to en-
2 courage affirmative action, recycling, inclusion of art in public buildings, the purchase of services
3 and goods from disabled individuals, the protection of workers through the payment of prevailing
4 wages as determined by the Bureau of Labor and Industries, the provision of workers' compensation
5 insurance to workers on contracts and the participation of emerging small businesses and businesses
6 owned by women and minorities.

7 **SECTION 265.** ORS 366.773 is amended to read:

8 366.773. (1) The Legislative Assembly declares that it is the public policy of the State of Oregon
9 to promote cooperation between the Department of Transportation and counties on road mainte-
10 nance projects when it results in an overall benefit to the public. Monetary savings that result from
11 the cooperative efforts shall primarily be retained by the counties and the division of the department
12 that enters into the agreement. The participants should endeavor to cooperate regardless of the
13 proportion of benefit to either party.

14 (2) A county and the Department of Transportation or a division of the department may estab-
15 lish an intergovernmental road maintenance agreement that will govern the maintenance of state
16 highways and county roads within the county or other areas described by the agreement or of a
17 particular road project. The agreement must be ratified by the governing body of the county and the
18 Director of Transportation. An agreement under this section shall require highways and roads to
19 be maintained in accordance with standards mutually established by the Oregon Transportation
20 Commission and the county governing body.

21 (3) All employees and managers of the department and the county who will perform road main-
22 tenance activities described in the agreement or who will be involved in the road project described
23 in the agreement must be given a reasonable opportunity to participate with the department and the
24 counties in establishing the terms and provisions of the agreement.

25 (4) Nothing in this section or in the agreement affects title to or ownership of state highways
26 or county roads.

27 (5) The agreement must:

28 (a) Provide for the use of state and county road maintenance equipment and facilities by the
29 participants.

30 (b) Recognize an agreement between either participant and a state or federal agency established
31 to protect the environment. The intergovernmental road maintenance agreement should contain
32 references to applicable provisions that implement procedures and specifications contained in the
33 agreement between either participant and the agency.

34 (c) Establish a procedure, consistent with appropriate collective bargaining agreements, to en-
35 sure that employees of the department and the county are properly supervised.

36 (d) Establish a procedure to determine which maintenance methods will be used by the partic-
37 ipants.

38 (e) Establish a procedure to account for changes in operating costs due to the establishment of
39 the agreement and to allocate increased costs or distribute cost savings between the county and the
40 department.

41 (f) Establish a formula, adjustment factor or procedure for the equitable adjustment and com-
42 parison of the maintenance and equipment use rates required of the department under federal law
43 and the maintenance and equipment use rates employed by the county.

44 (g) Authorize the participants to use either the procurement procedures applicable to the de-
45 partment or the procurement procedures applicable to the county as long as the procurement pro-

1 cedures include adequate safeguards fostering competition and are consistent with [ORS 279.005 and
2 279.007] **sections 3 and 97 of this 2003 Act.**

3 **SECTION 266.** ORS 367.025 is amended to read:

4 367.025. (1) If the Department of Transportation determines that it is necessary or desirable to
5 issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the
6 department shall ask the State Treasurer to issue infrastructure bonds.

7 (2) When the department asks the State Treasurer to issue infrastructure bonds, if the State
8 Treasurer determines that infrastructure bonds shall be issued:

9 (a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the
10 infrastructure fund.

11 (b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial
12 advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond
13 counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with
14 bond counsel if the services provided under the agreement comply with the provisions of ORS
15 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The
16 department may not appoint bond counsel under this paragraph unless the State Treasurer has re-
17 viewed and approved the terms and conditions of the appointment. [ORS 279.712 does] **Sections 7**
18 **and 18 of this 2003 Act do** not apply to an appointment or agreement described in this paragraph.

19 **SECTION 267.** ORS 368.051 is amended to read:

20 368.051. The county road official or such other person as may be designated by the county
21 governing body shall maintain a complete and accurate cost account for road work performed by the
22 county as required under [ORS 279.023] **section 98 of this 2003 Act.**

23 **SECTION 268.** ORS 377.836 is amended to read:

24 377.836. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this
25 section, the provisions of **ORS 279.835 to 279.855 and** ORS chapters 240, 276, [279,] 282, 283, 291,
26 292 and 293 **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply to the
27 Travel Information Council. The council is subject to all other statutes governing a state agency
28 that do not conflict with ORS 377.700 to 377.840, including the tort liability provisions of ORS 30.260
29 to 30.300 and the provisions of ORS 183.310 to 183.550. Subject to the requirements of ORS chapter
30 238, the council's employees are members of the Public Employees Retirement System.

31 (2) The following shall apply to the council:

32 [(a) ORS 279.800 to 279.830;]

33 **(a) Sections 36 to 44 of this 2003 Act;**

34 (b) ORS 282.210 to 282.230; and

35 (c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630.

36 **SECTION 269.** ORS 383.017 is amended to read:

37 383.017. (1) The Department of Transportation may award any contract, franchise, license or
38 agreement related to a tollway project, other than a concession for the provision of goods or ser-
39 vices at a rest area, under a competitive process or by private negotiation with one or more entities,
40 or by any combination of competition and negotiation without regard to any other laws concerning
41 the procurement of goods or services for projects of the state.

42 (2) When using a competitive process for the award of a tollway project contract, the depart-
43 ment shall consider the following factors in addition to the proposer's estimate of cost:

44 (a) The quality of the design, if applicable, submitted by a proposer. In considering the quality
45 of the design of a tollway project, the department shall take into consideration:

1 (A) The structural integrity of the design, including the probable effect of the design on the fu-
2 ture costs of maintenance of the tollway;

3 (B) The aesthetic qualities of the design, including such factors as the width of lane separators,
4 landscaping and sound walls;

5 (C) The traffic capacity of the design;

6 (D) The aspects of the design that affect safety, such as the lane width, the quality of lane
7 markers and separators, the shape and positioning of ramps and curves and the changes in elevation;
8 and

9 (E) The ease with which traffic will be able to pass through the toll collection facilities.

10 (b) The extent to which small businesses will be involved in the tollway project. The department
11 shall encourage participation by small businesses to the maximum extent the department determines
12 is practicable. As used in this paragraph, "small business" means an independent business with
13 fewer than 20 employees and with average annual gross receipts over the last three years not ex-
14 ceeding \$1 million for construction firms and \$300,000 for nonconstruction firms. "Small business"
15 does not include a subsidiary or parent company belonging to a group of firms that are owned and
16 controlled by the same individuals and that have average aggregate annual gross receipts in excess
17 of \$1 million for construction firms or \$300,000 for nonconstruction firms over the last three years.

18 (c) The financial stability of the proposer and the ability of the proposer to provide funding for
19 the tollway project and surety for its performance and financial obligations with respect to the
20 tollway project.

21 (d) The experience of the proposer and its subcontractors in building and operating projects
22 such as the tollway project.

23 (e) The terms of the financial arrangement proposed or accepted by the proposer with respect
24 to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate
25 of return from its operation or maintenance of the tollway.

26 (3)(a) The department may adopt rules and procedures for the award of franchises, licenses,
27 leases or other concessions for rest areas without regard to any other laws concerning the pro-
28 curement of goods or services for projects of the state. All such franchises, licenses, leases or other
29 concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to main-
30 tain the subject premises in accordance with all applicable state and federal health and safety
31 standards, to maintain one or more policies of casualty and property insurance and adequate work-
32 ers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or
33 claims that are levied, assessed or charged against the premises or concession or that may become
34 a lien upon the premises. The rules shall encourage participation by small businesses to the maxi-
35 mum extent the department determines is practicable. The department may grant any small business
36 a 10 percent or greater bid advantage in any bidding process for a concession.

37 (b) As used in this subsection, "small business" means an independent business with fewer than
38 20 employees and with average annual gross receipts over the last three years not exceeding
39 \$300,000. "Small business" does not include a subsidiary or parent company belonging to a group
40 of firms that are owned and controlled by the same individuals and that have average aggregate
41 annual gross receipts in excess of \$300,000 over the last three years. "Small business" also does not
42 include a franchise of any business that has average aggregate annual gross receipts in excess of
43 \$300,000 over the last three years.

44 (4) Notwithstanding any other provision of this section, the department may use any method for
45 the award of any contract, franchise, license or agreement that is necessary to comply with the re-

1 requirements of any grant or other funding source.

2 (5) If public funds are involved in the project, construction of a tollway project shall be subject
3 to the prevailing wage requirements of [ORS 279.348 to 279.380] **sections 165 to 179 of this 2003**
4 **Act.**

5 (6) For purposes of complying with applicable state and local land use laws, including statewide
6 planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215,
7 221, 222 and 227, and any requirement imposed by the Land Conservation and Development Com-
8 mission, a tollway project shall be treated as a project of the department and not as a project of
9 any other person or entity.

10 (7) Tollways, and any related facilities that would normally be purchased, constructed or in-
11 stalled by the department if the tollway were a conventional highway that was constructed and op-
12 erated by the department, shall be exempt from ad valorem property taxation.

13 (8) Tollways are considered state highways for purposes of law enforcement and application of
14 the Oregon Vehicle Code.

15 **SECTION 270.** ORS 390.195 is amended to read:

16 390.195. (1) The State Parks and Recreation Department shall use state correctional institution
17 inmate labor to improve, maintain and repair buildings and property at state parks and recreation
18 areas whenever feasible. The provisions of [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to**
19 **180 of this 2003 Act** do not apply to the use of state correctional institution inmate labor under this
20 section.

21 (2) The State Parks and Recreation Director shall assign and supervise the work of the state
22 inmates who are performing the work described in subsection (1) of this section.

23 (3) Nothing in this section is intended to exempt the State Parks and Recreation Department
24 from the provisions of ORS 279.835 to 279.855 for any purpose other than the use of state
25 correctional institution inmate labor.

26 **SECTION 271.** ORS 391.150 is amended to read:

27 391.150. (1) The Department of Transportation and the Tri-County Metropolitan Transportation
28 District shall jointly manage the construction phases of the Westside corridor light rail project. The
29 final project management plans of the managing agencies shall provide that the district shall manage
30 and oversee construction of the light rail right of way and facilities and that the department shall
31 manage and oversee the construction of highway improvements related to the extension of the light
32 rail system. The department and the district shall describe in a memorandum of understanding or
33 grant agreement the functions and responsibilities assigned to each of the managing agencies and
34 shall establish an organizational and management system for the project under which significant
35 actions during the construction phase occur only with the knowledge of both of the managing
36 agencies.

37 (2) Subject to [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** and
38 any applicable prohibitions against preferences in contracts related to the construction phase of the
39 Westside corridor light rail project, the managing agencies shall develop procedures that afford
40 qualified businesses in Oregon the opportunity to compete for project contracts to the maximum
41 extent feasible and consistent with federal laws and regulations governing Federal Transit Admin-
42 istration grants.

43 (3) The managing agencies shall seek the cooperation and assistance of contracting and con-
44 struction associations in this state when establishing the contracting procedures for the Westside
45 corridor light rail project. The managing agencies shall also establish and implement programs to

1 provide contracting and construction businesses with information relating to the project.

2 (4) The managing agencies, to the maximum extent feasible, shall encourage disadvantaged
3 business enterprises to bid for contracts and to otherwise participate in the Westside corridor light
4 rail project.

5 **SECTION 272.** ORS 396.345 is amended to read:

6 396.345. The moneys received by the Adjutant General from fines imposed by courts-martial and,
7 except as provided in ORS 283.110[, 279.828 and 279.831] **and sections 42 and 43 of this 2003 Act**,
8 the moneys received from other miscellaneous sources shall be deposited in the General Fund in the
9 State Treasury, to be available for general governmental expenses.

10 **SECTION 273.** ORS 407.177 is amended to read:

11 407.177. (1) When the Director of Veterans' Affairs considers such contracts necessary to im-
12 prove the financial condition of the loan program conducted under this chapter, the director is au-
13 thorized to enter into contracts with lending institutions under which the lending institutions may
14 provide any of the following services:

- 15 (a) Processing of new loans and purchase contracts; and
- 16 (b) Management and servicing of new loans and purchase contracts.

17 (2) Contracts entered into by the director under this section may provide that the lending in-
18 stitution:

- 19 (a) Receive applications for loans for the acquisition of homes or farms under this chapter;
- 20 (b) Immediately investigate and process an application for a loan as provided by law; and
- 21 (c) For approved loans or contracts, if requested by the director, service the loan or purchase
22 contract for a period of time specified by the director.

23 (3) When a lending institution, pursuant to a contract authorized by this section, receives an
24 application for a loan for the acquisition of a manufactured home, as defined in ORS 197.295, the
25 lending institution shall investigate and process the application in the manner prescribed in the
26 contract between the lending institution and the director.

27 (4) When a lending institution, pursuant to a contract authorized by this section, investigates
28 and processes a loan application that it considers eligible for approval under this chapter, the
29 lending institution shall notify the director and state the reasons why the loan may be approved
30 under this chapter. The director shall retain final authority to approve or disapprove the loan. If
31 the director disapproves the loan, the director shall notify the lending institution and the applicant
32 of the disapproval and shall indicate the reasons for the disapproval. When the director is satisfied
33 that all requirements for approval of a loan have been met by the applicant and the lending insti-
34 tution and that the property offered as security for the loan protects the interests of the state, the
35 director shall transfer to the lending institution an amount of money from the Oregon War Veterans'
36 Fund equal to the loan amount approved by the director. The lending institution shall disburse the
37 money in the manner prescribed by the director. The lending institution shall record the mortgage,
38 trust deed, contract or other security agreement relating to the loan and then shall forward all the
39 original loan documents to the director.

40 (5) All moneys received by a lending institution as payments on principal and interest for loans
41 made under this chapter shall be paid to the director in accordance with the terms of the contract
42 between the director and the lending institution.

43 (6) The director and lending institution shall mutually agree upon the compensation to be paid
44 to the lending institution for services performed under a contract authorized by this section. Such
45 compensation may be a fixed annual payment or a percentage of the amount of each loan or pur-

1 chase contract processed or serviced by the lending institution under the contract.

2 (7) Contracts entered into under this section are exempt from the requirements of the provisions
3 of [ORS chapter 279] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this**
4 **2003 Act** regarding personal [service] **services** contracts.

5 (8) As used in this section, "lending institution" means an entity that is licensed to conduct
6 business in the State of Oregon exclusively or in part as a mortgage lender or a conduit for mort-
7 gage loans and that, in the judgment of the director, is capable of meeting the needs of the director
8 in carrying out this chapter.

9 **SECTION 274.** ORS 408.375 is amended to read:

10 408.375. The Director of Veterans' Affairs shall enter into a contract with a nongovernmental
11 entity for the operation and management of the second Oregon Veterans' Home authorized by sec-
12 tion 1, chapter 591, Oregon Laws 1995. The entity with whom the director contracts under this
13 section shall be a person experienced in the operation and staffing of long term care facilities, as
14 defined in ORS 442.015. The contract executed under this section shall be subject to the require-
15 ments of [ORS 279.005 to 279.111] **sections 1 to 46 and 47 to 87 of this 2003 Act, except section**
16 **77 of this 2003 Act**, and shall provide that:

17 (1) The party who contracts to manage and operate the second Oregon Veterans' Home shall
18 be responsible for hiring and maintaining the necessary staff for the facility.

19 (2) The Director of Veterans' Affairs shall assign not more than one state employee on a full-
20 time basis to provide oversight of the management of the facility.

21 (3) The second Oregon Veterans' Home shall admit only patients who are war veterans, as de-
22 fined in ORS 174.105.

23 **SECTION 275.** ORS 414.630 is amended to read:

24 414.630. (1) The Department of Human Services shall execute prepaid capitated health service
25 contracts for at least hospital or physician medical care, or both, with hospital and medical organ-
26 izations, health maintenance organizations and any other appropriate public or private persons.

27 (2) For purposes of ORS [279.015, 279.712,] 414.145 and 414.610 to 414.640 **and sections 7, 18**
28 **and 50 to 57 of this 2003 Act**, instrumentalities and political subdivisions of the state are author-
29 ized to enter into prepaid capitated health service contracts with the Department of Human Services
30 and shall not thereby be considered to be transacting insurance.

31 (3) In the event that there is an insufficient number of qualified bids for prepaid capitated health
32 services contracts for hospital or physician medical care, or both, in some areas of the state, the
33 department may continue a fee for service payment system.

34 (4) Payments to providers may be subject to contract provisions requiring the retention of a
35 specified percentage in an incentive fund or to other contract provisions by which adjustments to
36 the payments are made based on utilization efficiency.

37 **SECTION 276.** ORS 414.640 is amended to read:

38 414.640. (1) Eligible persons shall select, to the extent practicable as determined by the De-
39 partment of Human Services, from among available providers participating in the program.

40 (2) The department by rule shall define the circumstances under which it may choose to reim-
41 burse for any medical services not covered under the prepaid capitation or costs of related services
42 provided by or under referral from any physician participating in the program in which the eligible
43 person is enrolled.

44 (3) The department shall establish requirements as to the minimum time period that an eligible
45 person is assigned to specific providers in the system.

1 (4) Actions taken by providers, potential providers, contractors and bidders in specific accord-
 2 ance with this chapter in forming consortiums or in otherwise entering into contracts to provide
 3 medical care shall be considered to be conducted at the direction of this state, shall be considered
 4 to be lawful trade practices and shall not be considered to be the transaction of insurance for pur-
 5 poses of ORS [279.015, 279.712,] 414.145 and 414.610 to 414.640 **and sections 7, 18 and 50 to 57 of**
 6 **this 2003 Act.**

7 **SECTION 277.** ORS 414.725 is amended to read:

8 414.725. Upon meeting the requirements of section 9, chapter 836, Oregon Laws 1989:

9 (1) Pursuant to rules adopted by the Department of Human Services, the department shall exe-
 10 cute prepaid managed care health services contracts for the health services funded pursuant to
 11 section 9, chapter 836, Oregon Laws 1989. The contract must require that all services are provided
 12 to the extent and scope of the Health Services Commission's report for each service provided under
 13 the contract. Such contracts are not subject to [ORS 279.011 to 279.063] **sections 1 to 46 and 47**
 14 **to 87 of this 2003 Act, except sections 36 to 44 and 77 of this 2003 Act.** It is the intent of ORS
 15 414.705 to 414.750 that the state move toward utilizing full service managed care health service
 16 providers for providing health services under ORS 414.705 to 414.750. The department shall solicit
 17 qualified providers or plans to be reimbursed at rates which cover the costs of providing the covered
 18 services. Such contracts may be with hospitals and medical organizations, health maintenance or-
 19 ganizations, managed health care plans and any other qualified public or private entities. The de-
 20 partment shall not discriminate against any contractors which offer services within their providers'
 21 lawful scopes of practice.

22 (2) In the event that there is an insufficient number of qualified entities to provide for prepaid
 23 managed health services contracts in certain areas of the state, the department may institute a
 24 fee-for-service case management system where possible or may continue a fee-for-service payment
 25 system for those areas that pay for the same services provided under the health services contracts
 26 for persons eligible for health services under ORS 414.705 to 414.750. In addition, the department
 27 may make other special arrangements as necessary to increase the interest of providers in partic-
 28 ipation in the state's managed care system, including but not limited to the provision of stop-loss
 29 insurance for providers wishing to limit the amount of risk they wish to underwrite.

30 (3) As provided in subsections (1) and (2) of this section, the aggregate expenditures by the de-
 31 partment for health services provided pursuant to ORS 414.705 to 414.750 shall not exceed the total
 32 dollars appropriated for health services under ORS 414.705 to 414.750.

33 (4) Actions taken by providers, potential providers, contractors and bidders in specific accord-
 34 ance with ORS 414.705 to 414.750 in forming consortiums or in otherwise entering into contracts to
 35 provide health care services shall be performed pursuant to state supervision and shall be consid-
 36 ered to be conducted at the direction of this state, shall be considered to be lawful trade practices
 37 and shall not be considered to be the transaction of insurance for purposes of the Insurance Code.

38 (5) Health care providers contracting to provide services under ORS 414.705 to 414.750 shall
 39 advise a patient of any service, treatment or test that is medically necessary but not covered under
 40 the contract if an ordinarily careful practitioner in the same or similar community would do so un-
 41 der the same or similar circumstances.

42 **SECTION 278.** Section 49, chapter 1084, Oregon Laws 1999, is amended to read:

43 **Sec. 49.** (1) The Board of Trustees of the Children's Trust Fund is abolished. Subject to the
 44 conditions in section 48, **chapter 1084, Oregon Laws 1999** [of this 1999 Act], the following are
 45 transferred to the private nonprofit corporation known as the Children's Trust Fund of Oregon, In-

1 corporated:

2 (a) All assets of the board, including but not limited to bank accounts and subaccounts; and

3 (b) All rights and obligations of the board legally incurred or acquired under leases, contracts
4 and business transactions, executed or entered into with owners of real property, independent con-
5 tractors or other entities or bodies prior to the operative date of this section.

6 (2) All *[public]* **contracting** agencies, as defined in *[ORS 279.011]* **section 2 of this 2003 Act**,
7 shall consent to the assignment to the Children's Trust Fund of Oregon, Incorporated, of leases,
8 contracts or business transactions described in subsection (1)(b) of this section, which shall continue
9 to be effective in accordance with their terms.

10 (3) The transfer of assets, rights and obligations described in this section is subject only to the
11 requirements imposed under section 48, **chapter 1084, Oregon Laws 1999**, *[of this 1999 Act]* and
12 not to *[ORS chapter 279]* **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** relating to
13 public contracts and purchasing.

14 (4) Subject to the conditions required under section 48, **chapter 1084, Oregon Laws 1999** *[of*
15 *this 1999 Act]*, the administrator of the Board of Trustees of the Children's Trust Fund shall cause
16 to be delivered to members or employees of the Children's Trust Fund of Oregon, Incorporated, all
17 records and property in the possession of the board that relate to the assets, rights and obligations
18 transferred under this section. However, any public records delivered under this section retain their
19 character as public records subject to ORS 192.410 to 192.505.

20 **SECTION 279.** ORS 421.352 is amended to read:

21 421.352. (1) The provisions of ORS chapters 182, 183, 240, 270, 273, 276, *[279,]* 283, 291, 292 and
22 293 and ORS 184.345, 190.430, 190.490, 200.035, 236.380, 236.605 to 236.640, 243.303, 243.305, 243.315,
23 243.325 to 243.335, 243.345, 243.350, 243.696, **279.835 to 279.855**, 281.210 to 281.260, 282.010 to 282.150
24 and 656.017 (2) **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** shall not apply to
25 Oregon Corrections Enterprises.

26 (2) Oregon Corrections Enterprises shall not be subject to any provision of law enacted after
27 December 2, 1999, that governs state agencies generally unless the provision specifically provides
28 that it applies to Oregon Corrections Enterprises.

29 **SECTION 280.** ORS 421.438 is amended to read:

30 421.438. (1) The Department of Corrections may enter into contracts for the purchase or other
31 acquisition, transfer or disposition of supplies, materials, equipment, products and other personal
32 property, and services for the following prison operations and programs:

33 (a) Prison work and on-the-job training programs;

34 (b) Forest and work camps established under ORS chapter 421;

35 (c) Farm and agricultural operations and programs;

36 (d) Food services operations and programs; and

37 (e) Facility or property maintenance operations and programs.

38 (2) Notwithstanding ORS 179.040 or any other law, the provisions of *[ORS chapter 279]* **ORS**
39 **279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply to
40 contracts entered into by the department under this section.

41 **SECTION 281.** ORS 426.504 is amended to read:

42 426.504. (1) The Department of Human Services may, through contract or otherwise, acquire,
43 purchase, receive, hold, exchange, demolish, construct, lease, maintain, repair, replace, improve and
44 equip community housing for the purpose of housing chronically mentally ill persons.

45 (2) The department may dispose of community housing acquired under subsection (1) of this

1 section in a public or private sale, upon such terms and conditions as the department considers ad-
2 visable to increase the quality and quantity of community housing available for chronically mentally
3 ill persons. In any instrument conveying fee title to community housing, the department shall include
4 language that restricts the use of the community housing to housing for chronically mentally ill
5 persons. Such restriction is not a violation of ORS 93.270.

6 (3) When exercising the authority granted to the department under this section, the department
7 is not subject to ORS chapter 273 or ORS 270.100 to 270.190[,] **or** 276.900 to 276.915 or [279.800 to
8 279.833] **sections 36 to 44 of this 2003 Act.**

9 **SECTION 282.** ORS 427.335 is amended to read:

10 427.335. (1) The Department of Human Services may, through contract or otherwise, acquire,
11 purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, im-
12 prove and equip community housing for the purpose of providing care to individuals with mental
13 retardation or other developmental disability.

14 (2) The department may dispose of community housing acquired under subsection (1) of this
15 section in a public or private sale, upon such terms and conditions as the department considers ad-
16 visable to increase the quality and quantity of community housing for individuals with mental re-
17 tardation or other developmental disability. The department may include in any instrument
18 conveying fee title to community housing language that restricts the use of the community housing
19 to provide care for individuals with mental retardation or other developmental disability. Such re-
20 striction is not a violation of ORS 93.270. Any instrument conveying fee title to community housing
21 under this subsection shall provide that equipment in the community housing is a part of and shall
22 remain with the real property unless such equipment was modified or designed specifically for an
23 individual's use, in which case such equipment shall follow the individual.

24 (3) The department may provide financial assistance to a housing provider or a care provider
25 that wishes to provide community housing for individuals with mental retardation or other devel-
26 opmental disability under rules promulgated by the department.

27 (4) The department may transfer its ownership of equipment to care providers.

28 (5) When exercising the authority granted to the department under this section, the department
29 is not subject to ORS 276.900 to 276.915 [or 279.800 to 279.833] or ORS chapters 270 and 273 **or**
30 **sections 36 to 44 of this 2003 Act.**

31 **SECTION 283.** ORS 452.620 is amended to read:

32 452.620. The State Department of Agriculture shall administer and enforce the provisions of ORS
33 452.610 to 452.630 and 452.990 (2), and in furtherance thereof is authorized:

34 (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, to adopt rules to
35 carry out the provisions of ORS 452.610 to 452.630 and 452.990 (2). In making such rules the de-
36 partment shall consider:

37 (a) The existence, availability and practicality of chemical, biological or other means for the
38 control or eradication of tansy ragwort, and the effectiveness thereof;

39 (b) The effect on the immediate environment of the use of such chemical, biological or other
40 means for control or eradication; and

41 (c) The overall benefit to be derived compared to the costs to be incurred.

42 (2) To cooperate with Oregon State University or any other person in the administration and
43 enforcement of ORS 452.610 to 452.630 and 452.990 (2).

44 (3) To collect, publish, disseminate and furnish information, statistics and advice concerning the
45 research, experimentation, control and eradication of tansy ragwort and the land management and

1 cultural practices recommended for such control and eradication.

2 (4) Notwithstanding any provisions of ORS **279.835 to 279.855** or 561.240 or [*ORS chapter 279*]
3 **sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act** to the contrary, to enter into contracts
4 with Oregon State University or any other person for the purpose of research, experimentation,
5 control or eradication of tansy ragwort, to receive and expend funds pursuant to such contracts and
6 to employ or authorize personnel to act on behalf of the department.

7 (5) To rear, propagate and release biological control agents, including insects or disease
8 organisms, and to construct, purchase, maintain and operate facilities and equipment for such pur-
9 pose.

10 (6) To control, or direct control of, predators and diseases of biological control agents, and to
11 limit or prohibit the movement or use of pesticides or other agriculture chemicals which reasonably
12 could damage or injure such biological control agents.

13 (7) To purchase, use and apply chemical control agents, including pesticides, and to purchase,
14 maintain and operate any application equipment for such purpose.

15 (8) To regulate, restrict or prohibit the movement or sale of hay, seed, other agricultural crops
16 or residues thereof, which are found to contain tansy ragwort or seeds thereof.

17 (9) To limit or prohibit the collection or taking of any biological control agents from public or
18 private lands within this state.

19 (10) To develop appropriate measures for the control or eradication of tansy ragwort on any
20 lands in this state.

21 (11) To have access to all lands within this state to carry out the provisions of ORS 452.610 to
22 452.630 and 452.990 (2), including survey, control and eradication activities and the establishment
23 of quarantines in accordance with ORS 561.510 to 561.600.

24 (12) To request any person owning or controlling land within this state to control, prevent the
25 spread of, or, when feasible, eradicate tansy ragwort, and to supervise such activities.

26 (13) To the extent funds are available for such purpose, to employ or use personnel of other
27 agencies of this state, including but not limited to persons acting under work-release, rehabilitation
28 or youth programs or persons employed and paid from federal funds received under the Emergency
29 Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal or state
30 program intended primarily to alleviate unemployment or to advance research.

31 (14) To establish advisory committees to assist the department in carrying out the provisions
32 of ORS 452.610 to 452.630 and 452.990 (2).

33 **SECTION 284.** ORS 455.465 is amended to read:

34 455.465. (1) In administering a building inspection program, the Department of Consumer and
35 Business Services or a municipality shall:

36 (a) Designate at least three persons licensed under ORS 455.457 from whom the department or
37 municipality will accept plan reviews; or

38 (b) Contract with a person licensed under ORS 455.457 and may include as a term of the con-
39 tract a process for collection of plan review fees.

40 (2) For plan reviews conducted under subsection (1) of this section, the department or a
41 municipality may:

42 (a) Establish the process for collecting fees from a person licensed under ORS 455.457; and

43 (b) Collect an administrative fee as provided in ORS 455.210.

44 (3) The provisions of [*ORS 279.005 to 279.111*] **sections 1 to 46 and 47 to 87 of this 2003 Act**
45 **and sections 89 to 96 and 97 to 136 of this 2003 Act, except section 77 of this 2003 Act,** do not

1 apply to a personal services contract between the department or a municipality and a person li-
2 censed under ORS 455.457.

3 **SECTION 285.** ORS 459.235 is amended to read:

4 459.235. (1) Applications for permits shall be on forms prescribed by the Department of Envi-
5 ronmental Quality. An application shall contain a description of the existing and proposed operation
6 and the existing and proposed facilities at the site, with detailed plans and specifications for any
7 facilities to be constructed. The application shall include a recommendation by each local govern-
8 ment unit having jurisdiction and such other information the department deems necessary in order
9 to determine whether the site and solid waste disposal facilities located thereon and the operation
10 will comply with applicable requirements.

11 (2) The Environmental Quality Commission shall establish a schedule of fees for disposal site
12 permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing
13 and investigating the application, of issuing or denying the requested permit and of an inspection
14 program to determine compliance or noncompliance with the permit.

15 (3) In addition to the fees imposed under subsection (2) of this section, the commission shall
16 establish a schedule of permit fees for the purpose of implementing this section and ORS 90.318,
17 182.375, [279.545 to 279.555, 279.570 to 279.650,] 459.005, 459.015, 459.247, 459.418, 459.995, 459A.005,
18 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.115, 459A.500 to 459A.685,
19 459A.695 and 459A.750 **and sections 17, 21, 49, 78, 79, 81, 188 and 189 of this 2003 Act.** The fees
20 shall be based on the amount of solid waste received at the disposal site.

21 (4) Notwithstanding any other fee or surcharge imposed under ORS 459.005 to 459.437 or
22 459A.005 to 459A.120, for the disposal of solid waste, in order to encourage the use of suitable ma-
23 terial other than virgin material for daily cover at a disposal site, the only fee that may be charged
24 for the disposal of substitute material that is also used for daily cover is the permit fee established
25 under this section.

26 **SECTION 286.** ORS 461.055 is amended to read:

27 461.055. (1) As used in this section:

28 (a) "Advanced digital communications" means equipment, facilities and capability to distribute
29 digital communications signals for the transmission of voice, data, images and video over distance.

30 (b) "Commission" means the Oregon State Lottery Commission.

31 (c) "Telecommunications provider" means any person capable of providing advanced digital
32 communications including, but not limited to, a telecommunications carrier as defined in ORS
33 133.721, a competitive telecommunications provider as defined in ORS 759.005, a cable television
34 provider or an interstate telecommunications provider.

35 (2) Notwithstanding any other law, not later than October 1, 1998, the commission shall estab-
36 lish an emergency lottery computer database center at a location that is within 10 miles of the City
37 of Burns.

38 (3) All telecommunications services for the emergency lottery computer database center shall
39 be procured on public switched networks, insofar as the use of public switched networks does not
40 compromise data security requirements.

41 (4) Notwithstanding [ORS 279.005 to 279.111 and 279.310 to 279.323] **sections 1 to 46 and 47 to**
42 **87 of this 2003 Act and sections 89 to 96, 97 to 136, 137 to 143, 152 and 153 of this 2003 Act,**
43 **except section 77 of this 2003 Act,** the commission by contract shall acquire an advanced digital
44 communications service for the emergency lottery computer database center from a telecommuni-
45 cations provider or a consortium of telecommunications providers capable of providing a network

1 that meets the data security requirements of the commission. Contracts under this section shall
2 provide that all responsibility for construction, installation, operation and maintenance of the net-
3 work shall remain with the contracting telecommunications provider.

4 (5) A telecommunications provider providing contract services to the commission according to
5 subsection (4) of this section may sell or otherwise transfer any excess capacity of the network, if
6 the sale or transfer does not compromise data security requirements of the commission.

7 **SECTION 287.** ORS 461.120 is amended to read:

8 461.120. (1)(a) Except as otherwise provided by law, the provisions of **ORS 279.835 to 279.855**
9 **and** ORS chapters [279,] 282 and 283 **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
10 **Act** do not apply to the Oregon State Lottery Commission unless otherwise provided by this chapter.

11 (b) Officers and employees of the Oregon State Lottery Commission are in the exempt service
12 for purposes of ORS chapter 240 and other related statutes.

13 (c) ORS 276.004 (2), 276.021, 276.037, 276.093 to 276.097, 276.410 to 276.426, 276.428, 276.440,
14 291.038, 291.201 to 291.260 and 292.210 to 292.250 do not apply to the Oregon State Lottery Com-
15 mission.

16 (d) ORS 293.075, 293.190, 293.205 to 293.225 and 293.275 do not apply to the Oregon State Lottery
17 Commission.

18 (e) [ORS 279.053] **Section 13 of this 2003 Act** and ORS chapters 659 and 659A apply to the
19 Oregon State Lottery Commission.

20 (f) Notwithstanding paragraph (a) of this subsection, the provisions of ORS 282.210 shall apply
21 to the Oregon State Lottery Commission.

22 (2) The commission shall, in accordance with ORS 183.310 to 183.550, adopt and enforce rules
23 to carry out the provisions of this chapter.

24 **SECTION 288.** ORS 468.035 is amended to read:

25 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
26 ment of Environmental Quality:

27 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
28 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
29 waters of the state in accordance with rules and standards established by the commission.

30 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
31 gations, research and programs pertaining to the quality and purity of the air or the waters of the
32 state and to the treatment and disposal of wastes.

33 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
34 other states or the federal government, in respect to any proceedings and all matters pertaining to
35 control of air or water pollution or for the formation and submission to the legislature of interstate
36 pollution control compacts or agreements.

37 (d) May employ personnel, including specialists and consultants, purchase materials and sup-
38 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010
39 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and
40 468B.

41 (e) Shall conduct and supervise programs of air and water pollution control education, including
42 the preparation and distribution of information regarding air and water pollution sources and con-
43 trol.

44 (f) Shall provide advisory technical consultation and services to units of local government and
45 to state agencies.

1 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
2 ernment.

3 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or
4 other public or private agencies for the purposes of air and water pollution control, studies or re-
5 search and to expend moneys after appropriation thereof for the purposes given.

6 (i) Shall make such determination of priority of air or water pollution control projects as may
7 be necessary under terms of statutes enacted by the Congress of the United States.

8 (j) Shall seek enforcement of the air and water pollution laws of the state.

9 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
10 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
11 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
12 454.755 and ORS chapters 468, 468A and 468B.

13 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
14 pollution control agencies or with associations of counties, cities, industries and other persons who
15 severally or jointly are or may be the source of air or water pollution, for the prevention and
16 abatement of pollution.

17 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
18 in various regions of the state.

19 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
20 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
21 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
22 468A and 468B.

23 (o) Shall coordinate any activities of the department related to a watershed enhancement project
24 approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
25 cooperating state and federal agencies participating in the project.

26 (2) Nothing in this section shall affect the authority of the Department of Human Services to
27 make and enforce rules:

28 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
29 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

30 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

31 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
32 Forestry Department from independently receiving moneys from a public or private agency for the
33 purposes of preventing or controlling air or water pollution resulting from agricultural or
34 silvicultural activities or soil erosion, or for research related to such purposes.

35 (4)(a) In awarding a public contract under [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88**
36 **to 180 of this 2003 Act** for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517
37 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385,
38 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030,
39 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the depart-
40 ment, and the Oregon Department of Administrative Services, when administering the establishment
41 of such a contract on behalf of the Department of Environmental Quality under [ORS 279.712]
42 **sections 7 and 18 of this 2003 Act**, shall subtract from the amount of any bid or proposal the
43 hazardous waste management fees and solid waste fees that would be required by law to be paid to
44 the department for waste that would be disposed of at a solid waste disposal site or a hazardous
45 waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be

1 established on the basis of reasonable preprocurement estimates of the amount of waste that would
2 be disposed of under the contract and that would be subject to those fees.

3 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
4 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
5 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
6 of amounts of waste that would be disposed of in projects of this character is technically challenging
7 and requires the application of professional discretion. Therefore, no award of a contract under this
8 subsection shall be subject to challenge, under [ORS 279.067] **section 134 of this 2003 Act** or oth-
9 erwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

10 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
11 lishment, by or on behalf of the department, of master contracts by which the department engages
12 the services of a contractor over a period of time for the purpose of issuing work orders for the
13 performance of environmental activities on a project or projects for which the amounts of waste to
14 be disposed of were not reasonably identified at the inception of the master contracts. However, the
15 department shall require any contractor under a master contract to apply the subtraction for fees
16 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
17 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
18 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
19 of Administrative Services from establishing contracts pursuant to this section through contracting
20 procedures authorized by [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
21 **Act** that do not require the solicitation of bids or proposals.

22 **SECTION 289.** ORS 468.035, as amended by section 103, chapter 849, Oregon Laws 1999, is
23 amended to read:

24 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
25 ment of Environmental Quality:

26 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
27 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
28 waters of the state in accordance with rules and standards established by the commission.

29 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
30 gations, research and programs pertaining to the quality and purity of the air or the waters of the
31 state and to the treatment and disposal of wastes.

32 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
33 other states or the federal government, in respect to any proceedings and all matters pertaining to
34 control of air or water pollution or for the formation and submission to the legislature of interstate
35 pollution control compacts or agreements.

36 (d) May employ personnel, including specialists, consultants and hearing officers, purchase ma-
37 terials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS
38 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chap-
39 ters 468, 468A and 468B.

40 (e) Shall conduct and supervise programs of air and water pollution control education, including
41 the preparation and distribution of information regarding air and water pollution sources and con-
42 trol.

43 (f) Shall provide advisory technical consultation and services to units of local government and
44 to state agencies.

45 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-

1 ernment.

2 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or
3 other public or private agencies for the purposes of air and water pollution control, studies or re-
4 search and to expend moneys after appropriation thereof for the purposes given.

5 (i) Shall make such determination of priority of air or water pollution control projects as may
6 be necessary under terms of statutes enacted by the Congress of the United States.

7 (j) Shall seek enforcement of the air and water pollution laws of the state.

8 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
9 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
10 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
11 454.755 and ORS chapters 468, 468A and 468B.

12 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
13 pollution control agencies or with associations of counties, cities, industries and other persons who
14 severally or jointly are or may be the source of air or water pollution, for the prevention and
15 abatement of pollution.

16 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
17 in various regions of the state.

18 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
19 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
20 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
21 468A and 468B.

22 (o) Shall coordinate any activities of the department related to a watershed enhancement project
23 approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
24 cooperating state and federal agencies participating in the project.

25 (2) Nothing in this section shall affect the authority of the Department of Human Services to
26 make and enforce rules:

27 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
28 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

29 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

30 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
31 Forestry Department from independently receiving moneys from a public or private agency for the
32 purposes of preventing or controlling air or water pollution resulting from agricultural or
33 silvicultural activities or soil erosion, or for research related to such purposes.

34 (4)(a) In awarding a public contract under [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88**
35 **to 180 of this 2003 Act** for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517
36 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385,
37 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030,
38 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the depart-
39 ment, and the Oregon Department of Administrative Services, when administering the establishment
40 of such a contract on behalf of the Department of Environmental Quality under [ORS 279.712]
41 **sections 7 and 18 of this 2003 Act**, shall subtract from the amount of any bid or proposal the
42 hazardous waste management fees and solid waste fees that would be required by law to be paid to
43 the department for waste that would be disposed of at a solid waste disposal site or a hazardous
44 waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be
45 established on the basis of reasonable preprocurement estimates of the amount of waste that would

1 be disposed of under the contract and that would be subject to those fees.

2 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
3 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
4 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
5 of amounts of waste that would be disposed of in projects of this character is technically challenging
6 and requires the application of professional discretion. Therefore, no award of a contract under this
7 subsection shall be subject to challenge, under [ORS 279.067] **section 134 of this 2003 Act** or oth-
8 erwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

9 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
10 lishment, by or on behalf of the department, of master contracts by which the department engages
11 the services of a contractor over a period of time for the purpose of issuing work orders for the
12 performance of environmental activities on a project or projects for which the amounts of waste to
13 be disposed of were not reasonably identified at the inception of the master contracts. However, the
14 department shall require any contractor under a master contract to apply the subtraction for fees
15 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
16 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
17 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
18 of Administrative Services from establishing contracts pursuant to this section through contracting
19 procedures authorized by [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
20 **Act** that do not require the solicitation of bids or proposals.

21 **SECTION 290.** ORS 468.035, as amended by section 17, chapter 495, Oregon Laws 2001, is
22 amended to read:

23 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
24 ment of Environmental Quality:

25 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
26 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
27 waters of the state in accordance with rules and standards established by the commission.

28 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
29 gations, research and programs pertaining to the quality and purity of the air or the waters of the
30 state and to the treatment and disposal of wastes.

31 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
32 other states or the federal government, in respect to any proceedings and all matters pertaining to
33 control of air or water pollution or for the formation and submission to the legislature of interstate
34 pollution control compacts or agreements.

35 (d) May employ personnel, including specialists and consultants, purchase materials and sup-
36 plies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010
37 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and
38 468B.

39 (e) Shall conduct and supervise programs of air and water pollution control education, including
40 the preparation and distribution of information regarding air and water pollution sources and con-
41 trol.

42 (f) Shall provide advisory technical consultation and services to units of local government and
43 to state agencies.

44 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
45 ernment.

1 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or
2 other public or private agencies for the purposes of air and water pollution control, studies or re-
3 search and to expend moneys after appropriation thereof for the purposes given.

4 (i) Shall make such determination of priority of air or water pollution control projects as may
5 be necessary under terms of statutes enacted by the Congress of the United States.

6 (j) Shall seek enforcement of the air and water pollution laws of the state.

7 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
8 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
9 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
10 454.755 and ORS chapters 468, 468A and 468B.

11 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
12 pollution control agencies or with associations of counties, cities, industries and other persons who
13 severally or jointly are or may be the source of air or water pollution, for the prevention and
14 abatement of pollution.

15 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
16 in various regions of the state.

17 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
18 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
19 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
20 468A and 468B.

21 (o) Shall coordinate any activities of the department related to a watershed enhancement project
22 approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
23 cooperating state and federal agencies participating in the project.

24 (2) Nothing in this section shall affect the authority of the Department of Human Services to
25 make and enforce rules:

26 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
27 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

28 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

29 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
30 Forestry Department from independently receiving moneys from a public or private agency for the
31 purposes of preventing or controlling air or water pollution resulting from agricultural or
32 silvicultural activities or soil erosion, or for research related to such purposes.

33 (4)(a) In awarding a public contract under [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88**
34 **to 180 of this 2003 Act** for a removal or remedial action pursuant to ORS 465.200 to 465.510, a
35 corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706
36 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085,
37 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department
38 of Administrative Services, when administering the establishment of such a contract on behalf of the
39 Department of Environmental Quality under [ORS 279.712] **sections 7 and 18 of this 2003 Act**, shall
40 subtract from the amount of any bid or proposal the hazardous waste management fees and solid
41 waste fees that would be required by law to be paid to the department for waste that would be
42 disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on
43 the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable
44 preprocurement estimates of the amount of waste that would be disposed of under the contract and
45 that would be subject to those fees.

1 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
 2 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
 3 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
 4 of amounts of waste that would be disposed of in projects of this character is technically challenging
 5 and requires the application of professional discretion. Therefore, no award of a contract under this
 6 subsection shall be subject to challenge, under [ORS 279.067] **section 134 of this 2003 Act** or oth-
 7 erwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

8 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
 9 lishment, by or on behalf of the department, of master contracts by which the department engages
 10 the services of a contractor over a period of time for the purpose of issuing work orders for the
 11 performance of environmental activities on a project or projects for which the amounts of waste to
 12 be disposed of were not reasonably identified at the inception of the master contracts. However, the
 13 department shall require any contractor under a master contract to apply the subtraction for fees
 14 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
 15 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
 16 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
 17 of Administrative Services from establishing contracts pursuant to this section through contracting
 18 procedures authorized by [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
 19 **Act** that do not require the solicitation of bids or proposals.

20 **SECTION 291.** ORS 468.035, as amended by section 103, chapter 849, Oregon Laws 1999, and
 21 section 18, chapter 495, Oregon Laws 2001, is amended to read:

22 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
 23 ment of Environmental Quality:

24 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
 25 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
 26 waters of the state in accordance with rules and standards established by the commission.

27 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
 28 gations, research and programs pertaining to the quality and purity of the air or the waters of the
 29 state and to the treatment and disposal of wastes.

30 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
 31 other states or the federal government, in respect to any proceedings and all matters pertaining to
 32 control of air or water pollution or for the formation and submission to the legislature of interstate
 33 pollution control compacts or agreements.

34 (d) May employ personnel, including specialists, consultants and hearing officers, purchase ma-
 35 terials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS
 36 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chap-
 37 ters 468, 468A and 468B.

38 (e) Shall conduct and supervise programs of air and water pollution control education, including
 39 the preparation and distribution of information regarding air and water pollution sources and con-
 40 trol.

41 (f) Shall provide advisory technical consultation and services to units of local government and
 42 to state agencies.

43 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
 44 ernment.

45 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or

1 other public or private agencies for the purposes of air and water pollution control, studies or re-
2 search and to expend moneys after appropriation thereof for the purposes given.

3 (i) Shall make such determination of priority of air or water pollution control projects as may
4 be necessary under terms of statutes enacted by the Congress of the United States.

5 (j) Shall seek enforcement of the air and water pollution laws of the state.

6 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
7 compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
8 issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
9 454.755 and ORS chapters 468, 468A and 468B.

10 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
11 pollution control agencies or with associations of counties, cities, industries and other persons who
12 severally or jointly are or may be the source of air or water pollution, for the prevention and
13 abatement of pollution.

14 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
15 in various regions of the state.

16 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
17 out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
18 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
19 468A and 468B.

20 (o) Shall coordinate any activities of the department related to a watershed enhancement project
21 approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
22 cooperating state and federal agencies participating in the project.

23 (2) Nothing in this section shall affect the authority of the Department of Human Services to
24 make and enforce rules:

25 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
26 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

27 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

28 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
29 Forestry Department from independently receiving moneys from a public or private agency for the
30 purposes of preventing or controlling air or water pollution resulting from agricultural or
31 silvicultural activities or soil erosion, or for research related to such purposes.

32 (4)(a) In awarding a public contract under [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88**
33 **to 180 of this 2003 Act** for a removal or remedial action pursuant to ORS 465.200 to 465.510, a
34 corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706
35 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085,
36 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department
37 of Administrative Services, when administering the establishment of such a contract on behalf of the
38 Department of Environmental Quality under [ORS 279.712] **sections 7 and 18 of this 2003 Act**, shall
39 subtract from the amount of any bid or proposal the hazardous waste management fees and solid
40 waste fees that would be required by law to be paid to the department for waste that would be
41 disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on
42 the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable
43 preprocurement estimates of the amount of waste that would be disposed of under the contract and
44 that would be subject to those fees.

45 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract

1 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
 2 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
 3 of amounts of waste that would be disposed of in projects of this character is technically challenging
 4 and requires the application of professional discretion. Therefore, no award of a contract under this
 5 subsection shall be subject to challenge, under [ORS 279.067] **section 134 of this 2003 Act** or oth-
 6 erwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

7 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
 8 lishment, by or on behalf of the department, of master contracts by which the department engages
 9 the services of a contractor over a period of time for the purpose of issuing work orders for the
 10 performance of environmental activities on a project or projects for which the amounts of waste to
 11 be disposed of were not reasonably identified at the inception of the master contracts. However, the
 12 department shall require any contractor under a master contract to apply the subtraction for fees
 13 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
 14 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
 15 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
 16 of Administrative Services from establishing contracts pursuant to this section through contracting
 17 procedures authorized by [ORS chapter 279] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
 18 **Act** that do not require the solicitation of bids or proposals.

19 **SECTION 292.** ORS 468.265 is amended to read:

20 468.265. (1) In addition to any other powers which it may now have, each county shall have the
 21 following powers, together with all powers incidental thereto or necessary for the performance of
 22 the following:

23 (a) To acquire, whether by purchase, exchange, devise, gift or otherwise, establish, construct,
 24 improve, maintain, equip and furnish one or more pollution control facilities or any interest therein
 25 to be located, in whole or in part, within such municipality or in another municipality, if the other
 26 municipality gives written consent.

27 (b) To enter into a lease, sublease, lease-purchase, installment sale, sale, or agreement for any
 28 facility upon such terms and conditions as the governing body may deem advisable, provided the
 29 same shall at least fully cover all debt service requirements with respect to the facility and shall
 30 not conflict with the provisions of ORS 468.263 to 468.272.

31 (c) To sell, exchange, donate and convey to others any or all facilities upon such terms as the
 32 governing body may deem advisable, including the power to receive for any such sale the note or
 33 notes of the purchaser of the facilities or property whenever the governing body finds any such
 34 action to be in furtherance of the purposes of ORS 468.263 to 468.272.

35 (d) To issue revenue bonds for the purpose of carrying out any of its powers under ORS 468.263
 36 to 468.272.

37 (e) Whenever the governing body finds such loans to be in the furtherance of the purposes of
 38 ORS 468.263 to 468.272 and subject always to the limitations contained in ORS 468.266, to make
 39 secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction,
 40 improvement or equipping of a facility and to charge and collect interest on such loans and pledge
 41 the proceeds thereof as security for the payment of the principal and interest of any bonds issued
 42 hereunder and any agreements made in connection therewith. A facility, in whole or in part, must
 43 be located in the municipality or in another municipality if the other municipality gives written
 44 consent.

45 (f) To mortgage and pledge any or all facilities or any part or parts thereof, whether then owned

1 or thereafter acquired, and to pledge the revenues, proceeds and receipts or any portion thereof
2 from a facility as security for the payment of the principal of and interest on any bonds so issued.

3 (g) To refund outstanding obligations incurred by an enterprise to finance the cost of a facility
4 when the governing body finds that such refinancing is in the public interest.

5 (h) To pay compensation for professional services and other services as the governing body shall
6 deem necessary to carry out the purposes of ORS 468.263 to 468.272.

7 (i) To acquire and hold obligations of any kind to carry out the purposes of ORS 468.263 to
8 468.272.

9 (j) To invest and reinvest funds under its control as the governing body shall direct.

10 (k) To enter into contracts and execute any agreements or instruments and to do any and all
11 things necessary or appropriate to carry out the purposes of ORS 468.263 to 468.272.

12 (L) To acquire, own, sell, assign or otherwise hold legal or equitable title to or an interest in
13 pollution control facilities or hold federal tax ownership of pollution control facilities.

14 (2) The county shall not have the power to operate any facility as a business other than as
15 owner pursuant to subsection (1)(L) of this section or as lessor or seller, nor shall it permit any
16 funds derived from the sale of bonds to be used by any lessee or purchaser of a facility as working
17 capital.

18 (3) Counties may jointly exercise any power or authority granted under ORS 468.263 to 468.272,
19 including, without limitation, the power to borrow money or issue bonds or notes.

20 (4) For the purpose of exercising the power and authority granted under ORS 468.263 to 468.272,
21 a county is not subject to the requirements of [ORS chapter 279] **ORS 279.835 to 279.855 or**
22 **sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act.**

23 **SECTION 293.** ORS 468A.707 is amended to read:

24 468A.707. (1) The Environmental Quality Commission by rule shall:

25 (a) Establish an asbestos abatement program that assures the proper and safe abatement of
26 asbestos hazards through contractor licensing and worker training.

27 (b) Establish the date after which a contractor must be licensed under ORS 468A.720 and a
28 worker must hold a certificate under ORS 468A.730.

29 (c) Establish criteria and provisions for granting an extension of time for contractor licensing
30 and worker certification, which may consider the number of workers and the availability of ac-
31 credited training courses.

32 (2) The program established under subsection (1) of this section shall include at least:

33 (a) Criteria for contractor licensing and training;

34 (b) Criteria for worker certification and training;

35 (c) Standardized training courses; and

36 (d) A procedure for inspecting asbestos abatement projects.

37 (3) In establishing the training requirements under subsections (1) and (2) of this section, the
38 commission shall adopt different training requirements that reflect the different levels of responsi-
39 bility of the contractor or worker, so that within the category of contractor, sublevels shall be
40 separately licensed or exempted and within the category of worker, sublevels shall be separately
41 certified or exempted. The commission shall specifically address as a separate class, those contrac-
42 tors and workers who perform small scale, short duration renovating and maintenance activity. As
43 used in this subsection, "small scale, short duration renovating and maintenance activity" means a
44 task for which the removal of asbestos is not the primary objective of the job, including but not
45 limited to:

- 1 (a) Removal of asbestos-containing insulation on pipes;
- 2 (b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
- 3 (c) Replacement of an asbestos-containing gasket on a valve;
- 4 (d) Installation or removal of a small section of drywall; or
- 5 (e) Installation of electrical conduits through or proximate to asbestos-containing materials.

6 (4) The Department of Environmental Quality, on behalf of the commission, shall consult with
7 the Department of Consumer and Business Services and the Department of Human Services about
8 proposed rules for the asbestos abatement program to assure that the rules are compatible with all
9 other state and federal statutes and regulations related to asbestos abatement.

10 (5) The Department of Environmental Quality shall cooperate with the Department of Consumer
11 and Business Services and the Department of Human Services to promote proper and safe asbestos
12 abatement work practices and compliance with the provisions of ORS [279.025,] 468.126, 468A.135
13 and 468A.700 to 468A.760 **and section 114 of this 2003 Act.**

14 **SECTION 294.** ORS 468A.745 is amended to read:

15 468A.745. The Environmental Quality Commission shall adopt rules to carry out its duties under
16 ORS [279.025,] 468A.135 and 468A.700 to 468A.760 **and section 114 of this 2003 Act.** In addition, the
17 commission may:

18 (1) Allow variances from the provisions of ORS 468A.700 to 468A.755 in the same manner vari-
19 ances are granted under ORS 468A.075.

20 (2) Establish training requirements for contractors applying for an asbestos abatement license.

21 (3) Establish training requirements for workers applying for a certificate to work on asbestos
22 abatement projects.

23 (4) Establish standards and procedures to accredit asbestos abatement training courses for con-
24 tractors and workers.

25 (5) Establish standards and procedures for licensing contractors and certifying workers.

26 (6) Issue, renew, suspend and revoke licenses, certificates and accreditations.

27 (7) Determine those classes of asbestos abatement projects for which the person undertaking the
28 project must notify the Department of Environmental Quality before beginning the project.

29 (8) Establish work practice standards, compatible with standards of the Department of Consumer
30 and Business Services, for the abatement of asbestos hazards and the handling and disposal of waste
31 materials containing asbestos.

32 (9) Provide for asbestos abatement training courses that satisfy the requirements for contractor
33 licensing under ORS 468A.720 or worker certification under ORS 468A.730.

34 **SECTION 295.** ORS 468A.760 is amended to read:

35 468A.760. Any public agency requesting bids for a proposed project shall first make a determi-
36 nation of whether or not the project requires a contractor licensed under ORS 468A.720. The public
37 agency shall include such requirement in the bid advertisement under [ORS 279.025] **section 114**
38 **of this 2003 Act.**

39 **SECTION 296.** Section 2, chapter 934, Oregon Laws 1999, is amended to read:

40 **Sec. 2.** (1) When the Oregon Department of Administrative Services determines that alternative
41 fuels are not readily available to a public agency or private entity that operates alternative fuel
42 fleet vehicles, the department may provide alternative fuels to the public agency or private entity.

43 (2) To implement the authority conferred by this section, the department may:

44 (a) Enter into agreements with private entities.

45 (b) Enter into agreements with public agencies pursuant to ORS chapter 190.

1 (c) Adopt rules.

2 (d) Without adopting a rule, establish and adjust the prices for which the department will sell
3 alternative fuels.

4 (3) ORS 190.240 does not apply to an agreement with a public agency under this section.

5 (4) [ORS chapter 279 does] **Sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do** not
6 apply to an agreement with a private entity under this section.

7 (5) The price the department charges for an alternative fuel may not exceed the greater of:

8 (a) The cost to the department of making the alternative fuel available; or

9 (b) The reasonable price of the alternative fuel in the private markets near the public agency
10 or private entity.

11 (6) On sales of alternative fuels to private entities, the department shall collect the taxes that
12 would be due in a transaction between private entities.

13 (7) When adopting rules under this section, the department may take into account the differ-
14 ences in availability of alternative fuels at reasonably competitive prices in the different geographic
15 regions of the state.

16 (8) Nothing in this section affects the department's authority under ORS 283.315.

17 **SECTION 297.** ORS 475.225 is amended to read:

18 475.225. (1) The Department of Human Services shall carry out educational programs designed
19 to prevent and deter misuse and abuse of controlled substances. In connection with these programs
20 it may:

21 (a) Promote better recognition of the problems of misuse and abuse of controlled substances
22 within the regulated industry and among interested groups and organizations;

23 (b) Assist the regulated industry and interested groups and organizations in contributing to the
24 reduction of misuse and abuse of controlled substances;

25 (c) Consult with interested groups and organizations to aid them in solving administrative and
26 organizational problems;

27 (d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of ed-
28 ucational programs on misuse or abuse of controlled substances;

29 (e) Disseminate the results of research on misuse and abuse of controlled substances to promote
30 a better public understanding of what problems exist and what can be done to combat them; and

31 (f) Assist in the education and training of state and local law enforcement officials in their ef-
32 forts to control misuse and abuse of controlled substances.

33 (2) The department shall encourage research on the medical use, misuse and abuse of controlled
34 substances. In connection with the research, and in furtherance of the enforcement of ORS 475.005
35 to 475.285 and 475.940 to 475.999, it may:

36 (a) Establish methods to assess accurately the physiological, psychological and social effects of
37 controlled substances and identify their medical uses, relative hazard potential, and potential for
38 abuse;

39 (b) Make studies and undertake programs of research to:

40 (A) Develop new or improved approaches, techniques, systems, equipment and devices to
41 strengthen the enforcement of ORS 475.005 to 475.285 and 475.940 to 475.999;

42 (B) Determine patterns of use, misuse and abuse of controlled substances and the social effects
43 thereof; and

44 (C) Improve methods for preventing, predicting, understanding and dealing with the misuse and
45 abuse of controlled substances; or

1 (c) Enter into contracts with public agencies, institutions of higher education, and private or-
 2 ganizations or individuals for the purpose of conducting research, demonstrations or special projects
 3 which bear directly on misuse and abuse of controlled substances.

4 (3) The department may enter into contracts for educational and research activities without
 5 performance bonds and without regard to [ORS 279.545 to 279.746] **sections 7, 17, 18, 49, 78, 79,**
 6 **80, 81, 188, 189, 190 and 191 of this 2003 Act.**

7 **SECTION 298.** ORS 476.055 is amended to read:

8 476.055. (1) All moneys received by the State Fire Marshal shall be paid into the State Treasury,
 9 and shall be placed by the State Treasurer to the credit of the State Fire Marshal Fund, except
 10 those moneys received and accounted for under the provisions of [ORS 279.833] **section 44 of this**
 11 **2003 Act.**

12 (2) Except as otherwise provided by this section, moneys in the State Fire Marshal Fund shall
 13 be available and constitute a continuing appropriation for the payment of any expense of the State
 14 Fire Marshal and for the payment of expenses of the Department of Public Safety Standards and
 15 Training and the Board on Public Safety Standards and Training relating to training programs
 16 concerning fire services and accreditation of fire service professionals. The State Fire Marshal shall
 17 keep on file an itemized statement of all expenses incurred by the State Fire Marshal and shall ap-
 18 prove all disbursements as submitted for payment. Administrative expenditures made from the State
 19 Fire Marshal Fund shall not exceed a reasonable amount for the services performed.

20 **SECTION 299.** ORS 565.080 is amended to read:

21 565.080. (1) The Director of the Oregon State Fair and Exposition Center shall have care of the
 22 Oregon State Fair and Exposition Center property and be entrusted with the direction of its busi-
 23 ness and financial affairs. The director shall prepare, adopt, publish and enforce all necessary rules
 24 for the management of the center and the Oregon State Fair, its meetings and exhibitions and for
 25 the guidance of its officers or employees. In carrying out any duties, functions or powers relating
 26 to property acquisition, capital construction or capital improvements for the center, the director
 27 shall contract for the performance of all services relating thereto with the Oregon Department of
 28 Administrative Services.

29 (2) The director may appoint all necessary marshals to keep order on the grounds and in the
 30 buildings of the center during all exhibitions. The marshals so appointed shall be vested with the
 31 same authority for such purposes as executive peace officers are vested by law.

32 (3) The director shall establish charges for entrance fees, gate money, lease stalls, stands,
 33 parking space, buildings, restaurant sites; conduct shows, exhibitions, races and all manner of busi-
 34 ness notwithstanding the provisions of ORS 227.286 and do all other things the director considers
 35 proper in the operation of a year-round fair and exposition center and the annual state fair. The
 36 state is in no event liable for any premium awarded or debt created by the director beyond the
 37 amount annually appropriated therefor.

38 (4) Subject to procedures established by the Oregon State Fair Commission, the director may
 39 enter into sponsorship agreements for the receipt of moneys, services, products or other items of
 40 value. A sponsorship agreement entered into under this subsection is not subject to [ORS chapter
 41 279] **sections 1 to 46 or 47 to 87 of this 2003 Act** or to the Oregon Department of Administrative
 42 Services service provision requirement under subsection (1) of this section.

43 **SECTION 300.** ORS 565.120 is amended to read:

44 565.120. The Director of the Oregon State Fair and Exposition Center is authorized to issue a
 45 license permitting the holder of the license to conduct any business therein named upon the grounds

1 of the Oregon State Fair and Exposition Center. Issuance of licenses shall be in accordance with the
 2 competitive bidding requirements of [ORS chapter 279] **sections 1 to 46 and 47 to 87 of this 2003**
 3 **Act** for the awarding of public contracts, to the extent those procedures are practicable. The Di-
 4 rector of the Oregon Department of Administrative Services by rule may adopt and prescribe such
 5 supplementary competitive bidding procedures as the director considers appropriate. The funds
 6 arising therefrom shall become a part of the Oregon State Fair and Exposition Center Account.

7 **SECTION 301.** ORS 565.442 is amended to read:

8 565.442. (1) On or before October 31 of each year, a county fair board must submit to the County
 9 Fair Commission, on a form approved by the commission, data for the period since the preceding
 10 report date regarding:

11 (a) Use of the county fairgrounds by youths and adults;

12 (b) Participation in county fairs by youths and adults;

13 (c) Evidence of community involvement in county fairs;

14 (d) Attendance at county fair and nonfair events;

15 (e) The most recent fiscal year budget for the county fairgrounds and evidence of compliance
 16 with open meeting law pursuant to ORS 192.610 to 192.690 in developing the budget;

17 (f) Compliance with public contracting and purchasing law under [ORS chapter 279] **ORS 279.835**
 18 **to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act;**

19 (g) The most recent business plan for the county fairgrounds;

20 (h) Maintenance of liability insurance in an amount satisfactory to the County Fair Commission;
 21 and

22 (i) Use of state funds distributed to the county fairs.

23 (2) If a county fair board fails to timely submit the data required by subsection (1) of this sec-
 24 tion, the county fair administered by that board is ineligible for state funding, including but not
 25 limited to, funding under ORS 565.445 and section 2, chapter 796, Oregon Laws 1995, for a period
 26 determined by the County Fair Commission, not to exceed one year. A county fair may appeal a
 27 commission decision under this subsection to the Director of Agriculture, whose decision is subject
 28 to ORS 183.310 to 183.550.

29 (3) The County Fair Commission may contract for the collection and summarizing of data re-
 30 quired to be submitted under subsection (1) of this section. The commission shall send a summary
 31 of the data to the Director of Agriculture.

32 **SECTION 302.** ORS 576.306 is amended to read:

33 576.306. (1) The commission may contract with an independent contractor for the performance
 34 of any services. However, the commission may not contract with an independent contractor to per-
 35 form the discretionary functions of the commission. ORS [chapters] **chapter 240 and [279] ORS**
 36 **279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply to
 37 the commission in obtaining such services, except that no contract for such services shall take effect
 38 until approved by the State Department of Agriculture as provided in subsection (7) of this section.

39 (2) The commission may rent space or acquire supplies and equipment from any contractor as
 40 described in subsection (1) of this section. ORS chapters 276, 278[, 279] and 283 and ORS **279.835**
 41 **to 279.855 and 291.038 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply
 42 to such rentals or acquisitions.

43 (3) Except as provided in this section, a contractor described in subsection (1) of this section
 44 shall be considered an independent contractor and not an employee, eligible employee, public em-
 45 ployee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 240,

1 243, 291, 292, 316 and 652.

2 (4) Nothing in this section precludes the state or a commission from being considered the em-
3 ployer of the contractor described in subsection (1) of this section for purposes of unemployment
4 compensation under ORS chapter 657 and ORS 670.600.

5 (5) A contractor described in subsection (1) of this section shall be considered an independent
6 contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

7 (6) A contractor described in subsection (1) of this section shall not be considered a public of-
8 ficial, public officer, state officer or executive official for purposes of Oregon law, including ORS
9 chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

10 (7) The State Department of Agriculture shall review the contract described in subsection (1)
11 of this section for the adequacy of the clauses pertaining to statement of work, starting and ending
12 dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, com-
13 pliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work
14 product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any
15 other clause the department deems necessary.

16 (8) The Oregon Department of Administrative Services, in consultation with the State Depart-
17 ment of Agriculture, shall adopt rules necessary for the screening and selection of independent
18 contractors under this section.

19 (9) Except as provided in subsection (8) of this section, the department may promulgate any
20 rules necessary for the administration and enforcement of this section.

21 **SECTION 303.** ORS 576.307 is amended to read:

22 576.307. (1) Upon request by the commission, the Oregon Department of Administrative Services
23 may:

24 (a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials,
25 equipment and services other than personal **services** required by the commission and for the fur-
26 nishing of professional services rendered by independent contractors with the state to the commis-
27 sion under [ORS 279.545 to 279.748] **sections 6, 7, 17, 18, 49, 78, 79, 80, 81, 188, 189, 190 and 191**
28 **of this 2003 Act.**

29 (b) Provide for the furnishing of printing and multiple duplication work to the commission under
30 ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products,
31 agricultural or manufactured, shall not be considered state printing.

32 (c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or un-
33 used supplies, materials and equipment to the commission under [ORS 279.828] **section 42 of this**
34 **2003 Act.**

35 (d) Provide for the furnishing of central telephone service and central mail or messenger ser-
36 vices to the commission under ORS 283.140.

37 (e) Provide for the furnishing of central repair and maintenance services to the commission un-
38 der ORS 283.150.

39 (f) Provide for the furnishing of clerical and stenographic pool services to the commission under
40 ORS 283.160.

41 (g) Provide for the furnishing of motor vehicles for use by members, officers and employees of
42 the commission under ORS 283.305 to 283.350.

43 (2) The commission shall pay to the Oregon Department of Administrative Services such amount
44 for services performed by the department under subsection (1) of this section as the department de-
45 termines is adequate to reimburse it for the costs necessary to perform such services.

1 (3) Upon request by the commission, the Oregon Department of Administrative Services may
2 design and supervise the installation of an accounting system for the commission. The commission
3 shall pay to the Oregon Department of Administrative Services such amount for services performed
4 by the department under this subsection as the department determines is adequate to reimburse it
5 for the costs necessary to perform such services.

6 **SECTION 304.** ORS 577.320 is amended to read:

7 577.320. (1) Upon request by the Oregon Beef Council, the Oregon Department of Administrative
8 Services may:

9 (a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials,
10 equipment and services other than personal **services** required by the council and for the furnishing
11 of professional services rendered by independent contractors with the state to the council under
12 [ORS 279.545 to 279.748] **sections 6, 7, 17, 18, 49, 78, 79, 80, 81, 188, 189, 190 and 191 of this 2003**
13 **Act.**

14 (b) Provide for the furnishing of printing and multiple duplication work to the council under
15 ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products,
16 agricultural or manufactured, shall not be considered state printing.

17 (c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or un-
18 used supplies, materials and equipment to the council under [ORS 279.828] **section 42 of this 2003**
19 **Act.**

20 (d) Provide for the furnishing of central telephone service and central mail or messenger ser-
21 vices to the council under ORS 283.140.

22 (e) Provide for the furnishing of central repair and maintenance services to the council under
23 ORS 283.150.

24 (f) Provide for the furnishing of clerical and stenographic pool services to the council under ORS
25 283.160.

26 (g) Provide for the furnishing of motor vehicles for use by members, officers and employees of
27 the council under ORS 283.305 to 283.350.

28 (2) The council shall pay to the Oregon Department of Administrative Services such amount for
29 services performed by the department under subsection (1) of this section as the department deter-
30 mines is adequate to reimburse it for the costs necessary to perform such services.

31 (3) Upon request by the council, the Oregon Department of Administrative Services may design
32 and supervise the installation of an accounting system for the council. The council shall pay to the
33 Oregon Department of Administrative Services such amount for services performed by that depart-
34 ment under this subsection as such department determines is adequate to reimburse it for the costs
35 necessary to perform such services.

36 **SECTION 305.** ORS 651.060 is amended to read:

37 651.060. (1) The Commissioner of the Bureau of Labor and Industries may issue subpoenas,
38 subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating
39 to the duties required under ORS [279.348 to 279.380,] 651.030, 651.050, 651.120, 651.170, 652.330,
40 653.055, 658.405 to 658.503 and 658.705 to 658.850 **and sections 165 to 179 of this 2003 Act** and
41 wage claims arising under ORS 653.305 to 653.350 and in all contested cases scheduled for hearing
42 by the Bureau of Labor and Industries pursuant to ORS 183.310 to 183.550. Such testimony shall be
43 taken in some suitable place in the vicinity to which testimony is applicable.

44 (2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees
45 and mileage provided for witnesses in ORS 44.415 (2), which payment shall be made from the fund

1 appropriated for the use of the bureau, and in the manner provided in ORS 651.170 for the payment
2 of other expenses of the bureau.

3 (3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner
4 and such other assistants or personnel as may be necessary to carry into effect the powers and
5 duties of the commissioner or of the Bureau of Labor and Industries and may prescribe the duties
6 and responsibilities of such employees. The commissioner may delegate any of the powers of the
7 commissioner or of the bureau to the deputy commissioner and to the other assistants employed
8 under this subsection for the purpose of transacting the business of the commissioner's office or of
9 the bureau. In the absence of the commissioner, the deputy commissioner and the other assistants
10 whom the commissioner employs shall have full authority, under the commissioner's direction, to do
11 and perform any duty which the law requires the commissioner to perform. However, the commis-
12 sioner shall be responsible for all acts of the deputy commissioner and of the assistants employed
13 under this subsection.

14 (4) In accordance with any applicable provisions of ORS 183.310 to 183.550, the Commissioner
15 of the Bureau of Labor and Industries may adopt such reasonable rules as may be necessary to ad-
16 minister and enforce any statutes over which the commissioner or the Bureau of Labor and Indus-
17 tries has jurisdiction.

18 (5) The Commissioner of the Bureau of Labor and Industries may conduct and charge and collect
19 fees for public information programs pertaining to any of the statutes over which the commissioner
20 or the Bureau of Labor and Industries has jurisdiction.

21 **SECTION 306.** ORS 651.120 is amended to read:

22 651.120. (1) The Commissioner of the Bureau of Labor and Industries may:

23 (a) Enter any factory, mill, office, workshop, or public or private works, at any reasonable time,
24 for the purpose of gathering facts such as are contemplated by ORS [279.355,] 652.330, 653.045,
25 653.540 and 659A.835 **and section 170 of this 2003 Act.**

26 (b) Examine into the methods of protection from danger to employees, and the sanitary condi-
27 tions in and around such buildings and places, and make a record thereof.

28 (2) No owner or occupant, or the respective agent, of any factory, mill, office, or workshop, or
29 public or private works, shall refuse to allow an inspector or employee of the Bureau of Labor and
30 Industries to enter.

31 **SECTION 307.** ORS 651.170 is amended to read:

32 651.170. The Commissioner of the Bureau of Labor and Industries may incur such expense and
33 employ such clerical aids as may be necessary to carry out ORS [279.352 (2) and] 651.030, 651.050,
34 651.060 and 651.120 **and section 168 (2) of this 2003 Act.** The Oregon Department of Administra-
35 tive Services may draw warrants on the State Treasurer for the payment of such expense upon
36 properly verified vouchers approved by the commissioner. However, such expense shall not exceed
37 at any time the amount appropriated therefor.

38 **SECTION 308.** ORS 651.185 is amended to read:

39 651.185. The Prevailing Wage Education and Enforcement Account is created in the General
40 Fund of the State Treasury. All moneys in the account are appropriated continuously to the Com-
41 missioner of the Bureau of Labor and Industries to:

42 (1) Administer and provide investigations under and enforce the provisions of [*ORS 279.348 to*
43 *279.380*] **sections 165 to 179 of this 2003 Act;**

44 (2) Provide educational programs on public contracting and purchasing law under [*ORS chapter*
45 *279*] **ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act;** and

1 (3) Conduct surveys to determine prevailing wages.

2 **SECTION 309.** ORS 652.332 is amended to read:

3 652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has re-
4 ceived a wage claim complaint which the commissioner could seek to collect through court action,
5 the commissioner may instead elect to seek collection of such claim through administrative pro-
6 ceedings in the manner provided in this section, subject to the employer's right to request a trial
7 in a court of law. The commissioner may join in a single administrative proceeding any number of
8 wage claims against the same employer. Upon making such election, the commissioner shall serve
9 upon the employer and the wage claimant an order of determination directing the employer to pay
10 to the commissioner the amount of the wage claim and any penalty amounts under ORS [279.356
11 (I),] 652.150 and 653.055 (1) **and section 171 (1) of this 2003 Act** determined to be owed the wage
12 claimant. Service shall be made in the same manner as service of summons or by certified mail, re-
13 turn receipt requested. The order of determination shall include:

14 (a) A reference to the particular sections of the statutes or rules involved;

15 (b) A short and concise statement of the basis for the amounts determined to be owed to each
16 wage claimant;

17 (c) A statement of the party's right to request a contested case hearing and to be represented
18 by counsel at such a hearing, and of the employer's right to a trial in a court of law, provided that
19 any request for a contested case hearing or trial in a court of law must be received by the com-
20 missioner in writing within 20 days after receipt by the party of the order of determination;

21 (d) A statement that the employer must, within 20 days after receipt of the order of determi-
22 nation, either pay in full the wage claim and any penalties assessed, or present to the commissioner
23 a written request for a contested case hearing or a trial in a court of law as provided in this section;

24 (e) A statement that failure to make a written request to the commissioner for a contested case
25 hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver
26 of the right thereto and a waiver of the right to a trial by jury; and

27 (f) A statement that unless the written requests provided for in subsection (1)(c) of this section
28 are received by the commissioner within the time specified for making such requests, the order of
29 determination shall become final.

30 (2) Upon failure of the employer to pay the amount specified in the order of determination or
31 to request a trial in a court of law within the time specified, and upon failure of any party to request
32 a contested case hearing within the time specified, the order of determination shall become final.

33 (3) If a party makes a timely request for a contested case hearing, a hearing shall be held in
34 accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the
35 commissioner's designee. The commissioner shall adopt rules for such hearing. In any hearing before
36 the commissioner's designee, the designee is authorized to issue the final order in the case. If the
37 employer makes a timely request for a trial in a court of law, the commissioner may proceed against
38 the employer as provided in ORS 652.330 (1)(b).

39 (4) Final administrative orders issued in a wage claim proceeding are subject to review by the
40 Court of Appeals as provided in ORS 183.480 and 183.482.

41 (5) When an order issued under this section becomes final, it may be recorded in the County
42 Clerk Lien Record in any county of this state. In addition to any other remedy provided by law,
43 recording an order in the County Clerk Lien Record pursuant to the provisions of this section has
44 the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in
45 ORS 205.125 and 205.126.

1 (6) Where the wage claim arose out of work performed by the claimant for the employer on any
2 public works project to which [ORS 279.350 or 279.352] **section 167 or 168 of this 2003 Act** applies,
3 and a state agency holds sufficient funds as retainage on such project to pay such claim or any
4 portion thereof, the state agency may, at the request of the commissioner, pay to the commissioner
5 from the retainage all or part of the amount due on the claim under the final order.

6 **SECTION 310.** ORS 656.753 is amended to read:

7 656.753. (1) Except as otherwise provided by law, the provisions of **ORS 279.835 to 279.855 and**
8 **ORS chapters 240, 276, [279,] 282, 283, 291, 292 and 293 and sections 1 to 46, 47 to 87 and 88 to**
9 **180 of this 2003 Act** do not apply to the State Accident Insurance Fund Corporation.

10 (2) In carrying out the duties, functions and powers imposed by law upon the State Accident
11 Insurance Fund Corporation, the board of directors or the manager of the State Accident Insurance
12 Fund Corporation may contract with any state agency for the performance of such duties, functions
13 and powers as the corporation considers appropriate.

14 (3) Notwithstanding subsection (1) or (2) of this section, ORS 293.240 except for appeals pursuant
15 to ORS 737.318, ORS 293.260, 293.262 and 293.505 (2) shall apply to the directors, manager, assistants
16 and accounts of the State Accident Insurance Fund Corporation and any subsidiary corporation
17 formed or acquired by the State Accident Insurance Fund Corporation.

18 (4) Notwithstanding subsection (1) or (2) of this section, ORS 243.305[, 279.053] and 659A.012 **and**
19 **section 13 of this 2003 Act** apply to the directors, manager and employees of the State Accident
20 Insurance Fund Corporation.

21 **SECTION 311.** ORS 657.665 is amended to read:

22 657.665. (1) Information secured from employing units, employees or other individuals pursuant
23 to this chapter:

24 (a) Shall be confidential and for the exclusive use and information of the Director of the Em-
25 ployment Department in the discharge of duties and shall not be open to the public (other than to
26 public employees in the performance of their public duties under state or federal laws for the pay-
27 ment of unemployment insurance benefits and to public employees in the performance of their public
28 duties under the recognized compensation and retirement, relief or welfare laws of this state), except
29 to the extent necessary for the presentation of a claim and except as required by the regulations
30 of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the
31 Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social
32 Security Act, as amended.

33 (b) Shall not be used in any court in any action or proceeding pending therein unless the di-
34 rector or the state is a party to such action or proceedings or the proceedings concern the estab-
35 lishment, enforcement or modification of a support obligation and support services are being
36 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

37 (2) However, any claimant or legal representative, at a hearing before a hearing officer, shall
38 be supplied with information from such records to the extent necessary for the proper presentation
39 of a claim.

40 (3) Notwithstanding subsection (1) of this section, information secured from employing units
41 pursuant to this chapter may be released:

42 (a) To agencies of this state, and political subdivisions acting alone or in concert in city, county,
43 metropolitan, regional or state planning to the extent necessary to properly carry out governmental
44 planning functions performed under applicable law. Information provided such agencies shall be
45 confidential and shall not be released by such agencies in any manner that would be identifiable as

1 to individuals, claimants, employees or employing units. Costs of furnishing information pursuant to
2 this subsection not prepared for the use of the Employment Department shall be borne by the parties
3 requesting the information; and

4 (b) In accordance with ORS 657.673.

5 (4) Nothing in this section shall prevent the Employment Department from providing names and
6 addresses of employing units to the Bureau of Labor and Industries for the purpose of disseminating
7 information to employing units. The names and addresses provided shall be confidential and shall
8 not be used for any other purposes. Costs of furnishing information pursuant to this subsection not
9 prepared for the use of the Employment Department shall be borne by the bureau.

10 (5) Nothing in this section shall prevent the Employment Department from providing to the
11 Commissioner of the Bureau of Labor and Industries, for the purpose of performing duties under
12 [ORS 279.348 to 279.380] **sections 165 to 179 of this 2003 Act**, the names, addresses and industrial
13 codes of employer units, the number of employees each unit employs during a given time period and
14 the firm number assigned to employer units by the Employment Department. Information so provided
15 shall be confidential and shall not be released by the commissioner in any manner that would iden-
16 tify such employing units except to the extent necessary to carry out the purposes of this subsection
17 and as provided in subsection (1)(b) of this section. Costs of furnishing information pursuant to this
18 subsection not prepared for the use of the Employment Department shall be borne by the bureau.

19 (6) Nothing in this section shall prevent the Employment Department from providing information
20 required under ORS 657.660 (3) and (4) to the Public Employees Retirement System for the purpose
21 of determining the eligibility of members of the retirement system for disability retirement allow-
22 ances under ORS chapter 238. The information provided shall be confidential and shall not be used
23 for any other purposes. Costs of furnishing information pursuant to this subsection shall be borne
24 by the Public Employees Retirement System.

25 (7) Any officer or employee of the Director of the Employment Department, who, except with
26 authority of the director or pursuant to regulations, or as otherwise required by law, shall disclose
27 confidential information under this section, thereafter may be disqualified from holding any ap-
28 pointment or employment by the director.

29 (8) Nothing in this section shall prevent the Employment Department from providing information
30 to the Department of Revenue for the purpose of performing its duties under ORS 293.250, or the
31 revenue and tax laws of this state. Information provided may include names and addresses of em-
32 ployers and employees and payroll data of employers and employees. Information so provided shall
33 be confidential and shall not be released by the Director of the Department of Revenue in any
34 manner that would identify such employing unit or employee except to the extent necessary to carry
35 out its duties under ORS 293.250 or in auditing or reviewing any report or return required or per-
36 mitted to be filed under the revenue and tax laws administered by the department. However, the
37 Director of the Department of Revenue shall not disclose any information received to any private
38 collection agency or for any other purpose. Costs of furnishing information pursuant to this sub-
39 section not prepared for the use of the Employment Department shall be borne by the Department
40 of Revenue.

41 (9) Nothing in this section shall prevent the Employment Department from providing information
42 to the Department of Consumer and Business Services for the purpose of performing its duties under
43 ORS chapter 656. Information provided may include names and addresses of employers and employ-
44 ees and payroll data of employers and employees. Information so provided shall be confidential and
45 shall not be released by the Director of the Department of Consumer and Business Services in any

1 manner that would identify such employing unit or employee except to the extent necessary to carry
2 out its duties under ORS chapter 656. However, the Director of the Department of Consumer and
3 Business Services shall not disclose any information received to any private collection agency or for
4 any other purpose. Costs of furnishing information pursuant to this subsection not prepared for the
5 use of the Employment Department shall be borne by the Department of Consumer and Business
6 Services.

7 (10) Nothing in this section shall prevent the Employment Department from providing informa-
8 tion to the Construction Contractors Board for the purpose of performing its duties under ORS
9 chapter 701. Information provided to the board may include names and addresses of employers and
10 status of their compliance with this chapter.

11 (11) Nothing in this section shall prevent the Employment Department from providing informa-
12 tion to the State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
13 powers under ORS 453.307 to 453.414. Information so provided shall be the employer or agent name,
14 address, telephone number and standard industrial classification. Information so provided shall be
15 confidential and shall not be released by the State Fire Marshal in any manner that would identify
16 such employing units except to the extent necessary to carry out duties under ORS 453.307 to
17 453.414. Costs of furnishing information pursuant to this subsection not prepared for the use of the
18 Employment Department shall be borne by the office of the State Fire Marshal.

19 (12) Nothing in this section shall prevent the Employment Department from providing informa-
20 tion to the Oregon Student Assistance Commission for the purposes of performing the commission's
21 duties under ORS chapter 348 and Title IV of the Higher Education Act of 1965, as amended. In-
22 formation provided may include names and addresses of employers and employees and payroll data
23 of employers and employees. Information so provided shall be confidential and shall not be released
24 by the Oregon Student Assistance Commission in any manner that would identify such employing
25 unit or employee except to the extent necessary to carry out duties under ORS chapter 348 or Title
26 IV of the Higher Education Act of 1965, as amended. Costs of furnishing information pursuant to this
27 subsection not prepared for the use of the Employment Department shall be borne by the Oregon
28 Student Assistance Commission.

29 (13) Any person or officer or employee of an entity to whom information is disclosed or given
30 by the Employment Department pursuant to this section, who divulges or uses such information for
31 any purpose other than that specified in the provision of law or agreement authorizing the use or
32 disclosure, may be disqualified from holding any appointment or employment, or performing any
33 service under contract, with the state agency employing that person or officer.

34 **SECTION 312.** ORS 657.710 is amended to read:

35 657.710. (1) The Director of the Employment Department shall establish and maintain such free
36 public employment offices, including such branch or affiliate offices, as may be necessary for the
37 proper administration of this chapter and for participation in Oregon's workforce investment system.

38 (2) The director may enter into such contracts or memoranda of understanding with designated
39 workforce investment system partners, including but not limited to other states and governments,
40 government entities, state agencies, units of local government, intergovernmental entities, commu-
41 nity colleges and persons, as appropriate to administer the workforce investment system.

42 (3) The director may enter into contracts or memoranda of understanding to share confidential
43 information as authorized under federal law and regulations for purposes of a national performance
44 accounting system, including receiving and making available wage records to the extent the wage
45 records are required by another state to carry out that state's workforce investment system per-

1 formance plan.

2 (4) All moneys made available by or received by the state for the Oregon State Employment
3 Service shall be paid to and expended from the Unemployment Compensation Administration Fund.

4 (5) Each *[public]* **contracting** agency shall provide to the director timely information pertinent
5 to all existing job vacancies over which the *[public]* **contracting** agency exercises employment
6 control and for which there will be open recruitment. Such information shall be made available to
7 the public by the director. As used in this subsection, "*[public]* **contracting** agency" has the mean-
8 ing given that term in *[ORS 279.011]* **section 2 of this 2003 Act**.

9 **SECTION 313.** ORS 657.732 is amended to read:

10 657.732. (1) As used in this section, "participating state agency or organization" means:

11 (a) The Employment Department;

12 (b) The Adult and Family Services Division, the Vocational Rehabilitation Division and other
13 divisions and offices within the Department of Human Services that have been approved by the Di-
14 rector of the Employment Department, in consultation with the Education and Workforce Policy
15 Advisor, to participate in the Interagency Shared Information System;

16 (c) The Department of Education;

17 (d) The Oregon University System;

18 (e) The Department of Community Colleges and Workforce Development; and

19 (f) Other state agencies, other governmental entities or private organizations that have applied
20 to be participating state agencies or organizations and have been approved by the Director of the
21 Employment Department, in consultation with the Education and Workforce Policy Advisor, to par-
22 ticipate in the Interagency Shared Information System.

23 (2) There is established the Interagency Shared Information System. The purpose of the system
24 is to collect, analyze and share information for the development of statistical and demographic data
25 to facilitate the creation of strategies for the purpose of improving the education, training and em-
26 ployment programs related to enhancing Oregon's workforce system. The system shall share aggre-
27 gate information with a participating state agency or organization to allow the agency or
28 organization to develop policy, evaluate policy and plan and measure performance for the purpose
29 of improving the education, training and employment programs related to enhancing Oregon's
30 workforce system.

31 (3) The Director of the Employment Department shall administer and, in consultation with the
32 Education and Workforce Policy Advisor, shall oversee the development of the Interagency Shared
33 Information System. Participating state agencies or organizations shall enter into an interagency or
34 other applicable agreement with the Director of the Employment Department, as administrator of
35 the system, that:

36 (a) Establishes protocols for the collection and sharing of data in the system;

37 (b) Establishes safeguards for protecting the confidentiality of data in the system;

38 (c) Includes provisions regarding informed consent for sharing information obtained from indi-
39 viduals; and

40 (d) Provides for the sharing of costs for designing and maintaining the system.

41 (4) Every participating state agency or organization shall provide information to the Interagency
42 Shared Information System. Information shall be provided in a format that encodes identifying data,
43 including the client's Social Security number, using a formula unique to the participating state
44 agency or organization that shall not be disclosed to the system.

45 (5) In disclosing Social Security numbers to the Interagency Shared Information System under

1 subsection (4) of this section, every participating state agency or organization shall comply with any
2 state and federal laws that govern the collection and use of Social Security numbers by a partic-
3 ipating state agency or organization and any additional requirements specified by the director, in
4 consultation with the Education and Workforce Policy Advisor, that are included in the agreement
5 entered into under subsection (3) of this section.

6 (6) The information in the Interagency Shared Information System is not a public record for
7 purposes of ORS 192.410 to 192.505. For purposes of ORS 192.410 to 192.505, the information sub-
8 mitted to the system and the information received from the system is a public record, and the
9 custodian of such information is the participating state agency or organization that submits or re-
10 ceives the information. If the participating state agency or organization receiving the information
11 is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of
12 the system information sent to that entity and shall be the custodian of that copy for purposes of
13 ORS 192.410 to 192.505. As custodian, the Employment Department shall limit the disclosure of, or
14 refuse to disclose, aggregate or summary level information when a small number of aggregated re-
15 cords or some other factor creates a reasonable risk that the identity of individuals may be discov-
16 ered or disclosed. The department shall refer all other requests for disclosure of system information
17 to the public body that is the custodian of the information.

18 (7) The Employment Department may charge a reasonable fee pursuant to ORS 192.440 for the
19 disclosure of reports to individuals or state agencies, governmental entities or private organizations
20 that submit data to the system and are not participating state agencies or organizations.

21 (8) If a participating state agency or organization prepares or acquires a record that is confi-
22 dential under federal or state law, including ORS 192.502 (2), the participating state agency or or-
23 ganization does not violate state confidentiality laws by providing the information described in this
24 section to the Interagency Shared Information System. Notwithstanding the provisions of ORS
25 [279.355 (3), 279.359 (3),] 657.665 and 660.339 **and sections 170 (3) and 173 (4) of this 2003 Act**, the
26 Bureau of Labor and Industries, the Department of Community Colleges and Workforce Development
27 and the Employment Department are authorized to provide information to the Interagency Shared
28 Information System.

29 (9) Notwithstanding the provisions of ORS 192.410 to 192.505, a participating state agency or
30 organization shall not allow public access to information received from the Interagency Shared In-
31 formation System that identifies a particular individual unless required by law. Any participating
32 state agency or organization shall limit the disclosure of, or refuse to disclose, aggregate or sum-
33 mary level information when a small number of aggregated records or some other factor creates a
34 reasonable risk that the identity of individuals may be discovered or disclosed.

35 (10) Any individual who, without proper authority, discloses confidential information under this
36 section may be disqualified from holding any appointment or employment with the State of Oregon.
37 The Employment Department shall adopt by rule procedures to prevent disclosure of confidential
38 information submitted to the Interagency Shared Information System.

39 **SECTION 314.** ORS 657.734 is amended to read:

40 657.734. (1) The Employment Department may establish a system for the purpose of collecting,
41 analyzing and sharing statistical and demographic data for the development and reporting of the
42 workforce system performance measures required by the federal Workforce Investment Act of 1998
43 (P.L. 105-220), and for Oregon's comprehensive workforce system-wide performance indicators. The
44 performance measures system is intended to share the data, by agreement, with all Workforce In-
45 vestment Act mandatory partners and one-stop delivery system partners. The performance measures

1 system shall not contain data submitted exclusively for use in the Interagency Shared Information
2 System.

3 (2) The Director of the Employment Department shall administer and, in consultation with the
4 Education and Workforce Policy Advisor, shall oversee the development of the performance meas-
5 ures system. Mandatory and one-stop system partners, which may include state agencies, other
6 governmental entities and private organizations, shall be designated as participants in the perform-
7 ance measures system by rule of the Employment Department, in consultation with the Education
8 and Workforce Policy Advisor. Mandatory and one-stop system partners shall enter into an intera-
9 gency or other applicable agreement with the Director of the Employment Department that:

10 (a) Establishes protocols for the collection and sharing of data in the system;

11 (b) Establishes safeguards for protecting the confidentiality of data in the system;

12 (c) Includes provisions regarding informed consent for sharing information obtained from indi-
13 viduals; and

14 (d) Provides for the sharing of costs for maintaining the system.

15 (3)(a) All individual record information in the performance measures system shall be confidential
16 and shall not be disclosed as a public record pursuant to the provisions of ORS 192.410 to 192.505.
17 As administrator of the system, the Director of the Employment Department may view all data or
18 individual record information in the performance measures system. Mandatory and one-stop system
19 partners shall not allow public access to information received from the system that identifies a
20 particular individual unless required by law. Mandatory and one-stop system partners shall limit the
21 disclosure of, or refuse to disclose, aggregate or summary level information when a small number
22 of aggregated records or some other factor creates a reasonable risk that the identity of individuals
23 may be discovered or disclosed.

24 (b) Mandatory and one-stop system partners shall provide information in a format that encodes
25 identifying data, including the client's Social Security number, using a formula unique to the man-
26 datory or one-stop system partner. In disclosing Social Security numbers to the performance meas-
27 ures system, mandatory and one-stop system partners shall comply with any state and federal laws
28 that govern the collection and use of Social Security numbers by the mandatory or one-stop system
29 partner and any additional requirements specified by the director, in consultation with the Educa-
30 tion and Workforce Policy Advisor, that are included in the agreement entered into under subsection
31 (2) of this section.

32 (4) The information in the performance measures system is not a public record for purposes of
33 ORS 192.410 to 192.505. For purposes of ORS 192.410 to 192.505, the information submitted to the
34 system and the information received from the system is a public record, and the custodian of such
35 information is the mandatory or one-stop system partner that submits or receives the information.
36 If the mandatory or one-stop system partner receiving the information is not a public body, as de-
37 fined in ORS 192.410, the Employment Department shall keep a copy of the system information sent
38 to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505. As
39 custodian, the Employment Department shall limit the disclosure of, or refuse to disclose, aggregate
40 or summary level information when a small number of aggregated records or some other factor
41 creates a reasonable risk that the identity of individuals may be discovered or disclosed. The de-
42 partment shall refer all other requests for disclosure of system information to the public body that
43 is the custodian of the information.

44 (5) The Employment Department may charge a reasonable fee pursuant to ORS 192.440 for the
45 disclosure of reports containing only aggregate data to individuals or state agencies, governmental

1 entities or private organizations that are not mandatory or one-stop system partners.

2 (6) If a mandatory or one-stop system partner prepares or acquires a record that is confidential
3 under federal or state law, including ORS 192.502 (2), the mandatory or one-stop system partner does
4 not violate state confidentiality laws by providing the information described in this section to the
5 performance measures system. Notwithstanding the provisions of ORS [279.355 (3), 279.359 (3),]
6 657.665 and 660.339 **and sections 170 (3) and 173 (4) of this 2003 Act**, the Bureau of Labor and
7 Industries, the Department of Community Colleges and Workforce Development and the Employment
8 Department are authorized to provide information to the performance measures system.

9 (7) Any individual who, without proper authority, discloses confidential information under this
10 section may be disqualified from holding any appointment or employment with the State of Oregon.
11 The Employment Department shall adopt by rule procedures to prevent disclosure of confidential
12 information submitted to the performance measures system.

13 **SECTION 315.** ORS 671.613 is amended to read:

14 671.613. (1) The failure of a landscaping business to comply with the provisions of this section
15 and ORS [279.348 to 279.363,] 656.021, 657.665, 670.600, 671.520, 671.525, 671.530 and 671.575 **and**
16 **sections 165 to 179 of this 2003 Act** or to be in conformance with the provisions of ORS chapter
17 [279,] 316, 571, 656 or 657 **or sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act** is a basis for
18 suspension of the landscaping business license, revocation of the landscaping business license, re-
19 fusal to issue or reissue a landscaping business license, assessment of a civil penalty as set forth in
20 ORS 671.955 or a combination of these sanctions.

21 (2) Any action against a landscaping business under this section shall be conducted in con-
22 formance with the provisions of ORS 183.413 to 183.497.

23 **SECTION 316.** ORS 674.349 is amended to read:

24 674.349. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276,
25 [279,] 282, 283, 291, 292 and 293 **and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do
26 not apply to the Appraiser Certification and Licensure Board. The board is subject to all other
27 statutes governing a state agency that do not conflict with ORS 674.346 to 674.367, including the
28 tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS 183.310 to 183.550. The
29 employees of the board are included within the Public Employees Retirement System.

30 (2) Notwithstanding subsection (1) of this section, the following provisions shall apply to the
31 board:

32 (a) ORS 240.309 (1) to (6) and 240.321;

33 [(b) ORS 279.800 to 279.830;]

34 [(c)] (b) ORS 279.835 to 279.855;

35 (c) **Sections 36 to 44 of this 2003 Act;**

36 (d) ORS 282.210 to 282.230; and

37 (e) ORS 293.240.

38 (3) In carrying out the duties, functions and powers of the board, the board may contract with
39 any state agency for the performance of duties, functions and powers as the board considers appro-
40 priate. A state agency shall not charge the board an amount that exceeds the actual cost of those
41 services. ORS 674.346 to 674.367 do not require a state agency to provide services to the board other
42 than pursuant to a voluntary interagency agreement or contract.

43 (4) The board shall adopt personnel policies and contracting and purchasing procedures. The
44 Oregon Department of Administrative Services shall review those policies and procedures for com-
45 pliance with applicable state and federal laws and collective bargaining contracts.

1 (5) Except as otherwise provided by law, members and employees of the board are eligible to
2 receive the same benefits as state employees and are entitled to retain their State of Oregon hire
3 dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer
4 of all accumulated state agency leaves.

5 **SECTION 317.** ORS 674.358 is amended to read:

6 674.358. In addition to other powers granted by ORS 674.346 to 674.367 and by the statutes
7 specifically applicable to the Appraiser Certification and Licensure Board, the board may:

8 (1) Sue and be sued in its own name.

9 (2) Notwithstanding [*ORS chapter 279*] **sections 1 to 46, 47 to 87 and 88 to 180 of this 2003**
10 **Act**, enter into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and
11 dispose of real and personal property.

12 (3) Fix a per diem amount to be paid to a board member for each day or portion thereof during
13 which the member is actually engaged in the performance of official duties. Board members may also
14 receive actual and necessary travel expenses or other expenses actually incurred in the performance
15 of their duties. If an advisory council or peer review committee is established under the law that
16 governs the board, the board may also fix and pay amounts and expenses for members of the council
17 or committee.

18 (4) Set the amount of any fee required by statute and establish by rule and collect other fees
19 as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying
20 out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this sub-
21 section, the board shall hold a public hearing prior to adopting or modifying any fee without regard
22 to the number of requests received to hold a hearing. The board shall give notice to all licensees
23 of the board prior to holding a hearing on the adoption or modification of any fee. The board may
24 adopt fees in conjunction with the budget adoption process described in ORS 674.352.

25 (5) Subject to any other statutory provisions, adopt procedures and requirements governing the
26 manner of making application for issuance, renewal, suspension, revocation, restoration and related
27 activities concerning licenses that are under the jurisdiction of the board.

28 **SECTION 318.** ORS 701.227 is amended to read:

29 701.227. (1) The Construction Contractors Board shall begin an action to determine whether a
30 contractor or a subcontractor shall not be considered qualified to hold or participate in a public
31 contract for a public improvement upon receipt of information from a public contracting agency or
32 from any person who supplied labor or materials in connection with a public contract for a public
33 improvement indicating that the contractor or subcontractor has not made payment to persons who
34 supplied labor or materials within 60 days after the date when the payment was received by the
35 contractor or subcontractor and that the payment was not a subject of a good faith dispute as de-
36 fined in [*ORS 279.445*] **section 151 of this 2003 Act**.

37 (2) If the board determines after notice and opportunity for hearing that a contractor or a sub-
38 contractor did not make payment to persons who supplied labor or materials in connection with a
39 public contract for a public improvement within 60 days after the date when payment was received
40 by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the
41 list of persons who have been determined not to be qualified to hold or participate in a public con-
42 tract for a public improvement. The board may not place a contractor or subcontractor on the list
43 if the only reason that the contractor or subcontractor did not make payment to a person when
44 payment was due is that the contractor or subcontractor did not receive payment from the public
45 contracting agency, contractor or subcontractor when payment was due. The contractor or subcon-

1 tractor shall remain on the list for a period of not less than six months from the date when the
2 board received the information under subsection (1) of this section.

3 (3) If the board determines that the claim made against a contractor or subcontractor was made
4 in bad faith or was false, the person filing the bad faith or false claim shall be placed on the list
5 of persons who have been determined not to be qualified to hold or participate in a public contract
6 for a public improvement.

7 (4) The board shall create and maintain a list of contractors and subcontractors who have been
8 determined not to be qualified to hold or participate in a public contract for a public improvement
9 under subsection (2) of this section. The list may include any corporation, partnership or other
10 business entity of which the contractor or subcontractor is an owner, shareholder or officer of the
11 business or was an owner or officer of the business. The board shall provide access to the list to
12 all public contracting agencies, contractors and subcontractors.

13 **SECTION 319.** ORS 701.410 is amended to read:

14 701.410. As used in ORS [279.400, 279.435,] 701.410, 701.420, 701.430, 701.435 and 701.440, unless
15 the context otherwise requires:

16 (1) "Construction" includes:

17 (a) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling
18 in and other preparation of land for the making and placement of building, structure or superstruc-
19 ture;

20 (b) Creation or making of a building, structure or superstructure; and

21 (c) Alteration, partial construction and repairs done in and upon a building, structure or
22 superstructure.

23 (2) "Contractor" includes a person who contracts with an owner on predetermined terms to be
24 responsible for the performance of all or part of a job of construction in accordance with established
25 specifications or plans, retaining control of means, method and manner of accomplishing the desired
26 result.

27 (3) "Owner" includes a person who is or claims to be the owner in fee or a lesser estate of the
28 land, building, structure or superstructure on which construction is performed and who enters into
29 an agreement with a contractor for the construction.

30 (4) "Retainage" means the difference between the amount earned by a contractor or subcon-
31 tractor under a construction contract and the amount paid on the contract by the owner or, in the
32 case of a subcontractor, by a contractor or another subcontractor.

33 (5) "Subcontractor" includes a person who contracts with a contractor or another subcontractor
34 on predetermined terms to be responsible for the performance of all or part of a job of construction
35 in accordance with established specifications or plans.

36 **SECTION 320.** ORS 701.435 is amended to read:

37 701.435. (1) When a contractor on a public contract deposits bonds or securities under [ORS
38 279.420 (3)] **section 148 (3) of this 2003 Act**, if the subcontract price exceeds \$50,000 and consti-
39 tutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract
40 may deposit bonds or securities with the contractor or in any bank or trust company to be held in
41 lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce
42 the retainage in an amount equal to the value of the bonds and securities and pay the amount of
43 the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such
44 bonds or securities shall accrue to the subcontractor.

45 (2) When a contractor on a public contract elects to have the public contracting agency deposit

1 the accumulated retainage in an interest-bearing account under [ORS 279.420 (4)] **section 148 (4)**
 2 **of this 2003 Act**, the contractor, within 30 days following payment of the final amount due for
 3 construction of the public improvement, shall pay to each subcontractor who performed work on the
 4 construction the subcontractor's proportional share of the interest earnings that accrued to the
 5 contractor as a result of that election. A subcontractor's share of the total amount of interest
 6 earnings under this subsection shall be determined by the proportion which the amount of retainage
 7 withheld from the subcontractor bears to the amount of retainage withheld from the contractor and
 8 the length of time the retainage was withheld from the subcontractor. A share of the interest
 9 earnings shall be paid to a subcontractor under this subsection only when:

10 (a) Retainage is withheld from the subcontractor for more than 60 days after the day on which
 11 the first partial payment was due the subcontractor under the terms of the subcontract; and

12 (b) The amount of interest earnings due the subcontractor exceeds \$100.

13 (3) If the contractor incurs additional costs as a result of the exercise of the options described
 14 in subsections (1) and (2) of this section, the contractor may recover such costs from the subcon-
 15 tractor by reduction of the final payment. As work on the subcontract progresses, the contractor
 16 shall, upon demand, inform the subcontractor of all accrued additional costs.

17 (4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section,
 18 shall be of a character approved by the Director of the Oregon Department of Administrative Ser-
 19 vices, including but not limited to:

20 (a) Bills, certificates, notes or bonds of the United States.

21 (b) Other obligations of the United States or its agencies.

22 (c) Obligations of any corporation wholly owned by the federal government.

23 (d) Indebtedness of the Federal National Mortgage Association.

24 **SECTION 321.** ORS 701.440 is amended to read:

25 701.440. ORS [279.400,] 701.410, 701.420 and 701.430 **and section 147 of this 2003 Act** do not
 26 apply when the owner is the United States or any agency thereof or when the construction is paid
 27 for, in whole or in part, with federal moneys.

28 **SECTION 322.** ORS 705.145 is amended to read:

29 705.145. (1) There is created in the State Treasury a fund to be known as the Consumer and
 30 Business Services Fund, separate from the General Fund. All moneys collected or received by the
 31 Department of Consumer and Business Services, except moneys collected pursuant to ORS 735.612
 32 and those moneys required to be paid into the Workers' Benefit Fund, shall be paid into the State
 33 Treasury and credited to the Consumer and Business Services Fund. Moneys in the fund may be
 34 invested in the same manner as other state moneys and any interest earned shall be credited to the
 35 fund.

36 (2) The department shall keep a record of all moneys deposited in the Consumer and Business
 37 Services Fund that shall indicate, by separate account, the source from which the moneys are de-
 38 rived, the interest earned and the activity or program against which any withdrawal is charged.

39 (3) Should moneys credited to any one account be withdrawn, transferred or otherwise used for
 40 purposes other than the program or activity for which the account is established, interest shall ac-
 41 crue on the amount withdrawn from the date of withdrawal and until such funds are restored.

42 (4) Moneys in the fund shall provide and are appropriated for the administrative expenses of the
 43 department and for its expenses in carrying out its functions and duties under any provision of law.

44 (5) Except as provided in ORS 705.165, it is the intention of the Legislative Assembly that the
 45 performance of the various duties and functions of the department in connection with each of its

1 programs shall be financed by the fees, assessments and charges established and collected in con-
2 nection with those programs.

3 (6) There is created by transfer from the Consumer and Business Services Fund a revolving ad-
4 ministrative account in the amount of \$100,000. The revolving account shall be disbursed by checks
5 or orders issued by the director or the Workers' Compensation Board and drawn upon the State
6 Treasury, to carry on the duties and functions of the department and the board. All checks or orders
7 paid from the revolving account shall be reimbursed by a warrant drawn in favor of the department
8 charged against the Consumer and Business Services Fund and recorded in the appropriate subsid-
9 iary record.

10 (7) For the purposes of ORS chapter 656, the revolving account created pursuant to subsection
11 (6) of this section may also be used to:

12 (a) Pay compensation benefits; and

13 (b) Refund to employers amounts paid to the Consumer and Business Services Fund in excess
14 of the amounts required by ORS chapter 656.

15 (8) Notwithstanding subsections (2), (3) and (5) of this section, the moneys derived pursuant to
16 ORS 446.003 to 446.200, 446.210, 446.225 to 446.285, 446.395 to 446.420 and 455.220 (1) and deposited
17 to the fund, interest earned on those moneys and withdrawals of moneys for activities or programs
18 under ORS 446.003 to 446.200, 446.210, 446.225 to 446.285 and 446.395 to 446.420, or education and
19 training programs pertaining thereto, must be assigned to a single account within the fund.

20 (9) Notwithstanding subsections (2), (3) and (5) of this section, the moneys derived pursuant to
21 ORS 455.240 or 460.370 or from state building code or specialty code program fees for which the
22 amount is established by department rule pursuant to ORS 455.020 (2) and deposited to the fund,
23 interest earned on those moneys and withdrawals of moneys for activities or programs described
24 under ORS 455.240 or 460.310 to 460.370, structural or mechanical specialty code programs or ac-
25 tivities for which a fee is collected under ORS 455.020 (2), or programs described under subsection
26 (10) of this section that provide training and education for persons employed in producing, selling,
27 installing, delivering or inspecting manufactured structures or manufactured dwelling parks or re-
28 creation parks, must be assigned to a single account within the fund.

29 (10) Notwithstanding [*ORS chapter 279*] **sections 1 to 46 and 47 to 87 of this 2003 Act**, the
30 department may, after consultation with the appropriate specialty code advisory boards established
31 under ORS 446.280, 455.132, 455.138, 480.535 and 693.115, contract for public or private parties to
32 develop or provide training and education programs relating to the state building code and associ-
33 ated licensing or certification programs.

34 **SECTION 323.** ORS 706.515 is amended to read:

35 706.515. (1) The Director of the Department of Consumer and Business Services may enter into
36 cooperative, coordinating and information sharing agreements with any other bank supervisory
37 agencies or any organization affiliated with or representing one or more bank supervisory agencies
38 with respect to the periodic examination or other supervision of any branch or other office or place
39 of business in this state of any non-Oregon institution, or any branch of a banking institution located
40 in any other state. The director may accept such supervisory agencies' reports of examination and
41 reports of investigation in lieu of conducting the director's own examinations or investigations. The
42 agreement may resolve conflicts of laws and specify the manner in which examination, supervision
43 and application processes shall be coordinated between this state and the home state of the non-
44 Oregon institution.

45 (2) The director may enter into contracts with any bank supervisory agency that has concurrent

1 jurisdiction over a banking institution or non-Oregon institution operating a branch or other office
 2 or place of business in this state, to engage the services of such agency's examiners at a reasonable
 3 rate of compensation, or to provide the services of the director's examiners to such agency at a
 4 reasonable rate of compensation. Any such contract shall be deemed exempt from competitive bid-
 5 ding requirements under the provisions of *[ORS chapter 279]* **sections 1 to 46 and 47 to 87 of this**
 6 **2003 Act**. The contract may resolve conflicts of laws and specify the manner in which examination,
 7 supervision and application processes shall be coordinated between this state and the home state
 8 of the non-Oregon institution.

9 (3) The director may enter into joint examinations or joint enforcement actions with other bank
 10 supervisory agencies having concurrent jurisdiction over any branch or other office or place of
 11 business in this state of a non-Oregon institution, or any branch of a banking institution located in
 12 any other state, provided that the director may at any time take such actions independently if the
 13 director deems such actions to be necessary or appropriate to carry out the director's responsibil-
 14 ities or to ensure compliance with the laws of this state, but provided further, that in the case of
 15 a non-Oregon institution, the director shall recognize:

16 (a) The exclusive authority of the banking supervisory agency of the home state or country of
 17 the non-Oregon institution over corporate governance matters; and

18 (b) The primary responsibility of the banking supervisory agency of the home state or country
 19 of the non-Oregon institution over safety and soundness matters.

20 (4) Any fees collected by the director from non-Oregon institutions under the provisions of the
 21 Bank Act may be shared with other bank supervisory agencies or any organization affiliated with
 22 or representing one or more bank supervisory agencies in accordance with agreements between such
 23 parties and the director.

24 **SECTION 324.** ORS 723.136 is amended to read:

25 723.136. (1) The Director of the Department of Consumer and Business Services may enter into
 26 cooperative, coordinating and information sharing agreements with any other credit union supervi-
 27 sory agency or any organization affiliated with or representing one or more credit union supervisory
 28 agencies with respect to the periodic examination or other supervision of any branch or other office
 29 or place of business in this state of any non-Oregon institution, or any branch of a credit union that
 30 is chartered in Oregon and is located in any other state. The director may accept the supervisory
 31 agency's reports of examination and reports of investigation in lieu of conducting the director's own
 32 examinations or investigations. The agreement may resolve conflicts of laws and specify the manner
 33 in which examination, supervision and application processes shall be coordinated between this state
 34 and the home state of the non-Oregon institution. The director may also share information with the
 35 Federal Home Loan Bank and its directors.

36 (2) The director may enter into contracts with any credit union supervisory agency that has
 37 concurrent jurisdiction over a credit union operating a branch or other office or place of business
 38 in this state, to engage the services of such agency's examiners at a reasonable rate of compen-
 39 sation, or to provide the services of the director's examiners to such agency at a reasonable rate
 40 of compensation. Any such contract shall be deemed exempt from competitive bidding requirements
 41 under the provisions of *[ORS chapter 279]* **sections 1 to 46 and 47 to 87 of this 2003 Act**. The
 42 contract may resolve conflicts of laws and specify the manner in which examination, supervision and
 43 application processes shall be coordinated between this state and the home state of the non-Oregon
 44 institution.

45 (3) The director may enter into joint examinations or joint enforcement actions with other credit

1 union supervisory agencies that have concurrent jurisdiction over any branch or other office or
2 place of business in this state of a non-Oregon institution, or any branch of a credit union that is
3 chartered in Oregon and is located in any other state, provided that the director may at any time
4 take the actions independently if the director deems the actions to be necessary or appropriate to
5 carry out the director's responsibilities or to ensure compliance with the laws of this state. In the
6 case of a non-Oregon institution, the director may recognize:

7 (a) The exclusive authority of the credit union supervisory agency of the home state of the
8 non-Oregon institution over corporate governance matters; and

9 (b) The primary responsibility of the credit union supervisory agency of the home state of the
10 non-Oregon institution over safety and soundness matters.

11 (4) Any fees collected by the director from non-Oregon institutions under the provisions of this
12 chapter may be shared with other credit union supervisory agencies or any organization affiliated
13 with or representing one or more credit union supervisory agencies in accordance with agreements
14 between such parties and the director.

15 **SECTION 325.** Section 1, chapter 336, Oregon Laws 1995, is amended to read:

16 **Sec. 1.** (1) As used in this section, "project" means the group of projects that make up the
17 combined sewer overflow program.

18 (2) Notwithstanding ORS [279.320,] 656.126, [737.346] **737.600** or 746.160 **or section 143 of this**
19 **2003 Act**, an insurer approved to transact insurance in the State of Oregon, including a guaranty
20 contract insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the
21 Department of Consumer and Business Services a policy of insurance or a guaranty contract cov-
22 ering and insuring the City of Portland, the prime contractor under contract for the construction
23 of the project, any contractors or subcontractors with whom the prime contractor may enter into
24 contracts for the purpose of fulfilling its contractual obligations in construction of the project and
25 any other contractors engaged by the City of Portland to provide architectural or other design
26 services, engineering services, construction management service or other consulting services relat-
27 ing to the design and construction of the projects or any combination thereof.

28 (3) The director, upon application of any insurer, shall approve the issuance of a policy of in-
29 surance or a guaranty contract to any grouping of the persons described in subsection (2) of this
30 section if:

31 (a) The grouping was formed for the purpose of performing a contract or a series of related
32 contracts for the design and construction of the project;

33 (b) The combined total estimated cost of the project exceeds \$100 million;

34 (c) The City of Portland can reasonably demonstrate that the formation and operation of the
35 grouping will substantially improve accident prevention and claims handling to the benefit of the
36 City of Portland and the contractors and workers employed in the project;

37 (d) The established rating and auditing standards required by authorized advisory organizations
38 and rating organizations are adhered to;

39 (e) Adequate protection is guaranteed by the insurer for the grouping to any other insurance
40 agency or agent that demonstrates that without such protection the insurance agency or agent will
41 suffer losses which will constitute a threat to the continuation of the insurance business of the
42 agency or agent;

43 (f) The City of Portland can reasonably demonstrate that a substantial savings will result from
44 the formation of the grouping;

45 (g) The insurer for the grouping will guarantee insurance coverage of the classes of insurance

1 issued to the grouping to any contractor who, because of participation in the group, has been unable
2 to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall
3 continue 12 months after substantial completion of the contractor's work on the project;

4 (h) Monoline workers' compensation insurers domiciled in the State of Oregon had the oppor-
5 tunity to propose a policy of insurance or a guaranty contract covering persons referred to in sub-
6 section (2) of this section; and

7 (i) The insurer places with the Department of Consumer and Business Services a special deposit
8 of \$25,000 per \$100 million of construction project value per project phase, or an amount prescribed
9 by rule of the director, whichever is greater.

10 **SECTION 326.** ORS 737.602 is amended to read:

11 737.602. (1) As used in this section:

12 (a) "Project" means a construction project, a plant expansion or improvements within Oregon
13 with an aggregate construction value in excess of \$90 million that is to be completed within a de-
14 fined period. The average construction value during the defined period of the project must be at
15 least \$18 million per year. "Project" does not mean a series of unrelated construction projects arti-
16 ficially aggregated to satisfy the \$90 million requirement.

17 (b) "Project sponsor" means public bodies, utilities, corporations and firms undertaking to con-
18 struct a project in excess of \$90 million and conducting business in the State of Oregon.

19 (c) "Public body" has the meaning given the term in ORS 30.260.

20 (2) Notwithstanding ORS [279.320,] 656.126, 737.600 or 746.160 **or section 143 of this 2003 Act**,
21 an insurer approved to transact insurance in this state, including the State Accident Insurance Fund
22 Corporation or a guaranty contract insurer as defined in ORS 656.005, may issue with the prior
23 approval of the Director of the Department of Consumer and Business Services a policy of insurance
24 or a guaranty contract covering and insuring the project sponsor, the prime contractor under a
25 contract for the construction of the project, any contractors or subcontractors with whom the prime
26 contractor may enter into contracts for the purpose of fulfilling its contractual obligations in con-
27 struction of the project and any other contractors engaged by a project sponsor to provide archi-
28 tectural or other design services, engineering services, construction management services, other
29 consulting services relating to the design and construction of the project or any combination
30 thereof.

31 (3) The following provisions apply to premiums under a policy of insurance or guaranty contract
32 described in subsection (2) of this section:

33 (a) A project sponsor or a prime contractor may not charge a premium for coverage under a
34 policy of insurance or a guaranty contract to a contractor or subcontractor with whom the project
35 sponsor or prime contractor enters into a contract or engages for services described in subsection
36 (2) of this section.

37 (b) A prime contractor may not charge a project sponsor a premium for coverage under a policy
38 of insurance or a guaranty contract other than a premium approved by the director under ORS
39 chapter 737 prior to or at the same time as the director approves the project to which the policy
40 or guaranty contract applies.

41 (c) Charging a premium prohibited by this subsection constitutes the unlawful transaction of
42 insurance in violation of ORS 731.354.

43 (4) The director, upon application of any insurer, shall approve the issuance of a policy of in-
44 surance or a guaranty contract to any grouping of the persons described in subsection (2) of this
45 section if:

1 (a) The grouping was formed for the purpose of performing a contract or a series of related
2 contracts for the design and construction of a project for the project sponsor;

3 (b) The project sponsor can reasonably demonstrate that the formation and operation of the
4 grouping will substantially improve accident prevention and claims handling to the benefit of the
5 project sponsor and the contractors and workers employed by the project sponsor on construction
6 related projects;

7 (c) The established rating and auditing standards required by authorized advisory organizations
8 and rating organizations are adhered to;

9 (d) The insurer for the grouping guarantees adequate protection to any other insurance agency
10 or agent that demonstrates that without such protection the agency or agent will suffer losses that
11 will constitute a threat to the continuation of the business of the agency or agent;

12 (e) The insurer for the grouping guarantees insurance coverage of the classes of insurance is-
13 sued to the grouping to any contractor who, because of participation in the group, has been unable
14 to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall
15 continue until 12 months after substantial completion of the contractor's work;

16 (f) By permitting this grouping for a project sponsor, greater opportunities will be made avail-
17 able for historically underutilized businesses to bid on the project;

18 (g) The project insurers agree to provide not less than 90 days' notice to all insured parties of
19 the cancellation or any material reduction in coverage for the project;

20 (h) The insurance coverage for the grouping contains a severability of interest clause with re-
21 spect to liability claims between individuals insured under the group policy and includes contractual
22 liability coverage that applies to the various contracts and subcontracts entered into in connection
23 with the project; and

24 (i) The insurer places with the Department of Consumer and Business Services a special deposit
25 of \$25,000 per \$100 million of construction project value, or an amount prescribed by rule of the
26 director, whichever is greater.

27 **SECTION 327.** ORS 737.604 is amended to read:

28 737.604. In addition to other rulemaking authority of the Director of the Department of Con-
29 sumer and Business Services, the director may make rules:

30 (1) Stating the necessary attributes that a construction project of a project sponsor and the
31 participants in the project must have in order to qualify for the grouping permitted under ORS
32 737.602. The rules may include but are not limited to matters regarding an appropriate trust agree-
33 ment for special deposit and adjustment of the construction project value according to an appropri-
34 ate cost index; and

35 (2) Establishing a process for a state agency or local contract review board created under [ORS
36 279.055] **section 9 of this 2003 Act** to evaluate the purchase by a public body of insurance author-
37 ized by ORS 737.602, or any agreements related thereto.

38 **SECTION 328.** ORS 742.061 is amended to read:

39 742.061. (1) Except as otherwise provided in subsections (2) and (3) of this section, if settlement
40 is not made within six months from the date proof of loss is filed with an insurer and an action is
41 brought in any court of this state upon any policy of insurance of any kind or nature, and the
42 plaintiff's recovery exceeds the amount of any tender made by the defendant in such action, a rea-
43 sonable amount to be fixed by the court as attorney fees shall be taxed as part of the costs of the
44 action and any appeal thereon. If the action is brought upon the bond of a contractor or subcon-
45 tractor executed and delivered as provided in ORS [279.029 or] 701.430 **or section 50, 51 or 118 of**

1 **this 2003 Act** and the plaintiff's recovery does not exceed the amount of any tender made by the
2 defendant in such action, a reasonable amount to be fixed by the court as attorney fees shall be
3 taxed and allowed to the defendant as part of the costs of the action and any appeal thereon. If in
4 an action brought upon such a bond the surety is allowed attorney fees and costs and the contractor
5 or subcontractor has incurred expenses for attorney fees and costs in defending the action, the at-
6 torney fees and costs allowed the surety shall be applied first to reimbursing the contractor or
7 subcontractor for such expenses.

8 (2) Subsection (1) of this section does not apply to actions to recover personal injury protection
9 benefits if, in writing, not later than six months from the date proof of loss is filed with the insurer:

10 (a) The insurer has accepted coverage and the only issue is the amount of benefits due the in-
11 sured; and

12 (b) The insurer has consented to submit the case to binding arbitration.

13 (3) Subsection (1) of this section does not apply to actions to recover uninsured or underinsured
14 motorist benefits if, in writing, not later than six months from the date proof of loss is filed with the
15 insurer:

16 (a) The insurer has accepted coverage and the only issues are the liability of the uninsured or
17 underinsured motorist and the damages due the insured; and

18 (b) The insurer has consented to submit the case to binding arbitration.

19 **SECTION 329.** ORS 757.552 is amended to read:

20 757.552. (1) It is the function of the board of directors to operate the Oregon Utility Notification
21 Center, through which a person shall notify operators of underground facilities of proposed exca-
22 vations and request that the underground facilities be marked.

23 (2) The board of directors shall:

24 (a) Utilize a competitive process to contract with any qualified person to provide the notification
25 required under subsection (1) of this section.

26 (b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which
27 subscribers shall pay to fund all of the activities of the Oregon Utility Notification Center.

28 (c) Adopt rules according to ORS 183.310 to 183.550 that regulate the notification and marking
29 of underground facilities to prevent damage to underground facilities. The rules, insofar as is prac-
30 ticable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of
31 March 31, 1995.

32 (3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except
33 as provided in subsection (2) of this section, the provisions of ORS chapters 240, 276, [279,] 282, 283,
34 291, 292 and 293 **and ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this**
35 **2003 Act** shall not apply to the Oregon Utility Notification Center.

36 (4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish
37 rates or other charges that require payments from any subscriber who receives fewer than 50 tele-
38 phone calls in the calendar year or that result in annual payments of more than \$500 for any of the
39 following subscribers:

40 (a) Cities with a population under 15,000;

41 (b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the
42 Public Utility Commission under ORS chapter 759;

43 (c) Cable system operators serving fewer than 15,000 customers;

44 (d) Utilities, special districts, people's utility districts or authorities providing electricity, water
45 or sanitary sewer service to fewer than 15,000 residential customers; and

(e) Telecommunications cooperatives.

SECTION 330. ORS 774.190 is amended to read:

774.190. (1) ORS chapters 278, [279,] 282, 283, 291, 292, 293, 295 and 297 **and ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act** do not apply to Citizens' Utility Board or to the administration and enforcement of this chapter. An employee of Citizens' Utility Board shall not be considered an "employee" as the term is defined in the public employees retirement laws. Citizens' Utility Board and its employees shall be exempt from the provisions of the State Personnel Relations Law.

(2) ORS 183.310 to 183.550 does not apply to determinations and actions by the board.

(3) The board, and any of the officers, employees, agents or members of Citizens' Utility Board shall be provided the same protections from liability as the board, officers, employees, agents, or members of any nonprofit corporation of the State of Oregon.

SECTION 331. ORS 777.775 is amended to read:

777.775. (1) An export trading corporation is not a [*public agency or public*] contracting agency for the purposes of [*ORS 279.011 to 279.063 or 279.435*] **sections 8, 10, 11, 12, 13, 14, 16, 47 to 87, 88, 89 to 96 and 97 to 136 of this 2003 Act, except sections 49, 77, 78, 79, 80 and 81 of this 2003 Act.**

(2) An export trading corporation is not a public employer for the purposes of ORS chapter 238.

PART 6: MISCELLANEOUS PROVISIONS

SECTION 332. Repeals. ORS 279.005, 279.007, 279.009, 279.011, 279.015, 279.017, 279.019, 279.021, 279.023, 279.025, 279.027, 279.029, 279.031, 279.033, 279.035, 279.037, 279.039, 279.041, 279.043, 279.045, 279.047, 279.049, 279.051, 279.053, 279.055, 279.056, 279.057, 279.058, 279.059, 279.061, 279.063, 279.067, 279.073, 279.095, 279.101, 279.103, 279.106, 279.111, 279.116, 279.310, 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320, 279.321, 279.322, 279.323, 279.324, 279.326, 279.328, 279.330, 279.332, 279.333, 279.334, 279.335, 279.336, 279.338, 279.348, 279.349, 279.350, 279.352, 279.354, 279.355, 279.356, 279.357, 279.359, 279.361, 279.363, 279.365, 279.370, 279.375, 279.380, 279.400, 279.410, 279.420, 279.430, 279.435, 279.445, 279.526, 279.528, 279.536, 279.538, 279.540, 279.542, 279.545, 279.550, 279.555, 279.560, 279.562, 279.565, 279.567, 279.570, 279.573, 279.580, 279.585, 279.590, 279.595, 279.605, 279.615, 279.617, 279.621, 279.630, 279.635, 279.640, 279.645, 279.650, 279.710, 279.711, 279.712, 279.717, 279.722, 279.723, 279.725, 279.727, 279.729, 279.742, 279.744, 279.746, 279.748, 279.800, 279.805, 279.820, 279.822, 279.824, 279.826, 279.828, 279.830, 279.831, 279.833 and 279.990 are repealed.

SECTION 332a. Repeal of sections 132 and 133. Sections 132 and 133 of this 2003 Act are repealed on June 30, 2009.

SECTION 333. Captions. The unit and section captions used in this 2003 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2003 Act.

SECTION 334. Applicability of existing rules and exemptions. Rules and exemptions adopted under statutes repealed by section 332 of this 2003 Act expire on March 1, 2005. However, nothing in this 2003 Act operates to invalidate or terminate any public contract that is entered into pursuant to a rule or an exemption that expires on March 1, 2005.

SECTION 335. Permissible actions before operative date. (1) The Director of the Oregon Department of Administrative Services, the Director of Transportation, the Attorney Gen-

1 eral and local contracting agencies may take any action before the operative date specified
2 in section 337 of this 2003 Act that is necessary to enable them to exercise, on and after the
3 operative date specified in section 337 of this 2003 Act, the duties, functions and powers
4 granted to them under this 2003 Act.

5 (2) Notwithstanding section 10 of this 2003 Act, the Attorney General shall review this
6 2003 Act and adopt model rules implementing the Public Contracting Code on or before Sep-
7 tember 1, 2004, with an effective date of March 1, 2005.

8 SECTION 336. Applicability. Sections 1 to 21, 23 to 91, 94 to 103, 106 to 108, 111, 114 to 125
9 and 128 to 192 of this 2003 Act, the amendments to statutes by sections 193 to 331 of this 2003
10 Act and the repeal of statutes by section 332 of this 2003 Act apply only to public contracts
11 first advertised, but if not advertised then entered into, on or after March 1, 2005.

12 SECTION 337. Operative date. (1) Sections 1 to 21, 23 to 91, 94 to 103, 106 to 108, 111, 114
13 to 125 and 128 to 192 of this 2003 Act, the amendments to statutes by sections 193 to 331 of
14 this 2003 Act and the repeal of statutes by section 332 of this 2003 Act become operative on
15 March 1, 2005.

16 (2) Section 22 of this 2003 Act becomes operative on September 30, 2003.

17 SECTION 338. Emergency clause. This 2003 Act being necessary for the immediate pres-
18 ervation of the public peace, health and safety, an emergency is declared to exist, and this
19 2003 Act takes effect on its passage.

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