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). Presession 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


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.

LC 354
A-Eng. HB 2341

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; appropriating money; and declaring an
emergency.

(1) In order to promote the policy of a sound and responsive public contracting system, the
Legislative Assembly finds that it is appropriate to divide the public contracting statutes into the
following three chapters:
(a) ORS chapter 279C on public improvements and architectural, engineering, land surveying and
related service contracts;
(b) ORS chapter 279B on public procurements; and
(c) ORS chapter 279A on overarching provisions.

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

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

PART 1: GENERAL PROVISIONS

(ORS Chapter 279A)

GENERAL PROVISIONS

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

SECTION 2. Definitions for the Public Contracting Code. (1) As used in the Public Con-
tracting Code, unless the context or a specifically applicable definition requires otherwise:
(a) “Bidder” means a person that submits a bid in response to an invitation to bid.
(b) “Contracting agency” means a public body authorized by law to conduct a procure-
ment. “Contracting agency” includes, but is not limited to, the Director of the Oregon De-
partment of Administrative Services and any person authorized by a contracting agency to
conduct a procurement on the contracting agency’s behalf. “Contracting agency” does not
include the judicial department or the legislative department.
(c) “Days” means calendar days.
(d) “Department” means the Oregon Department of Administrative Services.
(e) “Director” means the Director of the Oregon Department of Administrative Services
or a person designated by the director to carry out the authority of the director under the
Public Contracting Code.
(f) “Emergency” means circumstances that:
(A) Could not have been reasonably foreseen;
(B) Create a substantial risk of loss, damage or interruption of services or a substantial
threat to property, public health, welfare or safety; and
(C) Require prompt execution of a contract to remedy the condition.
(g) “Executive department” has the meaning given that term in ORS 174.112.
(h)(A) “Grant” means:
(i) An agreement under which a contracting agency receives moneys, property or other
assistance, including but not limited to federal assistance that is characterized as a grant

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

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

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

(i) “Industrial oil” means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(j) “Judicial department” has the meaning given that term in ORS 174.113.

(k) “Legislative department” has the meaning given that term in ORS 174.114.

(L) “Local contract review board” means a local contract review board described in section 9 of this 2003 Act.

(m) “Local contracting agency” means a local government or special government body authorized by law to conduct a procurement. “Local contracting agency” includes any person authorized by a local contracting agency to conduct a procurement on behalf of the local contracting agency.

(n) “Local government” has the meaning given that term in ORS 174.116.

(o) “Lowest responsible bidder” means the lowest bidder who:

(A) Has substantially complied with all prescribed public contracting procedures and requirements;

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

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

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

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

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

(r) “Post-consumer waste” means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. “Post-consumer
waste” does not include manufacturing waste.

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

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

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

(t) “Proposer” means a person that submits a proposal in response to a request for proposals.

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

(v) “Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Public contract” does not include grants.

(w) “Public contracting” means procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering public contracts or price agreements.

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

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

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

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

(z) “Public improvement contract” means a public contract for a public improvement. “Public improvement contract” does not include a public contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

(aa) “Recycled material” means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

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

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

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

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

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

(ee) “Recycled product” means all materials, goods and supplies, not less than 50 percent
of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. “Recycled product” includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form.

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

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

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

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

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

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

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

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

- “Adequate” section 98 of this 2003 Act
- “Administering contracting agency” section 25 of this 2003 Act
- “Affirmative action” section 13 of this 2003 Act
- “Architect” section 89 of this 2003 Act
- “Architectural, engineering and land surveying services” section 89 of this 2003 Act
- “Bid documents” section 129 of this 2003 Act
- “Bidder” section 86 of this 2003 Act
- “Bids” section 129 of this 2003 Act
- “Brand name” section 84 of this 2003 Act
- “Brand name or equal specification” section 72 of this 2003 Act
- “Brand name specification” section 72 of this 2003 Act
- “Consultant” section 94 of this 2003 Act
- “Cooperative procurement” section 25 of this 2003 Act
- “Cooperative procurement group” section 25 of this 2003 Act
- “Donee” section 36 of this 2003 Act
- “Engineer” section 89 of this 2003 Act
- “Established catalog price” section 47 of this 2003 Act
- “Findings” section 102 of this 2003 Act
- “Fire protection equipment” section 24 of this 2003 Act
- “Flagger” section 172 of this 2003 Act
“Fringe benefits” section 165 of this 2003 Act
“Funds of a public agency” section 172 of this 2003 Act
“Good cause” section 152 of this 2003 Act
“Good faith dispute” section 151 of this 2003 Act
“Goods” section 60 of this 2003 Act
“Goods and services” or “goods or services” section 47 of this 2003 Act
“Interstate cooperative procurement” section 25 of this 2003 Act
“Invitation to bid” sections 47 and 129 of this 2003 Act
“Joint cooperative procurement” section 25 of this 2003 Act
“Labor dispute” section 160 of this 2003 Act
“Land surveyor” section 89 of this 2003 Act
“Legally flawed” section 84 of this 2003 Act
“Locality” section 165 of this 2003 Act
“Nonprofit organization” section 172 of this 2003 Act
“Nonresident bidder” section 16 of this 2003 Act
“Not-for-profit organization” section 36 of this 2003 Act
“Original contract” section 25 of this 2003 Act
“Permissive cooperative procurement” section 25 of this 2003 Act
“Person” sections 137 and 173 of this 2003 Act
“Personal services” section 89 of this 2003 Act
“Prevailing rate of wage” section 165 of this 2003 Act
“Procurement description” section 47 of this 2003 Act
“Property” section 36 of this 2003 Act
“Public agency” section 165 of this 2003 Act
“Public contract” section 24 of this 2003 Act
“Public works” section 165 of this 2003 Act
“Purchasing contracting agency” section 25 of this 2003 Act
“Regularly organized fire department” section 24 of this 2003 Act
“Related services” section 89 of this 2003 Act
“Request for proposals” section 47 of this 2003 Act
“Resident bidder” section 16 of this 2003 Act
“Responsible bidder” sections 14 and 47 of this 2003 Act
“Responsible proposer” section 47 of this 2003 Act
“Responsive bid” section 47 of this 2003 Act
“Responsive proposal” section 47 of this 2003 Act
“Retainage” section 146 of this 2003 Act
“Specification” section 72 of this 2003 Act
“State agency” section 36 of this 2003 Act
“Substantial completion” section 135 of this 2003 Act
“Surplus property” section 36 of this 2003 Act
“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
place and industry standards.

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

(3) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.

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

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

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

SECTION 4. Organization of the Public Contracting Code. (1) Except as otherwise provided in the Public Contracting Code, all public contracting by a contracting agency is subject to sections 1 to 46 of this 2003 Act.

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

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

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

SECTION 5. Application of the Public Contracting Code. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

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

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

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

(c) Grants;

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

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

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

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

(h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;
(i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Oregon State Lottery Commission;

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

(c) The legislative department;

(d) The judicial department;
(e) Semi-independent state agencies listed in ORS 182.451, 182.452 and 182.454, except as provided in ORS 279.835 to 279.855 and sections 36 to 44 of this 2003 Act;
(f) Oregon Corrections Enterprises;
(g) The Oregon Film and Video Office, except as provided in sections 13 and 36 to 44 of this 2003 Act;
(h) The Travel Information Council, except as provided in sections 36 to 44 of this 2003 Act;
(i) The Appraiser Certification and Licensure Board, except as provided in ORS 279.835 to 279.855 and sections 36 to 44 of this 2003 Act; or
(j) Any other public body specifically exempted from the code by another provision of law.

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

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

(2) For purposes of this section, “a conflict between a provision of the Public Contracting Code, or a rule adopted under a provision of the code, and a federal statute, regulation, official written policy or funding requirement” means that:
(a) A federal statute, regulation, official written policy or funding requirement is more stringent or restrictive than the code or a rule adopted under the code; or
(b) Compliance with the federal statute, regulation, official written policy or funding requirement is mandatory, regardless of whether it is more restrictive than the code or a rule adopted under the code, as a condition of the receipt of federal funds or federal assistance.

AUTHORITY

SECTION 7. Procurement authority. (1) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all rights, powers and authority in accordance with the provisions of the Public Contracting Code.

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

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all of the rights, powers and authority to:
(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);
(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges
and other transportation facilities that are subject to the authority of the Department of Transportation; and

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

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

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

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

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing:

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

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

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

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

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

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

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

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services;

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

(i) The Department of Corrections, subject to any applicable provisions of ORS 283.110 to 283.385 and sections 16, 17 and 19 of this 2003 Act, to procure or supervise the procurement of goods for its institutions;

(j) The Director of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the direc-
tor’s authority; and

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

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

(2) A local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal services contracts.

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

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

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

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

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

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

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

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

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

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

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

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

SECTION 13. Affirmative action; limited competition permitted. (1) As used in this section, “affirmative action” means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

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

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

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

(2) A contracting agency may require a contractor to subcontract some part of a con-
tract to, or to obtain materials to be used in performing the contract from, a business enter-
prise that is certified under ORS 200.055 as an emerging small business and that, as
identified by the contracting agency, is located in or draws its workforce from economically
depressed areas, as designated by the Economic and Community Development Department.
(3) A contracting agency may require that a public contract be awarded to a responsible
bidder, as defined in ORS 200.005, who the contracting agency determines has made good
faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, “responsible
bidder” includes a responsible proposer that has made good faith efforts as prescribed in ORS
200.045 (3).

SECTION 15. Discrimination in subcontracting prohibited; remedies. (1) A bidder or
proposer who competes for or is awarded a public contract may not discriminate against a
subcontractor in the awarding of a subcontract because the subcontractor is a minority,
women or emerging small business enterprise certified under ORS 200.055.
(2) A contracting agency may debar or disqualify, under section 63 or 122 of this 2003 Act,
as appropriate, a bidder or proposer if the contracting agency finds that the bidder or
proposer has violated subsection (1) of this section in the awarding of a subcontract in con-
nection with a contract advertised by the contracting agency or a contract between the
contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer
may appeal the debarment or disqualification under section 87 of this 2003 Act or sections
124 and 125 of this 2003 Act, as appropriate.
(3) A contracting agency may not allege an occurrence of discrimination in subcon-tracting as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this
section more than three years after the alleged discriminatory conduct occurred or more
than three years after the contracting agency, in the exercise of reasonable diligence, should
have discovered the conduct, whichever is later.
(4) A bidder or proposer shall certify in the documents accompanying the bidder’s or
proposer’s offer to enter into a public contract that the bidder or proposer has not discrimi-
inated and will not discriminate, in violation of subsection (1) of this section, against any
minority, women or emerging small business enterprise in obtaining any required subcon-
tract.
(5) After a contractor is awarded a public contract, if the contractor violates the certif-
ication made under subsection (4) of this section, the contracting agency may regard the
violation as a breach of contract that permits:
(a) Termination of the contract; or
(b) The contracting agency to exercise any remedies for breach of contract that are re-
served in the contract.

CONTRACT PREFERENCES

SECTION 16. Preference for Oregon goods and services; nonresident bidders. (1) As used
in this section:
(a) “Nonresident bidder” means a bidder who is not a resident bidder.
(b) “Resident bidder” means a bidder that has paid unemployment taxes or income taxes
in this state during the 12 calendar months immediately preceding submission of the bid, has
a business address in this state and has stated in the bid whether the bidder is a “resident
bidder” under this paragraph.

(2) For the purposes of awarding a public contract, a contracting agency shall:
(a) Give preference to goods or services that have been manufactured or produced in this
state if price, fitness, availability and quality are otherwise equal; and
(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any,
of the preference given to the bidder in the state in which the bidder resides.

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

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

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

(2) A contracting agency shall give preference to goods that are certified to be made from
recycled materials if:
(a) The recycled product is available;
(b) The recycled product meets applicable standards;
(c) The recycled product can be substituted for a comparable nonrecycled product; and
(d) The recycled product’s costs do not exceed the costs of nonrecycled products by more
than five percent, or a higher percentage if a written determination is made by the con-
tacting agency.

STATE PROCUREMENT

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

(2) The following requirements and procedures apply to all contracts of state agencies:
(a) A personal services contract is not valid or effective without the written approval of
the department unless:
(A) The contract is authorized under section 7 of this 2003 Act; or
(B) The department has delegated authority to the contracting agency under section 12 of this 2003 Act to make the personal services contract.

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

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

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

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

(f) The department shall adopt rules necessary to implement the provisions of this subsection, including but not limited to rules establishing:

(A) A reporting system for personal service contracts, including architectural, engineering and land surveying services contracts and related services contracts, that includes the following:

(i) A state agency shall submit to the department personal services contract information as directed by the department. A state agency shall file with the department a copy of each personal services contract entered into by the state agency, including appropriate documentation as required by the department. Whenever a state agency pays more in a calendar year under a personal services contract for services historically performed by state employees than the agency would have paid to the agency’s employees performing the same work, the agency shall so report to the department and include in the report a statement of justification for the greater costs.

(ii) The department shall keep the copy of the contract and the department’s documentation on file for three years, after which the department may destroy the file. The department shall maintain a system for filing copies of personal services contracts and documentation submitted to the department under this paragraph. The department shall submit a biennial report to the Legislative Assembly concerning the use of personal services contracts by state agencies. The report must specify the name of each state agency, the amount paid under each personal services contract entered into by the agency, the name of the contractor, the duration of the contract and the contract’s basic purpose. The report must also include the total dollar figure of all personal services contracts for each year of the preceding biennium.

(B) Procedures for the evaluation and award of personal services contracts when the department authorizes a state agency to contract directly for personal services, including architectural, engineering and land surveying services and related services, in accordance with section 50 of this 2003 Act or sections 89 to 96 of this 2003 Act.
(3) The department shall notify all state agencies of the requirements of this section.

SECTION 19. Recycled product purchasing information. The Oregon Department of Administrative Services shall include recycled product purchasing information within publications and training programs provided to local governments requesting state government purchasing assistance.

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

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

SECTION 21. State procurement of paper. No less than 35 percent of state agency procurements of paper products may be from recycled paper products.

INTERGOVERNMENTAL RELATIONS
(Generally)

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

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

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

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

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

SECTION 24. Transfers of fire protection equipment between fire departments. (1) As used in this section:
(a) “Fire protection equipment” has the meaning given that term in ORS 476.005.
(b) “Public contract” includes a sale at no cost.
(c) “Regularly organized fire department” has the meaning given that term in ORS 476.005.

(2) Notwithstanding any other provision of the Public Contracting Code, transfers of fire protection equipment under public contracts between regularly organized fire departments may be made without competitive sealed bidding, competitive sealed proposals or other competition required in sections 50 to 57 of this 2003 Act, provided:
(a) The recipient regularly organized fire department makes a written request for the fire protection equipment to the transferor regularly organized fire department;
(b) The fire protection equipment is surplus to or unusable by the transferor;
(c) The total fair market value of fire protection equipment received by the recipient does not exceed $50,000 per calendar year; and
(d) The transferor holds a public hearing, with hearing notice published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing, and finds that the public contract is in the public’s interest.

(Cooperative Procurement)

SECTION 25. Definitions for sections 25 to 30 of this 2003 Act. (1) As used in sections 25 to 30 of this 2003 Act:
(a) “Administering contracting agency” means a contracting agency that solicits and establishes the original contract for procurement of goods, services or public improvements in a cooperative procurement.
(b) “Cooperative procurement” means a procurement conducted by or on behalf of one or more contracting agencies. “Cooperative procurement” includes but is not limited to multiparty contracts and price agreements.
(c) “Cooperative procurement group” means a group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating cooperative procurements.
(d) “Interstate cooperative procurement” means a permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into public contracts and in which one or more of the participating agencies are located outside this state.
(e) “Joint cooperative procurement” means a cooperative procurement in which the participating contracting agencies or the cooperative procurement group and the agencies’ or group’s contract requirements or estimated contract requirements for price agreements are identified.
(f) “Original contract” means the initial contract or price agreement solicited and awarded during a cooperative procurement by an administering contracting agency.
(g) “Permissive cooperative procurement” means a cooperative procurement in which the purchasing contracting agencies are not identified.
(h) “Purchasing contracting agency” means a contracting agency that procures goods, services or public improvements from a contractor based on the original contract established
by an administering contracting agency.

(2) As used in sections 27 (1)(a), 28 (1)(a) and 29 (1)(a) of this 2003 Act, an administering contracting agency’s solicitation and award process uses source selection methods “substantially equivalent” to those identified in section 51, 52 or 57 of this 2003 Act if the solicitation and award process:

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

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

(c) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.

SECTION 26. Cooperative procurements authorized. A contracting agency may participate in, sponsor, conduct or administer a cooperative procurement for the procurement of any goods, services or public improvements.

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

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

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

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

(2) A joint cooperative procurement may not also be a permissive cooperative procurement.

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

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

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

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

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

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

(b) The notice of intent must include:

(A) A description of the procurement;
(B) An estimated amount of the procurement;
(C) The name of the administering contracting agency; and
(D) A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through a permissive cooperative procurement.

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

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

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

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

(b) Vendors must submit comments within seven days after the notice of intent is published.

(c) And if the purchasing contracting agency receives comments on the intent to establish a contract or price agreement through a permissive cooperative procurement, before the purchasing contracting agency may establish a contract or price agreement through the permissive cooperative procurement, the purchasing contracting agency shall make a written determination that establishing a contract or price agreement through a permissive cooperative procurement is in the best interest of the purchasing contracting agency. The purchasing contracting agency shall provide a copy of the written determination to any vendor that submitted comments.

SECTION 29. Interstate cooperative procurements. (1) A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

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

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

(c) The administering contracting agency permits the contractor to extend the use of the
terms, conditions and prices of the original contract to the purchasing contracting agency.

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

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

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

(B) The notice of intent must include:

(i) A description of the procurement;

(ii) An estimated amount of the procurement;

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

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

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

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

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

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

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

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

(4) For purposes of this section, an administering contracting agency may be any gov-
ernmental body, domestic or foreign, authorized under its laws, rules or regulations to enter
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 renumbered.

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

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

(a) Accept surplus property;
(b) Distribute surplus property to donees;
(c) Provide suitable facilities for the storage and distribution of surplus property;
(d) Enter into reciprocal agreements and contracts with federal government units, state agencies, local governments, special government bodies, not-for-profit organizations, other states and private entities, with respect to the utilization and exchange of property, facilities, personnel and services, for the administration of the provisions of this section in accordance with federal and state laws governing the acquisition, distribution, utilization, disposal or sale of surplus property;
(e) Expend funds in connection with the provisions of this section;
(f) Adopt rules for the acquisition, distribution, utilization, disposal or sale of surplus property in accordance with federal and state laws;
(g) Set charges, subject to federal and state laws, necessary to recover all direct and indirect costs associated with acquiring, purchasing, shipping, handling, warehousing, storing and distributing surplus property;
(h) Cooperate with donees in locating, obtaining or warehousing surplus property; and
(i) Obtain surplus property on behalf of donees.

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

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

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

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

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

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

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

SECTION 42. Disposal of surplus property; costs of disposal. (1)(a) Without requiring
competitive bidding:
(A) The Oregon Department of Administrative Services may sell or transfer surplus
property to or transfer surplus property between donees. Donees may be given preference
to acquire surplus property. Property acquired shall be used for public purpose or benefit and
not for resale to a private purchaser.
(B) The department, or a public or private person or entity designated by the department,
may transfer computers and related hardware that are surplus, obsolete or unused to a
common or union high school district or education service district. The department, or its
designee, may not charge the school district a fee for the transfer.
(C) The department, or a public or private person or entity designated by the department,
may recycle or otherwise dispose of property when the department determines the value and
condition of the property does not warrant the cost of a sale.
(b) Authorized transfers under this subsection include those made with or without con-
ideration.
(2) In accordance with section 51 or 52 of this 2003 Act, the department may sell surplus
property.
(3) All proceeds derived from the disposal of property under this section, except proceeds
that may not under federal laws or regulations be deposited in the manner provided by this
section, shall be deposited in the State Treasury to the credit of the Oregon Department of
Administrative Services Operating Fund.
(4) In addition to the other purposes for which the fund may be used, the fund is appro-
priated continuously for and may be used for paying the administrative costs incurred in the
transfer or disposal of property under subsections (1) and (2) of this section, and for paying
the amount due to the state agency whose property has been sold. The total amount payable
to the agency whose property has been sold shall be the amount derived from the disposal
of the property less the amount of the administrative costs incurred in disposing of the
property. Such total amount may be deposited in the State Treasury to the credit of the
miscellaneous receipts account established under section 44 of this 2003 Act for the agency
whose property has been sold.
(5) The cost of services for disposal of property under this section that is not recoverable from the proceeds of a sale of the property shall be charged to the state agency served and paid to the department in the same manner as other claims against the agency are paid.

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

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

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

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

PENALTIES

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

PART 2: PUBLIC PROCUREMENTS

(ORS Chapter 279B)

GENERAL PROVISIONS

SECTION 47. Definitions for sections 47 to 87 of this 2003 Act. (1) As used in sections 47 to 87 of this 2003 Act, unless the context or a specifically applicable definition requires otherwise:

(a) “Established catalog price” means the price included in a catalog, price list, schedule or other form that:

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

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

(C) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public
bodies, for the goods or services involved.

(b) “Goods and services” or “goods or services” means supplies, equipment, materials and services other than personal services designated under section 8 of this 2003 Act and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that a contracting agency is authorized by law to procure. “Goods and services” or “goods or services” includes combinations of any of the items identified in this paragraph.

(c) “Invitation to bid” means all documents, whether attached or incorporated by reference, used for soliciting bids.

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

(e) “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(f) “Responsible bidder” or “responsible proposer” means a person who meets the standards of responsibility described in section 59 of this 2003 Act.

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

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

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

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

(2) Seek consistency in procurement practices between contracting agencies covered under the Public Contracting Code while preserving each contracting agency’s ability to adopt rules to maximize the contracting agency’s effectiveness; and

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

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

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

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

(3) Any contractor or subcontractor or contractor’s or subcontractor’s surety who violates subsection (1) or (2) of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation resulted from willful falsification of payroll records, the contractor or subcontractor or contractor’s or subcontractor’s surety is liable to
the affected employees in the amount of their unpaid overtime wages and in an additional
amount equal to twice the unpaid overtime wages as liquidated damages.

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

(5) This section does not apply to:
(a) Financial institutions as defined in ORS 706.008.
(b) Labor performed in the prevention or suppression of fire under contracts and agree-
ments made pursuant to the authority of the State Forester or the State Board of Forestry
under ORS 477.406.

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

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

SOURCE SELECTION
(Methods of Source Selection)

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

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

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

(4) Notwithstanding that the term “goods and services” as defined in section 47 of this
2003 Act does not include personal services:
(a) A local contracting agency may elect, by rule, charter, ordinance or other appropriate
legislative action, to award contracts for personal services, as designated under section 8 of
this 2003 Act, under the procedures of sections 50 to 57 of this 2003 Act.
(b) State contracting agencies shall solicit contracts for personal services in accordance
with sections 50 to 57 of this 2003 Act.

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

(2) The contracting agency shall issue an invitation to bid, which must include:
(a) A time and date by which the bids must be received and a place at which the bids
must be submitted, and may, in the sole discretion of the contracting agency, direct or per-
mit the submission and receipt of bids by electronic means;
(b) The name and title of the person designated for the receipt of bids and the person
designated by the contracting agency as the contact person for the procurement, if different;
(c) A procurement description;

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

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

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

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

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

(3)(a) The contracting agency may require bid security if the contracting agency determines that bid security is reasonably necessary or prudent to protect the interests of the contracting agency.

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

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

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

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

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

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

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

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

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

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

c) Notwithstanding any requirement to make bids open to public inspection after the contracting agency’s issuance of notice of intent to award a contract, a contracting agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a bid.

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

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

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

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

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

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

(a) To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or

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

(A) Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and
(B) Who qualify for the award of a public contract under the terms of the invitation to bid.

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

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

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

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

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

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

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

(c) A procurement description;

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

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

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

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

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

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

(B) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals;

(C) Contain or incorporate the form and content of the contract that the contracting agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers; and
(D) Announce the method of contractor selection that may include, but is not limited to,
negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered
competition designed to identify a class of proposers that fall within a competitive range or
to otherwise eliminate from consideration a class of lower ranked proposers, or any combi-
nation of methods, as authorized or prescribed by rules adopted under section 10 of this 2003
Act; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 53. Small procurements. (1) Any procurement not exceeding $5,000 may be
awarded in accordance with small procurement procedures established by rules adopted un-
der section 11 of this 2003 Act. A contract awarded under this section may be amended to
exceed $5,000 only in accordance with rules adopted under section 11 of this 2003 Act.

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

(3) Small procurements need not be made through competitive sealed bidding, competitive
sealed proposals or intermediate procurements under section 51, 52 or 54 of this 2003 Act.

SECTION 54. Intermediate procurements. (1) Any procurement exceeding $5,000 but not
exceeding $150,000 may be awarded in accordance with intermediate procurement procedures.

A contract awarded under this section may be amended to exceed $150,000 only in accordance
with rules adopted under section 11 of this 2003 Act.

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

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

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

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

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

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

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

(b) That the goods or services required for the exchange of software or data with other
public or private agencies are available from only one source;
(c) That the goods or services are for use in a pilot or an experimental project; or
(d) Other findings that support the conclusion that the goods or services are available from only one source.

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

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

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

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

(a) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

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

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

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

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

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

(Cancellation, Rejection and Delay of Invitations for Bids or Requests for Proposals)
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
potential contractors, sellers or suppliers to submit goods for testing and examination to
determine their acceptability for inclusion on the list and may solicit in writing representa-
tive groups of potential contractors, sellers or suppliers to submit goods for the testing
and examination. Any potential contractor, seller or supplier, even though not solicited, may
offer its goods for consideration.

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

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

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

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

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

SECTION 62. Application for prequalification. (1) When a contracting agency permits or
requires prequalification of bidders or proposers, a prospective bidder or proposer who wishes
to prequalify shall submit a prequalification application to the contracting agency on a form
prescribed under section 61 (1) of this 2003 Act. Upon receipt of a prequalification application,
the contracting agency shall investigate the prospective bidder or proposer as necessary to
determine whether the prospective bidder or proposer is qualified. The determination shall
be made in less than 30 days, if practicable, if the prospective bidder or proposer requests an early decision to allow the prospective bidder or proposer as much time as possible to prepare a bid or proposal for a contract that has been advertised. In making its determination, the contracting agency shall consider only the applicable standards of responsibility listed in section 59 (2) of this 2003 Act. The contracting agency shall promptly notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified.

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

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

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

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

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

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

(b) The prospective bidder or proposer has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving
stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective bidder’s or proposer’s responsibility as a contractor.

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

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

(e) The prospective bidder or proposer does not carry workers’ compensation or unemployment insurance as required by statute.

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

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

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

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

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

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

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

(Types of Contracts)

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

SECTION 67. Multiyear contracts. (1) Unless otherwise provided by law, a contracting agency may enter into a contract for goods or services for any period of time, provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the contracting agency’s fiscal period that is in effect at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the obligations.
(2) When funds are not appropriated or otherwise made available to support continuation of the contracting agency’s performance of a contract in a subsequent fiscal period, the contracting agency may cancel the contract and reimburse the contractor for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract. The contracting agency may pay the reimbursement only from any appropriations or funds then lawfully available for such purposes.

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

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

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

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

(3) A price agreement does not constitute an exclusive dealing commitment on the part of the contracting agency or the contractor unless the price agreement expressly so provides.

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

(Determinations)

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

SPECIFICATIONS
(General Provisions)

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

(1) “Brand name or equal specification” means a specification that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the contracting agency’s requirements and that authorizes bidders or proposers to offer goods or services that are equivalent or superior to those named or described in the specification.
(2) “Brand name specification” means a specification limited to one or more products, brand names, makes, manufacturer’s names, catalog numbers or similar identifying characteristics.

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

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

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

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

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

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

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

(2) A brand name specification may be prepared and used only if the contracting agency determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of the contracting agency based on one or more of the following written determinations:
(a) That use of a brand name specification is unlikely to encourage favoritism in the
awarding of public contracts or substantially diminish competition for public contracts;
(b) That use of a brand name specification would result in substantial cost savings to the
contracting agency;
(c) That there is only one manufacturer or seller of the product of the quality, perform-
ance or functionality required; or
(d) That efficient utilization of existing goods requires the acquisition of compatible goods
or services.
(3) A contracting agency’s use of a brand name specification may be subject to review
only as provided in section 83 of this 2003 Act.
SECTION 76a. Conditions concerning payment, contributions, liens, withholding. Every
public contract shall contain a condition that the contractor shall:
(1) Make payment promptly, as due, to all persons supplying to the contractor labor or
material for the performance of the work provided for in the contract.
(2) Pay all contributions or amounts due the Industrial Accident Fund from the con-
tractor or subcontractor incurred in the performance of the contract.
(3) Not permit any lien or claim to be filed or prosecuted against the state or a county,
school district, municipality, municipal corporation or subdivision thereof, on account of any
labor or material furnished.
(4) Pay to the Department of Revenue all sums withheld from employees under ORS
316.167.
SECTION 76b. Condition concerning salvaging, recycling, composting or mulching yard
waste material. Every public contract for lawn and landscape maintenance shall contain a
condition requiring the contractor to salvage, recycle, compost or mulch yard waste material
at an approved site, if feasible and cost-effective.
SECTION 76c. Condition concerning payment for medical care and providing workers’
compensation. (1) Every public contract shall contain a condition that the contractor shall
promptly, as due, make payment to any person, copartnership, association or corporation
furnishing medical, surgical and hospital care services or other needed care and attention,
incident to sickness or injury, to the employees of the contractor, of all sums that the con-
tractor agrees to pay for the services and all moneys and sums that the contractor collected
or deducted from the wages of employees under any law, contract or agreement for the
purpose of providing or paying for the services.
(2) Every public contract shall contain a clause or condition that all subject employers
working under the contract are either employers that will comply with ORS 656.017 or em-
ployers that are exempt under ORS 656.126.
SECTION 77. Condition concerning hours of labor. (1) Every public contract, other than
a contract for services at a county fair or for other events authorized by a county fair board,
must contain a condition that the contractor shall pay employees for overtime work per-
formed under the public contract in accordance with ORS 653.010 to 653.261 and the Fair
(2) In the case of a contract for services at a county fair or for other events authorized
by a county fair board, the contract must contain a provision that employees must be paid
at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one
week. An employer shall give notice in writing to employees who work on such a contract,
either at the time of hire or before commencement of work on the contract, or by posting
a notice in a location frequented by employees, of the number of hours per day and days per
week that employees may be required to work.

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

(Specifications in State Contracts)

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

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

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

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

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

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

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

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

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

SECTION 81. Use of recycled products when economically feasible. The Oregon Depart-
ment of Administrative Services shall review and work with state agencies to develop pro-
curement specifications that encourage the use of recycled products whenever economically
feasible, if the quality of a recycled product is functionally equal to the same product man-
ufactured with virgin resources, including but not limited to recycled paper, recycled oil and
recycled PETE products. Except for specifications that have been established to preserve the public health and safety, all procurement specifications shall be established in a manner that encourages the procurement of recycled products.

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

LEGAL REMEDIES

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

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

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

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

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

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

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

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

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

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

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

(a) “Brand name” means a brand name specification as defined in section 72 of this 2003 Act.

(b) “Legally flawed” means that a solicitation document contains terms or conditions that are contrary to law.

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

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

(3) The contracting agency, pursuant to rules adopted under section 10 of this 2003 Act, shall notify prospective bidders, proposers or offerors of the time and manner in which a
protest under this section may be filed and considered. Before seeking judicial relief, a prospective bidder, proposer or offeror must file a protest with the contracting agency and exhaust all available administrative remedies.

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

(a) Sufficient information to identify the solicitation that is the subject of the protest;
(b) The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unduly restrictive, is legally flawed or improperly specifies a brand name;
(c) Evidence or supporting documentation that supports the grounds on which the protest is based; and
(d) The relief sought.

(5) If the protest meets the requirements of subsection (4) of this section, the contracting agency shall consider the protest and issue a decision in writing. Otherwise, the contracting agency shall promptly notify the prospective bidder, proposer or offeror that the protest is untimely or that the protest failed to meet the requirements of subsection (4) of this section and give the reasons for the failure.

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

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

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

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

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

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

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

SECTION 85. Protests regarding contract award. (1) An adversely affected bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if:
   (a) The bidder or proposer would be eligible to be awarded the public contract in the event that the protest were successful; and
   (b) The purpose of the protest is:
      (A) To require compliance with with sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and 81 of this 2003 Act;
      (B) To prevent violations of sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and 81 of this 2003 Act; or
      (C) To determine the applicability of sections 50 to 57, 58, 59 to 64, 72 to 78, 79, 80 and 81 of this 2003 Act to matters or decisions of the contracting agency.
   (2) The bidder or proposer shall submit the protest to the contracting agency in writing and shall specify the grounds for the protest to be considered by the contracting agency.
   (3) The contracting agency shall, in rules adopted under section 10 of this 2003 Act, establish a reasonable time and manner for protests to be submitted. The contracting agency may not consider late protests.
   (4) The contracting agency shall consider and respond in writing to a protest in a timely manner. After the contracting agency issues the response, the bidder or proposer may seek judicial relief in the manner provided in section 86 of this 2003 Act.

SECTION 86. Judicial relief for protests of contract award. (1) As used in this section, “bidder” includes a person who submits a proposal to a public contracting agency pursuant to a request for proposals.
   (2) A decision by a state contracting agency on a protest is reviewable by the Circuit Court for Marion County or the circuit court for the county in which the principal offices of the state contracting agency are located. A decision by a local contracting agency on a protest is reviewable by the circuit court for the county in which the principal offices of the local contracting agency are located.
   (3) To obtain review, a complainant shall file a complaint with the court before the contract that is the subject of the protest is both approved by the Attorney General, if required by ORS 291.047, and executed by the contracting agency. In the complaint, the complainant shall state the nature of the complainant’s interest, the facts showing how the complainant is adversely affected or aggrieved by the contracting agency’s decision and the basis upon which the decision should be reversed or remanded. The complainant shall join as parties all bidders that would be in line for an award of the contract ahead of the complainant. If
injunctive relief is sought, the court may require the complainant to post a bond in an
amount sufficient to protect the contracting agency and the public from costs associated
with delay in execution of the contract.

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

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

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

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

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

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

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

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

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

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

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

SECTION 87. Review of prequalification and debarment decisions. (1) The procedure for
appeal from the denial, revocation or revision of a prequalification under section 62 of this
2003 Act, or from a debarment under section 63 of this 2003 Act, shall be in accordance with
this section and is not subject to ORS 183.310 to 183.550 except as specifically provided by this
section.

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

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

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

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

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

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

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

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

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

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

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

(b) There was evident partiality or corruption on the part of the director or board or any
of the board’s members; or
(c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

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

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

PART 3: PUBLIC IMPROVEMENTS AND RELATED CONTRACTS
(ORS Chapter 279C)

GENERAL PROVISIONS

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

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

ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES

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

(1) “Architect” means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “architect,” “licensed architect” and “registered architect.”

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

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

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

(5) “Personal services” mean the services of a person or persons that are designated by the Oregon Department of Administrative Services or a local contract review board as personal services under section 8 of this 2003 Act. “Personal services” includes architectural,
engineering and land surveying services procured under section 90 or 91 of this 2003 Act and related services procured under section 95 of this 2003 Act.

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

SECTION 90. Contracts for architectural, engineering, land surveying and related services; procedures. (1) Except as provided in section 18 of this 2003 Act, contracting agencies may enter into contracts for architectural, engineering and land surveying services and related services. The Oregon Department of Administrative Services shall enter into contracts for architectural, engineering and land surveying services and related services on behalf of state contracting agencies that are subject to section 18 of this 2003 Act. The provisions of this section do not relieve the contracting agency of the duty to comply with section 18 of this 2003 Act, any other law applicable to state contracting agencies, or any applicable city or county charter provisions. Each contracting agency authorized to enter into contracts for architectural, engineering and land surveying services and related services shall adopt procedures for the screening and selection of persons to perform those services under section 91 or 95 of this 2003 Act.

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

SECTION 91. Contracts for services of architects, engineers and land surveyors; selection procedure; compensation; applicability. (1) A state contracting agency shall select consultants to provide architectural, engineering or land surveying services on the basis of qualifications for the type of professional service required. A state contracting agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a candidate pursuant to subsection (3) of this section.

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

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

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

(c) The value of the project exceeds $400,000.
(3) Subject to the requirements of subsections (1) and (2) of this section, the procedures that a contracting agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency. Screening and selection procedures may include a consideration of each candidate's:

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

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

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

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

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

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

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

(6) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

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

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

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

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

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

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

[(c) The value of the project exceeds $400,000.] [(3)] (2) Subject to the requirements of [subsections (1) and (2)] subsection (1) of this section, the procedures that a contracting agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency’s scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting agency’s objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency. Screening and selection procedures may include a consideration of each candidate’s:

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

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

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

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

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

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

[(5)] (4) The contracting agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of
If the contracting agency and the selected candidate are unable for any reason to nego-
tiate a contract at a compensation level that is reasonable and fair to the contracting agency, the
contracting agency shall, either orally or in writing, formally terminate negotiations with the se-
lected candidate. The contracting agency may then negotiate with another candidate. The negoti-
ation process may continue in this manner through successive candidates until an agreement is
reached or the contracting agency terminates the consultant contracting process.

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

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

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

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

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

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

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

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

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

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

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

(2) Subject to the requirements of subsection (1) of this section, the procedures that a
contracting agency adopts for the screening and selection of consultants and the selection
of a candidate under this section is within the sole discretion of the contracting agency and
may be adjusted to accommodate the contracting agency’s scope, schedule and budget objec-

[52]
tives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency.

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

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

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

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

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

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

PROCUREMENT OF CONSTRUCTION SERVICES

(General Policies)

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

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

(2) Not less than 30 days prior to adoption of the contracting agency’s budget for the subsequent budget period, each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the contracting agency that the contracting agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether the contracting agency intends to perform the construction through a private contractor. If the contracting agency intends to perform construction work using the contracting agency’s own equipment and personnel on a project estimated to cost more than $125,000, the contracting agency shall also show that the contracting agency’s decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.
(3) Before a contracting agency constructs a public improvement with its own equipment or personnel:

(a) If the estimated cost exceeds $125,000, the contracting agency shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work must include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, “adequate” means sufficient to control the performance of the work and to ensure satisfactory quality of construction by the contracting agency personnel.

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

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

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

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

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

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

(a) Requires notice of any delay;

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

(c) Provides for reasonable liquidated damages.

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

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

(3) When construction services are not considered to be a public improvement under sections 88 to 180 of this 2003 Act because no funds of a public agency are directly or indi-
rectly used, except for participation that is incidental or related primarily to project design
or inspection, the benefiting public body may nonetheless condition acceptance of the ser-
vice on receipt of such protections as the public body considers to be in the public interest,
including a performance bond, a payment bond and appropriate insurance.

(Competitive Bidding; Contract Specifications;
Exceptions; Exemptions)

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

(1) Operational, budget and financial data;
(2) Public benefits;
(3) Value engineering;
(4) Specialized expertise required;
(5) Public safety;
(6) Market conditions;
(7) Technical complexity; and
(8) Funding sources.

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

(a) Contracts entered into with qualified nonprofit agencies providing employment op-
opportunities for disabled individuals under ORS 279.835 to 279.855.
(b) A public improvement contract exempt under subsection (2) of this section.
(c) A contract for goods or services if the value of the contract is less than $5,000.
(d) A contract not to exceed $100,000, or not to exceed $50,000 in the case of a contract
for a highway, bridge or other transportation project, made under procedures for competitive
quotes in sections 132 and 133 of this 2003 Act.
(e) Contracts for repair, maintenance, improvement or protection of property obtained
by the Director of Veterans’ Affairs under ORS 407.135 and 407.145 (1).

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

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public
improvement contracts or substantially diminish competition for public improvement con-
tracts; and
(b) The awarding of public improvement contracts under the exemption will result in
substantial cost savings to the contracting agency or, if the contracts are for public im-
provements described in section 7 (3)(b) of this 2003 Act, to the contracting agency or the
public. In making the finding, the Director of the Oregon Department of Administrative
Services, the Director of Transportation or the local contract review board may consider the
type, cost and amount of the contract, the number of persons available to bid and such other
factors as may be deemed appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If a contracting agency is required to act promptly due to circumstances beyond the con-
tracting agency’s control that do not constitute an emergency, notification of the public hearing may
be published simultaneously with the contracting agency’s solicitation of contractors for the alter-
native public contracting method, as long as responses to the solicitation are due at least five days
after the meeting and approval of the findings.
(5) A public improvement contract may be exempted from the requirement of subsection (1) of this section if emergency conditions require prompt execution of the contract. In accordance with rules adopted under section 10 of this 2003 Act, a contracting agency may declare that an emergency exists. If an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the director of Administrative Services or the local contract review board grants an extension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 107. Specifications for contracts; exemptions. (1) Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

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

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

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

(c) There is only one manufacturer or seller of the product of the quality required; or
(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

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

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

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

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

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

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

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

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

SECTION 111. Evaluation of public improvement projects not contracted by competitive bidding. (1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts described in section 7 (3)(b) of this 2003 Act, in excess
of $100,000 for which the contracting agency did not use the competitive bidding process, the contracting agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the local contract review board or, for a class of public improvement contracts described in section 7 (3)(b) of this 2003 Act, the Director of Transportation an evaluation of the public improvement contract or the class of public improvement contracts.

(2) The evaluation must include but is not limited to the following matters:
   (a) The actual project cost as compared with original project estimates;
   (b) The amount of any guaranteed maximum price;
   (c) The number of project change orders issued by the contracting agency;
   (d) A narrative description of successes and failures during the design, engineering and construction of the project; and
   (e) An objective assessment of the use of the alternative contracting process as compared to the findings required by section 103 of this 2003 Act.

(3) The evaluations required by this section:
   (a) Must be made available for public inspection; and
   (b) Must be completed within 30 days of the date the contracting agency accepts:
      (A) The public improvement project; or
      (B) The last public improvement project if the project falls within a class of public improvement contracts described in section 7 (3)(b) of this 2003 Act.

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

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

(2) The evaluation shall include but is not limited to the following matters:
   (a) The actual project cost as compared with original project estimates;
   (b) The amount of any guaranteed maximum price;
   (c) The number of project change orders issued by the contracting agency;
   (d) A narrative description of successes and failures during the design, engineering and construction of the project; and
   (e) An objective assessment of the use of the alternative contracting process as compared to the findings required by section 103 of this 2003 Act.

(3) The evaluations required by this section:
   (a) Must be made available for public inspection; and
   (b) Must be completed within 30 days of the date the contracting agency accepts:
      (A) The public improvement project; or
      (B) The last public improvement project if the project falls within a class of public improvement contracts described in section 7 (3)(b) of this 2003 Act.

SECTION 113. The amendments to section 111 of this 2003 Act by section 112 of this 2003 Act become operative on July 1, 2005.
SECTION 114. Requirement for public improvement advertisements. (1) An advertisement for public improvement contracts must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the contracting agency may determine. The Director of the Oregon Department of Administrative Services or a local contract review board, by rule or order, may authorize advertisements for public improvement contracts to be published electronically instead of in a newspaper of general circulation if the director or board determines that electronic advertisements are likely to be cost-effective. If the public improvement contract has an estimated cost in excess of $125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation. The director or board may, by rule or order, require an advertisement to be published more than once or in one or more additional publications.

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

(a) The public improvement project;
(b) The office where the specifications for the project may be reviewed;
(c) The date that prequalification applications must be filed under section 123 of this 2003 Act and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
(d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
(e) The name and title of the person designated for receipt of bids;
(f) The date, time and place that the contracting agency will publicly open the bids; and
(g) If the contract is for a public works subject to sections 165 to 179 of this 2003 Act or the Davis-Bacon Act (40 U.S.C. 276a).

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

(a) The public improvement project;
(b) The office where the specifications for the project may be reviewed;
(c) The date that prequalification applications must be filed under section 123 of this 2003 Act and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
(d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;
(e) The name and title of the person designated for receipt of bids;
(f) The date, time and place that the contracting agency will publicly open the bids;
(g) A statement that, if the contract is for a public works subject to sections 165 to 179 of this 2003 Act or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the contracting agency unless the bid contains a statement by the bidder that section 167 of this 2003 Act or 40 U.S.C. 276a will be complied with;
(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in section 16 of this 2003 Act;
(i) A statement that the contracting agency may reject any bid not in compliance with
all prescribed public contracting procedures and requirements and may reject for good cause
all bids upon a finding of the agency that it is in the public interest to do so;

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

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

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

(a) In writing;

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

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

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

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

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

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

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

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

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

(d) This subsection does not apply to public improvement contracts that have been ex-
empted from competitive bidding requirements under section 103 (2) of this 2003 Act.

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must
include:

(a) The name of each subcontractor; and

(b) The category of work that each subcontractor will be performing.

(3) A contracting agency shall accept the subcontractor disclosure. The contracting
agency shall consider the bid of any contractor that does not submit a subcontractor dis-

(4) After the bids are opened, the subcontractor disclosures must be made available for
(5) A contractor may substitute a first-tier subcontractor under the provisions of section 152 of this 2003 Act.

(6) A subcontractor may file a complaint under section 153 of this 2003 Act based on the disclosure requirements of subsection (1) of this section.

SECTION 117. Award of contract; bonds. (1) After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder.

(2) In determining the lowest responsible bidder, a contracting agency shall:
   (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract; and
   (b) Determine whether the prospective bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a prospective bidder has:
      (A) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;
      (B) A satisfactory record of performance. The contracting agency shall document the record of performance of a prospective bidder if the contracting agency finds the prospective bidder not to be responsible under this subparagraph;
      (C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a prospective bidder if the contracting agency finds the prospective bidder not to be responsible under this subparagraph;
      (D) Qualified legally to contract with the contracting agency; and
      (E) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder 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 prospective bidder not to be responsible.

(3) The successful bidder shall:
   (a) Promptly execute a formal contract; and
   (b) Execute and deliver to the contracting agency a performance bond and a payment bond as described in section 118 of this 2003 Act.

SECTION 118. Performance bond; payment bond; waiver of bonds in case of emergency.

(1) A successful bidder for a public improvement contract shall promptly execute and deliver to the contracting agency the following bonds:
   (a) A performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the contracting agency that awarded the contract and any public agency or agencies for whose benefit the contract was awarded. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract required by this paragraph must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises,
the surety is not liable after final completion of the contract, or longer if provided for in the
contract, for damages of any nature, economic or otherwise and including corrective work,
attributable to the design aspect of a design-build project, or for the costs of design revisions
needed to implement corrective work. A contracting agency may waive the requirement of
a performance bond.

(b) A payment bond in an amount equal to the full contract price, solely for the pro-
tection of claimants under section 154 of this 2003 Act.

(2) If the public improvement contract is with a single person to provide construction
manager and general contractor services, in which a guaranteed maximum price may be es-
established by an amendment authorizing construction period services following precon-
struction period services, the contractor shall provide the bonds required by subsection (1)
of this section upon execution of an amendment establishing the guaranteed maximum price.
The contracting agency shall also require the contractor to provide bonds equal to the value
of construction services authorized by any early work amendment in advance of the guar-
anteed maximum price amendment. Such bonds must be provided before construction starts.

(3) Each performance bond and each payment bond must be executed solely by a surety
company or companies holding a certificate of authority to transact surety business in this
state. The bonds may not constitute the surety obligation of an individual or individuals. The
performance and payment bonds must be payable to the contracting agency or to the public
agency or agencies for whose benefit the contract was awarded, as specified in the solicita-
tion documents, and shall be in a form approved by the contracting agency.

(4) In cases of emergency, or when the interest or property of the contracting agency
or the public agency or agencies for whose benefit the contract was awarded probably would
suffer material injury by delay or other cause, the requirement of furnishing a good and
sufficient performance bond and a good and sufficient payment bond for the faithful per-
formance of any public improvement contract may be excused, if a declaration of such
emergency is made in accordance with rules adopted under section 10 of this 2003 Act.

SECTION 119. Return or retention of bid security. Upon the execution of a public im-
provement contract and delivery of a good and sufficient performance bond and a good and
sufficient payment bond by the successful bidder, the bid security of the successful bidder
shall be returned to the bidder. A bidder who is awarded a contract and who fails promptly
and properly to execute the contract and to deliver the performance bond and the payment
bond shall forfeit the bid security that accompanied the successful bid. The bid security shall
be taken and considered as liquidated damages and not as a penalty for failure of the bidder
to execute the contract and bonds. The bid security of unsuccessful bidders may be returned
to them when the bids have been opened and the contract has been awarded, and may not
be retained by the contracting agency after the contract has been duly signed.

SECTION 120. Exemption of contracts from bid security and bonds. (1) Subject to the
provisions of subsection (2) of this section, the Director of the Oregon Department of Ad-
ministrative Services or a local contract review board may exempt certain contracts or
classes of contracts from the requirement for bid security and from the requirement that
good and sufficient bonds be furnished to ensure performance of the contract and payment
of obligations incurred in the performance.

(2) The contracting agency may require bid security and a good and sufficient perform-
ance bond, a good and sufficient payment bond, or any combination of such bonds, even
though the public improvement contract is of a class exempted by the director or board.

(Rejection; Prequalification and Disqualification)

SECTION 121. Rejection of bids. A contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject all bids upon a finding of the contracting agency it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed project is not abandoned, new bids may be called for as in the first instance.

SECTION 122. Disqualification from consideration for award of contracts. (1)(a) A contracting agency may disqualify a person from consideration for award of the contracting agency’s contracts for the reasons listed in subsection (2) of this section after providing the person with notice and a reasonable opportunity to be heard.

(b) In lieu of the disqualification process described in paragraph (a) of this subsection, a contracting agency contracting for a public improvement may petition the Construction Contractors Board to disqualify a person from consideration for award of the contracting agency’s public improvement contracts for the reasons listed in subsection (2) of this section. The Construction Contractors Board shall provide the person with notice and a reasonable opportunity to be heard.

(c) A contracting agency or the Construction Contractors Board may not disqualify a person under this section for a period of more than three years.

(2) A person may be disqualified from consideration for award of a contracting agency’s contracts for any of the following reasons:

(a) The person has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person’s responsibility as a contractor.

(c) The person has been convicted under state or federal antitrust statutes.

(d) The person has committed a violation of a contract provision that is regarded by the contracting agency or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for disqualification.

(e) The person does not carry workers’ compensation or unemployment insurance as required by statute.

(3) A contracting agency or the Construction Contractors Board shall issue a written decision to disqualify a person under this section. The decision shall:

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

(b) Inform the disqualified person of the appeal right of the person under:

(A) Sections 124 and 125 of this 2003 Act if the decision to disqualify was issued by a contracting agency; or
(B) ORS 183.310 to 183.550 if the decision to disqualify was issued by the Construction Contractors Board.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified person.

SECTION 123. Prequalification of bidders. (1) A contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public improvement contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section must include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application must be in writing on a standard form prescribed under the authority of section 7 of this 2003 Act.

(2) When a contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the contracting agency on a standard form prescribed under subsection (1) of this section. Within 30 days after receipt of a prequalification application, the contracting agency shall investigate the applicant as necessary to determine if the applicant is qualified. The determination shall be made in less than 30 days, if practicable, if the applicant requests an early decision to allow the applicant as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the contracting agency shall consider only the applicable standards of responsibility listed in section 117 (2)(b) of this 2003 Act. The agency shall promptly notify the applicant whether or not the applicant is qualified.

(3) If the contracting agency finds that the applicant is qualified, the notice must state the nature and type of contracts that the person is qualified to bid on and the period of time for which the qualification is valid under the contracting agency’s rule, resolution, ordinance or other regulation. If the contracting agency finds the applicant is not qualified as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice must specify the reasons found under section 117 (2)(b) of this 2003 Act for not prequalifying the applicant and inform the applicant of the right to a hearing under sections 124 and 125 of this 2003 Act.

(4) If a contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under section 117 (2)(b) of this 2003 Act for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under sections 124 and 125 of this 2003 Act. A revocation or revision does not apply to any public improvement contract for which publication of an advertisement, in accordance with section 114 of this 2003 Act, commenced before the date the notice of revocation or revision was received by the prequalified person.

SECTION 124. Appeal of disqualification. Any person who wishes to appeal disqualification shall, within three business days after receipt of notice of disqualification, notify the contracting agency that the person appeals the disqualification. Immediately upon receipt of the notice of appeal:

(1) A state contracting agency shall notify the Director of the Oregon Department of Administrative Services.
(2) All contracting agencies other than state contracting agencies shall notify the appropriate local contract review board.

SECTION 125. Appeal procedure; hearing; costs; judicial review. (1) The procedure for appeal from a disqualification or denial, revocation or revision of a prequalification by a contracting agency shall be in accordance with this section and is not subject to ORS 183.310 to 183.550 except when specifically provided by this section.

(2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by section 124 of this 2003 Act, the Director of the Oregon Department of Administrative Services or the local contract review board shall notify the person appealing and the contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notification from the contracting agency. The director or board shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or denial, revocation or revision of a prequalification, the reasons listed in section 122 (2) of this 2003 Act on which the contracting agency based the disqualification or the standards of responsibility listed in section 117 (2)(b) of this 2003 Act on which the contracting agency based the denial, revocation or revision of the prequalification and any evidence provided by the parties. In all other respects, a hearing before the director shall be conducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425, 183.440, 183.450 and 183.452.

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

(a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld, the director’s costs shall be paid by the person appealing the disqualification or prequalification decision.

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

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

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

(b) There was evident partiality or corruption on the part of the director or board or any of its members.

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

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

(7) The circuit court may, in its discretion, stay the letting of the contract that is the
subject of the petition in the same manner as a suit in equity. When the court determines
that there has been an improper disqualification or denial, revocation or revision of a pre-
qualification and the contract has been let, the court may proceed to take evidence to de-
termine the damages, if any, suffered by the petitioner and award such damages as the court
may find as a judgment against the director or board. The court may award costs and at-
torney fees to the prevailing party.

SECTION 126. Section 125 of this 2003 Act is amended to read:

Sec. 125. (1) The procedure for appeal from a disqualification or denial, revocation or revision
of a prequalification by a contracting agency shall be in accordance with this section and is not
subject to ORS 183.310 to 183.550 except when specifically provided by this section.

(2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by sec-
tion 124 of this 2003 Act, the Director of the Oregon Department of Administrative Services or the
local contract review board shall notify the person appealing and the contracting agency of the time
and place of the hearing. The director or board shall conduct the hearing and decide the appeal
within 30 days after receiving the notification from the contracting agency. The director or board
shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or
denial, revocation or revision of a prequalification, the reasons listed in section 122 (2) of this 2003
Act on which the contracting agency based the disqualification or the standards of responsibility
listed in section 117 (2)(b) of this 2003 Act on which the contracting agency based the denial, revo-
cation or revision of the prequalification and any evidence provided by the parties. In all other re-
spects, a hearing before the director shall be conducted in the same manner as a contested case
under ORS 183.415 (3) to (6) and (9), 183.425, 183.440, 183.450 and 183.452. Hearings before a board
shall be conducted under rules of procedure adopted by the board.

(4) The director may allocate the director’s cost for the hearing between the person appealing
and the contracting agency whose disqualification or prequalification decision is being appealed. The
allocation shall be based upon facts found by the director and stated in the final order that, in the
director’s opinion, warrant such allocation of the costs. If the final order does not allocate the di-
rector’s costs for the hearing, the costs shall be paid as follows:

(a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld,
the director’s costs shall be paid by the person appealing the disqualification or prequalification
decision.

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

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

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

(b) There was evident partiality or corruption on the part of the director or board or any of its
members.

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

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

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

SECTION 127. The amendments to section 125 of this 2003 Act by section 126 of this 2003 Act become operative on June 30, 2005.

SECTION 128. Effect of prequalification by Department of Transportation or Oregon Department of Administrative Services. If a person is prequalified with the Department of Transportation or with the Oregon Department of Administrative Services, the person is rebuttably presumed qualified with any other contracting agency for the same kind of work. When qualifying for the same kind of work with another contracting agency, the person may submit proof of the prequalification in lieu of a prequalification application as required by section 123 of this 2003 Act.

(Competitive Proposals)

SECTION 129. Competitive proposals; procedure. (1) When authorized or required by an exemption granted under section 103 of this 2003 Act, a contracting agency may award a public improvement contract by competitive proposals. A contract awarded under this section may be amended only in accordance with rules adopted under section 10 of this 2003 Act.

(2) Except as provided in sections 102 to 113, 114 to 120 and 121 to 128 of this 2003 Act, competitive proposals shall be subject to the following requirements of competitive bidding:

(a) Advertisement under section 114 of this 2003 Act;

(b) Requirements for solicitation documents under section 115 of this 2003 Act;

(c) Disqualification due to a Construction Contractors Board listing as described in section 117 (2)(a) of this 2003 Act;

(d) Contract execution and bonding requirements under sections 117 and 118 of this 2003 Act;

(e) Determination of responsibility under section 117 (2)(b) of this 2003 Act;

(f) Rejection of bids under section 121 of this 2003 Act; and

(g) Disqualification and prequalification under sections 122, 123 and 128 of this 2003 Act.

(3) For the purposes of applying the requirements listed in subsection (2) of this section to competitive proposals, when used in the sections listed in subsection (2) of this section, “bids” includes proposals, and “bid documents” and “invitation to bid” include requests for proposals.

(4) Competitive proposals are not subject to the following requirements of competitive bidding:

(a) First-tier subcontractor disclosure under section 116 of this 2003 Act; and

(b) Reciprocal preference under section 16 of this 2003 Act.

(5) When award of a public improvement contract advertised by the issuance of a request for proposals may be made without negotiation, the contracting agency may require proposal...
security that serves the same function with respect to proposals as bid security serves with respect to bids under sections 115 (4), 118 and 119 of this 2003 Act, as follows:

(a) The contracting agency may require proposal security in a form and amount as may be determined to be reasonably necessary or prudent to protect the interests of the contracting agency.

(b) The contracting agency shall retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract and provide any required bonds or insurance.

(c) The contracting agency shall return the proposal security to all proposers upon the execution of the contract, or earlier in the selection process.

(6) In all other respects, and subject to rules adopted under section 10 of this 2003 Act, references in sections 88 to 180 of this 2003 Act to invitations to bid, bids or bidders shall, to the extent practicable within the proposal process, be deemed equally applicable to requests for proposals, proposals or proposers. However, notwithstanding section 117 (1) of this 2003 Act, a contracting agency may not be required to award a contract advertised under the competitive proposal process based on price, but may award the contract in accordance with section 131 (8) of this 2003 Act.

SECTION 130. Requirements for requests for proposals. In addition to the general requirements of section 115 of this 2003 Act, a contracting agency preparing a request for proposals shall include:

(1) All required contractual terms and conditions. The request for proposals also may:

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

(b) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals; and

(c) Contain or incorporate the form and content of the contract that the contracting agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers.

(2) The method of contractor selection, which may include but is not limited to award without negotiation, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed either to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods, as authorized or prescribed by rules adopted under section 10 of this 2003 Act.

(3) All evaluation factors that will be considered by the contracting agency when evaluating the proposals, including the relative importance of price and any other evaluation factors.

SECTION 131. Receipt of proposals; evaluation and award. (1) Notwithstanding the public records law, ORS 192.410 to 192.505:

(a) Proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation.

(b) Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

(2) For each request for proposals, the contracting agency shall prepare a list of proposals.
(3) Notwithstanding any requirement to make proposals open to public inspection after
the contracting agency's issuance of notice of intent to award a contract, a contracting
agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501,
and information submitted to a public body in confidence, as described in ORS 192.502, that
are contained in a proposal. The fact that proposals are opened at a public meeting as defined
in ORS 192.610 does not make their contents subject to disclosure, regardless of whether the
public body opening the proposals fails to give notice of or provide for an executive session
for the purpose of opening proposals. If a request for proposals is canceled after proposals
are received, the contracting agency may return a proposal to the proposer that made the
proposal. The contracting agency shall keep a list of returned proposals in the file for the
solicitation.

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

(5) When provided for in the request for proposals, the contracting agency may employ
methods of contractor selection including but not limited to award based solely on the
ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations,
multiple-tiered competition designed to identify a class of proposers that fall within a com-
petitive range or to otherwise eliminate from consideration a class of lower ranked
proposers, or any combination of methods, as authorized or prescribed by rules adopted un-
der section 10 of this 2003 Act. When applicable, in any instance in which the contracting
agency determines that impasse has been reached in negotiations with a highest ranked
proposer, the contracting agency may terminate negotiations with that proposer and com-
mence negotiations with the next highest ranked proposer.

(6) The cancellation of requests for proposals and the rejection of proposals shall be in
accordance with section 121 of this 2003 Act.

(7) At least seven days before the award of a public contract, unless the contracting
agency determines that seven days is impractical under rules adopted under section 10 of
this 2003 Act, the contracting agency shall issue to each proposer or post, electronically or
otherwise, a notice of intent to award.

(8) If a public contract is awarded, the contracting agency shall award a public contract
to the responsible proposer whose proposal is determined in writing to be the most advan-
tageous to the contracting agency based on the evaluation factors set forth in the request
for proposals and, when applicable, the outcome of any negotiations authorized by the re-
quest for proposals. Other factors may not be used in the evaluation.

(9) The contracting agency may issue a request for information, a request for interest,
a request for qualifications or other preliminary documents to obtain information useful in
the preparation or distribution of a request for proposals.
(Competitive Quotes)

SECTION 132. Competitive quotes for intermediate procurements. (1) A public improvement contract estimated by the contracting agency not to exceed $100,000, or not to exceed $50,000 in the case of contracts for highways, bridges and other transportation projects, may be awarded in accordance with intermediate procurement procedures for competitive quotes established by rules adopted under section 10 of this 2003 Act. A contract awarded under this section may be amended to exceed the thresholds set forth in this subsection only in accordance with rules adopted under section 10 of this 2003 Act.

(2) A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section or to circumvent competitive bidding requirements under sections 88 to 180 of this 2003 Act.

(3) Intermediate procurements under this section need not be made through competitive bidding. However, nothing in this section may be construed as prohibiting a contracting agency from conducting a procurement that does not exceed the thresholds in subsection (1) of this section under competitive bidding procedures.

SECTION 133. Requirements for competitive quotes. (1) Rules adopted under section 10 of this 2003 Act to govern competitive quotes shall require the contracting agency to seek at least three informally solicited competitive price quotes from prospective contractors. The contracting agency shall keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but in that event the contracting agency shall make a written record of the effort made to obtain the quotes.

(2) If a contract is to be awarded by competitive quotes, the contracting agency shall award the contract to the prospective contractor whose quote will best serve the interests of the contracting agency, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If an award is not made to the prospective contractor offering the lowest price quote, the contracting agency shall make a written record of the basis for award.

(Remedies)

SECTION 134. Suit by or on behalf of adversely affected bidder or proposer; exception for personal services contract. (1) Any bidder or proposer adversely affected or any trade association of construction contractors acting on behalf of a member of the association to protect interests common to construction contractor members may commence a suit in the circuit court for the county where the principal offices of a contracting agency are located, for the purpose of requiring compliance with, or prevention of violations of, sections 97 to 136 of this 2003 Act or to determine the applicability of sections 97 to 136 of this 2003 Act to matters or decisions of the contracting agency.

(2) The court may order such equitable relief as the court considers appropriate in the circumstances. In addition to or in lieu of any equitable relief, the court may award an aggrieved bidder or proposer any damages suffered by the bidder or proposer as a result of violations of sections 97 to 136 of this 2003 Act for the reasonable cost of preparing and submitting a bid or proposal. A decision of the contracting agency may not be voided if other
equitable relief is available.

(3) If the contracting agency is successful in defending the contracting agency’s actions against claims of violation or potential violation of sections 97 to 136 of this 2003 Act, the court may award to the aggrieved contracting agency any damages suffered as a result of the suit.

(4) The court may order payment of reasonable attorney fees and costs on trial and on appeal to a successful party in a suit brought under this section.

(5) This section does not apply to personal services contracts under sections 89 to 96 of this 2003 Act.

SECTION 135. Action against successful bidder; amount of damages; when action to be commenced; defenses. (1) Any person that loses a competitive bid or proposal for a contract involving the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation of a building or structure may bring an action for damages against another person who is awarded the contract for which the bid or proposal was made if the person making the losing bid or proposal can establish that the other person knowingly violated section 167 of this 2003 Act or ORS 656.017, 657.505 or 701.055 while performing the work under the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) A person bringing an action under this section must establish a violation of section 167 of this 2003 Act or ORS 316.167, 656.017, 657.505 or 701.055 by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover, as liquidated damages, 10 percent of the total amount of the contract or $5,000, whichever is greater.

(4) In any action under this section, the prevailing party is entitled to an award of reasonable attorney fees.

(5) An action under this section must be commenced within two years of the substantial completion of the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation. For the purposes of this subsection, “substantial completion” has the meaning given that term in ORS 12.135.

(6) A person may not recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of ORS 701.055 at the time of making the bid or proposal on the contract;

(b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the plaintiff as of the time of making the bid or proposal on the contract; or

(c) Was in violation of section 167 of this 2003 Act with respect to any contract performed by the plaintiff within one year before making the bid or proposal on the contract at issue in the action.

SECTION 136. Compensation for contractor on contracts declared void by court; exceptions; applicability. (1) If a court determines that a public improvement contract is void because the contracting agency letting the contract failed to comply with any statutory or regulatory competitive bidding or other procurement requirements, and the contractor entered into the contract without intentionally violating the laws regulating public improvement contracts, then, unless the court determines that substantial injustice would result, the contractor is entitled to reimbursement for work performed under the contract as fol-
lows:

(a) If the work under the public improvement contract is substantially complete, the
contracting agency shall ratify the contract.

(b) If the work under the public improvement contract is not substantially complete, the
contracting agency shall ratify the contract and the contract shall be deemed terminated.
Upon termination, the contractor shall be paid in accordance with section 162 of this 2003
Act, unless the court determines that payment under section 162 of this 2003 Act would be
a substantial injustice to the contracting agency or the contractor, in which case the con-
tactor shall be paid as the court deems equitable.

(c) For the purposes of this section, a ratified contract shall be deemed valid, binding and
legally enforceable, and the contractor’s payment and performance bonds shall remain in full
force and effect.

(2) Notwithstanding subsection (1) of this section, if a court determines that a public
improvement contract is void as a result of fraudulent or criminal acts or omissions of the
contractor or of both the contracting agency letting the contract and the contractor, the
contractor is not entitled to reimbursement for work performed under the contract.

(3) This section does not apply to a public improvement contract if:

(a) The contracting agency’s employee that awarded the public improvement contract did
not have the authority to do so under law, ordinance, charter, contract or agency rule; or

(b) Payment is otherwise prohibited by Oregon law.

(4) The contractor and all subcontractors under a public improvement contract are pro-
hibited from asserting that the public improvement contract is void for any reason described
in this section.

CONSTRUCTION CONTRACTS GENERALLY

(Required Contract Conditions)

SECTION 137. “Person” defined. As used in sections 137 to 143 of this 2003 Act, unless
the context otherwise requires, “person” includes the State Accident Insurance Fund Cor-
poration and the Department of Revenue.

SECTION 138. Conditions concerning payment, contributions, liens, withholding, drug
testing. (1) Every public contract shall contain a condition that the contractor shall:

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

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

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

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

(2) In addition to the conditions specified in subsection (1) of this section, every public
improvement contract shall contain a condition that the contractor shall demonstrate that
an employee drug testing program is in place.

SECTION 139. Demolition contracts to require material salvage; lawn and landscape
maintenance contracts to require composting or mulching. (1) Every public improvement contract for demolition shall contain a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective.

(2) Every public improvement contract for lawn and landscape maintenance shall contain a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective.

SECTION 140. Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. (1) Every public contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

(2) Every public improvement contract shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under section 151 (4) of this 2003 Act and ending upon final payment, unless payment is subject to a good faith dispute as defined in section 151 of this 2003 Act. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

(3) Every public improvement contract and every contract related to the public improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in section 151 of this 2003 Act.

(4) The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

SECTION 141. Condition concerning hours of labor. (1) Every public contract subject to sections 88 to 180 of this 2003 Act must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under section 8 of this 2003 Act, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week
when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in section 144 of this 2003 Act.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in section 8 of this 2003 Act, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract must contain a provision that employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in section 144 (1)(b)(B) to (G) of this 2003 Act and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

SECTION 142. Provisions concerning environmental and natural resources laws; remedies.

(1) Solicitation documents for a public improvement contract shall make specific reference to federal, state and local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. If the successful bidder awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in the public improvement contract or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of sections 88 to 180 of this 2003 Act; or
(f) Issue the contractor a change order setting forth the additional work that must be undertaken.

(2) In addition to the obligation imposed under subsection (1) of this section to refer to federal, state and local agencies with ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a solicitation document must also make specific reference to known conditions at the construction site that may require the successful bidder to comply with the ordinances, rules or regulations identified under subsection (1) of this section.

(3) If the successful bidder encounters a condition not referred to in the solicitation documents, not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under subsection (1) of this section, the successful bidder shall immediately give notice of the condition to the contracting agency.

(4) Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the successful bidder may not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the contracting agency.

(5) Upon request by the contracting agency, the successful bidder shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the contracting agency for resolution.

(6) Within a reasonable period of time following delivery of an estimate under subsection (5) of this section, the contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of sections 88 to 180 of this 2003 Act; or

(f) Issue the contractor a change order setting forth the additional work that must be undertaken.

(7)(a) If the contracting agency chooses to terminate the contract under subsection (1)(a) or (6)(a) of this section, the successful bidder shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The contracting agency shall have access to the contractor’s bid documents when making the contracting agency’s determination of the additional compensation due to the contractor.

(b) If the contracting agency causes work to be done by another contractor under subsection (1)(c) or (e) or (6)(c) or (e) of this section, the initial contractor may not be held liable for actions or omissions of the other contractor.

(c) The change order under subsection (1)(f) or (6)(f) of this section shall include the appropriate extension of contract time and compensate the contractor for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The contracting agency shall have
access to the contractor’s bid documents when making the contracting agency’s determination of the additional compensation due to the contractor.

(8) Notwithstanding subsections (1) to (7) of this section, a contracting agency:

(a) May allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the solicitation documents; and

(b) In a local improvement district, may allocate all or a portion of the known and unknown environmental and natural resource risks to a contractor by so stating in the solicitation documents.

SECTION 143. Condition concerning payment for medical care and providing workers’ compensation. (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

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

(Hours of Labor)

SECTION 144. Maximum hours of labor on public contracts; holidays; exceptions; liability to workers. (1) When labor is employed by the state or a county, school district, municipality, municipal corporation or subdivision thereof through a contractor, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on the following legal holidays:

(A) Each Sunday.

(B) New Year’s Day on January 1.

(C) Memorial Day on the last Monday in May.

(D) Independence Day on July 4.

(E) Labor Day on the first Monday in September.

(F) Thanksgiving Day on the fourth Thursday in November.

(G) Christmas Day on December 25.

(2) An employer shall give notice in writing to employees who perform work under subsection (1) of this section, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of
hours per day and days per week that employees may be required to work.

(3) For the purpose of this section, each time a legal holiday, other than Sunday, listed in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection (1) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

(4) Subsections (1) and (2) of this section do not apply to a public improvement contract or a contract for services if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

(5) When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

(6) This section does not apply to labor performed in the prevention or suppression of fire under contracts and agreements made under the authority of the State Forester or the State Board of Forestry, under ORS 477.406.

(7) This section does not apply to contracts for personal services designated under section 8 of this 2003 Act, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (1)(b)(B) to (G) of this section and for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.

(8) Subsections (1) and (2) of this section do not apply to contracts for services at a county fair or for other events authorized by a county fair board if persons employed under the contract receive at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week.

(9)(a) Subsections (1) and (2) of this section do not apply to contracts for services. However, persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in subsection (1)(b)(B) to (G) of this section and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(10) Any contractor or subcontractor or contractor’s or subcontractor’s surety that violates the provisions of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the contractor or subcontractor or contractor’s or subcontractor’s surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

(11) An action to enforce liability to employees under subsection (10) of this section may be brought as an action on the contractor’s payment bond as provided for in section 156 of this 2003 Act.

(12) This section does not apply to financial institutions as defined in ORS 706.008.
(13) In accordance with ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries may adopt rules to carry out the provisions of this section.

SECTION 145. Time limitation on claim for overtime; posting of circular by contractor. When labor is employed by the state or a county, school district, municipality, municipal corporation or subdivision thereof through another as a contractor, any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in section 144 of this 2003 Act unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:

(1) Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work.

(2) Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

(Retainage and Payments)

SECTION 146. “Retainage” defined. As used in sections 146 to 150 of this 2003 Act, “retainage” means the difference between the amount earned by a contractor on a public contract and the amount paid on the contract by the contracting agency.

SECTION 147. Withholding of retainage. The withholding of retainage by a contractor or subcontractor on public improvement contracts shall be in accordance with ORS 701.420 and 701.430 except when the charter of the contracting agency contains provisions requiring retainage by the contracting agency of more than five percent of the contract price of the work completed.

SECTION 148. Form of retainage. (1) Moneys retained by a contracting agency under section 150 (7) of this 2003 Act shall be:

(a) Retained in a fund by the contracting agency and paid to the contractor in accordance with section 150 of this 2003 Act; or

(b) At the option of the contractor, paid to the contractor in accordance with subsection (3) or (4) of this section and in a manner authorized by the Director of the Oregon Department of Administrative Services.

(2) If the contracting agency incurs additional costs as a result of the exercise of the options described in subsection (1) of this section, the contracting agency may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all accrued costs.

(3) The contractor may deposit bonds or securities with the contracting agency or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the contracting agency. In such event the contracting agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with section 150 of this 2003 Act. Interest on the bonds or securities shall accrue to the contractor.

(4) If the contractor elects, the retainage as accumulated shall be deposited by the contracting agency in an interest-bearing account in a bank, savings bank, trust company or
savings association for the benefit of the contracting agency. When the contracting agency
is a state contracting agency, the account shall be established through the State Treasurer.
Earnings on the account shall accrue to the contractor.

(5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this
section, shall be of a character approved by the Director of the Oregon Department of Ad-
ministrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.
(b) Other obligations of the United States or its agencies.
(c) Obligations of any corporation wholly owned by the federal government.
(d) Indebtedness of the Federal National Mortgage Association.

(6) The contractor, with the approval of the contracting agency, may deposit a surety
bond for all or any portion of the amount of funds retained, or to be retained, by the con-
tracting agency in a form acceptable to the contracting agency. The bond and any proceeds
therefrom shall be made subject to all claims and liens and in the same manner and priority
as set forth for retainage under sections 146 to 150 and 154 to 159 of this 2003 Act. The con-
tracting agency shall reduce the retainage in an amount equal to the value of the bond and
pay the amount of the reduction to the contractor in accordance with section 150 of this 2003
Act. Whenever a contracting agency accepts a surety bond from a contractor in lieu of
retainage, the contractor shall accept like bonds from any subcontractor or supplier from
which the contractor has retainage. The contractor shall then reduce the retainage in an
amount equal to the value of the bond and pay the amount of the reduction to the subcon-
tractor or supplier.

SECTION 149. Limitation on retainage requirements. Unless otherwise specifically in-
cluded by statute, the provisions of section 148 or 159 of this 2003 Act apply only as between
the contracting agency or public body and the party with whom it contracts.

SECTION 150. Prompt payment policy; progress payments; retainage; interest; exception;
settlement of compensation disputes. (1) It is the policy of the State of Oregon that all pay-
ments due on a public improvement contract and owed by a contracting agency shall be paid
promptly. No contracting agency is exempt from the provisions of this section.

(2) Contracting agencies shall make progress payments on the contract monthly as work
progresses on a public improvement contract. Payments shall be based upon estimates of
work completed that are approved by the contracting agency. A progress payment is not
considered acceptance or approval of any work or waiver of any defects therein. The con-
tracting agency shall pay to the contractor interest on the progress payment, not including
retainage, due the contractor. The interest shall commence 30 days after receipt of the in-
voice from the contractor or 15 days after the payment is approved by the contracting
agency, whichever is the earlier date. The rate of interest charged to the contracting agency
on the amount due shall equal three times the discount rate on 90-day commercial paper in
effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on
the date that is 30 days after receipt of the invoice from the contractor or 15 days after the
payment is approved by the contracting agency, whichever is the earlier date, but the rate
of interest may not exceed 30 percent.

(3) Interest shall be paid automatically when payments become overdue. The contracting
agency shall document, calculate and pay any interest due when payment is made on the
principal. Interest payments shall accompany payment of net due on public contracts. The
A contracting agency may not require the contractor to petition, invoice, bill or wait additional days to receive interest due.

(4) When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the contracting agency shall so notify the contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven days of being notified by the contracting agency, may not cause a payment to be made later than specified in this section unless interest is also paid.

(5) If requested in writing by a first-tier subcontractor, the contractor, within 10 days after receiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to the contracting agency or pay document provided by the contracting agency to the contractor specifically related to any labor or materials supplied by the first-tier subcontractor.

(6) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between the contracting agency and the contractor. Whenever a contractor brings formal administrative or judicial action to collect interest due under this section, the prevailing party is entitled to costs and reasonable attorney fees.

(7) A contracting agency may reserve as retainage from any progress payment on a public contract an amount not to exceed five percent of the payment. As work progresses, a contracting agency may reduce the amount of the retainage and the contracting agency may eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the contracting agency’s opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the contractor, and the application shall include written approval of the contractor’s surety. However, when the contract work is 97.5 percent completed the contracting agency may, at the contracting agency’s discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the contractor, the contracting agency shall respond in writing within a reasonable time.

(8) The retainage held by a contracting agency shall be included in and paid to the contractor as part of the final payment of the contract price. The contracting agency shall pay to the contractor interest at the rate of 1.5 percent per month on the final payment due the contractor, interest to commence 30 days after the work under the contract has been completed and accepted and to run until the date when the final payment is tendered to the contractor. The contractor shall notify the contracting agency in writing when the contractor considers the work complete and the contracting agency shall, within 15 days after receiving the written notice, either accept the work or notify the contractor of work yet to be performed on the contract. If the contracting agency does not, within the time allowed, notify the contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

(9)(a) The contracting agency shall pay, upon settlement or judgment in favor of the contractor regarding any dispute as to the compensation due a contractor for work performed under the terms of a public contract, the amount due plus interest at the rate of two times the discount rate, but not to exceed 30 percent, on 90-day commercial paper in effect.
at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date of the settlement or judgment, and accruing from the later of:

(A) The due date of any progress payment received under the contract for the period in which such work was performed; or

(B) Thirty days after the date on which the claim for the payment under dispute was presented to the contracting agency by the contractor in writing or in accordance with applicable provisions of the contract.

(b) Interest shall be added to and not made a part of the settlement or judgment.

(Subcontractors)

SECTION 151. Contractor’s relations with subcontractors. (1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until such time as the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment of such amount.

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public contract awarded by a contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in section 140 (2) of this 2003 Act.

(4) The contract awarded by the contracting agency shall require the contractor to include in each of the contractor’s subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of this section.
in each of the first-tier subcontractor’s subcontracts and to require each of the first-tier subcontractor’s subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor’s request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor under sub-subparagraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, “good faith dispute” means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after making application to a contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor’s performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the subcontractor’s progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:
(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or
(B) Seven days after the contractor recovers such funds from the contracting agency;
(f) Notify the contracting agency upon:
(A) Reduction of the amount of any subsequent certified application for payment; or
(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:
(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and
(ii) The dates that such withholding began and ended; and
(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in section 150 of this 2003 Act from the 11th day after receipt of the withheld amounts from the contracting agency until:
(A) The day the identified subcontractor performance deficiency is corrected; or
(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.
(7)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor’s performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:
(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon making such determination; and
(B) Withhold from the first-tier subcontractor’s next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.
(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified in section 150 of this 2003 Act.
(8) A written notice of any withholding shall be issued to a subcontractor, with a copy to the contracting agency of any such notice issued by a contractor, specifying:
(a) The amount to be withheld;
(b) The specified causes for the withholding under the terms of the subcontract; and
(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.
(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor.
(10) A contractor’s obligation to pay a late payment interest penalty to a subcontractor
under the clause included in a subcontract under subsection (3) or (4) of this section is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such late payment interest penalty.

SECTION 152. Authority to substitute undisclosed first-tier subcontractor; circumstances; rules. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under section 116 of this 2003 Act by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

1. When the subcontractor disclosed under section 116 of this 2003 Act fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor’s written bid, is presented to the subcontractor by the contractor.

2. When the disclosed subcontractor becomes bankrupt or insolvent.

3. When the disclosed subcontractor fails or refuses to perform the subcontract.

4. When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

5. When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

6. When the disclosed subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board.

7. When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

8. When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

9. When the substitution is for good cause. The Construction Contractors Board shall define “good cause” by rule. “Good cause” includes but is not limited to the financial instability of a subcontractor. The definition of “good cause” must reflect the least-cost policy for public improvements established in section 98 of this 2003 Act.

10. When the substitution is reasonably based on the contract alternates chosen by the contracting agency.

SECTION 153. Complaint process for substitutions of subcontractors; civil penalties. (1)(a) A subcontractor disclosed under section 116 of this 2003 Act may file a complaint based on the subcontractor disclosure requirements under section 116 of this 2003 Act with the Construction Contractors Board about a contractor if the contractor has substituted another subcontractor for the complaining subcontractor.

(b) If more than one subcontractor files a complaint with the board under paragraph (a) of this subsection relating to a single subcontractor disclosure, the board shall consolidate the complaints into one proceeding. If the board imposes a civil penalty under this section against a contractor, the amount collected by the board shall be divided evenly among all of
the complaining subcontractors.

(c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a deposit of $500 with the board upon filing the complaint.

(d) If the board determines that a contractor’s substitution was not in compliance with section 152 of this 2003 Act, the board shall return the full amount of the deposit posted under paragraph (c) of this subsection to the complaining subcontractor.

(e) If the board determines that a contractor has not substituted a subcontractor or that the contractor’s substitution was in compliance with section 152 of this 2003 Act, the board shall award the contractor $250 of the deposit and shall retain the other $250, which may be expended by the board.

(2) Upon receipt of a complaint under subsection (1) of this section, the board shall investigate the complaint. If the board determines that a contractor has substituted a subcontractor in a manner not in compliance with section 152 of this 2003 Act, the board may impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the manner provided under ORS 183.090.

(3) If the board imposes a civil penalty under subsection (2) of this section and it is the first time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board shall:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(4) If the board imposes a civil penalty under subsection (2) of this section and it is the second time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to six months. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(5) If the board imposes a civil penalty under subsection (2) of this section and the board has imposed a civil penalty under subsection (2) of this section against the contractor three or more times during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to one year. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(6) Within 10 working days after receiving a complaint under subsection (1) of this sec-
tion, the board shall notify, in writing, any contracting agency that is a party to the contract for which the complaint has been filed that the complaint has been filed.

(>Action on Payment Bonds<)

SECTION 154. Right of action against payment bond of contractor or subcontractor; notice of claim. (1) A person claiming to have supplied labor or materials for the performance of the work provided for in a public contract, including any person having a direct contractual relationship with the contractor furnishing the payment bond or a direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's payment bond as provided for in sections 118 and 129 of this 2003 Act only if:

(a) The person or the assignee of the person has not been paid in full; and

(b) The person gives written notice of claim, as prescribed in section 155 of this 2003 Act, to the contractor and the contracting agency.

(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has received information indicating that one or more workers providing labor on a public works have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action on the contractor's payment bond, as provided in sections 118 and 129 of this 2003 Act. The commissioner's right of action exists without necessity of an assignment and extends to workers on the project who are not identified when the written notice of claim is given, but for whom the commissioner has received information indicating that the workers have provided labor on the public works and have not been paid in full. The commissioner shall give written notice of the claim, as prescribed in section 155 of this 2003 Act, to the contractor and the contracting agency.

SECTION 155. Notice of claim. (1) The notice of claim required by section 154 of this 2003 Act must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business or at the residence of the contractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by section 154 of this 2003 Act must be sent or delivered within 150 days after the employee last provided labor or materials.

(3) The notice must be in writing substantially as follows:

To (here insert the name of the contractor and the name of the public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has 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-
tials, insert a brief description of the claim) in the sum of (here insert the amount) dollars
against the payment bond taken from (here insert the name of the principal and, if known,
the surety or sureties upon the payment bond) for the work of (here insert a brief de-
scription of the work concerning which the payment bond was taken). Such material or labor
was supplied to (here insert the name of the contractor or subcontractor).

____________________ (here to be signed)

(4) When notice of claim is given by the commissioner and if the claim includes a worker
who is then unidentified, the commissioner shall include in the notice a statement that the
claim includes an unidentified worker for whom the commissioner has received information
indicating that the worker has not been paid in full at the prevailing rate of wage required
by section 167 of this 2003 Act or overtime wages required by section 144 of this 2003 Act.

(5) The notice shall be signed by the person making the claim or giving the notice.

SECTION 156. Action on contractor’s payment bond; time limitation. (1) The Commis-
sioner of the Bureau of Labor and Industries or a person who has a right of action on the
payment bond under section 154 of this 2003 Act and, where required, who has filed and
served the notice or notices of claim, as required under sections 154 and 155 of this 2003 Act,
or that person’s assignee, may institute an action on the contractor’s payment bond in a
circuit court of this state or the federal district court of the district.

(2) The action shall be on the relation of the commissioner, the claimant, or that person’s
assignee, as the case may be, and shall be in the name of the contracting agency that let the
contract or, when applicable, the public agency or agencies for whose benefit the contract
was let. It may be prosecuted to final judgment and execution for the use and benefit of the
commissioner or the claimant, or that person’s assignee, as the fact may appear.

(3) The action shall be instituted no later than two years after the person last provided
labor or materials or two years after the worker listed in the commissioner’s notice of claim
last provided labor.

SECTION 157. Preference of labor and material liens. All labor and material liens have
preference and are superior to all other liens and claims of any kind or nature created by
sections 137 to 143 and 154 to 159 of this 2003 Act.

SECTION 158. Rights of person providing medical care to employees of contractor. A
person providing medical, surgical or hospital care services or other needed care and atten-
tion, incident to sickness or injury, to the employees of a contractor or subcontractor on a
public contract is deemed to have performed labor on the public contract for the purposes
of sections 154 to 159 of this 2003 Act.

SECTION 159. Joint liability when payment bond not executed. If the public contract is
one for which a payment bond as provided for in sections 118 and 129 of this 2003 Act is re-
quired and the contractor fails to pay for labor or materials or to pay claims due the Indus-
trial Accident Fund, the Unemployment Compensation Trust Fund or the Department of
Revenue and the officers of the public body that authorized the contract fail or neglect to
require the person entering into the contract to execute the payment bond:

(1) The State of Oregon and the officers authorizing the contract shall be jointly liable
for the labor and materials used in the performance of any work under the contract, and for
claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and
the Department of Revenue, if the contract was entered into with the State of Oregon.

(2) The public body and the officers authorizing the contract shall be jointly liable for the labor and materials used in the performance of any work under the contract and for claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into on behalf of a public body other than the state.

(Termination of Contract for Public Interest Reasons)

SECTION 160. “Labor dispute” defined. As used in sections 160 to 164 of this 2003 Act, “labor dispute” has the meaning given that term in ORS 662.010.

SECTION 161. Extension and compensation when work suspended. If a public contract is not terminated but work under the contract is suspended by an order of a contracting agency for any reason considered to be in the public interest other than a labor dispute or any third-party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute, the contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs.

SECTION 162. Compensation when contract terminated due to public interest. When a public contract is terminated by mutual agreement, provision shall be made for the payment of compensation to the contractor. In addition to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of termination, the amount to be paid to the contractor:

(1) Shall be determined on the basis of the contract price in the case of any fully completed separate item or portion of the work for which there is a separate or unit contract price; and

(2) May, with respect to any other work, be a percent of the contract price equal to the percentage of the work completed.

SECTION 163. Contractual provisions for compensation when contract terminated due to public interest. A contracting agency may provide in a public improvement contract detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason considered to be in the public interest.

SECTION 164. Application of sections 160 to 164 of this 2003 Act. Sections 160 to 164 of this 2003 Act do not apply to suspension of the work or termination of the contract that occurs as a result of the contractor’s violation of federal, state or local statutes, ordinances, rules or regulations in existence at the time the contract was executed or as a result of violations of the terms of the contract.

PREVAILING WAGE RATE

SECTION 165. Definitions for sections 165 to 179 of this 2003 Act. As used in sections 165 to 179 of this 2003 Act, unless the context requires otherwise:

(1) “Fringe benefits” means the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a
trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(2) “Locality” means the following district in which the public works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;
(b) District 2, composed of Clackamas, Multnomah and Washington Counties;
(c) District 3, composed of Marion, Polk and Yamhill Counties;
(d) District 4, composed of Benton, Lincoln and Linn Counties;
(e) District 5, composed of Lane County;
(f) District 6, composed of Douglas County;
(g) District 7, composed of Coos and Curry Counties;
(h) District 8, composed of Jackson and Josephine Counties;
(i) District 9, composed of Hood River, Sherman and Wasco Counties;
(j) District 10, composed of Crook, Deschutes and Jefferson Counties;
(k) District 11, composed of Klamath and Lake Counties;
(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;
(m) District 13, composed of Baker, Union and Wallowa Counties; and
(n) District 14, composed of Harney and Malheur Counties.

(3) “Prevailing rate of wage” means the rate of hourly wage, including all fringe benefits, paid in the locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. In making such determinations, the commissioner shall rely on an independent wage survey to be conducted once each year. However, if it appears to the commissioner that the data derived from the survey alone are insufficient to establish the rate, the commissioner also shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to workers on any public works is based on some period of time other than an hour, the hourly wage shall be mathematically determined by the number of hours worked in that period of time.

(4) “Public agency” means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(5) “Public works” includes, but is not limited to, roads, highways, buildings, structures
and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by a public agency.

SECTION 166. Policy. The Legislative Assembly declares that the purposes of the prevailing rate of wage law are:

(1) To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community-established compensation standards.

(2) To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.

(3) To encourage training and education of workers to industry skills standards.

(4) To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits.

SECTION 167. Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality where the labor is performed. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in section 165 (1)(a) of this 2003 Act, or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in section 165 (1)(b) of this 2003 Act, or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.

(2) After a contract for public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage is not subject to attack in any legal proceeding by any contractor or subcontractor in connection with that contract.

(3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the specifications of a contract for public works, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public works shall keep the prevailing rates of wage for that project posted in a conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and subcontractors.

(5) Every contractor or subcontractor engaged on a project for which there is a contract for a public works to which the prevailing wage requirements apply that also provides or contributes to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor’s employees on the project shall post a notice describing the plan in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plan, the notice shall contain information on how and where to make claims and where to obtain further information.

(6)(a) Except as provided in paragraph (c) of this subsection, no person other than the
contractor or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the contractor or subcontractor to workers employed in the performance of a public works contract.

(b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage specified in the contract.

(c) This subsection is not intended to prohibit payments to a worker who is enrolled in any government-subsidized training or retraining program.

(7) A person may not take any action that circumvents the payment of the prevailing rate of wage to workers employed on a public works contract, including, but not limited to, reducing an employee’s regular rate of pay on any project not subject to sections 165 to 179 of this 2003 Act in a manner that has the effect of offsetting the prevailing rate of wage on a public works project.

SECTION 168. Contractual provisions regarding prevailing rates of wage and fee for administration of law. (1) The specifications for every contract for public works shall contain a provision stating the existing prevailing rate of wage that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. The contract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage.

(2) The specifications for every contract for public works shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in section 178 (1) of this 2003 Act. The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner.

SECTION 169. Certified statements regarding payment of prevailing rates of wage. (1) The contractor or the contractor’s surety and every subcontractor or the subcontractor’s surety shall file certified statements with the public agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works, and further certifying that no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. The certificate and statement shall be verified by the oath of the contractor or the contractor’s surety or subcontractor or the subcontractor’s surety that the contractor or subcontractor has read the statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor’s knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker’s correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(2) The contractor or subcontractor shall deliver or mail each certified statement required by subsection (1) of this section to the public agency. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public works shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of sections 165 to 179 of this 2003 Act.
(3) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

(4) Certified statements received by a public agency are public records subject to the provisions of ORS 192.410 to 192.505.

SECTION 170. Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries may enter the office or business establishment of any contractor or subcontractor performing public works and gather facts and information necessary to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(2) Upon request by the commissioner, every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works. The commissioner’s request must be made a reasonable time in advance of the inspection.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section is not open to inspection by the public.

(4) The commissioner may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to require the payment of prevailing rates of wage or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

SECTION 171. Liability for violations. (1) Any contractor or subcontractor or contractor’s or subcontractor’s surety that violates the provisions of section 167 of this 2003 Act is liable to the workers affected in the amount of their unpaid minimum wages, including all fringe benefits as defined in section 165 of this 2003 Act, and in an additional amount equal to the unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors’ bonds as provided for in section 156 of this 2003 Act.

(3) If the public agency fails to include a provision that the contractor and any subcontractor shall comply with section 167 of this 2003 Act in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several with any contractor or subcontractor that had notice of the requirement to comply with section 167 of this 2003 Act. The Commissioner of the Bureau of Labor and Industries may enforce the provisions of this subsection by a civil action under section 170 (4) of this 2003 Act, by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332.

SECTION 172. Exemptions. (1) Sections 165 to 179 of this 2003 Act do not apply to:

(a) Projects for which the contract price does not exceed $25,000.
(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such regulation, contractors and subcontractors shall pay individuals employed as flaggers on the projects not less than the prevailing rate of wage as determined by the Commissioner of the Bureau of Labor and Industries for that classification of work. As used in this paragraph, “flagger” means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

c)(A) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS 183.310 to 183.550, the commissioner shall adopt rules to carry out the provisions of this paragraph.

(B) As used in this paragraph:

(i) “Funds of a public agency” does not include funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction.

(ii) “Nonprofit organization” means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2)(a) A public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with sections 165 to 179 of this 2003 Act.

(b) When the commissioner determines that a public agency has divided a public works project for the purpose of avoiding compliance with sections 165 to 179 of this 2003 Act, the commissioner shall issue an order compelling compliance.

(c) In making determinations under this subsection, the commissioner shall consider:

(A) The physical separation of the project structures;

(B) The timing of the work on project phases or structures;

(C) The continuity of project contractors and subcontractors working on project parts or phases; and

(D) The manner in which the public agency and the contractors administer and implement the project.

SECTION 173. Determination of prevailing rates of wage; providing information to commissioner. (1) As used in this section, “person” includes any employer, labor organization or any official representative of an employee or employer association.

(2) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing rate of wage for workers in each trade or occupation in each locality described in section 165 of this 2003 Act at least once each year by means of an independent wage survey and make this information available at least twice each year. The commissioner may amend the rate at any time.

(3) A person shall make such reports and returns to the Bureau of Labor and Industries as the commissioner may require to determine the prevailing rates of wage. The reports and returns shall be made upon forms furnished by the bureau and within the time prescribed therefore by the commissioner. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) In order to assist the commissioner in making determinations of the prevailing rates
of wage, the commissioner may enter into contracts with public or private parties to obtain
relevant data and information. Any such contract may include provisions for the manner and
extent of the market review of affected trades and occupations and such other requirements
regarding timelines of reports, accuracy of data and information and supervision and review
as the commissioner may prescribe.

SECTION 174. Ineligibility for public works contracts for failure to pay or post notice of
prevailing rates of wage; certified payroll reports to commissioner. (1) When the Commis-
sioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS
183.310 to 183.550, determines that a contractor or subcontractor has intentionally failed or
refused to pay the prevailing rate of wage to workers employed upon public works, a sub-
contractor has failed to pay to its employees amounts required by section 167 of this 2003
Act and the contractor has paid those amounts on the subcontractor’s behalf, or a contrac-
tor or subcontractor has intentionally failed or refused to post the prevailing rates of wage
as required by section 167 (4) of this 2003 Act, the contractor, subcontractor or any firm, 
corporation, partnership or association in which the contractor or subcontractor has a fi-
nancial interest shall be ineligible, for a period not to exceed three years from the date of
publication of the name of the contractor or subcontractor on the ineligible list as provided
in this section, to receive any contract or subcontract for public works. The commissioner
shall maintain a written list of the names of those contractors and subcontractors deter-
mioned to be ineligible under this section and the period of time for which they are ineligible.
A copy of the list shall be published, furnished upon request and made available to con-
tracting agencies.

(2) When the contractor or subcontractor is a corporation, the provisions of subsection
(1) of this section apply to any corporate officer or corporate agent who is responsible for
the failure or refusal to pay or post the prevailing rate of wage or the failure to pay to a
subcontractor’s employees amounts required by section 167 of this 2003 Act that are paid by
the contractor on the subcontractor’s behalf.

(3) For good cause shown, the commissioner may direct the removal of the name of a
contractor or subcontractor from the ineligible list.

(4) To assist the commissioner in determining whether the contractor or subcontractor
is paying the prevailing rate of wage, when a prevailing rate of wage claim is filed, or evi-
dence indicating a violation has occurred, a contractor or subcontractor required to pay the
prevailing rate of wage to workers employed upon public works under sections 165 to 179 of
this 2003 Act shall send a certified copy of the payroll for those workers when the commis-
sioner requests the certified copy.

SECTION 175. Notifying commissioner of public works contract. Public agencies shall
notify the Commissioner of the Bureau of Labor and Industries in writing, on a form pre-
scribed by the commissioner, whenever a contract subject to the provisions of sections 165
to 179 of this 2003 Act has been awarded. The notification shall be made within 30 days of the
date that the contract is awarded. The notification shall include a copy of the disclosure of
first-tier subcontractors that was submitted under section 116 of this 2003 Act.

SECTION 176. Civil action to enforce payment of prevailing rates of wage. (1) The Com-
missoner of the Bureau of Labor and Industries or any other person may bring a civil action
in any court of competent jurisdiction to require a public agency under a public contract with
a contractor to withhold twice the wages in dispute if it is shown that the contractor or

[97]
subcontractor on the contract has intentionally failed or refused to pay the prevailing rate
of wage to workers employed on that contract and to require the contractor to pay the
prevailing rate of wage and any deficiencies that can be shown to exist because of improper
wage payments already made. In addition to other relief, the court may also enjoin the con-
tactor or subcontractor from committing future violations. The contractor or subcontractor
involved shall be named as a party in all civil actions brought under this section. In addition
to other costs, the court may award the prevailing party reasonable attorney fees at the trial
and on appeal. However, attorney fees may not be awarded against the commissioner
under this section.

(2) The court shall require any party, other than the commissioner, that brings a civil
action under this section to post a bond sufficient to cover the estimated attorney fees and
costs to the public agency and to the contractor or subcontractor of any temporary re-
straining order, preliminary injunction or permanent injunction awarded in the action, in the
event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section
may enjoin the public agency from contracting with the contractor or subcontractor if the
court finds that the commissioner would be entitled to place the contractor or subcontractor
on the ineligible list established under section 174 (1) of this 2003 Act. If the court issues
such an injunction, the commissioner shall place the contractor or subcontractor on the list
for a period of three years, subject to the provision of section 174 (2) of this 2003 Act.

SECTION 177. Civil penalties. (1) In addition to any other penalty provided by law, the
Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed
$5,000 for each violation of any provision of sections 165 to 179 of this 2003 Act or any rule
of the commissioner adopted thereunder.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) All moneys collected as penalties under this section shall be first applied toward re-
imbursement of costs incurred in determining violations, conducting hearings and assessing
and collecting the penalties. The remainder, if any, of moneys collected as penalties under
this section shall be paid into the State Treasury and credited to the General Fund and are
available for general governmental expenses.

SECTION 178. Fees; rules. (1)(a) The Commissioner of the Bureau of Labor and Indus-
tries, by rule, shall establish a fee to be paid by the contractor to whom a public works
contract subject to sections 165 to 179 of this 2003 Act has been awarded. The fee shall be
used to pay the costs of:

(A) Surveys to determine the prevailing rates of wage;

(B) Administering and providing investigations under and enforcement of sections 165 to
179 of this 2003 Act; and

(C) Providing educational programs on public contracting law under the Public Con-
tracting Code.

(b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee
be charged and collected that is more than $5,000 or less than $100.

(2) The commissioner shall pay moneys received under this section into the State
Treasury. The moneys shall be credited to the Prevailing Wage Education and Enforcement
Account created by ORS 651.185.

(3) The contractor shall pay the fee at the time of the first progress payment or 60 days
after work on the contract has begun, whichever date is earlier.

(4) Failure to make timely payment under subsection (3) of this section shall subject the contractor to a civil penalty under section 177 of this 2003 Act in such amount as the commissioner, by rule, shall specify.

SECTION 179. Advisory committee to assist commissioner. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee to assist the commissioner in the administration of sections 165 to 179 of this 2003 Act.

(2) The advisory committee must include equal representation of members from management and labor in the building and construction industry who perform work on public works contracts and such other interested parties as the commissioner shall appoint.

PENALTIES

SECTION 180. Penalties. (1) Any contractor, subcontractor, agent or person in authority or in charge who violates any of the provisions of sections 141 and 144 of this 2003 Act as to hours of employment of labor shall, upon conviction, be fined not less than $50 nor more than $1,000 or imprisoned in the county jail for not less than five days nor more than one year, or both.

(2) Any contractor or subcontractor subject to section 167 of this 2003 Act who fails to pay the prevailing rate of wage as required by section 167 of this 2003 Act shall be punished, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail for not more than six months, or both.

PART 4: OTHER PROVISIONS

SECTION 181. Section 182 of this 2003 Act is added to and made a part of ORS chapter 198.

SECTION 182. District authority to enter into property purchase contracts. (1) A district may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when the period of time allowed for payment under the contract does not exceed 30 years. A district entering into a contract authorized by this subsection may budget funds annually for payment of amounts due under the contract in each year during the term of the contract, unless the contract is terminated sooner in accordance with its terms.

(2) The powers granted to districts by this section are in addition to any other powers possessed by districts in this state, and this section may not be construed to limit such powers.

SECTION 183. Section 184 of this 2003 Act is added to and made a part of ORS chapter 203.

SECTION 184. County authority to enter into property purchase contracts. (1) A county may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when:

(a) The period of time allowed for payment under the contract does not exceed 30 years; and

(b) The county is not obligated to make payments under the contract in any fiscal year.
unless the county governing body includes such payments in the county's budget for that fiscal year and makes an appropriation therefor.

(2) The powers granted to counties by this section are in addition to any other powers possessed by counties in this state, and this section may not be construed to limit such powers.

SECTION 185. Notwithstanding any other provision of law, ORS 279.340, 279.342, 279.625 and 279.795 may not be considered to have been added to or made a part of ORS chapter 279 or any smaller series therein for the purpose of statutory compilation, for the application of definitions, penalties or administrative provisions or for any other purpose.

SECTION 186. ORS 279.340 and 279.342 are added to and made a part of ORS 653.010 to 653.545.

SECTION 187. ORS 279.625 is added to and made a part of ORS 282.010 to 282.050.

SECTION 188. Policy; findings. The Legislative Assembly finds and declares that:

(1) It is the policy of the State of Oregon to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(2) The volume of solid waste generated within the state, an increased rate in the consumption of products and materials, including paper products, and the absence of adequate programs and procedures for the reuse and recycling of these products and materials threaten the quality of the environment and well-being of the people of Oregon.

SECTION 189. State government recycling program requirements. (1) For the current state waste paper collection program, the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall provide participating locations with public awareness information and training to state and legislative employees, including but not limited to the proper separation and disposal of recycled resources. Additionally, the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality, shall provide training for personnel, including but not limited to state buildings and grounds personnel responsible for the collection of waste materials. This training shall include but is not limited to educating and training the personnel concerning the separation and collection of recyclable materials.

(2) The Oregon Department of Administrative Services shall continue the current state waste paper collection program for employees of state government, as defined in ORS 174.111. This program shall include recycling opportunities for office paper, corrugated cardboard, newsprint, beverage containers as defined in ORS 459A.700, container glass, mixed waste paper, plastic bottles, waste oil, clay-coated materials, batteries, toner and printer cartridges and any other material at the discretion of the Director of the Oregon Department of Administrative Services, in consultation with the Department of Environmental Quality.

(3) The Oregon Department of Administrative Services may contract as necessary for the recycling of products returned under subsections (1) and (2) of this section.

SECTION 190. Rules for recycling and reusing solid waste; exemption. (1) Notwithstanding ORS 183.335 (5), the Oregon Department of Administrative Services shall adopt rules pursuant to ORS 183.310 to 183.550 that:

(a) Establish procedures for the separation of solid waste generated by state agencies that can be recycled or reused.

(b) Establish a system for the collection of solid waste generated by state agencies that
can be recycled or reused. The system shall ensure that the material is made available to appropriate agencies or private industries for reuse or recycling at the greatest economic value and to the greatest extent feasible for recycling.

(2) All state agencies shall comply with the procedures and systems established under subsection (1) of this section.

(3) The Governor may exempt any single activity or facility of any state agency from compliance under this section if the Governor determines it to be in the paramount interest of the state. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year. The Governor shall make public all exemptions together with the reasons for granting such exemptions.

SECTION 191. Guidelines and procedures to encourage paper conservation. (1) The Oregon Department of Administrative Services shall encourage paper conservation.

(2) The department shall provide guidelines to state agencies and contractors on the availability of recycled paper and paper products, including the sources of supply and the potential uses of various grades of recycled paper.

(3) The department shall review the total paper purchases and utilization of each state agency.

(4) The department shall, in conjunction with the administrative heads of state agencies, develop procedures to eliminate excessive or unnecessary paper use, including but not limited to overpurchase of paper, overprinting of materials, purchase of too high a grade of paper, purchase of paper that is not recyclable and purchase of virgin paper when recycled paper is available in the same grade.

SECTION 192. Title to property acquired by state agency in name of state. A state agency, as defined in section 36 of this 2003 Act, authorized by law to acquire real or personal property or any interest therein shall take title to the property or the interest therein in the name of the State of Oregon.

PART 5: CONFORMING AMENDMENTS

SECTION 193. ORS 7.250 is amended to read:

7.250. (1) The State Court Administrator and the courts of this state shall encourage persons who make filings in the courts, including all pleadings, motions, copies and other documents, to use paper that has been printed on both sides of each sheet. The courts of this state may not decline to accept any filing because the filing is printed on both sides of each sheet of paper.

(2) All filings in the courts of this state, including all pleadings, motions, copies and other documents, shall be printed on recycled paper if recycled paper is readily available at a reasonable price. The State Court Administrator and the courts of this state shall encourage persons who make filings in the courts to use recycled paper that has the highest available content of post-consumer waste, as defined in [ORS 279.545] section 2 of this 2003 Act, and that is recyclable in office paper recycling programs in the community in which the filing is made. A court of this state may not decline to accept any filing because the paper does not comply with the requirements of this subsection.

SECTION 194. ORS 9.010 is amended to read:

9.010. (1) An attorney, admitted to practice in this state, is an officer of the court; and the Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the
(2) The Oregon State Bar has perpetual succession and a seal, and it may sue and be sued. Notwithstanding the provisions of ORS 270.020 and ORS 278 and 279 sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act, it may, in its own name, for the purpose of carrying into effect and promoting its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property. [ORS 279.011 to 279.067, 279.310 to 279.542, 279.710 and 279.711 shall not apply to any contract for purchase, lease or sale of personal property, public improvements or services entered into before, on or after July 9, 1985.]

(3) No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon.

SECTION 196. ORS 105.435 is amended to read:

105.435. (1) A receiver appointed by the court, pursuant to ORS 105.420 to 105.455, shall have the authority to do any or all of the following unless specifically limited by the court:

(a) Take possession and control of the property including the right to enter, modify and terminate tenancies pursuant to ORS 105.105 to 105.161 and to charge and collect rents derived therefrom, applying said sum to the costs incurred due to the abatement and receivership;

(b) Negotiate contracts and pay all expenses associated with the operation and conservation of the property including, but not limited to, all utility, fuel, custodial, repair or insurance costs;

(c) Pay all accrued property taxes, penalties, assessments and other charges imposed on the
property by a unit of government as well as any accruing charge of like nature accruing during the
pendency of the receivership;
   (d) Dispose of any or all abandoned personal property found at the structure; and
   (e) Enter into contracts and pay for the performance of any work necessary to complete the
abatement.

(2) In addition to the powers set forth in subsection (1) of this section, the receiver may, under
such terms and condition as a court shall allow, enter into financing agreements with public or
private lenders and encumber the property therewith so as to have moneys available to correct the
conditions at the property giving rise to the abatement.

(3) A receiver may charge an administrative fee at an hourly rate approved by the court or at
a rate of 15 percent of the total cost of the abatement, whichever the court deems more appropriate.

(4) All abatement work done under ORS 105.420 to 105.455 is exempt from the public contracting
statutes set forth in [ORS 279.011 to 279.063] sections 1 to 46 and 47 to 87 of this 2003 Act and
sections 88, 89 to 96 and 97 to 136 of this 2003 Act, except sections 17, 36 to 44 and 77 of this
2003 Act.

SECTION 197. ORS 173.500 is amended to read:

ORS 173.500. (1) There is established within the legislative department the Oregon State Capitol
Foundation. The foundation shall be composed of not fewer than nine and not more than 25 voting
members, who shall each serve a term of four years. The President of the Senate shall appoint three
voting members from members of the Senate. The Speaker of the House of Representatives shall
appoint three voting members from members of the House of Representatives. The Legislative Ad-
ministration Committee shall appoint the remaining voting members. A member is eligible for reap-
pointment. At all times there shall be appointed to the foundation an odd number of voting members.
The foundation may appoint honorary, nonvoting members to the foundation.

(2) The Oregon State Capitol Foundation shall:
   (a) Advise the Legislative Administration Committee on the terms and conditions of contracts
or agreements entered into under ORS 276.002.
   (b) Recommend to the committee renovations, repairs and additions to the State Capitol.
   (c) Recommend to the committee exhibits and events for the State Capitol.
   (d) Deposit gifts, grants, donations and moneys converted from gifts or donations of other than
money into separate trust accounts reserved for the purposes of the gifts, grants and donations.
   (e) Develop, maintain and implement plans to:
      (A) Enhance and embellish the State Capitol in keeping with the design and purpose of the
building and adjacent areas; and
      (B) Preserve the history of activities of state government that have occurred in the State Capitol
and of persons who have participated in state government in the State Capitol.
   (f) Adopt rules to guide the foundation and implement the foundation’s responsibilities under this
subsection and the foundation’s authority under subsections (3) to (5) of this section.
   (g) Consult with any advisory committees the Legislative Administration Committee may desig-
nate before the foundation makes a recommendation required by this subsection.

(3) The Oregon State Capitol Foundation may:
   (a) Solicit and accept gifts, grants and donations from public and private sources in the name
of the foundation.
   (b) Under guidelines adopted by the Legislative Administration Committee, expend moneys from
the Oregon State Capitol Foundation Fund for the purposes set out in subsection (2) of this section,
including but not limited to the reasonable and necessary operating expenses of the foundation.

(c) Convert gifts or donations other than money into moneys.

(d) Become or create an organization under section 501(c)(3) of the Internal Revenue Code.

(4)(a) As used in this subsection, “community foundation” has the meaning given that term in ORS 348.580.

(b) The Oregon State Capitol Foundation may enter into agreements with a person, including a community foundation in Oregon, for the person to assume the management of the moneys in the Oregon State Capitol Foundation Fund. The Oregon State Capitol Foundation may transfer to the person any moneys in the fund.

(c) The Oregon State Capitol Foundation shall include in any agreement entered into under this subsection a requirement that:

(A) The person conduct a periodic independent financial audit of the moneys transferred to the person.

(B) The person prepare an annual financial report according to generally accepted accounting principles.

(C) The person submit an annual financial report to the Oregon State Capitol Foundation, the Legislative Administration Committee and the Oregon Investment Council.

(d) If a provision of an agreement entered into under this subsection would cause the person to be out of compliance with a federal law, the Oregon State Capitol Foundation may waive the provision.

(5) The Oregon State Capitol Foundation may, through the Legislative Administrator, enter into contracts or agreements to implement the foundation’s responsibilities and authority. [ORS chapter 279 does] 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 a contract or agreement entered into by the foundation.

(6) The Oregon State Capitol Foundation may take action under this section upon a majority vote of a quorum of members. A majority of the voting members of the foundation constitutes a quorum for the transaction of business.

SECTION 198. ORS 177.120 is amended to read:

177.120. (1) The Secretary of State shall compile and issue biennially on or about February 15 of the same year as the regular sessions of the Legislative Assembly, an official directory of all state officers, state institutions, boards and commissions and district and county officers of the state, to be known as the Oregon Blue Book, and include therein the information regarding their functions that the secretary considers most valuable to the people of the state, together with such other data and information as usually is included in similar publications. The Secretary of State may cause the Oregon Blue Book to be copyrighted.

(2) In order to fully carry out the intent and purposes of this section, the Secretary of State may request of any state, district and county officials any information concerning their offices, institutions or departments that the secretary desires to include in the Oregon Blue Book. The officials shall furnish the information.

(3) The Secretary of State may distribute the Oregon Blue Book free of charge, under such regulations as the secretary may establish, to schools and to federal, state, county and city officials of the State of Oregon. The copies distributed under this subsection shall not be sold.

(4) The Secretary of State shall determine a reasonable price, and charge such price, for each copy of the Oregon Blue Book distributed to the general public. The secretary may also establish a discount price for dealers and shall set the price for resale by dealers in order to maintain a
uniform price. The sum collected shall be paid over to the State Treasurer and credited to the Secretary of State Miscellaneous Receipts Account established under [ORS 279.833] section 44 of this 2003 Act.

SECTION 199. ORS 177.150 is amended to read:

177.150. The Secretary of State shall cause a record to be kept of all moneys paid into the Secretary of State Miscellaneous Receipts Account established under [ORS 279.833] section 44 of this 2003 Act. Together with other matters, the record shall indicate, by separate account, the source from which the moneys paid in are derived and the activity or program against which any payment or withdrawal is charged.

SECTION 200. ORS 179.040 is amended to read:

179.040. (1) The Department of Corrections and the Department of Human Services shall:

(a) Govern, manage and administer the affairs of the public institutions and works within their respective jurisdictions.

(b) Enter into contracts for the planning, erection, completion and furnishings of all new buildings or additions at their respective institutions.

(c) Subject to any applicable provisions of ORS [279.545 to 279.746, 279.805, 279.826 to 279.833 and] 283.110 to 283.395 and sections 17, 37, 41, 42, 43, 44, 49, 78, 79, 80 and 81 of this 2003 Act, enter into contracts for the purchase of supplies for their respective institutions.

(d) Make and adopt rules, not inconsistent with law, for the guidance of the Department of Corrections or the Department of Human Services and for the government of their respective institutions.

(2) The Department of Corrections and the Department of Human Services, respectively, may:

(a) Sue and plead in all courts of law and equity.

(b) Perform all legal and peaceful acts requisite and necessary for the successful management and maintenance of the institutions within their respective jurisdictions.

SECTION 201. ORS 179.140 is amended to read:

179.140. Subject to any applicable provision of ORS [279.545 to 279.746, 279.805, 279.826 to 279.833,] 283.110 to 283.395 and 291.232 to 291.260 and sections 17, 37, 41, 42, 43, 44, 49, 78, 79, 80 and 81 of this 2003 Act, all claims for supplies or materials furnished or services rendered to institutions shall be audited and approved as provided by law, upon the presentation of duly verified vouchers therefor, approved in writing by the Director of the Department of Corrections or by the Director of Human Services, or by their designees.

SECTION 202. ORS 181.150 is amended to read:

181.150. (1) The state shall provide the members of the state police with emergency and first aid outfits, weapons, motor vehicles, and all other supplies and equipment necessary to carry out the objects of the Department of State Police. This property shall remain the property of the state with the exception of a retiring or deceased officer’s department-issued service revolver, which may be sold by the department to the officer or, in the case of a deceased officer, to a member of the officer’s family, upon the officer’s retirement or death, and the officer’s badge, which may be given to the officer or, in the case of a deceased officer, to a member of the deceased officer’s family, upon the officer’s retirement or death. When a service revolver is sold pursuant to this section, it shall be sold for its fair market value. The badge shall be marked to indicate the officer’s retirement status and under no circumstance shall it be used for official police identification other than as a memento of service to the department.

(2) When any of the property, supplies or equipment becomes surplus, obsolete or unused it shall
be disposed of by the Oregon Department of Administrative Services as provided in [ORS 279.828] section 42 of this 2003 Act.

(3) For purposes of [ORS 279.011 to 279.063] sections 1 to 46 and 47 to 87 of this 2003 Act, the sale of a service revolver to a retiring officer by the department is not a public contract and shall not be subject to the competitive bidding requirements of [ORS 279.011 to 279.063] sections 1 to 46 and 47 to 87 of this 2003 Act. The provisions of ORS 166.412 do not apply to transfers of firearms pursuant to this section.

SECTION 203. ORS 182.375 is amended to read:

182.375. (1) There is created in the State Treasury, separate and distinct from the General Fund, an Oregon State Productivity Improvement Revolving Fund. All moneys in the fund are appropriated continuously to the Oregon Department of Administrative Services for making loans, grants, matching funds or cash awards available to state agencies or units for implementation of productivity improvement projects, including training and workforce development, upon authorization of the Oregon Department of Administrative Services, subject to ORS 243.650 to 243.782 when applicable. Interest on earnings of the fund shall be credited to the fund.

(2) The Oregon State Productivity Improvement Revolving Fund shall consist of:

(a) Moneys transferred from the Oregon Department of Administrative Services Operating Fund, as provided in ORS 240.170, in a sum not to exceed $500,000 to establish the fund.

(b) Savings realized from implementation of productivity improvement projects which may include existing and future projects authorized by the department.

(c) Any unexpended revenues transferred in accordance with ORS 279.645 (2).

(3) Fifty percent of the agency or unit budget savings resulting from improved efficiency shall be credited to the Oregon State Productivity Improvement Revolving Fund to be used for program improvement by the agency or unit. If not used in the biennium in which the savings occur, the amount of credit to an agency or unit may be treated as if it were continuously appropriated to the agency or unit and may be expended in the following biennium without resulting in any budget justification for the agency or unit. Expenditures from the fund are not subject to allotment or other budgetary procedures.

(4) None of the expenditures in a biennium by the agency or unit under this section shall be considered to be within any appropriation or expenditure limitation in the agency’s base budget for the biennium.

(5) A productivity improvement project may include training and employee development authorized by the department and intended to lead to improved productivity.

(6) The department may require a different repayment schedule for training and employee development than for other productivity improvement projects.

(7) Agencies and units shall report to the department quarterly on project implementation, savings realized to date, or projected, and repayment of moneys to the fund.

SECTION 204. ORS 182.460 is amended to read:

182.460. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, [279,] 282, 283, 291, 292 and 293 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to a board. A board is subject to all other statutes governing a state agency that do not conflict with ORS 182.456 to 182.472, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS 183.310 to 183.550, and a board’s employees are included within the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, the following provisions shall apply to a
board:

(a) ORS 240.309 (1) to (6) and 240.321;

(b) ORS 279.800 to 279.830;

(c) ORS 279.835 to 279.855;

(e) Sections 36 to 44 of this 2003 Act;

(d) ORS 282.210 to 282.230; and

(e) ORS 293.240.

(3) In carrying out the duties, functions and powers of a board, the board may contract with any state agency for the performance of duties, functions and powers as the board considers appropriate. A state agency shall not charge a board an amount that exceeds the actual cost of those services. ORS 182.456 to 182.472 do not require an agency to provide services to a board other than pursuant to a voluntary interagency agreement or contract.

(4) A board shall adopt personnel policies and contracting and purchasing procedures. The Oregon Department of Administrative Services shall review those policies and procedures for compliance with applicable state and federal laws and collective bargaining contracts.

(5) Except as otherwise provided by law, directors and employees of a board are eligible to receive the same benefits as state employees and are entitled to retain their State of Oregon hire dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer of all accumulated state agency leaves.

SECTION 205. ORS 182.466 is amended to read:

182.466. In addition to other powers granted by ORS 182.456 to 182.472 and by the statutes specifically applicable to a board, a board may:

(1) Sue and be sued in its own name.

(2) Notwithstanding ORS chapter 279 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act, enter into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and dispose of real and personal property.

(3) Notwithstanding ORS 670.300, fix a per diem amount to be paid to board members for each day or portion thereof during which the member is actually engaged in the performance of official duties. Board members may also receive actual and necessary travel expenses or other expenses actually incurred in the performance of their duties. If an advisory council or peer review committee is established under the law that governs the board, the board may also fix and pay amounts and expenses for members thereof.

(4) Set the amount of any fee required by statute and establish by rule and collect other fees as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this subsection, a board shall hold a public hearing prior to adopting or modifying any fee without regard to the number of requests received to hold a hearing. A board shall give notice to all licensees of the board prior to holding a hearing on the adoption or modification of any fee. A board may adopt fees in conjunction with the budget adoption process described in ORS 182.462.

(5) Subject to any other statutory provisions, adopt procedures and requirements governing the manner of making application for issuance, renewal, suspension, revocation, restoration and related activities concerning licenses that are under the jurisdiction of a board.

SECTION 206. ORS 183.335 is amended to read:

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:
(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency’s proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person’s interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534; and

(F) If an advisory committee is not appointed under the provisions of ORS 183.025 (2), an explanation as to why no advisory committee was used to assist the agency in drafting the rule.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under the provisions of subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by bracketing material to be deleted and showing all new material in boldfaced type.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the
hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
and the rule for which the hearing is to be conducted applies only to a limited geographical area
within this state, or affects only a limited geographical area within this state, the hearing shall be
conducted within the geographical area at the place most convenient for the majority of the resi-
dents within the geographical area. At least 14 days before a hearing conducted under this para-
graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
in a newspaper of general circulation published within the geographical area that is affected by the
rule or to which the rule applies. If a newspaper of general circulation is not published within the
geographical area that is affected by the rule or to which the rule applies, the publication shall be
made in the newspaper of general circulation published closest to the geographical area.

c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates
in the proposed adoption, amendment or repeal of any rule to written submissions.

d) An agency that receives data or views concerning proposed rules from interested persons
shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend
or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of
receiving those submissions.

(C) Comments of the committees submitted under subsection (16) of this section.

(4) Upon request of an interested person received before the earliest date that the rule could
become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall
postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
requesting person an opportunity to submit data, views or arguments concerning the proposed
action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to
the public interest or the interest of the parties concerned and the specific reasons for its findings
of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the
promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the
need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
the agency in considering the need for and in preparing the rule, and a statement of the location
at which those documents are available for public inspection; and

e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
183.534.
(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;
(b) Correcting spelling;
(c) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule; or
(d) Correcting statutory references.

(8) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to [ORS 279.025 to 279.031 and 279.310 to 279.990] ORS 279.835 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, 118, 119, 137 to 143, 144, 145, 146 to 150, 151, 152, 153, 154 to 159, 160 to 164, 165 to 179 and 180 of this 2003 Act relating to public contracts and purchasing.

(11)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed
within two years before notice is given under subsection (1) of this section, notice shall be given to
the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
cochairs of all committees that reported the bill out, except for those committees whose sole action
on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was
passed within two years before notice is given under subsection (1) of this section, notice shall be
given to the chair or cochairs of any interim or session committee with authority over the subject
matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
to the Speaker of the House of Representatives and to the President of the Senate who are in office
on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal
to the agency proposing the adoption, amendment or repeal.

SECTION 207. ORS 183.355 is amended to read:

183.355. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of
each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule
incorporating published standards by reference is not required to file a copy of those standards with
the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incor-
porated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the
effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a desig-
nated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency
shall take appropriate measures to make temporary rules known to the persons who may be affected
by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of
the amendment or notice of repeal with the Secretary of State who shall appropriately amend the
compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor
shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against
any person or party until a certified copy is filed in accordance with this section. However, if an
agency, in disposing of a contested case, announces in its decision the adoption of a general policy
applicable to such case and subsequent cases of like nature the agency may rely upon such decision
in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated
parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts
SECTION 208. ORS 190.110 is amended to read:

190.110. (1) In performing a duty imposed upon it, in exercising a power conferred upon it or in administering a policy or program delegated to it, a unit of local government or a state agency of this state may cooperate for any lawful purpose, by agreement or otherwise, with a unit of local government or a state agency of this or another state, or with the United States, or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe. This power includes power to provide jointly for administrative officers.

(2) The power conferred by subsection (1) of this section to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe extends to any unit of local government or state agency that is not otherwise expressly authorized to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe.

(3) With regard to an American Indian tribe, the power described in subsections (1) and (2) of this section includes the power of the Governor or the designee of the Governor to enter into agreements to ensure that the state, a state agency or unit of local government does not interfere with or infringe on the exercise of any right or privilege of an American Indian tribe or members of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or any other authority. Nothing in this subsection shall be construed to modify the obligations of the United States to an American Indian tribe or its members concerning real or personal property, title to which is held in trust by the United States.

(4) A unit of local government or state agency of this state may exclude any clause or condition required by [ORS 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] section 79 of this 2003 Act or sections 137 to 143 of this 2003 Act from an agreement under subsection (1) of this section if the agreement is with:

(a) A unit of local government of another state.

(b) A state agency of another state.

(c) The United States.

(d) A United States governmental agency.

(e) An American Indian tribe.

(f) An agency of an American Indian tribe.

SECTION 209. ORS 190.240 is amended to read:

190.240. (1) Subject to rules prescribed by the Oregon Department of Administrative Services, any state agency as defined in ORS 291.002 may, upon request, furnish to the federal government or a city, county, district or other municipal corporation or political subdivision in Oregon the same or similar services, other than materials, equipment and supplies, having a single unit price of less than $500, furnished under the laws of this state to other state agencies. Equipment does not include used goods; material and supplies do not include goods produced by the State of Oregon. The cost of the services provided under this subsection shall be charged to the federal government, city, county, district or other municipal corporation or political subdivision for which the services are performed.

(2) Except as provided in subsection (3) of this section, in the case of state agencies, the cost of services furnished pursuant to subsection (1) of this section may be paid out of the miscellaneous receipts account established pursuant to [ORS 279.833] section 44 of this 2003 Act for such agen-
cies. All moneys received by an agency in payment of such services shall be paid into the State Treasury for deposit to the credit of the miscellaneous receipts account established pursuant to [ORS 279.833] section 44 of this 2003 Act for the agency furnishing the service.

(3) In the case of the Oregon Department of Administrative Services, the cost of services furnished pursuant to subsection (1) of this section may be advanced from the Oregon Department of Administrative Services Operating Fund and reimbursed to the fund from the charges paid to the department by the federal government, city, county, district or other municipal corporation or political subdivision for which the services are performed.

SECTION 210. ORS 190.420 is amended to read:

190.420. (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency in this state may be exercised and enjoyed jointly with any public agency in another state to the extent that the laws of the other state permit such joint exercise or enjoyment.

(2) Public agencies in this state and in another state may enter into agreements with one another for joint or cooperative action. Such action must be recorded by ordinance, resolution or in other lawful manner by the governing bodies of the participating public agencies.

(3) An agreement under subsection (2) of this section must specify its duration, the organization, composition and nature of any separate legal or administrative entity created to exercise the functions agreed upon, the purpose of the agreement, the method of financing the joint or cooperative undertaking, the methods to be employed to terminate the agreement, and any other necessary and proper matters.

(4) No agreement under subsection (2) of this section shall relieve any public agency of any obligation or responsibility imposed on it by law.

(5) Notwithstanding subsection (4) of this section, a public agency in this state may exclude from an agreement under subsection (2) of this section any clause or condition required by [ORS 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] section 79 of this 2003 Act or sections 137 to 143 of this 2003 Act.

SECTION 211. ORS 190.485 is amended to read:

190.485. (1) Any power or powers, privileges or authority exercised or capable of exercise by a state agency in this state may be exercised and enjoyed jointly with a nation or a public agency in any nation other than the United States, to the extent that the laws of the United States and of the other nation do not prohibit such joint exercise or enjoyment.

(2) A state agency may enter into an agreement with another nation or public agency of another nation for joint and cooperative action.

(3) An agreement described in subsection (2) of this section must specify its duration, the organization, composition and nature of any separate legal or administrative entity created to exercise the functions agreed upon, the purpose of the agreement, the method of financing the joint or cooperative undertaking, the methods to be employed to terminate the agreement and other necessary and proper matters.

(4) No agreement described in subsection (2) of this section shall relieve any state agency of any obligation or responsibility imposed upon it by the laws of this state or of the United States.

(5) Notwithstanding subsection (4) of this section, a state agency may exclude from an agreement under subsection (2) of this section any clause or condition required by [ORS 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555] section 79 of this 2003 Act or sections 137 to 143 of this 2003 Act.

SECTION 212. ORS 192.240 is amended to read:
To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

1. Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

2. Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper in accordance with [ORS 279.545 to 279.650 and 279.729] sections 7 (2), 49, 79, 81, 188 and 191 of this 2003 Act and rules adopted pursuant thereto.

3. Insure that public documents are furnished to the State Librarian, as required in ORS 357.090.

SECTION 213. ORS 200.005 is amended to read:

200.005. As used in ORS 200.005 to 200.075[7], 200.200 and 279.059 section 14 of this 2003 Act:

1. “Disadvantaged business enterprise” means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. “Economically disadvantaged individual” means an individual who is socially disadvantaged and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to another in the same business area who is not socially disadvantaged.

3. “Emerging small business” means:

(a) A business with its principal place of business located in this state;

(b) A business with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms;

(c) A business which has fewer than 20 employees;

(d) An independent business; and

(e) A business properly licensed and legally registered in this state.

4. “Emerging small business” does not mean a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have aggregate annual gross receipts in excess of $1 million for construction or $300,000 for nonconstruction firms over the last three years.

5. A business may be certified as an emerging small business for no more than seven years.

6. “Minority or women business enterprise” means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

7. “Minority individual” means a person who is a citizen or lawful permanent resident of the United States, who is:

(a) Black who is a person having origins in any of the black racial groups of Africa;

(b) Hispanic who is a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American who is a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese who is a person of Portuguese, Brazilian or other Portuguese culture or origin,
regardless of race;

(e) American Indian or Alaskan Native who is a person having origins in any of the original peoples of North America; or

(f) A member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(8) “Small business concern” means a small business as defined by the United States Small Business Administration per C.F.R. 121, as amended.

(9) “Socially disadvantaged individual” means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual’s identity as a member of a group.

(10) “Woman” means a person of the female sex who is a citizen or lawful permanent resident of the United States.

(11) “Responsible bidder” means one who, in the determination of the office of the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder.

SECTION 214. ORS 200.025 is amended to read:

200.025. (1) There is created in the Office of the Governor, the Advocate for Minority, Women and Emerging Small Business who shall be appointed by the Governor.

(2) There is created in the Department of Consumer and Business Services the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by the Director of the Department of Consumer and Business Services.

(3) The Advocate for Minority, Women and Emerging Small Business shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women and emerging small businesses into the business sector;

(b) Prepare an annual report to the Governor, director and Legislative Assembly on the status of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to minority and women’s enterprises and recommendations for executive and legislative actions; and

(c) Carry out other duties that may be assigned by the Governor.

(4) The Office for Minority, Women and Emerging Small Business shall:

(a) Provide assistance and information to minority, women and emerging small businesses;

(b) Assist in the development and implementation of an aggressive strategy for this state, based on research and monitoring, that encourages participation of minorities, women and emerging small businesses in the state’s economy;

(c) Make recommendations to the director on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups and emerging small businesses in all state programs;

(d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public agency and other contract solicitations for professional services, supplies and services and other bid opportunities, in consultation with the State Board of Higher Education, the Department of Transportation and other entities;

(e) Monitor the certification and compliance program for disadvantaged, minority, women and emerging small businesses under [ORS 279.059] section 14 of this 2003 Act;

(f) Investigate complaints and possible abuses of the certification program; and

(g) Assist in the promotion and coordination of plans, programs and operations of state govern-
ment that strengthen minority and women participation in the economic life of this state.

SECTION 215. ORS 200.045 is amended to read:

200.045. (1) To determine whether a bidder that has failed to meet emerging small business enterprise contract requirements, as described in [ORS 279.059] section 14 of this 2003 Act, may be awarded the contract, the public contracting agency must decide whether the bidder’s efforts to obtain participation by emerging small business enterprises were good faith efforts to meet the requirements.

(2) Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement for emerging small businesses. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not acted consistently with such actions. Efforts that are merely superficial are not good faith efforts:

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform emerging small business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific emerging small business enterprises, identified from a list of certified emerging small business enterprises provided or maintained by the Department of Consumer and Business Services for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested emerging small business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any emerging small business enterprises;

(h) Where applicable, the bidder advised and made efforts to assist interested emerging small business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder’s efforts to obtain emerging small business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of emerging small business enterprises.

(3) To determine whether a bidder is a responsible bidder, the performance of all the following actions constitutes a rebuttable presumption that the bidder is responsible. It shall be a rebuttable presumption that the bidder is not responsible if the bidder has not acted consistently with the actions described in this subsection. Efforts that are merely superficial are not good faith efforts.
(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform minority or women business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by minority or women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific minority or women business enterprises, identified from a list of certified minority or women business enterprises provided or maintained by the Department of Consumer and Business Services for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested minority or women business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with interested, capable and competitive minority or women business enterprises submitting bids;

(h) Where applicable, the bidder advised and made efforts to assist interested minority or women business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder’s efforts to obtain minority or women business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority or women business enterprises.

SECTION 216. ORS 200.055 is amended to read:

200.055. (1) Any disadvantaged, minority, women or emerging small business enterprise is entitled to be certified as such upon application to the Department of Consumer and Business Services. If the application is approved by the department, the department shall certify the applicant as a disadvantaged, minority, women or emerging small business enterprise. The enterprise shall be considered so certified by any public contracting agency.

(2) In consultation with the State Board of Higher Education and the Department of Transportation, and with the approval of the Advocate for Minority, Women and Emerging Small Business, the Department of Consumer and Business Services by rule shall adopt a uniform standard form and procedure designed to provide complete documentation that a business enterprise is certified as a disadvantaged, minority, women or emerging small business enterprise. The Department of Consumer and Business Services shall compile and make available upon request a list of certified disadvantaged, minority, women or emerging small business enterprises.

(3) Any business enterprise that is refused certification as a disadvantaged business enterprise or denied recertification as such or whose certification is revoked may appeal directly to the United
(4) Any business enterprise that is refused certification as a minority, women or emerging small
business enterprise or has its certification revoked may request a contested case hearing as pro-
vided in ORS 183.310 to 183.550.

(5) The Department of Consumer and Business Services shall be the sole agency authorized to
certify enterprises as disadvantaged, minority, women or emerging small business enterprises eligi-
ble to perform on public contracts in this state.

(6) The Department of Consumer and Business Services by rule may establish a fee not to exceed
$100 for a copy of the list of certified disadvantaged, minority, women and emerging small business
enterprises and may assess state agencies for services under ORS 200.005 to 200.075 and [279.059]
section 14 of this 2003 Act.

(7) The Department of Transportation may collect a fee, not to exceed $200, from a bidder upon
bidder prequalifications to cover the costs of the Department of Consumer and Business Services in
administering ORS 200.005 to 200.075 and [279.059] section 14 of this 2003 Act. The Department
of Transportation shall transfer such fees to the credit of the account established under subsection
(8) of this section.

(8) The Department of Consumer and Business Services shall establish a special account in
which to deposit fees and assessments. The special account is continuously appropriated to the De-
partment of Consumer and Business Services to meet its expenses in administering ORS 200.005 to

SECTION 217. ORS 200.200 is amended to read:

200.200. (1) When any requirement exists under [ORS chapter 279] sections 1 to 46, 47 to 87
or 88 to 180 of this 2003 Act to provide a surety bond or other security for the faithful performance
of a public contract, an emerging small business may provide:

(a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as
defined in ORS 731.186;

(b) A stipulation or undertaking with one or more individual sureties; or

(c) Any other form of security specified in the statute requiring the security.

(2) When the security for the faithful performance of a public contract is in the form of a stip-
ulation or undertaking with one or more individual sureties, the individual sureties must be resi-
dents of this state. The total net worth of all the individual sureties on the stipulation or
undertaking must be at least twice the sum specified in the stipulation or undertaking. The public
agency requiring the security shall determine if the sureties possess the qualifications prescribed
by this subsection.

SECTION 218. ORS 238.260 is amended to read:

238.260. (1) The purpose of this section is to establish a well balanced, broadly diversified in-
vestment program for certain contributions and portions of the member accounts so as to provide
retirement benefits for members of the system that will fluctuate as the value and earnings of the
investments vary in relation to changes in the general economy. It is anticipated that investment
of those contributions and portions of the member accounts in equities will result in the accumu-
lation of larger deposit reserves for those members during their working years, tend to preserve the
purchasing power of those reserves and the retirement benefits provided thereby and afford better
protection in periods of economic inflation.

(2) There is established in the Public Employees Retirement Fund an account, separate and
distinct from the General Fund, to be known as the Variable Annuity Account. Interest earned by
the account shall be credited to the account.

(3) A member may elect at any time to have 25, 50 or 75 percent of contributions by the member to the fund on and after the effective date of the election paid into the Variable Annuity Account, credited to a variable account, and reserved for the purchase of a variable annuity. A member who has elected to have a percentage of contributions so paid, credited and reserved may elect at any time thereafter to have an additional 25 or 50 percent of contributions by the member, but not to exceed a maximum of 75 percent, so paid, credited and reserved. An election shall be in writing on a form furnished by the board and be filed with the board. An election shall be effective on January 1 following the filing thereof.

(4) A member who has elected to have contributions paid into the Variable Annuity Account under subsection (3) of this section may thereafter cause the contributions to cease being paid into the member’s variable account by filing a request in writing on a form furnished by the board and filed with the board. The contributions shall cease being paid into the member’s variable account after December 31 following the filing of the request. Contributions paid into the member’s variable account before the effective date of the request for cessation shall remain in the member’s variable account.

(5)(a) An employee who is a member of the system on January 1, 1968, and who thereafter files an election under subsection (3) of this section, may elect at any time to have an amount equal to 10 percent per year, for not more than five years, of the balance of the regular account of the member in the fund on the effective date of an election filed under subsection (3) of this section, transferred from the regular account of the member to the Variable Annuity Account, credited to the member’s variable account, and reserved for the purchase of a variable annuity. An election shall be in writing on a form furnished by the board and be filed with the board. An election is final and irrevocable upon the filing thereof. The first transfer pursuant to an election shall be made on July 1 following the filing of the election, but may be made, in the discretion of the board, on an earlier date.

(b) If the transfers elected by a member under this subsection have not been completed at the time of retirement, a transfer equal to one annual transfer shall be made pursuant to an election by the member made and filed as provided in this subsection.

(c) No transfer shall be made under this subsection after the first payment of the service retirement allowance of the member becomes normally due.

(6) Moneys in the Variable Annuity Account may be invested in investments authorized by law for investment of moneys in the Public Employees Retirement Fund; but, notwithstanding any other general or specific law, moneys in the account shall be invested primarily in equities, including common stock, securities convertible into common stock, real property and other recognized forms of equities, whether or not subject to indebtedness. Not more than five percent of the amortized value of all the investments of the Variable Annuity Account and of moneys in the account immediately available for investment may be invested in the obligations of or equities in a single, primary obligor or issuer. A pro rata share of the administrative expenses of the system shall be paid from interest earned by the Variable Annuity Account.

(7)(a) Except as provided in subsection (8) of this section, the policy-making investment authority for the Public Employees Retirement Fund shall enter into contracts with one or more persons whom the authority determines to be qualified, whereby the persons undertake to invest and reinvest moneys in the Variable Annuity Account available for investment and acquire, retain, manage and dispose of investments of the account in accordance with subsections (1) and (6) of this section.
and to the extent provided in the contracts.

(b) Performance of functions under contracts so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the Variable Annuity Account.

(c) The policy-making investment authority may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the authority, with corporate surety authorized to do business in this state.

(d) Contracts so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or [ORS 279.545 to 279.746] sections 7 (2) and 18 of this 2003 Act.

(e) A person contracted with shall report to the policy-making investment authority as often as the authority may require, but at least annually, the earnings of the moneys invested during the period covered by the report, the capital gains and losses of the Variable Annuity Account during the period, the changes in the market value of the investments of the account during the period and such other information as the authority may require.

(8) The policy-making investment authority for the Public Employees Retirement Fund, for and on behalf of the Public Employees Retirement System and Public Employees Retirement Board, may enter into group annuity contracts with one or more insurance companies authorized to do business in this state. In lieu of any investment of moneys in the Variable Annuity Account as provided in subsections (6) and (7) of this section, the authority may pay, from time to time under contracts so entered into, any moneys in that account available for investment purposes. Contracts so entered into:

(a) May provide that annuities purchased thereunder be payable in variable dollar amounts, but if that provision is made, provision also shall be made that a member of the system who has a variable account, upon retiring from service and before the first payment of retirement allowance becomes normally due, may elect an option to have the annuities payable to the member or the beneficiary of the member in fixed or variable dollar amounts or both.

(b) May provide that payment of annuities purchased thereunder may be made by the insurance company directly to persons entitled thereto or to the Variable Annuity Account for payment therefrom to those persons.

(c) Are not subject to [ORS 279.545 to 279.746] sections 7 (2) and 18 of this 2003 Act.

(9) Upon retiring from service but within 60 days after the date of the first benefit payment, a member of the system who has a variable account may elect to transfer the balance in the variable account to the regular account of the member, and by that transfer the annuity shall be based on the amount in the regular account of the member as otherwise provided in this chapter and the member shall not receive a variable annuity as provided in this section.

(10) When an annuity is payable under this chapter to a member of the system who has a variable account, or is payable to a beneficiary of that person, the portion of the annuity payable from the Variable Annuity Account shall be proportionately increased or decreased for a calendar year when, as of October 31 of the preceding calendar year, the balance of the member’s variable account exceeds or is less than the current value of the annuity, determined in accordance with the rate of interest and approved actuarial tables then in effect.

(11) Notwithstanding subsection (10) of this section, the board, in the event of extraordinary fluctuation in the market value of investments of the Variable Annuity Account and in order to avoid substantial inequities, may increase or decrease the portions of annuities paid from the ac-
count for periods less than a calendar year and determined as of dates other than October 31.

(12) Notwithstanding any other provision of this chapter, the retirement allowance to which a member of the system who has a variable account or who made contributions on salary in excess of $4,800 per year during the period January 1, 1956, through December 31, 1967, and whose effective date of retirement is January 1, 1982, or later, is otherwise entitled under this chapter shall be subject to the following adjustment:

(a) The board shall determine the difference between the member account of the member and what the member account of the member would have been had the member not participated in the variable annuity program on or after January 1, 1982, plus the contributions made on salary in excess of $4,800 per year during the period January 1, 1956, through December 31, 1967.

(b) If the member account of the member due to participation in the variable annuity program or due to the contributions made on salary in excess of $4,800 per year is greater, the monthly retirement allowance of the member shall be increased by the value of the difference, using the annuity tables applicable to the plan selected by the member.

(c) If the member account of the member due to participation in the variable annuity program or due to the contributions made on salary in excess of $4,800 per year is lesser, the monthly retirement allowance of the member shall be decreased by the value of the difference, using the annuity tables applicable to the plan selected by the member.

(13) Except as otherwise specifically provided in this section, the rights and benefits under this chapter of an active or retired member of the system or of a beneficiary of the member are not affected by this section and the provisions of this chapter applicable to regular accounts of active and retired members of the system in the fund are also applicable to variable accounts.

(14)(a) In addition to the transfer provided for in subsection (9) of this section, a member of the system who has a variable account may at any time prior to retirement elect to transfer the balance in that account to the regular account of the member in the fund if:

(A) The member is other than a police officer or firefighter and has attained the age of 50;

(B) The member is a police officer or firefighter and has attained the age of 45; or

(C) The member has a combined total of 25 years or more of creditable service in the system and prior service credit.

(b) An election under paragraph (a) of this subsection is irrevocable, and a member who has so elected may not thereafter elect to make contributions to the Variable Annuity Account under subsection (3) of this section.

(c) An election under paragraph (a) of this subsection shall be in writing and shall be filed with the board. The board by rule shall prescribe a form for the purposes of application. An election so made shall be effective on January 1 of the year following the year in which the election is made, except that an election shall have no effect whatsoever unless the member account of the member as of the effective date of the election is greater than what the member account of the member would have been had the member not participated in the variable annuity program on or after January 1, 1982, not including the contributions made on salary in excess of $4,800 per year during the period January 1, 1956, through December 31, 1967.

(d) As of the effective date of an election under this subsection, the board shall credit all earnings to the member’s variable account based on the actual calendar year variable earnings rate for the year in which the election is made. This account balance shall:

(A) Be used by the board in determining whether the member’s election is effective under paragraph (c) of this subsection; and

[121]
(B) Be the account balance credited by the board to the regular account of the member in the
fund if the election is determined to be effective.

e) The annuity of a member who makes an effective transfer under this subsection shall be
based on the amount in the regular account of the member in the fund as otherwise provided in this
chapter, and the member shall not receive a variable annuity as provided in this section.

SECTION 219. ORS 238.410 is amended to read:
238.410. (1) As used in this section:

(a) “Carrier” means an insurance company or health care service contractor holding a valid
certificate of authority from the Director of the Department of Consumer and Business Services, an
insurance company or health care service contractor licensed or certified in another state that is
operating under the laws of that state, or two or more of those companies or contractors acting
together pursuant to a joint venture, partnership or other joint means of operation.

(b) “Eligible person” means:

(A) A member of the Public Employees Retirement System who is retired for service or disability
and is receiving a retirement allowance or benefit under the system, and a spouse or dependent of
that member;

(B) A person who is a surviving spouse or dependent of a deceased retired member of the system
or the surviving spouse or dependent of a member of the system who had not retired but who had
reached earliest retirement age at the time of death;

(C) A person who is receiving retirement pay or a pension calculated under ORS 1.314 to 1.380
(1989 Edition), and a spouse or dependent of that person; or

(D) A surviving spouse or dependent of a deceased retired member of the system or of a person
who was receiving retirement pay or a pension calculated under ORS 1.314 to 1.380 (1989 Edition)
if the surviving spouse or dependent was covered at the time of the decedent’s death by a health
care insurance plan contracted for under this section.

(c) “Health care” means medical, surgical, hospital or any other remedial care recognized by
state law and related services and supplies and includes comparable benefits for persons who rely
on spiritual means of healing.

(2) The Public Employees Retirement Board shall conduct a continuing study and investigation
of all matters connected with the providing of health care insurance protection to eligible persons.
The board shall design benefits, devise specifications, invite proposals, analyze carrier responses to
advertisements for proposals and do acts necessary to award contracts to provide health care in-
urance, including insurance that provides coverage supplemental to federal Medicare coverage,
with emphasis on features based on health care cost containment principles, for eligible persons.
The board is not subject to the provisions of [ORS 279.005 to 279.111] sections 1 to 46 and 47 to
87 of this 2003 Act, except section 77 of this 2003 Act in awarding contracts under the provisions
of this section. The board shall establish procedures for inviting proposals and awarding contracts
under this section.

(3) The board shall enter into a contract with a carrier to provide health care insurance for
eligible persons for a one or two-year period. The board may enter into more than one contract with
one or more carriers, contracting jointly or severally, if in the opinion of the board it is necessary
to do so to obtain maximum coverage at minimum cost and consistent with the health care insurance
needs of eligible persons. The board periodically shall review a current contract or contracts and
make suitable study and investigation for the purpose of determining whether a different contract
or contracts can and should, in the best interest of eligible persons, be entered into. If it would be
advantageous to eligible persons to do so, the board shall enter into a different contract or con-
tracts. Contracts shall be signed by the chairperson on behalf of the board.

(4) Except as provided in ORS 238.415 and 238.420, the board may deduct monthly from the re-
tirement allowance or benefit, retirement pay or pension payable to an eligible person who elects
to participate in a health care insurance plan the monthly cost of the coverage for the person under
a health care insurance contract entered into under this section and the administrative costs in-
curred by the board under this section, and shall pay those amounts into the Standard Retiree
Health Insurance Account established under subsection (7) of this section. The board by rule may
establish other procedures for collecting the monthly cost of the coverage and the administrative
costs incurred by the board under this section if the board does not deduct those costs from the
retirement allowance or benefit, retirement pay or pension payable to an eligible person.

(5) Subject to applicable provisions of ORS 183.310 to 183.550, the board may make rules not
inconsistent with this section to determine the terms and conditions of eligible person participation
and coverage and otherwise to implement and carry out the purposes and provisions of this section
and ORS 238.420.

(6) The board may retain consultants, brokers or other advisory personnel, organizations spe-
cializing in health care cost containment or other administrative services when it determines the
necessity and, subject to the State Personnel Relations Law, shall employ such personnel as are
required to assist in performing the functions of the board under this section.

(7) The Standard Retiree Health Insurance Account is established within the Public Employees
Retirement Fund, separate and distinct from the General Fund. All payments made by eligible per-
sons for health insurance coverage provided under this section shall be held in the account. Interest
earned by the account shall be credited to the account. All moneys in the account are continuously
appropriated to the Public Employees Retirement Board and may be used by the board only to pay
the cost of health insurance coverage under this section and to pay the administrative costs in-
curred by the board under this section.

(8) The sum of all amounts paid by eligible persons into the Standard Retiree Health Insurance
Account, by participating public employers into the Retiree Health Insurance Premium Account
under ORS 238.415, and by participating public employers into the Retirement Health Insurance
Account under ORS 238.420, may not exceed 25 percent of the aggregate contributions made by
participating public employers to the Public Employees Retirement Fund on or after July 11, 1987,
not including contributions made by participating public employers to fund prior service credits.

(9) Until all liabilities for health benefits under the system are satisfied, contributions and
earnings in the Standard Retiree Health Insurance Account, the Retiree Health Insurance Premium
Account under ORS 238.415 and the Retirement Health Insurance Account under ORS 238.420 may
not be diverted or otherwise put to any use other than providing health benefits and payment of
reasonable costs incurred in administering this section and ORS 238.415 and 238.420. Upon satis-
faction of all liabilities for providing health benefits under this section, any amount remaining in the
Standard Retiree Health Insurance Account shall be returned to the participating public employers
who have made contributions to the account. The distribution shall be made in such equitable
manner as the board determines appropriate.

SECTION 220. ORS 246.170 is amended to read:

246.170. All moneys received by the Secretary of State under ORS 246.160 shall be deposited into
the Secretary of State Miscellaneous Receipts Account established under [ORS 279.833] section 44
of this 2003 Act. All moneys received by the Secretary of State under ORS 246.160 and deposited
in the account are appropriated continuously to the Secretary of State for the payment of expenses
incurred in performing the functions described in ORS 246.160.

SECTION 221. ORS 261.253 is amended to read:

261.253. (1) No public contract entered into by a noninvestor-owned electric utility shall contain
a clause or condition that imposes an unconditional and unlimited financial obligation on the elec-
tric utility that is party to the contract unless the terms and conditions of the contract are subject
to approval and are approved by the electors of the people’s utility district or municipality that
owns the electric utility.

(2) Nothing in subsection (1) of this section is intended to affect provisions of law requiring
approval of electors for any particular type of public contract that are in effect on October 15, 1983,
or that are later enacted.

(3) Nothing in subsection (1) of this section is intended to conflict with [ORS 279.324 to
279.332] sections 160 to 164 of this 2003 Act.

(4) As used in this section:

(a) “Public contract” includes a contract, note, general obligation bond or revenue bond by
which the people’s utility district or municipality or any subdivision of any of them is obligated to
pay for or finance the acquisition of goods, services, materials, real property or any interest therein,
improvement, betterments or additions from any funds, including receipts from rates or charges as-
sessed to or collected from its customers.

(b) “Unconditional and unlimited financial obligation” means a public contract containing a
provision that the people’s utility district or municipality that is party to the contract is obligated
to make payments required by the contract whether or not the project to be undertaken thereunder
is undertaken, completed, operable or operating notwithstanding the suspension, interruption, inter-
ference, reduction or curtailment of the output or product of the project.

SECTION 222. ORS 261.335 is amended to read:

261.335. People’s utility districts are subject to the public contracting and purchasing require-
ments of [ORS 279.011 to 279.063] sections 1 to 46 and 47 to 87 of this 2003 Act and sections 88,
89 to 96 and 97 to 136 of this 2003 Act, except sections 17, 36 to 44 and 77 of this 2003 Act.

SECTION 223. ORS 261.345 is amended to read:

261.345. (1) All labor employed by a district, directly or indirectly, shall be employed under and
in pursuance of the provisions of ORS [279.334, 279.336, 279.340 and 279.342 and sections 77, 144
and 145 of this 2003 Act.

(2) The minimum scale of wages to be paid by a people’s utility district or by any contractor
or subcontractor for such district shall be not less than the prevailing wage for the character of
work in the same trade in the largest city having a population of 5,000 or more in the district, or
if there is none, the nearest to the district.

(3) The board of directors of any utility district may negotiate, sign and maintain collective
bargaining agreements concerning employment, rates of pay and working conditions with the rep-
resentatives of its employees. Notice in writing of any intended change in rates of pay, or working
conditions, or both, shall be given in accordance with the provisions of the agreements. The pro-
visions of ORS 243.650 to 243.782 shall govern the negotiation of a collective bargaining agreement
and any changes to an existing agreement. The mutual rights and obligations of the board and the
employees or their representatives shall be those provided under ORS 243.650 to 243.782.

(4) Whenever any district acquires any utility which at the time of acquisition is in private
ownership:
(a) The district shall, within financial and organizational limitations, offer employment to all employees of the private utility whose work primarily served the affected territory.

(b) Where the employees of the private utility are, at the time of acquisition, covered by any collective bargaining contract, plan for individual annuity contracts, retirement income policies, group annuity contract or group insurance for the benefit of employees, the district shall:

[(A)] maintain any benefits or privileges [which] that employees of the acquired utility would receive or be entitled to had the acquisition not occurred; and

[(B)] (A) [Assume] Assuming for one year all of the rights, obligations and liabilities of the acquired private utility in regard to that collective bargaining contract or plan for the employees covered thereby at the time of acquisition; or

[(C)] (B) [By agreement with a majority of the employees affected, substitute] Substituting a similar plan or contract under an agreement with a majority of the affected employees.

(c) The district may pay all or part of the premiums or other payments required under paragraph (b) of this subsection out of the revenue derived from the operation of its properties.

(d) The district shall recognize the collective bargaining agent of the employees if the district retains a majority of the employees of the private utility working in the affected territory.

SECTION 224. ORS 270.005 is amended to read:

270.005. For purposes of ORS 184.634, 270.005 to 270.015, 270.100 to 270.190, 273.416, 273.426 to 273.436 and 273.551:

(1) “Department” means the Oregon Department of Administrative Services.

(2) “Improvements” means any and all structures on or attachments to state-owned real property, but excluding public improvements as defined in [ORS 279.011] section 2 of this 2003 Act.

(3) “Real property” means all real property together with any and all improvements thereon.

(4) “Surplus real property” means all state-owned real property and improvements surplus to agency and state need.

SECTION 225. ORS 276.071 is amended to read:

276.071. ORS 276.073 to 276.090, [279.005 to 279.111, 279.310 to 279.323, 279.324 to 279.332, 279.333, 279.334, 279.336, 279.338, 279.340, 279.342, 279.348 to 279.380, 279.400, 279.410, 279.420, 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 and 88 to 180 of this 2003 Act, except sections 154 to 159 of this 2003 Act apply to all public improvements that are being constructed, reconstructed or renovated for use by a state agency under a lease-purchase agreement or under any other agreement whereby ultimate state ownership is contemplated or expected.

SECTION 226. Section 4, chapter 628, Oregon Laws 2001, is amended to read:

Sec. 4. The Bureau of Labor and Industries may not initiate or continue any action to enforce compliance with [ORS 279.348 to 279.380] sections 165 to 179 of this 2003 Act] against any contractor, subcontractor or public agency involved with a project to which [ORS 279.348 to 279.380] sections 165 to 179 of this 2003 Act] would not apply under [ORS 279.357, as amended by section 1 of this 2001 Act,] section 172 of this 2003 Act if the project were started on or after January 1, 2002.

SECTION 227. Section 5, chapter 628, Oregon Laws 2001, is amended to read:

Sec. 5. (1) Notwithstanding section 4, chapter 628, Oregon Laws 2001, [of this 2001 Act,] the Bureau of Labor and Industries may accept and enforce wage claims filed by workers who are entitled to be paid the prevailing rate of wage on a project if:

(a) The project was started before January 1, 2002; and
(b) [ORS 279.348 to 279.380] Sections 165 to 179 of this 2003 Act would not have applied to the project under [ORS 279.357, as amended by section 1 of this 2001 Act] section 172 of this 2003 Act, if the project had been started on or after January 1, 2002.

(2) If a contractor, subcontractor or public agency mails to a worker a notice of the right to file a wage claim on a project described in subsection (1) of this section, the employee must file the wage claim with the bureau within 30 days after the date the notice is mailed.

SECTION 228. Section 1, chapter 937, Oregon Laws 2001, is amended to read:

Sec. 1. (1) As used in this section and section 2, chapter 937, Oregon Laws 2001 [of this 2001 Act]:

(a) “Best value procurement” means a method of selecting a vendor based on a determination of which vendor’s proposal offers the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:

(A) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting a product or service over its projected lifetime;

(B) The technical merit of the vendor’s proposal; and

(C) The probability of the vendor performing the requirements stated in the solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.

(b) “Government-vendor partnership” means a mutually beneficial contractual relationship between a state agency and a vendor, in which the two share risk and reward and in which value is added to the procurement of information technology.

(c) “Information technology” has the meaning given that term in ORS 291.038.

(d) “Solution-based solicitation” means a solicitation whose requirements are stated in terms of how the product or service being purchased should accomplish a business objective, rather than in terms of the technical design of the product or service.

(e) “State agency” includes every state officer, board, commission, department, institution, branch or agency of the state government whose costs are paid wholly or in part from funds held in the State Treasury, except the Legislative Assembly, the courts and their officers and committees, and except the Secretary of State and the State Treasurer in the performance of their duties.

(2) The intent of best value procurement of information technology is to enable vendors to offer, and a state agency to select, the most appropriate solution to meet the business objectives identified in a solicitation and to keep all parties focused on the desired outcome of a procurement. Business process reengineering, system design and technology implementation may be combined into a single solicitation.

(3) The acquisition of information technology by a state agency may be conducted using any procurement method available that is best suited to the intended purpose of the state, subject to [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act, including the best value procurement method. When a state agency and the Oregon Department of Administrative Services determine that acquisitions are highly complex or that the optimal solution to a business problem is not known, the state agency and the department may use solution-based solicitations and government-vendor partnerships, subject to [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act.

SECTION 229. Section 3, chapter 937, Oregon Laws 2001, is amended to read:

Sec. 3. (1) The Oregon Department of Administrative Services shall develop and implement the policies, procedures and programs described in section 2 (1), chapter 937, Oregon Laws 2001, [of

(2) The Oregon Department of Administrative Services shall report by January 15, 2003, to the Joint Legislative Committee on Information Management and Technology on the results of the implementation of sections 1 and 2, chapter 937, Oregon Laws 2001, [of this 2001 Act] and on the relationship between the implementation of sections 1 and 2, chapter 937, Oregon Laws 2001, [of this 2001 Act] and a comprehensive evaluation of [ORS chapter 279] sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act.

SECTION 229a. ORS 279.835 is amended to read:

279.835. As used in ORS 279.835 to 279.855:

(1) “Department” means the Oregon Department of Administrative Services.

(2) “Direct labor” includes all work required for preparation, processing and packing, but not supervision, administration, inspection and shipping.

(3) “Disabled individual” means an individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.

(4) “Public agency” or “public contracting agency” [has the same meaning contained in ORS 279.011] means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(5) “Qualified nonprofit agency for disabled individual” means a nonprofit activity center or rehabilitation facility:

(a) Organized under the laws of the United States or of this state and operated in the interest of disabled individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(b) That complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and

(c) That in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS [279.015 and 279.835 to 279.855, during the fiscal year employs disabled individuals for not less than 75 percent of the work hours of direct labor required for the manufacture or provision of the products or services.

SECTION 229b. ORS 279.840 is amended to read:

279.840. The purpose of ORS [279.015 and] 279.835 to 279.855 is to further the policy of this state to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization.

SECTION 229c. ORS 279.845 is amended to read:

279.845. (1) It shall be the duty of the Oregon Department of Administrative Services to:

(a) Determine the price of all products manufactured and services offered for sale to the various public agencies by any qualified nonprofit agency for disabled individuals. The price shall recover for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and equipment replacement;

(b) To revise such prices from time to time in accordance with changing cost factors; and

(c) To make such rules regarding specifications, time of delivery and other relevant matters of
procedure as shall be necessary to carry out the purposes of ORS [279.015 and] 279.835 to 279.855.

(2) The department shall establish and publish a list of sources or potential sources of products produced by any qualified nonprofit agency for disabled individuals and the services provided by any such agency, which the department determines are suitable for procurement by public agencies pursuant to ORS [279.015 and] 279.835 to 279.855. This procurement list and revisions thereof shall be distributed to all public purchasing officers.

SECTION 229d. ORS 279.850 is amended to read:

279.850. (1) If any public agency intends to procure any product or service on the procurement list, that public agency shall, in accordance with rules of the Oregon Department of Administrative Services, procure such product or service, at the price established by the department, from a qualified nonprofit agency for disabled individuals provided the product or service is of the appropriate specifications and is available within the period required by that public agency.

(2) In furthering the purposes of ORS [279.015 and] 279.835 to 279.855, it is the intent of the Legislative Assembly that there be close cooperation between the department, public contracting agencies and qualified nonprofit agencies for disabled individuals. The department on behalf of public contracting agencies and qualified nonprofit agencies for disabled individuals is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of ORS [279.015 and] 279.835 to 279.855 and any other law requiring procurement of products or services.

SECTION 229e. ORS 279.855 is amended to read:

279.855. The following may purchase equipment, materials, supplies and services through the Oregon Department of Administrative Services in the same manner as state agencies as provided in [ORS 279.545 to 279.746 and 279.800 to 279.833] sections 18 to 21 and 36 to 44 of this 2003 Act:

(1) Qualified nonprofit agencies for disabled individuals participating in the program set forth in ORS [279.015 and] 279.835 to [279.850] 279.855.

(2) Residential programs when under contract with the Department of Human Services to provide services to youth in the custody of the state.

(3) Public benefit corporations, as defined in ORS 65.001, that provide public services either under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds.

SECTION 230. ORS 283.110 is amended to read:

283.110. (1) Subject to rules prescribed by the Oregon Department of Administrative Services, any state agency shall, as its own facilities permit, furnish to any other state agency such services (including labor), facilities and materials as are requisitioned by the head of another agency. The expense shall be charged to the agency served, which shall pay the expense to the agency furnishing the services, facilities or materials in the manner other claims are paid. Agencies shall, as far as practicable, cooperate with one another in the use of services, quarters and equipment.

(2) Except as provided in ORS 283.076 (3), all moneys received by an agency in payment of services, facilities or materials furnished to another state agency as provided in this section, or in payment of services, facilities or materials furnished to other persons may be, or if required by the Oregon Department of Administrative Services, shall be paid into the State Treasury for deposit to the credit of the miscellaneous receipts account established pursuant to [ORS 279.833] section 44 of this 2003 Act for the agency furnishing the services, facilities or materials.

(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 ex-
penditure 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 var-
ious 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 telecommunication 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.
SECTION 235. ORS 285A.075 is amended to read:

285A.075. (1) The Economic and Community Development Department, through research, promotion and coordination of activities in this state, shall foster the most desirable growth and geographical distribution of agriculture, industry and commerce in the state. The department shall serve as a central coordinating agency and clearinghouse for activities and information concerning the resources and economy of the state.

(2) The department shall have no regulatory power over the activities of private persons. Its functions shall be solely advisory, coordinative and promotional.

(3) The department shall administer the state’s participation in the federal Community Development Block Grant funding program authorized by 42 U.S.C. 5301 et seq.

(4) In order to accomplish the purposes of ORS chapters 285A and 285B and ORS 329.905 to 329.975, the department may expend moneys duly budgeted to pay the travel and various other expenses of industrial or commercial site location agents, film or video production location agents, business journal writers, elected state officials or other state personnel whom the Director of the Economic and Community Development Department determines may promote the purposes of this subsection.

(5) In accordance with applicable provisions of ORS 183.310 to 183.550, the department may adopt rules necessary for the administration of laws that the department is charged with administering.


(7) Notwithstanding [ORS 279.712] sections 7 and 18 of this 2003 Act, the department may enter into contracts for personal services as necessary or appropriate to carry out the duties, functions and powers vested in the department by law.

(8)(a) The department may contract directly with the Oregon Downtown Development Association, or its successor entity, to provide downtown development and redevelopment assistance and similar services to municipalities in Oregon.

(b) The department may contract directly with Rural Development Initiatives, or its successor entity, to provide training, technical assistance, planning assistance and other support and services to municipalities in Oregon to build economic and community development capacity.

(c) Contracts entered into under this subsection are exempt from the requirements of [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act.

(9) If the director determines that moneys are available, the department may transfer funds from the Special Public Works Fund created under ORS 285B.455 or from the Water Fund established under ORS 285B.563 to a state agency to provide financial assistance in the delivery of technical assistance or other services to one or more water systems for evaluation of water quality or services or for planning the improvement of water quality or services. The department may structure the financial assistance under this subsection in the form of an interagency grant or loan or in any other manner the director considers necessary or appropriate.

SECTION 236. ORS 285A.227 is amended to read:

285A.227. (1) There is created within the State Treasury, separate and distinct from the General Fund, the Oregon Community Development Fund. The fund is created to provide a flexible funding
source for financing those programs and projects that are determined by the Oregon Economic and
Community Development Commission under the policies, criteria and standards set forth in ORS
285A.020, 285A.045 and 285A.055 to further economic and community development. The Economic
and Community Development Department may finance programs and projects determined by the
commission to further economic and community development by making grants or loans using mon-
ey in the fund. Notwithstanding [ORS 279.712] sections 7 and 18 of this 2003 Act, the department
may enter into contracts for personal services as necessary or appropriate to implement programs
and projects determined by the commission to further economic and community development using
moneys in the fund. The Oregon Community Development Fund shall consist of all moneys credited
to the fund, including moneys from the Administrative Services Economic Development Fund, federal
funds collected or received, and fees, moneys or other revenues, including Miscellaneous Receipts,
collected or received by the Economic and Community Development Department, and all interest
earnings that accrue to the fund. The moneys in the Oregon Community Development Fund are
continuously appropriated to the Economic and Community Development Department to promote
economic and community development.

(2) The Oregon Economic and Community Development Commission, by rule, shall adopt stan-
dards, objectives and criteria for use of the moneys in the Oregon Community Development Fund.

SECTION 237. ORS 285A.273 is amended to read:

285A.273. The Oregon Tourism Program is established as an administrative section of the Eco-
nomic and Community Development Department. The following are the duties and powers of the
Oregon Tourism Program:

(1) Collecting, analyzing and disseminating data that accurately measure the economic and so-
cial impact of tourism on this state and that may be used in marketing efforts.
(2) Carrying out a program of media advertising, promotion of Oregon to the travel trade and
other promotional development activities as directed by the Oregon Tourism Commission and in
compliance with the marketing plan established by the tourism commission under ORS 285A.264.
(3) Providing information on vacationing in Oregon to travel writers, travel agents and tour
operators. The tourism program may expend moneys duly budgeted to pay the travel and various
other expenses of travel writers, travel agents and tour operators.
(4) Answering requests for information about Oregon.
(5) Printing, publishing and distributing all the information required by this section in a manner
that will best serve the traveling public. In carrying out this subsection, the tourism program is not
subject to ORS chapter 282.
(6) Notwithstanding [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003
Act, accepting or providing travel, lodging, meals, entertainment, meetings and other services from
or to public and private entities or persons in order to carry out the duties and functions of the
tourism commission under ORS 285A.264.
(7) Entering into agreements and cooperating with political subdivisions of this state, state
agencies, other states, federal agencies, governments of foreign countries and private individuals,
corporations or other persons in the publication or distribution of information relating to recre-
ational activities and tourist facilities or of other information or materials of interest or service to
the traveling public and in activities related to developing and promoting tourism in this state.

SECTION 238. ORS 285A.276 is amended to read:

285A.276. (1) The Public-Private Partnership is hereby established as a program of the Oregon
Tourism Commission.

[131]
(2) The tourism commission shall adopt a biennial budget for the Public-Private Partnership using the classifications of expenditures and revenues required by ORS 291.206 (1).

(3) The tourism commission shall adopt the budget for the Public-Private Partnership only after holding a public hearing on the proposed budget. At least 15 days prior to any public hearing on the proposed budget, the tourism commission shall give notice of the hearing to all persons known to be interested in the proceedings of the tourism commission and to any person who requests notice.

(4) All moneys collected, received or appropriated for the purposes of the Public-Private Partnership shall be deposited in an account established in a depository bank insured by the Federal Deposit Insurance Corporation. In a manner consistent with the requirements of ORS chapter 295, the chair of the tourism commission shall ensure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation. Subject to approval by the tourism commission, the commission may invest moneys collected or received for the Public-Private Partnership. Investments made by the tourism commission are limited to the types of investments listed in ORS 294.035 (1) to (9). Interest earned from any amounts invested shall be made available to the tourism commission in a manner consistent with the biennial budget for the Public-Private Partnership.

(5) Moneys in the account established under subsection (4) of this section for the Public-Private Partnership shall consist of:

(a) Gifts, grants and other contributions from private and nonprofit entities;
(b) Grants, loans and other revenue transfers from public entities, including the State of Oregon;
(c) Interest earned on moneys in the account; and
(d) Revenues generated by the tourism commission or by Oregon Tourism Program activities.

(6) Notwithstanding [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act, all expenditures from the account established under subsection (4) of this section shall be in conformance with the duties of the tourism commission set forth in ORS 285A.264. All expenditures from the account are exempt from any state expenditure limitation. The Public-Private Partnership is exempt from ORS 291.050 to 291.060. The tourism commission shall follow generally accepted accounting principles and keep such financial and statistical information that is necessary to completely and accurately disclose the financial condition of the account as may be required by the Secretary of State.

SECTION 239. ORS 285B.341 is amended to read:

285B.341. Except as provided in ORS 285B.335 and 285B.338, the state shall not have power to operate any eligible project as a business or in any manner whatsoever, and except as provided in ORS 285B.335, 285B.338, 285B.374 and 285B.377, nothing in ORS 285B.320 to 285B.377 authorizes the state to expend any funds on any eligible project, other than the revenues of such projects, or the proceeds of revenue bonds issued hereunder, or other funds granted to the state for the purposes of an eligible project. For the purpose of exercising the powers and authority granted under ORS 285B.335 or 285B.338, the state and the Oregon Economic and Community Development Commission are not subject to the requirements of [ORS chapter 279] sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act.

SECTION 240. ORS 285B.344 is amended to read:

285B.344. (1) If the State Treasurer determines that bonds should be issued:

(a) The State Treasurer may authorize and issue in the name of the State of Oregon bonds secured by revenues from eligible economic development projects or from other financing sources, and where applicable, secured as provided in ORS 285B.374 and 285B.377, to finance or refinance in
whole or part the cost of acquisition, construction, reconstruction, improvement or extension of
projects. The bonds shall be identified by project and issued in the manner prescribed by ORS
286.010, 286.020 and 286.105 to 286.135, and refunding bonds may be issued to refinance such bonds.

(b) The State Treasurer shall designate the underwriter, vendor, lender or other financing party,
if any, and enter into appropriate agreements with each to carry out the provisions of ORS 285B.320
to 285B.377. The Economic and Community Development Department, with the approval of the State
Treasurer, shall designate the trustee and enter into appropriate agreements with the trustee to
carry out the provisions of ORS 285B.320 to 285B.377. The department may appoint bond counsel
as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond
counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and
the appointment is approved by the Attorney General as required by ORS 288.523. The department
may not make an appointment or enter into an agreement under this paragraph unless the State
Treasurer has reviewed and approved the terms and conditions of the appointment or agreement.

[ORS 279.712 does] Sections 7 and 18 of this 2003 Act do not apply to any appointment or agree-
ment described in this paragraph.

(2) Any escrow agent, bond registrar, paying agent or trustee, if any, designated by the State
Treasurer to carry out all or part of the powers specified in ORS 285B.335 must agree to furnish
financial statements and audit reports for each bond issue.

SECTION 241. ORS 285B.473 is amended to read:

285B.473. If the State Treasurer determines that revenue bonds should be issued:

(1) The State Treasurer may authorize and issue in the name of the State of Oregon revenue
bonds secured by moneys paid to the Special Public Works Fund pledged therefor to finance or re-
finance in whole or part the cost of acquisition, construction, reconstruction, improvement or ex-
tension of infrastructure projects. The bonds shall be issued in the manner prescribed by ORS
chapter 286, and refunding bonds may be issued to refinance such revenue bonds.

(2) The State Treasurer shall designate the underwriter and enter into appropriate agreements
with the underwriter to carry out the provisions of ORS 285B.467 to 285B.479. The Economic and
Community Development Department, with the approval of the State Treasurer, shall designate the
trustee and enter into appropriate agreements with the trustee to carry out the provisions of ORS
285B.467 to 285B.479. The department may appoint bond counsel as authorized by ORS 288.523, or
the State Treasurer may enter into an agreement with bond counsel if the services provided under
the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the
Attorney General as required by ORS 288.523. The department may not make an appointment or
enter into an agreement under this subsection unless the State Treasurer has reviewed and approved
the terms and conditions of the appointment or agreement. [ORS 279.712 does] Sections 7 and 18
of this 2003 Act do not apply to any appointment or agreement described in this subsection.

SECTION 242. ORS 285B.575 is amended to read:

285B.575. If the State Treasurer determines that revenue bonds shall be issued:

(1) The State Treasurer may authorize and issue in the name of the State of Oregon revenue
bonds secured by moneys paid to the Water Fund and pledged to finance or refinance in whole or
in part the cost of a water project. The revenue bonds issued under this section shall be issued in
the manner prescribed by ORS chapter 286, and refunding bonds may be issued to refinance the re-
venue bonds.

(2) The State Treasurer shall designate and enter into agreements with the underwriter to carry
out the provisions of ORS 285B.560 to 285B.599. The Economic and Community Development De-
department, with the approval of the State Treasurer, shall designate the trustee and enter into ap-
propriate agreements with the trustee to carry out the provisions of ORS 285B.560 to 285B.599. The
department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may
enter into an agreement with bond counsel if the services provided under the agreement comply with
the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required
by ORS 288.523. The department may not make an appointment or enter into an agreement under
this subsection unless the State Treasurer has reviewed and approved the terms and conditions of
the appointment or agreement. [ORS 279.712 does] Sections 7 and 18 of this 2003 Act do not apply
to any appointment or agreement described in this subsection.

SECTION 243. ORS 286.066 is amended to read:

286.066. Each respective general obligation bonding agency shall enter into an agreement with
and provide for the appointment of bond counsel for a period of not less than one year during any
biennium in which the agency has bonds outstanding or expects to issue bonds. An agency may not
enter into an agreement for the appointment of bond counsel under this section unless the State
Treasurer and the Attorney General have reviewed and approved the terms and conditions of the
agreement as required by ORS 288.523. [ORS 279.712 does] Sections 7 and 18 of this 2003 Act do
not apply to an agreement for the appointment of bond counsel entered into under this section.

SECTION 244. ORS 286.071 is amended to read:

286.071. (1) The State Treasurer may, or an agency authorized to use bond proceeds may, with
the approval of the State Treasurer, enter into an agreement with and retain the services of a fi-
nancial consultant. The State Treasurer, in granting approval for the retention of a financial con-
sultant authorized by this section, shall consider:

(a) The reputation, experience and credentials of the consultant, including the individuals ex-
pected to actually fulfill the contract work; and

(b) The willingness of the consultant to consider the impact of the agency’s bond program on
overall state resources, levels of bonded indebtedness, and statewide bond issuance procedures and
policies.

(2) An agency may not enter into an agreement to retain the services of a financial consultant
unless the State Treasurer reviews and approves the terms and conditions of the agreement. [ORS
279.712 does] Sections 7 and 18 of this 2003 Act do not apply to an agreement described in this
section.

SECTION 245. ORS 288.523 is amended to read:

288.523. (1) Notwithstanding any other provision of law relating to the appointment of bond
counsel, a public body may provide for the appointment of bond counsel to advise and assist the
public body in the issuance of bonds or certificates of participation, including the issuance of re-
funding bonds and obligations, and in the lawful administration of outstanding bonds or certificates
of participation. The services provided by an appointed bond counsel may include:

(a) Advising the public body concerning the legality of specific proposed taxable or tax-exempt
obligations and the compliance, in substance and procedure, of those obligations with law, including
but not limited to federal securities laws and regulations and federal and state tax laws and regu-
lations;

(b) Issuing legal opinions, including opinions on the authorization, tax status and the binding
effect of the obligations and their associated documents and on the lawful use of the proceeds of the
obligations, as may be required by the demands of the bond market for the obligations;

(c) Advising the public body on legal procedures and practices in the bond market for the obli-
ations, including advice on the structuring and marketing of the obligations;
(d) Preparing or assisting in the preparation of any document related to a specific issue of obliga-
tions, including but not limited to a bond authorization, bond resolution, indenture, prospectus,
preliminary official statement, official statement, bond sale notice, bond form, bid form or bond
purchase agreement;
(e) Advising the public body concerning the maintenance of the tax status of specific obligations,
compliance with any requirements for representations or disclosures relating to the obligations and
compliance with any documents issued or executed with respect to the obligations; and
(f) Advising the public body concerning accounting and investment procedures recommended or
required for compliance with tax and federal securities and rebate requirements.
(2) No appointment of bond counsel under this section shall be construed as authorizing bond
counsel to advise or represent the public body on matters that are committed by statute to the At-
torney General or by local law to counsel for the public body. An appointment of bond counsel by
a state agency or institution shall be subject to the prior approval of the State Treasurer and the
Attorney General.
(3) [ORS 279.712 does] Sections 7 and 18 of this 2003 Act do not apply to an appointment of
bond counsel under this section.

SECTION 246. ORS 291.990 is amended to read:
291.990. (1) Any person who makes or orders or votes to make any expenditure in violation of
any of the provisions of ORS 279.805, 279.826, 279.828, 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 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 81 of this 2003 Act, commits a violation,
and shall, upon conviction, be punished by a fine of not less than $500 nor more than $3,000.
(2) If any person incurs or orders or votes to incur an obligation in violation of any of the
provisions of ORS 279.805, 279.826, 279.828, 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 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 81 of this 2003 Act, or who makes or au-
thorizes or causes to be made any disbursement of funds from the State Treasury in violation of any
of the provisions of ORS 279.805, 279.826, 279.828, 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 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 81 of this 2003 Act, commits a violation,
and shall, upon conviction, be punished by a fine of not less than $500 nor more than $3,000.
(3) Upon certification by the Oregon Department of Administrative Services that any state offi-
cer or employee of a state agency has failed or refused to comply with any order, rule or regulation
made by the department in accordance with the provisions of ORS 279.805, 279.826, 279.828,
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
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
81 of this 2003 Act, the person and the sureties on the
bond of the person shall be jointly and severally liable therefor to the person in whose favor the
obligation was incurred.
(4) Any violation of ORS 279.805, 279.826, 279.828, 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 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 81 of this 2003 Act, for which no other
penalty is provided in this section, is a Class A violation.

SECTION 247. ORS 292.990 is amended to read:
292.990. (1) The provisions of ORS 291.990 shall apply to ORS 292.220 and 292.230 the same as such provisions apply to ORS [279.805, 279.826, 279.828], 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 291.222, 291.232 to 291.260 and 291.307 and sections 37, 41 and 42 of this 2003 Act.

(2) If any of the officers mentioned in ORS 292.316 fails to pay over to the State Treasurer any and all moneys collected by virtue of office, the officer shall be deemed guilty of theft, and shall be punished accordingly.

SECTION 248. ORS 293.741 is amended to read:

293.741. The Oregon Investment Council may enter into contracts with one or more persons whom the council determines to be qualified, whereby the persons undertake, in lieu of the investment officer, to perform the functions specified in ORS 293.736 to the extent provided in the contract. Performance of functions under contract so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the investment funds. The council may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the council, with corporate surety authorized to do business in this state. Contracts so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.

SECTION 249. ORS 293.746 is amended to read:

293.746. (1) In the acquisition or disposition of bonds with which approving legal opinions ordinarily are furnished, the investment officer may require an original or certified copy of the written opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General, certifying to the legality of the bonds.

(2) The Oregon Investment Council may arrange for the furnishing to the investment officer of investment counseling services. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.

(3) The investment officer, with the approval of the council, may arrange for services with respect to mortgages in which moneys in the investment funds are invested. Those services shall be paid for out of the gross interest of the mortgages with respect to which the services are furnished, and the net interest of the mortgages after that payment shall be considered income of the investment funds. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.

SECTION 250. ORS 293.780 is amended to read:

293.780. The Oregon Investment Council, for and on behalf of the Public Employees Retirement System and Public Employees Retirement Board, may enter into group annuity contracts with one or more insurance companies authorized to do business in this state. In lieu of any investment of moneys in the Public Employees Retirement Fund as provided in ORS 293.701 to 293.820, the council may pay, from time to time under contracts so entered into, any moneys in that fund available for investment purposes. Contracts so entered into are not subject to [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.

SECTION 251. ORS 294.850 is amended to read:

294.850. The Oregon Investment Council may enter into contracts with one or more persons whom the council determines to be qualified, whereby the persons undertake, in lieu of the investment officer, to perform the functions specified in ORS 294.845 to the extent provided in the con-
tract. Performance of functions under contract so entered into shall be paid for out of the gross
interest or other income of the investments with respect to which the functions are performed, and
the net interest or other income of the investments after that payment shall be considered income
of the investment pool. The council may require a person contracted with to give to the state a fi-
delity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the council,
with corporate surety authorized to do business in this state. Contracts so entered into and func-
tions performed thereunder are not subject to the State Personnel Relations Law or [ORS 279.545
to 279.746] section 7 or 18 of this 2003 Act.

SECTION 252. ORS 294.855 is amended to read:

294.855. (1) In the acquisition or disposition of bonds with which approving legal opinions ordi-
narily are furnished, the investment officer may require an original or certified copy of the written
opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General,
certifying to the legality of the bonds.
(2) The Oregon Investment Council may arrange for the furnishing to the investment officer of
investment counseling services. The furnishing and acquisition of those services are not subject to
the State Personnel Relations Law or [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.
(3) The investment officer, with the approval of the council, may arrange for services with re-
spect to mortgages in which moneys in the investment pool are invested. Those services shall be
paid for out of the gross interest of the mortgages with respect to which the services are furnished,
and the net interest of the mortgages after that payment shall be considered income of the invest-
ment pool. The furnishing and acquisition of those services are not subject to the State Personnel
Relations Law or [ORS 279.545 to 279.746] section 7 or 18 of this 2003 Act.

SECTION 253. ORS 305.085 is amended to read:

305.085. The Department of Revenue is hereby authorized to charge a reasonable sum reflecting
its costs, for each copy sold of maps, documents, or publications such as those containing its laws
and administrative rules or reports. The proceeds from such sales are to be deposited in the de-
partment’s miscellaneous receipts account established under the authority of [ORS 279.833] section
44 of this 2003 Act.

SECTION 254. ORS 305.612 is amended to read:

305.612. (1) The Director of the Department of Revenue may enter into an intergovernmental
agreement with the United States Financial Management Service and the Internal Revenue Service
for the purpose of engaging in the reciprocal offset of federal tax refunds in payment of liquidated
state tax obligations and the offset of state tax refunds in payment of liquidated federal tax obli-
gations.
(2) The director may pay a fee charged by the federal government for the processing of an offset
request. The fee may be deducted from amounts remitted to the state by the federal government
pursuant to an intergovernmental agreement.
(3) The Department of Revenue may by rule establish a fee to be charged to the federal gov-
ernment for the provision of state offset services.
(4) All moneys received by the department in payment of charges made pursuant to subsection
(3) of this section shall be deposited in a department miscellaneous receipts account established
under [ORS 279.833] section 44 of this 2003 Act.

SECTION 255. ORS 332.155 is amended to read:

332.155. A district school board:
(1) May furnish, equip, repair, lease, purchase and build schoolhouses, including high schools,
junior high schools, professional technical schools, gymnasiums, houses for teachers and other employees, and like buildings; and locate, buy and lease lands for all school purposes. Leases authorized by this section include lease-purchase agreements whereunder the district may acquire ownership of the leased property at a nominal price. Such leases and lease-purchase agreements may be for a term of up to 30 years.

(2) May contract for the removal or containment of asbestos substances in school buildings and for repairs made necessary by such removal or containment. Contracts authorized by this section may be for a term exceeding one year.

(3) May construct or cooperate in the construction of schools for training of student teachers on state or district owned lands, for any state institution of higher education in or contiguous to the district, and to expend district funds in so doing.

(4) May acquire personal property by a lease-purchase agreement or contract of purchase for a term exceeding one year. A lease-purchase agreement is one in which the rent payable by the district is expressly agreed to have been established to reflect the savings resulting from the exemption from taxation, and the district is entitled to ownership of the property at a nominal or other price which is stated or determinable by the terms of the agreement and was not intended to reflect the true value of the property.

(5) May lease, sell and convey all property of the district as may not in the judgment of the district school board be required for school purposes.

(6) May sell property of the district in transactions whereby the district has the right to lease, occupy or reacquire the property following the sale or have facilities constructed thereon or furnished to the specifications of the district. The construction or furnishing of such facilities shall be subject to: [ORS 279.011 to 279.063.]

(a) Sections 1 to 46 of this 2003 Act, except sections 17 and 36 to 44 of this 2003 Act;

(b) Sections 47 to 87 of this 2003 Act, except sections 77, 78, 79, 80 and 81 of this 2003 Act;

and

(c) Sections 88, 89 to 96 and 97 to 136 of this 2003 Act.

(7) Shall furnish the schools with supplies, equipment, apparatus and services essential to meeting the requirements of a standard school and may furnish such other supplies, equipment, apparatus and services as the board considers advisable.

(8) May construct, purchase or lease in cooperation with other school districts or community college districts facilities for secondary professional technical programs for pupils of more than one district and may furnish or cooperate in furnishing supplies and equipment for such facilities, to be financed in the same manner as other school buildings and supplies are financed.

(9) May purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed 30 years.

(10) May purchase relocatable classrooms and other relocatable structures in installment transactions in which deferred installments of the purchase price are payable over not more than 10 years from the date such property is delivered to the district for occupancy and are secured by a security interest in such property. Such transactions may take the form of, but are not limited to, lease-purchase agreements.

(11) May enter into rental or lease-purchase agreements covering motor vehicles operated by the district.

SECTION 256. Section 1, chapter 847, Oregon Laws 1999, is amended to read:

Sec. 1. (1) Subject to the terms of the governing instruments and applicable law, a school dis-
strict may enter into agreements with one or more community foundations or nonprofit corporations
to complete school facility projects. School districts may not enter into an agreement under this
subsection with a community foundation or nonprofit corporation that has been in existence for less
than one year. A school district may transfer to the community foundation or nonprofit corporation
the ownership of a school facility for the purpose of completion of a school facility project under
this section.

(2) Any agreement between a school district and a community foundation or nonprofit corpo-
ration entered into pursuant to subsection (1) of this section shall include:

(a)(A) A requirement that if the school district transfers ownership of a school facility to a
community foundation or nonprofit corporation, the community foundation or nonprofit corporation
shall transfer the school facility back to the school district for an amount that does not exceed the
cost of the school facility project plus 10 percent; and

(B) A requirement that the school district may lease the school facility from the community
foundation or nonprofit corporation and that if the school district has paid to the community foun-
dation or nonprofit corporation, through a lease, an amount that equals the cost of the school fa-
cility project plus 10 percent, the community foundation or nonprofit corporation shall transfer the
school facility back to the school district.

(b) A requirement that any amount received by a community foundation or nonprofit corporation
from the school district for a school facility project shall be allocated as follows:

(A) Sixty percent of the amount shall be used to start new school facility projects; and

(B) Forty percent shall be used for maintenance of existing school facilities.

(c) A requirement that the community foundation or nonprofit corporation use all volunteer la-
bor.

(d) A provision that a community foundation or nonprofit corporation may purchase building
materials at reduced cost or use other cost saving measures or community based resources to com-
plete the school facility project.

(e) A requirement that the school facility project shall be completed based on the specifications
of the school district.

(f) A requirement that the school facility project shall be completed within three years of the
transfer of ownership of the school facility from the school district to the community foundation or
nonprofit corporation. If the project is not completed within three years, the ownership of the school
facility shall be transferred back to the school district.

(3) The following laws do not apply to a school facility project that is the subject of an agree-
ment that meets the requirements of this section:

(a) ORS 332.155 (6); and

[b] ORS chapter 279.]

(b) Sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act.

(4) A school district may enter into an agreement with a community foundation or nonprofit
corporation under this section to complete a school facility project only if the school district sub-
mitted the question of incurring bonded indebtedness for the school facility project to the electors
of the school district in the prior 12 months and the electors of the school district did not approve
the contracting of bonded indebtedness.

(5) Any community foundation or nonprofit corporation that does not use all volunteer labor is
subject to the provisions of [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003
Act.
(6) As used in this section:
(a) “Community foundation” has the meaning given that term in ORS 348.580.
(b) “Nonprofit corporation” means:
(A) A corporation as defined in ORS 65.001; or
(B) A foreign corporation as defined in ORS 65.001.
(c) “School facility project” includes, but is not limited to:
(A) The construction of a new school facility; or
(B) The completion of capital improvements to an existing school facility.

SECTION 257. ORS 344.750 is amended to read:
344.750. In addition to the provisions of ORS 344.745, in each program:
(1) The State Apprenticeship and Training Council shall establish by rule appropriate youth
apprentice or trainee ratios.
(2) The employer shall provide workers’ compensation coverage for the youth apprentices and
trainees as required by ORS 656.033.
(3) The youth apprentice or trainee shall begin at a wage that is not less than the state mini-
mum wage.
(4) Youth apprentices and trainees shall be evaluated for wage increases consistent with the
policies established by the participating local apprenticeship or training committee.
(5) Youth apprentices and trainees shall not be employed on projects subject to the federal
Davis-Bacon Act or on projects subject to [ORS 279.348 to 279.363] sections 165 to 179 of this 2003
Act, except sections 176, 177, 178 and 179 of this 2003 Act.
(6) The youth apprentice’s or trainee’s combined in-school coursework and related training, as
well as on-the-job training and other training experiences, shall not exceed 44 hours per week.
(7) Employment with the employer shall not exceed 20 hours per week while the student is en-
rolled in school classes. All or a portion of the on-the-job training shall be used to meet graduation
requirements.
(8) Participating students who fail to regularly attend and make satisfactory progress in in-
school courses and required related training or who leave high school prior to graduation or com-
pletion of their high school requirements shall automatically be removed from the youth
apprenticeship program.

SECTION 258. ORS 348.703, as amended by section 5, chapter 6, Oregon Laws 2002 (third spe-
cial session), is amended to read:
348.703. (1) The Oregon Growth Account Board shall contract with one or more management
companies to manage and invest the moneys in the Oregon Growth Account. For purposes of this
subsection, a contract with a management company may consist of a partnership agreement under
which the Oregon Growth Account Board is the limited partner and the management company is the
general partner.
(2) The provisions of ORS 293.726 do not apply to those assets of the Education Stability Fund
that are held in the Oregon Growth Account. The limitations of ORS 293.726 (6) shall be calculated
based only on the balance of the Education Stability Fund that does not include the Oregon Growth
Account.
(3) A management company selected to manage the Oregon Growth Account shall manage the
moneys in the account, subject to investment policies established by the State Treasurer and the
investment directives or strategies of the Oregon Growth Account Board, with the care, skill and
diligence that a prudent investor acting in a similar capacity and familiar with such investments
would use in managing and investing a similar account. The management company shall invest in
Oregon an amount that is at least equal to the amount of the principal transferred from the Oregon
Growth Account to the management company for investment.

(4) The contract between the board and a management company to manage the Oregon Growth
Account and the functions performed under the contract are not subject to the State Personnel Re-
lations Law or [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act.

(5) Notwithstanding ORS 348.702 (2), a management company selected to manage the Oregon
Growth Account may maintain a portion of the moneys allocated to the account under ORS 348.702
(1) in short-term securities in investments other than those specified in ORS 348.702 (2) during such
times as a management company is seeking investments that meet the requirements of ORS 348.702
(2).

(6) The State Treasurer shall annually submit a report to the Governor and to the Legislative
Assembly on the investment of moneys in the Oregon Growth Account. The report required by this
subsection shall include a summary of the amount of money invested by industrial sector or business
classification, by region of this state, by size of investment and by type of investment.

(7) The State Treasurer shall provide to other state agencies any reports on the investment of
moneys in the Oregon Growth Account that are necessary to fulfill audit, financial, investment or
other reporting requirements to which the Education Stability Fund is subject by law or standard
accounting principles.

(8) The office of the State Treasurer shall provide staff to the board.

(9) There is continuously appropriated to the board from the Oregon Growth Account those
amounts necessary to meet the expenses of the board and the State Treasurer in carrying out the
operations of the Oregon Growth Account and the duties of the board and the State Treasurer. The
cost to the office of the State Treasurer of providing staff to the board shall be deducted from those
amounts paid to the State Treasurer pursuant to ORS 293.718 as reimbursement for expenses in-
curred as investment officer for the Education Stability Fund.

(10) The board may enter into contracts for the provision of investment advice or other services
that the board deems reasonable and necessary to fulfill the duties of the board. The State Treasurer
may enter into contracts for the provision of investment advice or other services that the State
Treasurer deems reasonable and necessary to fulfill the duties of the State Treasurer with respect
to the Oregon Growth Account. Such contracts are not subject to the State Personnel Relations Law
or [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act.

SECTION 259. ORS 351.086 is amended to read:

351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions
of ORS chapters 240, 279, 282 and 292 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003
Act do not apply to the Oregon University System.

(2) Notwithstanding subsection (1) of this section, ORS 240.167, 240.185, [279.029 (4) and (5),
279.321, 279.348, 279.350, 279.352, 279.354, 279.355, 279.356, 279.357, 279.361, 279.363, 279.365, 279.370,
279.375, 279.526 to 279.542,] 279.835 to 279.855 and 292.043 and sections 50 (3), 51 (3), 118 (1)(a)
and (3), 154 to 159, 163, 167, 168, 169, 170, 171, 172, 174, 175, 176, 177 and 178 of this 2003 Act
shall apply to the Oregon University System.

(3) Notwithstanding any other law, the following provisions shall not apply to the Oregon Uni-
versity System:

(a) ORS 182.310 to 182.400; and

(b) ORS 276.071 and 276.072.
(4) In carrying out the duties, functions and powers imposed by law upon the Oregon University System, the State Board of Higher Education or the Chancellor of the Oregon University System may contract with any public agency for the performance of such duties, functions and powers as the Oregon University System considers appropriate.

SECTION 260. ORS 351.155 is amended to read:

351.155. Notwithstanding the applicable provisions of [(ORS 279.025 to 279.031, 279.310 to 279.356 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, 80, 81, 114, 115, 116, 117, 118, 119, 137 to 143, 144, 145, 154 to 159, 160 to 164, 165 to 179 and 180 of this 2003 Act, the State Board of Higher Education may, in the management of all forestlands under its control and supervision, sell the forest products on such lands in the same manner as is provided in ORS 530.059, and for that purpose the State Board of Higher Education shall have the same powers with respect to experimental or research projects in the field of forestland management or for forest product utilization on forestlands under its control as the State Forester has pursuant to the provisions of ORS 530.050 and 530.059. In the management of its forestlands, the State Board of Higher Education may lease mineral and geothermal resource rights as provided in ORS 351.060 (5).

SECTION 261. ORS 351.689 is amended to read:

351.689. The provisions of [(ORS chapter 279)] 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 Higher Education Technology Transfer Fund Board.

SECTION 262. Section 5, chapter 835, Oregon Laws 2001, is amended to read:

Sec. 5. (1) The Higher Education Technology Transfer Account Board shall:

(a) Adopt investment policies for the purpose of maintaining, investing and reinvesting assets to earn a return on investments in the Higher Education Technology Transfer Account to further technology transfer programs and other public education activities.

(b) Manage the account in accordance with policies adopted under paragraph (a) of this subsection.

(c) Transfer to a state institution of higher education those declared earnings from the account that the board can identify as having been credited to the account as proceeds, dividends or securities received as a result of securities received in exchange for technology transfer by that state institution of higher education. Amounts transferred to a state institution of higher education under this paragraph are continuously appropriated to the Department of Higher Education for use by the state institution of higher education.

(2) In managing the account, the board may:

(a) Make and enter into contracts, agreements and arrangements as necessary or desirable for carrying out the duties of the board.

(b) Retain, employ and contract for the services of private and public financial institutions, investment advisors and managers, depositories and consultants, and for research, technical and other services necessary or desirable for carrying out the purposes of the account and to fulfill the duties of the board.

(c) Adopt, amend and repeal rules as necessary for the administration of sections 1 to 6, chapter 835, Oregon Laws 2001 [of this 2001 Act].

(d) Take any intellectual property asset of whatever character transferred from a state institution of higher education as part of a technology transfer activity. A transfer of such an intellectual property asset shall not be accepted if such restriction would be contrary to the laws of this state.
or policies of the board. The account shall be credited with the revenues or other property received
in exchange for intellectual property assets received under this paragraph.

(e) Solicit and accept gifts, bequests or devises of money, securities or other property of whatever character to further the mission of the board. A restricted gift, bequest or devise shall not be accepted if such restriction would be contrary to the laws of this state or the policies of the board. The account shall be credited with the money, securities or other property solicited or accepted by the board.

(f) Disburse to state institutions of higher education those declared earnings from the account that are appropriated continuously to the board under section 2, chapter 835, Oregon Laws 2001 [of this 2001 Act].

(3) In managing the account, the board shall:

(a) Be the custodian of any securities or other property that the board accepts under subsection (2)(d) and (e) of this section. The board shall hold such property as trustee for the Higher Education Technology Transfer Account and shall conserve and administer such property. Except as prohibited by law or restricted by the terms of a transfer, gift, bequest or devise, the board may sell or exchange such property as the board may from time to time determine. The income from property shall be credited to the Higher Education Technology Transfer Account; and

(b) Hold and dispose of securities received in exchange for a technology transfer from a state institution of higher education to a private entity and invest and reinvest such securities or any moneys, proceeds, dividends or securities received as a result of those securities.

(4) The provisions of [ORS chapter 279] ORS 279.835 to 279.855 and sections 1 to 46, 47 to 88 and 88 to 180 of this 2003 Act do not apply to the board.

SECTION 263. ORS 353.100 is amended to read:

353.100. (1) The provisions of ORS chapters 35, 190, 192, 244, 281 and 295 and ORS 30.260 to 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 and 307.112 shall apply to Oregon Health and Science University under the same terms as they apply to public bodies other than the state.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270, 273, 276, [279,] 283, 291, 292, 293, 294 and 297 and ORS 180.060, 180.210 to 180.235, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 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 656.017 (2) and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act shall not apply to the university or any not-for-profit organization or other entity, if the equity of the entity is owned exclusively by the university, and if the organization or entity is created by the university to advance any of the university's statutory missions.

(3) The university, as a distinct governmental entity, or any organization or entity described in subsection (2) of this section shall not be subject to any provision of law enacted after January 1, 1995, with respect to any governmental entity, unless the provision specifically provides that it applies to the university or to the organization or entity.

SECTION 264. ORS 353.130 is amended to read:

353.130. The Oregon Health and Science University subscribes to the policy set forth under [ORS 279.005] section 3 of this 2003 Act regarding public contracting, and shall develop contract policies that support openness, impartiality and competition in the awarding of contracts in accordance with that provision. The university subscribes to the intent of the social policies of [ORS chapter 279] ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act
and shall develop contract policies that are appropriate to the university and are designed to encourage affirmative action, recycling, inclusion of art in public buildings, the purchase of services and goods from disabled individuals, the protection of workers through the payment of prevailing wages as determined by the Bureau of Labor and Industries, the provision of workers’ compensation insurance to workers on contracts and the participation of emerging small businesses and businesses owned by women and minorities.

SECTION 265. ORS 366.773 is amended to read:

366.773. (1) The Legislative Assembly declares that it is the public policy of the State of Oregon to promote cooperation between the Department of Transportation and counties on road maintenance projects when it results in an overall benefit to the public. Monetary savings that result from the cooperative efforts shall primarily be retained by the counties and the division of the department that enters into the agreement. The participants should endeavor to cooperate regardless of the proportion of benefit to either party.

(2) A county and the Department of Transportation or a division of the department may establish an intergovernmental road maintenance agreement that will govern the maintenance of state highways and county roads within the county or other areas described by the agreement or of a particular road project. The agreement must be ratified by the governing body of the county and the Director of Transportation. An agreement under this section shall require highways and roads to be maintained in accordance with standards mutually established by the Oregon Transportation Commission and the county governing body.

(3) All employees and managers of the department and the county who will perform road maintenance activities described in the agreement or who will be involved in the road project described in the agreement must be given a reasonable opportunity to participate with the department and the counties in establishing the terms and provisions of the agreement.

(4) Nothing in this section or in the agreement affects title to or ownership of state highways or county roads.

(5) The agreement must:

(a) Provide for the use of state and county road maintenance equipment and facilities by the participants.

(b) Recognize an agreement between either participant and a state or federal agency established to protect the environment. The intergovernmental road maintenance agreement should contain references to applicable provisions that implement procedures and specifications contained in the agreement between either participant and the agency.

(c) Establish a procedure, consistent with appropriate collective bargaining agreements, to ensure that employees of the department and the county are properly supervised.

(d) Establish a procedure to determine which maintenance methods will be used by the participants.

(e) Establish a procedure to account for changes in operating costs due to the establishment of the agreement and to allocate increased costs or distribute cost savings between the county and the department.

(f) Establish a formula, adjustment factor or procedure for the equitable adjustment and comparison of the maintenance and equipment use rates required of the department under federal law and the maintenance and equipment use rates employed by the county.

(g) Authorize the participants to use either the procurement procedures applicable to the department or the procurement procedures applicable to the county as long as the procurement pro-
c edures include adequate safeguards fostering competition and are consistent with [ORS 279.005 and 279.007] sections 3 and 97 of this 2003 Act.

SECTION 266. ORS 367.025 is amended to read:

367.025. (1) If the Department of Transportation determines that it is necessary or desirable to issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the department shall ask the State Treasurer to issue infrastructure bonds.

(2) When the department asks the State Treasurer to issue infrastructure bonds, if the State Treasurer determines that infrastructure bonds shall be issued:

(a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the infrastructure fund.

(b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The department may not appoint bond counsel under this paragraph unless the State Treasurer has reviewed and approved the terms and conditions of the appointment. [ORS 279.712 does] Sections 7 and 18 of this 2003 Act do not apply to an appointment or agreement described in this paragraph.

SECTION 267. ORS 368.051 is amended to read:

368.051. The county road official or such other person as may be designated by the county governing body shall maintain a complete and accurate cost account for road work performed by the county as required under [ORS 279.023] section 98 of this 2003 Act.

SECTION 268. ORS 377.836 is amended to read:

377.836. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this section, the provisions of ORS 279.835 to 279.855 and ORS chapters 240, 276, [279.] 282, 283, 291, 292 and 293 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to the Travel Information Council. The council is subject to all other statutes governing a state agency that do not conflict with ORS 377.700 to 377.840, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS 183.310 to 183.550. Subject to the requirements of ORS chapter 238, the council’s employees are members of the Public Employees Retirement System.

(2) The following shall apply to the council:

[(a) ORS 279.800 to 279.830;]

(a) Sections 36 to 44 of this 2003 Act;

(b) ORS 282.210 to 282.230; and

(c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630.

SECTION 269. ORS 383.017 is amended to read:

383.017. (1) The Department of Transportation may award any contract, franchise, license or agreement related to a tollway project, other than a concession for the provision of goods or services at a rest area, under a competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation without regard to any other laws concerning the procurement of goods or services for projects of the state.

(2) When using a competitive process for the award of a tollway project contract, the department shall consider the following factors in addition to the proposer’s estimate of cost:

(a) The quality of the design, if applicable, submitted by a proposer. In considering the quality of the design of a tollway project, the department shall take into consideration:
(A) The structural integrity of the design, including the probable effect of the design on the future costs of maintenance of the tollway;
(B) The aesthetic qualities of the design, including such factors as the width of lane separators, landscaping and sound walls;
(C) The traffic capacity of the design;
(D) The aspects of the design that affect safety, such as the lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and the changes in elevation; and
(E) The ease with which traffic will be able to pass through the toll collection facilities.

(b) The extent to which small businesses will be involved in the tollway project. The department shall encourage participation by small businesses to the maximum extent the department determines is practicable. As used in this paragraph, “small business” means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. “Small business” does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for nonconstruction firms over the last three years.

(c) The financial stability of the proposer and the ability of the proposer to provide funding for the tollway project and surety for its performance and financial obligations with respect to the tollway project.

(d) The experience of the proposer and its subcontractors in building and operating projects such as the tollway project.

(e) The terms of the financial arrangement proposed or accepted by the proposer with respect to franchise fees, license fees, lease payments or operating expenses and the proposer’s required rate of return from its operation or maintenance of the tollway.

3)(a) The department may adopt rules and procedures for the award of franchises, licenses, leases or other concessions for rest areas without regard to any other laws concerning the procurement of goods or services for projects of the state. All such franchises, licenses, leases or other concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to maintain the subject premises in accordance with all applicable state and federal health and safety standards, to maintain one or more policies of casualty and property insurance and adequate workers’ compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or claims that are levied, assessed or charged against the premises or concession or that may become a lien upon the premises. The rules shall encourage participation by small businesses to the maximum extent the department determines is practicable. The department may grant any small business a 10 percent or greater bid advantage in any bidding process for a concession.

(b) As used in this subsection, “small business” means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $300,000. “Small business” does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $300,000 over the last three years. “Small business” also does not include a franchise of any business that has average aggregate annual gross receipts in excess of $300,000 over the last three years.

(4) Notwithstanding any other provision of this section, the department may use any method for the award of any contract, franchise, license or agreement that is necessary to comply with the re-
requirements of any grant or other funding source.

(5) If public funds are involved in the project, construction of a tollway project shall be subject
to the prevailing wage requirements of [ORS 279.348 to 279.380] sections 165 to 179 of this 2003
Act.

(6) For purposes of complying with applicable state and local land use laws, including statewide
planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215,
221, 222 and 227, and any requirement imposed by the Land Conservation and Development Com-
misson, a tollway project shall be treated as a project of the department and not as a project of
any other person or entity.

(7) Tollways, and any related facilities that would normally be purchased, constructed or in-
stalled by the department if the tollway were a conventional highway that was constructed and op-
erated by the department, shall be exempt from ad valorem property taxation.

(8) Tollways are considered state highways for purposes of law enforcement and application of
the Oregon Vehicle Code.

SECTION 270. ORS 390.195 is amended to read:
390.195. (1) The State Parks and Recreation Department shall use state correctional institution
inmate labor to improve, maintain and repair buildings and property at state parks and recreation
areas whenever feasible. The provisions of [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to
180 of this 2003 Act do not apply to the use of state correctional institution inmate labor under this
section.

(2) The State Parks and Recreation Director shall assign and supervise the work of the state
inmates who are performing the work described in subsection (1) of this section.

(3) Nothing in this section is intended to exempt the State Parks and Recreation Department
from the provisions of ORS 279.835 to 279.855 for any purpose other than the use of state
 correctional institution inmate labor.

SECTION 271. ORS 391.150 is amended to read:
391.150. (1) The Department of Transportation and the Tri-County Metropolitan Transportation
District shall jointly manage the construction phases of the Westside corridor light rail project. The
final project management plans of the managing agencies shall provide that the district shall manage
and oversee construction of the light rail right of way and facilities and that the department shall
manage and oversee the construction of highway improvements related to the extension of the light
rail system. The department and the district shall describe in a memorandum of understanding or
grant agreement the functions and responsibilities assigned to each of the managing agencies and
shall establish an organizational and management system for the project under which significant
actions during the construction phase occur only with the knowledge of both of the managing
agencies.

(2) Subject to [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act and
any applicable prohibitions against preferences in contracts related to the construction phase of the
Westside corridor light rail project, the managing agencies shall develop procedures that afford
qualified businesses in Oregon the opportunity to compete for project contracts to the maximum
extent feasible and consistent with federal laws and regulations governing Federal Transit Admin-
istration grants.

(3) The managing agencies shall seek the cooperation and assistance of contracting and con-
struction associations in this state when establishing the contracting procedures for the Westside
corridor light rail project. The managing agencies shall also establish and implement programs to
provide contracting and construction businesses with information relating to the project.

(4) The managing agencies, to the maximum extent feasible, shall encourage disadvantaged business enterprises to bid for contracts and to otherwise participate in the Westside corridor light rail project.

SECTION 272. ORS 396.345 is amended to read:

396.345. The moneys received by the Adjutant General from fines imposed by courts-martial and, except as provided in ORS 283.110[279.828 and 279.831] and sections 42 and 43 of this 2003 Act, the moneys received from other miscellaneous sources shall be deposited in the General Fund in the State Treasury, to be available for general governmental expenses.

SECTION 273. ORS 407.177 is amended to read:

407.177. (1) When the Director of Veterans’ Affairs considers such contracts necessary to improve the financial condition of the loan program conducted under this chapter, the director is authorized to enter into contracts with lending institutions under which the lending institutions may provide any of the following services:

(a) Processing of new loans and purchase contracts; and

(b) Management and servicing of new loans and purchase contracts.

(2) Contracts entered into by the director under this section may provide that the lending institution:

(a) Receive applications for loans for the acquisition of homes or farms under this chapter;

(b) Immediately investigate and process an application for a loan as provided by law; and

(c) For approved loans or contracts, if requested by the director, service the loan or purchase contract for a period of time specified by the director.

(3) When a lending institution, pursuant to a contract authorized by this section, receives an application for a loan for the acquisition of a manufactured home, as defined in ORS 197.295, the lending institution shall investigate and process the application in the manner prescribed in the contract between the lending institution and the director.

(4) When a lending institution, pursuant to a contract authorized by this section, investigates and processes a loan application that it considers eligible for approval under this chapter, the lending institution shall notify the director and state the reasons why the loan may be approved under this chapter. The director shall retain final authority to approve or disapprove the loan. If the director disapproves the loan, the director shall notify the lending institution and the applicant of the disapproval and shall indicate the reasons for the disapproval. When the director is satisfied that all requirements for approval of a loan have been met by the applicant and the lending institution and that the property offered as security for the loan protects the interests of the state, the director shall transfer to the lending institution an amount of money from the Oregon War Veterans’ Fund equal to the loan amount approved by the director. The lending institution shall disburse the money in the manner prescribed by the director. The lending institution shall record the mortgage, trust deed, contract or other security agreement relating to the loan and shall forward all the original loan documents to the director.

(5) All moneys received by a lending institution as payments on principal and interest for loans made under this chapter shall be paid to the director in accordance with the terms of the contract between the director and the lending institution.

(6) The director and lending institution shall mutually agree upon the compensation to be paid to the lending institution for services performed under a contract authorized by this section. Such compensation may be a fixed annual payment or a percentage of the amount of each loan or pur-
chase contract processed or serviced by the lending institution under the contract.

(7) Contracts entered into under this section are exempt from the requirements of the provisions of [ORS chapter 279] ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act regarding personal [service] services contracts.

(8) As used in this section, “lending institution” means an entity that is licensed to conduct business in the State of Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans and that, in the judgment of the director, is capable of meeting the needs of the director in carrying out this chapter.

SECTION 274. ORS 408.375 is amended to read:

408.375. The Director of Veterans’ Affairs shall enter into a contract with a nongovernmental entity for the operation and management of the second Oregon Veterans’ Home authorized by section 1, chapter 591, Oregon Laws 1995. The entity with whom the director contracts under this section shall be a person experienced in the operation and staffing of long term care facilities, as defined in ORS 442.015. The contract executed under this section shall be subject to the requirements of [ORS 279.005 to 279.111] sections 1 to 46 and 47 to 87 of this 2003 Act, except section 77 of this 2003 Act, and shall provide that:

(1) The party who contracts to manage and operate the second Oregon Veterans’ Home shall be responsible for hiring and maintaining the necessary staff for the facility.

(2) The Director of Veterans’ Affairs shall assign not more than one state employee on a full-time basis to provide oversight of the management of the facility.

(3) The second Oregon Veterans’ Home shall admit only patients who are war veterans, as defined in ORS 174.105.

SECTION 275. ORS 414.630 is amended to read:

414.630. (1) The Department of Human Services shall execute prepaid capitated health service contracts for at least hospital or physician medical care, or both, with hospital and medical organizations, health maintenance organizations and any other appropriate public or private persons.

(2) For purposes of ORS [279.015, 279.712,] 414.145 and 414.610 to 414.640 and sections 7, 18 and 50 to 57 of this 2003 Act, instrumentalities and political subdivisions of the state are authorized to enter into prepaid capitated health service contracts with the Department of Human Services and shall not thereby be considered to be transacting insurance.

(3) In the event that there is an insufficient number of qualified bids for prepaid capitated health services contracts for hospital or physician medical care, or both, in some areas of the state, the department may continue a fee for service payment system.

(4) Payments to providers may be subject to contract provisions requiring the retention of a specified percentage in an incentive fund or to other contract provisions by which adjustments to the payments are made based on utilization efficiency.

SECTION 276. ORS 414.640 is amended to read:

414.640. (1) Eligible persons shall select, to the extent practicable as determined by the Department of Human Services, from among available providers participating in the program.

(2) The department by rule shall define the circumstances under which it may choose to reimburse for any medical services not covered under the prepaid capitation or costs of related services provided by or under referral from any physician participating in the program in which the eligible person is enrolled.

(3) The department shall establish requirements as to the minimum time period that an eligible person is assigned to specific providers in the system.
(4) Actions taken by providers, potential providers, contractors and bidders in specific accordance with this chapter in forming consortia or in otherwise entering into contracts to provide medical care shall be considered to be conducted at the direction of this state, shall be considered to be lawful trade practices and shall not be considered to be the transaction of insurance for purposes of ORS 279.015, 279.712, 414.145 and 414.610 to 414.640 and sections 7, 18 and 50 to 57 of this 2003 Act.

SECTION 277. ORS 414.725 is amended to read:

414.725. Upon meeting the requirements of section 9, chapter 836, Oregon Laws 1989:

(1) Pursuant to rules adopted by the Department of Human Services, the department shall execute prepaid managed care health services contracts for the health services funded pursuant to section 9, chapter 836, Oregon Laws 1989. The contract must require that all services are provided to the extent and scope of the Health Services Commission’s report for each service provided under the contract. Such contracts are not subject to (ORS 279.011 to 279.063) sections 1 to 46 and 47 to 87 of this 2003 Act, except sections 36 to 44 and 77 of this 2003 Act. It is the intent of ORS 414.705 to 414.750 that the state move toward utilizing full service managed care health service providers for providing health services under ORS 414.705 to 414.750. The department shall solicit qualified providers or plans to be reimbursed at rates which cover the costs of providing the covered services. Such contracts may be with hospitals and medical organizations, health maintenance organizations, managed health care plans and any other qualified public or private entities. The department shall not discriminate against any contractors which offer services within their providers’ lawful scopes of practice.

(2) In the event that there is an insufficient number of qualified entities to provide for prepaid managed health services contracts in certain areas of the state, the department may institute a fee-for-service case management system where possible or may continue a fee-for-service payment system for those areas that pay for the same services provided under the health services contracts for persons eligible for health services under ORS 414.705 to 414.750. In addition, the department may make other special arrangements as necessary to increase the interest of providers in participation in the state’s managed care system, including but not limited to the provision of stop-loss insurance for providers wishing to limit the amount of risk they wish to underwrite.

(3) As provided in subsections (1) and (2) of this section, the aggregate expenditures by the department for health services provided pursuant to ORS 414.705 to 414.750 shall not exceed the total dollars appropriated for health services under ORS 414.705 to 414.750.

(4) Actions taken by providers, potential providers, contractors and bidders in specific accordance with ORS 414.705 to 414.750 in forming consortia or in otherwise entering into contracts to provide health care services shall be performed pursuant to state supervision and shall be considered to be conducted at the direction of this state, shall be considered to be lawful trade practices and shall not be considered to be the transaction of insurance for purposes of the Insurance Code.

(5) Health care providers contracting to provide services under ORS 414.705 to 414.750 shall advise a patient of any service, treatment or test that is medically necessary but not covered under the contract if an ordinarily careful practitioner in the same or similar community would do so under the same or similar circumstances.

SECTION 278. Section 49, chapter 1084, Oregon Laws 1999, is amended to read:

Sec. 49. (1) The Board of Trustees of the Children’s Trust Fund is abolished. Subject to the conditions in section 48, chapter 1084, Oregon Laws 1999 [of this 1999 Act], the following are transferred to the private nonprofit corporation known as the Children’s Trust Fund of Oregon, In-
corporated:

(a) All assets of the board, including but not limited to bank accounts and subaccounts; and
(b) All rights and obligations of the board legally incurred or acquired under leases, contracts and business transactions, executed or entered into with owners of real property, independent contractors or other entities or bodies prior to the operative date of this section.

(2) All public contracting agencies, as defined in ORS 279.011 section 2 of this 2003 Act, shall consent to the assignment to the Children’s Trust Fund of Oregon, Incorporated, of leases, contracts or business transactions described in subsection (1)(b) of this section, which shall continue to be effective in accordance with their terms.

(3) The transfer of assets, rights and obligations described in this section is subject only to the requirements imposed under section 48, chapter 1084, Oregon Laws 1999, of this 1999 Act and not to ORS chapter 279 sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act relating to public contracts and purchasing.

(4) Subject to the conditions required under section 48, chapter 1084, Oregon Laws 1999 of this 1999 Act, the administrator of the Board of Trustees of the Children’s Trust Fund shall cause to be delivered to members or employees of the Children’s Trust Fund of Oregon, Incorporated, all records and property in the possession of the board that relate to the assets, rights and obligations transferred under this section. However, any public records delivered under this section retain their character as public records subject to ORS 192.410 to 192.505.

SECTION 279. ORS 421.352 is amended to read:


(2) Oregon Corrections Enterprises shall not be subject to any provision of law enacted after December 2, 1999, that governs state agencies generally unless the provision specifically provides that it applies to Oregon Corrections Enterprises.

SECTION 280. ORS 421.438 is amended to read:

421.438. (1) The Department of Corrections may enter into contracts for the purchase or other acquisition, transfer or disposition of supplies, materials, equipment, products and other personal property, and services for the following prison operations and programs:
(a) Prison work and on-the-job training programs;
(b) Forest and work camps established under ORS chapter 421;
(c) Farm and agricultural operations and programs;
(d) Food services operations and programs; and
(e) Facility or property maintenance operations and programs.

(2) Notwithstanding ORS 179.040 or any other law, the provisions of ORS chapter 279 sections 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 contracts entered into by the department under this section.

SECTION 281. ORS 426.504 is amended to read:

426.504. (1) The Department of Human Services may, through contract or otherwise, acquire, purchase, receive, hold, exchange, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of housing chronically mentally ill persons.

(2) The department may dispose of community housing acquired under subsection (1) of this
section in a public or private sale, upon such terms and conditions as the department considers ad-
visable to increase the quality and quantity of community housing available for chronically mentally
ill persons. In any instrument conveying fee title to community housing, the department shall include
language that restricts the use of the community housing to housing for chronically mentally ill
persons. Such restriction is not a violation of ORS 93.270.

(3) When exercising the authority granted to the department under this section, the department
is not subject to ORS chapter 273 or ORS 270.100 to 270.190[,] or 276.900 to 276.915 or [279.800 to
279.833] sections 36 to 44 of this 2003 Act.

SECTION 282. ORS 427.335 is amended to read:

427.335. (1) The Department of Human Services may, through contract or otherwise, acquire,
purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, im-
prove and equip community housing for the purpose of providing care to individuals with mental
retardation or other developmental disability.

(2) The department may dispose of community housing acquired under subsection (1) of this
section in a public or private sale, upon such terms and conditions as the department considers ad-
visable to increase the quality and quantity of community housing for individuals with mental re-
tardation or other developmental disability. The department may include in any instrument
conveying fee title to community housing language that restricts the use of the community housing
to provide care for individuals with mental retardation or other developmental disability. Such re-
striction is not a violation of ORS 93.270. Any instrument conveying fee title to community housing
under this subsection shall provide that equipment in the community housing is a part of and shall
remain with the real property unless such equipment was modified or designed specifically for an
individual's use, in which case such equipment shall follow the individual.

(3) The department may provide financial assistance to a housing provider or a care provider
that wishes to provide community housing for individuals with mental retardation or other develop-
mental disability under rules promulgated by the department.

(4) The department may transfer its ownership of equipment to care providers.

(5) When exercising the authority granted to the department under this section, the department
is not subject to ORS 276.900 to 276.915 [or 279.800 to 279.833] or ORS chapters 270 and 273 or
sections 36 to 44 of this 2003 Act.

SECTION 283. ORS 452.620 is amended to read:

452.620. The State Department of Agriculture shall administer and enforce the provisions of ORS
452.610 to 452.630 and 452.990 (2), and in furtherance thereof is authorized:

(1) In accordance with the applicable provisions of ORS 183.310 to 183.550, to adopt rules to
carry out the provisions of ORS 452.610 to 452.630 and 452.990 (2). In making such rules the de-
partment shall consider:
   (a) The existence, availability and practicality of chemical, biological or other means for the
control or eradication of tansy ragwort, and the effectiveness thereof;
   (b) The effect on the immediate environment of the use of such chemical, biological or other
means for control or eradication; and
   (c) The overall benefit to be derived compared to the costs to be incurred.

(2) To cooperate with Oregon State University or any other person in the administration and
enforcement of ORS 452.610 to 452.630 and 452.990 (2).

(3) To collect, publish, disseminate and furnish information, statistics and advice concerning the
research, experimentation, control and eradication of tansy ragwort and the land management and
cultural practices recommended for such control and eradication.

(4) Notwithstanding any provisions of ORS 279.835 to 279.855 or 561.240 or [ORS chapter 279] sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act to the contrary, to enter into contracts with Oregon State University or any other person for the purpose of research, experimentation, control or eradication of tansy ragwort, to receive and expend funds pursuant to such contracts and to employ or authorize personnel to act on behalf of the department.

(5) To rear, propagate and release biological control agents, including insects or disease organisms, and to construct, purchase, maintain and operate facilities and equipment for such purpose.

(6) To control, or direct control of, predators and diseases of biological control agents, and to limit or prohibit the movement or use of pesticides or other agriculture chemicals which reasonably could damage or injure such biological control agents.

(7) To purchase, use and apply chemical control agents, including pesticides, and to purchase, maintain and operate any application equipment for such purpose.

(8) To regulate, restrict or prohibit the movement or sale of hay, seed, other agricultural crops or residues thereof, which are found to contain tansy ragwort or seeds thereof.

(9) To limit or prohibit the collection or taking of any biological control agents from public or private lands within this state.

(10) To develop appropriate measures for the control or eradication of tansy ragwort on any lands in this state.

(11) To have access to all lands within this state to carry out the provisions of ORS 452.610 to 452.630 and 452.990 (2), including survey, control and eradication activities and the establishment of quarantines in accordance with ORS 561.510 to 561.600.

(12) To request any person owning or controlling land within this state to control, prevent the spread of, or, when feasible, eradicate tansy ragwort, and to supervise such activities.

(13) To the extent funds are available for such purpose, to employ or use personnel of other agencies of this state, including but not limited to persons acting under work-release, rehabilitation or youth programs or persons employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (Public Law 93-567) or any other federal or state program intended primarily to alleviate unemployment or to advance research.

(14) To establish advisory committees to assist the department in carrying out the provisions of ORS 452.610 to 452.630 and 452.990 (2).

SECTION 284. ORS 455.465 is amended to read:

455.465. (1) In administering a building inspection program, the Department of Consumer and Business Services or a municipality shall:

(a) Designate at least three persons licensed under ORS 455.457 from whom the department or municipality will accept plan reviews; or

(b) Contract with a person licensed under ORS 455.457 and may include as a term of the contract a process for collection of plan review fees.

(2) For plan reviews conducted under subsection (1) of this section, the department or a municipality may:

(a) Establish the process for collecting fees from a person licensed under ORS 455.457; and

(b) Collect an administrative fee as provided in ORS 455.210.

(3) The provisions of [ORS 279.005 to 279.111] sections 1 to 46 and 47 to 87 of this 2003 Act and sections 89 to 96 and 97 to 136 of this 2003 Act, except section 77 of this 2003 Act, do not
apply to a personal services contract between the department or a municipality and a person licensed under ORS 455.457.

SECTION 285. ORS 459.235 is amended to read:

459.235. (1) Applications for permits shall be on forms prescribed by the Department of Environmental Quality. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by each local government unit having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) The Environmental Quality Commission shall establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit.

(3) In addition to the fees imposed under subsection (2) of this section, the commission shall establish a schedule of permit fees for the purpose of implementing this section and ORS 90.318, 182.375, [279.545 to 279.555, 279.570 to 279.650,] 459.005, 459.015, 459.247, 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.115, 459A.500 to 459A.685, 459A.695 and 459A.750 and sections 17, 21, 49, 78, 79, 81, 188 and 189 of this 2003 Act. The fees shall be based on the amount of solid waste received at the disposal site.

(4) Notwithstanding any other fee or surcharge imposed under ORS 459.005 to 459.437 or 459A.005 to 459A.120, for the disposal of solid waste, in order to encourage the use of suitable material other than virgin material for daily cover at a disposal site, the only fee that may be charged for the disposal of substitute material that is also used for daily cover is the permit fee established under this section.

SECTION 286. ORS 461.055 is amended to read:

461.055. (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, images and video over distance.

(b) “Commission” means the Oregon State Lottery Commission.

(c) “Telecommunications provider” means any person capable of providing advanced digital communications including, but not limited to, a telecommunications carrier as defined in ORS 133.721, a competitive telecommunications provider as defined in ORS 759.005, a cable television provider or an interstate telecommunications provider.

(2) Notwithstanding any other law, not later than October 1, 1998, the commission shall establish an emergency lottery computer database center at a location that is within 10 miles of the City of Burns.

(3) All telecommunications services for the emergency lottery computer database center shall be procured on public switched networks, insofar as the use of public switched networks does not compromise data security requirements.

(4) 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 and sections 89 to 96, 97 to 136, 137 to 143, 152 and 153 of this 2003 Act, except section 77 of this 2003 Act, the commission by contract shall acquire an advanced digital communications service for the emergency lottery computer database center from a telecommunications provider or a consortium of telecommunications providers capable of providing a network
that meets the data security requirements of the commission. Contracts under this section shall provide that all responsibility for construction, installation, operation and maintenance of the network shall remain with the contracting telecommunications provider.

(5) A telecommunications provider providing contract services to the commission according to subsection (4) of this section may sell or otherwise transfer any excess capacity of the network, if the sale or transfer does not compromise data security requirements of the commission.

SECTION 287. ORS 461.120 is amended to read:

461.120. (1)(a) Except as otherwise provided by law, the provisions of ORS 279.835 to 279.855 and ORS chapters [279,] 282 and 283 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to the Oregon State Lottery Commission unless otherwise provided by this chapter.

(b) Officers and employees of the Oregon State Lottery Commission are in the exempt service for purposes of ORS chapter 240 and other related statutes.

(c) ORS 276.004 (2), 276.021, 276.037, 276.093 to 276.097, 276.410 to 276.426, 276.428, 276.440, 291.038, 291.201 to 291.260 and 292.210 to 292.250 do not apply to the Oregon State Lottery Commission.

(d) ORS 293.075, 293.190, 293.205 to 293.225 and 293.275 do not apply to the Oregon State Lottery Commission.

(e) [ORS 279.053] Section 13 of this 2003 Act and ORS chapters 659 and 659A apply to the Oregon State Lottery Commission.

(f) Notwithstanding paragraph (a) of this subsection, the provisions of ORS 282.210 shall apply to the Oregon State Lottery Commission.

(2) The commission shall, in accordance with ORS 183.310 to 183.550, adopt and enforce rules to carry out the provisions of this chapter.

SECTION 288. ORS 468.035 is amended to read:

468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the federal government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.
(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the federal government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the Department of Human Services to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State Forestry Department from independently receiving moneys from a public or private agency for the purposes of preventing or controlling air or water pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative Services, when administering the establishment of such a contract on behalf of the Department of Environmental Quality under [ORS 279.712] sections 7 and 18 of this 2003 Act, shall subtract from the amount of any bid or proposal the hazardous waste management fees and solid waste fees that would be required by law to be paid to the department for waste that would be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be

[156]
established on the basis of reasonable preprocurement estimates of the amount of waste that would
be disposed of under the contract and that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less
than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
of amounts of waste that would be disposed of in projects of this character is technically challenging
and requires the application of professional discretion. Therefore, no award of a contract under this
subsection shall be subject to challenge, under [ORS 279.067] section 134 of this 2003 Act or oth-
otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
ishment, by or on behalf of the department, of master contracts by which the department engages
the services of a contractor over a period of time for the purpose of issuing work orders for the
performance of environmental activities on a project or projects for which the amounts of waste to
be disposed of were not reasonably identified at the inception of the master contracts. However, the
department shall require any contractor under a master contract to apply the subtraction for fees
under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
of Administrative Services from establishing contracts pursuant to this section through contracting
procedures authorized by [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003
Act that do not require the solicitation of bids or proposals.

SECTION 289. ORS 468.035, as amended by section 103, chapter 849, Oregon Laws 1999, is
amended to read:

468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
ment of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investiga-
tions, research and programs pertaining to the quality and purity of the air or the waters of the
state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
other states or the federal government, in respect to any proceedings and all matters pertaining to
control of air or water pollution or for the formation and submission to the legislature of interstate
pollution control compacts or agreements.

(d) May employ personnel, including specialists, consultants and hearing officers, purchase ma-
terials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS
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-
ters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including
the preparation and distribution of information regarding air and water pollution sources and con-
control.

(f) Shall provide advisory technical consultation and services to units of local government and
to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
(h) Shall serve as the agency of the state for receipt of moneys from the federal government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the Department of Human Services to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State Forestry Department from independently receiving moneys from a public or private agency for the purposes of preventing or controlling air or water pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative Services, when administering the establishment of such a contract on behalf of the Department of Environmental Quality under [ORS 279.712] sections 7 and 18 of this 2003 Act, shall subtract from the amount of any bid or proposal the hazardous waste management fees and solid waste fees that would be required by law to be paid to the department for waste that would be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable preprocurement estimates of the amount of waste that would
be disposed of under the contract and that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under [ORS 279.067] section 134 of this 2003 Act or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act that do not require the solicitation of bids or proposals.

SECTION 290. ORS 468.035, as amended by section 17, chapter 495, Oregon Laws 2001, is amended to read:

468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the federal government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.
(h) Shall serve as the agency of the state for receipt of moneys from the federal government or
other public or private agencies for the purposes of air and water pollution control, studies or re-
search and to expend moneys after appropriation thereof for the purposes given.
(i) Shall make such determination of priority of air or water pollution control projects as may
be necessary under terms of statutes enacted by the Congress of the United States.
(j) Shall seek enforcement of the air and water pollution laws of the state.
(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
454.755 and ORS chapters 468, 468A and 468B.
(L) Shall encourage the formulation and execution of plans in conjunction with air and water
pollution control agencies or with associations of counties, cities, industries and other persons who
severally or jointly are or may be the source of air or water pollution, for the prevention and
abatement of pollution.
(m) May determine, by means of field studies and sampling, the degree of air or water pollution
in various regions of the state.
(n) May perform such other and further acts as may be necessary, proper or desirable to carry
out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
468A and 468B.
(o) Shall coordinate any activities of the department related to a watershed enhancement project
approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
cooperating state and federal agencies participating in the project.
(2) Nothing in this section shall affect the authority of the Department of Human Services to
make and enforce rules:
(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and
(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.
(3) Nothing in this section shall prevent the State Department of Agriculture or the State
Forestry Department from independently receiving moneys from a public or private agency for the
purposes of preventing or controlling air or water pollution resulting from agricultural or
silvicultural activities or soil erosion, or for research related to such purposes.
(4)(a) In awarding a public contract under [ORS chapter 279] sections 1 to 46, 47 to 87 and 88
to 180 of this 2003 Act for a removal or remedial action pursuant to ORS 465.200 to 465.510, a
corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706
to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085,
468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department
of Administrative Services, when administering the establishment of such a contract on behalf of the
Department of Environmental Quality under [ORS 279.712] sections 7 and 18 of this 2003 Act, shall
subtract from the amount of any bid or proposal the hazardous waste management fees and solid
waste fees that would be required by law to be paid to the department for waste that would be
disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on
the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable
preprocurement estimates of the amount of waste that would be disposed of under the contract and
that would be subject to those fees.
(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under [ORS 279.067] section 134 of this 2003 Act or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act that do not require the solicitation of bids or proposals.

SECTION 291. ORS 468.035, as amended by section 103, chapter 849, Oregon Laws 1999, and section 18, chapter 495, Oregon Laws 2001, is amended to read:

468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the federal government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the federal government or
other public or private agencies for the purposes of air and water pollution control, studies or re-
search and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may
be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
compel compliance with any rule or standard adopted or any order or permit, or condition thereof,
issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water
pollution control agencies or with associations of counties, cities, industries and other persons who
severally or jointly are or may be the source of air or water pollution, for the prevention and
abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution
in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry
out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305,
454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project
approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the Department of Human Services to
make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
to 448.325, 624.010 to 624.120 and 624.310 to 624.430; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State
Forestry Department from independently receiving moneys from a public or private agency for the
purposes of preventing or controlling air or water pollution resulting from agricultural or
silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under [ORS chapter 279] sections 1 to 46, 47 to 87 and 88
to 180 of this 2003 Act for a removal or remedial action pursuant to ORS 465.200 to 465.510, a
corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706
to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085,
468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department
of Administrative Services, when administering the establishment of such a contract on behalf of the
Department of Environmental Quality under [ORS 279.712] sections 7 and 18 of this 2003 Act, shall
subtract from the amount of any bid or proposal the hazardous waste management fees and solid
waste fees that would be required by law to be paid to the department for waste that would be
disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on
the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable
preprocurement estimates of the amount of waste that would be disposed of under the contract and
that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under [ORS 279.067] section 134 of this 2003 Act or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act that do not require the solicitation of bids or proposals.

SECTION 292. ORS 468.265 is amended to read:

468.265. (1) In addition to any other powers which it may now have, each county shall have the following powers, together with all powers incidental thereto or necessary for the performance of the following:

(a) To acquire, whether by purchase, exchange, devise, gift or otherwise, establish, construct, improve, maintain, equip and furnish one or more pollution control facilities or any interest therein to be located, in whole or in part, within such municipality or in another municipality, if the other municipality gives written consent.

(b) To enter into a lease, sublease, lease-purchase, installment sale, sale, or agreement for any facility upon such terms and conditions as the governing body may deem advisable, provided the same shall at least fully cover all debt service requirements with respect to the facility and shall not conflict with the provisions of ORS 468.263 to 468.272.

(c) To sell, exchange, donate and convey to others any or all facilities upon such terms as the governing body may deem advisable, including the power to receive for any such sale the note or notes of the purchaser of the facilities or property whenever the governing body finds any such action to be in furtherance of the purposes of ORS 468.263 to 468.272.

(d) To issue revenue bonds for the purpose of carrying out any of its powers under ORS 468.263 to 468.272.

(e) Whenever the governing body finds such loans to be in the furtherance of the purposes of ORS 468.263 to 468.272 and subject always to the limitations contained in ORS 468.266, to make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of a facility and to charge and collect interest on such loans and pledge the proceeds thereof as security for the payment of the principal and interest of any bonds issued hereunder and any agreements made in connection therewith. A facility, in whole or in part, must be located in the municipality or in another municipality if the other municipality gives written consent.

(f) To mortgage and pledge any or all facilities or any part or parts thereof, whether then owned
or thereafter acquired, and to pledge the revenues, proceeds and receipts or any portion thereof
from a facility as security for the payment of the principal of and interest on any bonds so issued.

(g) To refund outstanding obligations incurred by an enterprise to finance the cost of a facility
when the governing body finds that such refinancing is in the public interest.

(h) To pay compensation for professional services and other services as the governing body shall
deem necessary to carry out the purposes of ORS 468.263 to 468.272.

(i) To acquire and hold obligations of any kind to carry out the purposes of ORS 468.263 to
468.272.

(j) To invest and reinvest funds under its control as the governing body shall direct.

(k) To enter into contracts and execute any agreements or instruments and to do any and all
things necessary or appropriate to carry out the purposes of ORS 468.263 to 468.272.

(L) To acquire, own, sell, assign or otherwise hold legal or equitable title to or an interest in
pollution control facilities or hold federal tax ownership of pollution control facilities.

(2) The county shall not have the power to operate any facility as a business other than as
owner pursuant to subsection (1)(L) of this section or as lessor or seller, nor shall it permit any
funds derived from the sale of bonds to be used by any lessee or purchaser of a facility as working
capital.

(3) Counties may jointly exercise any power or authority granted under ORS 468.263 to 468.272,
including, without limitation, the power to borrow money or issue bonds or notes.

(4) For the purpose of exercising the power and authority granted under ORS 468.263 to 468.272,
a county is not subject to the requirements of [ORS chapter 279] ORS 279.835 to 279.855 or
sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act.

SECTION 293. ORS 468A.707 is amended to read:

468A.707. (1) The Environmental Quality Commission by rule shall:

(a) Establish an asbestos abatement program that assures the proper and safe abatement of
asbestos hazards through contractor licensing and worker training.

(b) Establish the date after which a contractor must be licensed under ORS 468A.720 and a
worker must hold a certificate under ORS 468A.730.

(c) Establish criteria and provisions for granting an extension of time for contractor licensing
and worker certification, which may consider the number of workers and the availability of ac-
ccredited training courses.

(2) The program established under subsection (1) of this section shall include at least:

(a) Criteria for contractor licensing and training;

(b) Criteria for worker certification and training;

(c) Standardized training courses; and

(d) A procedure for inspecting asbestos abatement projects.

(3) In establishing the training requirements under subsections (1) and (2) of this section, the
commission shall adopt different training requirements that reflect the different levels of responsi-
bility of the contractor or worker, so that within the category of contractor, sublevels shall be
separately licensed or exempted and within the category of worker, sublevels shall be separately
certified or exempted. The commission shall specifically address as a separate class, those contrac-
tors and workers who perform small scale, short duration renovating and maintenance activity. As
used in this subsection, “small scale, short duration renovating and maintenance activity” means a
task for which the removal of asbestos is not the primary objective of the job, including but not
limited to:
(a) Removal of asbestos-containing insulation on pipes;
(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;
(c) Replacement of an asbestos-containing gasket on a valve;
(d) Installation or removal of a small section of drywall; or
(e) Installation of electrical conduits through or proximate to asbestos-containing materials.

(4) The Department of Environmental Quality, on behalf of the commission, shall consult with the Department of Consumer and Business Services and the Department of Human Services about proposed rules for the asbestos abatement program to assure that the rules are compatible with all other state and federal statutes and regulations related to asbestos abatement.

(5) The Department of Environmental Quality shall cooperate with the Department of Consumer and Business Services and the Department of Human Services to promote proper and safe asbestos abatement work practices and compliance with the provisions of ORS 279.025, 468.126, 468A.135 and 468A.700 to 468A.760 and section 114 of this 2003 Act.

SECTION 294. ORS 468A.745 is amended to read:

468A.745. The Environmental Quality Commission shall adopt rules to carry out its duties under ORS 279.025, 468A.135 and 468A.700 to 468A.760 and section 114 of this 2003 Act. In addition, the commission may:

(1) Allow variances from the provisions of ORS 468A.700 to 468A.755 in the same manner variances are granted under ORS 468A.075.
(2) Establish training requirements for contractors applying for an asbestos abatement license.
(3) Establish training requirements for workers applying for a certificate to work on asbestos abatement projects.
(4) Establish standards and procedures to accredit asbestos abatement training courses for contractors and workers.
(5) Establish standards and procedures for licensing contractors and certifying workers.
(6) Issue, renew, suspend and revoke licenses, certificates and accreditations.
(7) Determine those classes of asbestos abatement projects for which the person undertaking the project must notify the Department of Environmental Quality before beginning the project.
(8) Establish work practice standards, compatible with standards of the Department of Consumer and Business Services, for the abatement of asbestos hazards and the handling and disposal of waste materials containing asbestos.
(9) Provide for asbestos abatement training courses that satisfy the requirements for contractor licensing under ORS 468A.720 or worker certification under ORS 468A.730.

SECTION 295. ORS 468A.760 is amended to read:

468A.760. Any public agency requesting bids for a proposed project shall first make a determination of whether or not the project requires a contractor licensed under ORS 468A.720. The public agency shall include such requirement in the bid advertisement under ORS 279.025 section 114 of this 2003 Act.

SECTION 296. Section 2, chapter 934, Oregon Laws 1999, is amended to read:

Sec. 2. (1) When the Oregon Department of Administrative Services determines that alternative fuels are not readily available to a public agency or private entity that operates alternative fuel fleet vehicles, the department may provide alternative fuels to the public agency or private entity.
(2) To implement the authority conferred by this section, the department may:
(a) Enter into agreements with private entities.
(b) Enter into agreements with public agencies pursuant to ORS chapter 190.
(c) Adopt rules.
(d) Without adopting a rule, establish and adjust the prices for which the department will sell alternative fuels.

(3) ORS 190.240 does not apply to an agreement with a public agency under this section.

(4) [ORS chapter 279 does] Sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to an agreement with a private entity under this section.

(5) The price the department charges for an alternative fuel may not exceed the greater of:
(a) The cost to the department of making the alternative fuel available; or
(b) The reasonable price of the alternative fuel in the private markets near the public agency or private entity.

(6) On sales of alternative fuels to private entities, the department shall collect the taxes that would be due in a transaction between private entities.

(7) When adopting rules under this section, the department may take into account the differences in availability of alternative fuels at reasonably competitive prices in the different geographic regions of the state.

(8) Nothing in this section affects the department’s authority under ORS 283.315.

SECTION 297. ORS 475.225 is amended to read:

475.225. (1) The Department of Human Services shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:
(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
(d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse or abuse of controlled substances;
(e) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(2) The department shall encourage research on the medical use, misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of ORS 475.005 to 475.285 and 475.940 to 475.999, it may:
(a) Establish methods to assess accurately the physiological, psychological and social effects of controlled substances and identify their medical uses, relative hazard potential, and potential for abuse;
(b) Make studies and undertake programs of research to:
(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of ORS 475.005 to 475.285 and 475.940 to 475.999;
(B) Determine patterns of use, misuse and abuse of controlled substances and the social effects thereof; and
(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; or
(c) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(3) The department may enter into contracts for educational and research activities without performance bonds and without regard to [ORS 279.545 to 279.746] sections 7, 17, 18, 49, 78, 79, 80, 81, 188, 189, 190 and 191 of this 2003 Act.

SECTION 298. ORS 476.055 is amended to read:

476.055. (1) All moneys received by the State Fire Marshal shall be paid into the State Treasury, and shall be placed by the State Treasurer to the credit of the State Fire Marshal Fund, except those moneys received and accounted for under the provisions of [ORS 279.833] section 44 of this 2003 Act.

SECTION 299. ORS 565.080 is amended to read:

565.080. (1) The Director of the Oregon State Fair and Exposition Center shall have care of the Oregon State Fair and Exposition Center property and be entrusted with the direction of its business and financial affairs. The director shall prepare, adopt, publish and enforce all necessary rules for the management of the center and the Oregon State Fair, its meetings and exhibitions and for the guidance of its officers or employees. In carrying out any duties, functions or powers relating to property acquisition, capital construction or capital improvements for the center, the director shall contract for the performance of all services relating thereto with the Oregon Department of Administrative Services.

(2) Except as otherwise provided by this section, moneys in the State Fire Marshal Fund shall be available and constitute a continuing appropriation for the payment of any expense of the State Fire Marshal and for the payment of expenses of the Department of Public Safety Standards and Training and the Board on Public Safety Standards and Training relating to training programs concerning fire services and accreditation of fire service professionals. The State Fire Marshal shall keep on file an itemized statement of all expenses incurred by the State Fire Marshal and shall approve all disbursements as submitted for payment. Administrative expenditures made from the State Fire Marshal Fund shall not exceed a reasonable amount for the services performed.

SECTION 300. ORS 565.120 is amended to read:

565.120. The Director of the Oregon State Fair and Exposition Center is authorized to issue a license permitting the holder of the license to conduct any business therein named upon the grounds...
of the Oregon State Fair and Exposition Center. Issuance of licenses shall be in accordance with the
competitive bidding requirements of [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003
Act for the awarding of public contracts, to the extent those procedures are practicable. The Di-
rector of the Oregon Department of Administrative Services by rule may adopt and prescribe such
supplementary competitive bidding procedures as the director considers appropriate. The funds
arising therefrom shall become a part of the Oregon State Fair and Exposition Center Account.

SECTION 301. ORS 565.442 is amended to read:
565.442. (1) On or before October 31 of each year, a county fair board must submit to the County
Fair Commission, on a form approved by the commission, data for the period since the preceding
report date regarding:
(a) Use of the county fairgrounds by youths and adults;
(b) Participation in county fairs by youths and adults;
(c) Evidence of community involvement in county fairs;
(d) Attendance at county fair and nonfair events;
(e) The most recent fiscal year budget for the county fairgrounds and evidence of compliance
with open meeting law pursuant to ORS 192.610 to 192.690 in developing the budget;
(f) Compliance with public contracting and purchasing law under [ORS chapter 279] ORS 279.835
to 279.855 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act;
(g) The most recent business plan for the county fairgrounds;
(h) Maintenance of liability insurance in an amount satisfactory to the County Fair Commission;
and
(i) Use of state funds distributed to the county fairs.
(2) If a county fair board fails to timely submit the data required by subsection (1) of this sec-
tion, the county fair administered by that board is ineligible for state funding, including but not
limited to, funding under ORS 565.445 and section 2, chapter 796, Oregon Laws 1995, for a period
determined by the County Fair Commission, not to exceed one year. A county fair may appeal a
commission decision under this subsection to the Director of Agriculture, whose decision is subject
to ORS 183.310 to 183.550.
(3) The County Fair Commission may contract for the collection and summarizing of data re-
quired to be submitted under subsection (1) of this section. The commission shall send a summary
of the data to the Director of Agriculture.

SECTION 302. ORS 576.306 is amended to read:
576.306. (1) The commission may contract with an independent contractor for the performance
of any services. However, the commission may not contract with an independent contractor to per-
form the discretionary functions of the commission. ORS [chapters] chapter 240 and [279] 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 commission in obtaining such services, except that no contract for such services shall take effect
until approved by the State Department of Agriculture as provided in subsection (7) of this section.
(2) The commission may rent space or acquire supplies and equipment from any contractor as
described in subsection (1) of this section. ORS chapters 276, 278[, 279] and 283 and ORS 279.835
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
to such rentals or acquisitions.
(3) Except as provided in this section, a contractor described in subsection (1) of this section
shall be considered an independent contractor and not an employee, eligible employee, public em-
ployee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 240,
243, 291, 292, 316 and 652.

(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.

(5) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(6) A contractor described in subsection (1) of this section shall not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(7) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(9) Except as provided in subsection (8) of this section, the department may promulgate any rules necessary for the administration and enforcement of this section.

SECTION 303. ORS 576.307 is amended to read:

576.307. (1) Upon request by the commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal services required by the commission and for the furnishing of professional services rendered by independent contractors with the state to the commission under [ORS 279.545 to 279.748] sections 6, 7, 17, 18, 49, 78, 79, 80, 81, 188, 189, 190 and 191 of this 2003 Act.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products, agricultural or manufactured, shall not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under [ORS 279.828] section 42 of this 2003 Act.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.
(3) Upon request by the commission, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services.

SECTION 304. ORS 577.320 is amended to read:

577.320. (1) Upon request by the Oregon Beef Council, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal services required by the council and for the furnishing of professional services rendered by independent contractors with the state to the council under [ORS 279.545 to 279.748] sections 6, 7, 17, 18, 49, 78, 79, 80, 81, 188, 189, 190 and 191 of this 2003 Act.

(b) Provide for the furnishing of printing and multiple duplication work to the council under ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products, agricultural or manufactured, shall not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the council under [ORS 279.828] section 42 of this 2003 Act.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the council under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the council under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the council under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the council under ORS 283.305 to 283.350.

(2) The council shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by the council, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the council. The council shall pay to the Oregon Department of Administrative Services such amount for services performed by that department under this subsection as such department determines is adequate to reimburse it for the costs necessary to perform such services.

SECTION 305. ORS 651.060 is amended to read:

651.060. (1) The Commissioner of the Bureau of Labor and Industries may issue subpoenas, subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the duties required under ORS [279.348 to 279.380,] 651.030, 651.050, 651.120, 651.170, 652.330, 653.055, 658.405 to 658.503 and 658.705 to 658.850 and sections 165 to 179 of this 2003 Act and wage claims arising under ORS 653.305 to 653.350 and in all contested cases scheduled for hearing by the Bureau of Labor and Industries pursuant to ORS 183.310 to 183.550. Such testimony shall be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2), which payment shall be made from the fund
appropriated for the use of the bureau, and in the manner provided in ORS 651.170 for the payment of other expenses of the bureau.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other assistants or personnel as may be necessary to carry into effect the powers and duties of the commissioner or of the Bureau of Labor and Industries and may prescribe the duties and responsibilities of such employees. The commissioner may delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and to the other assistants employed under this subsection for the purpose of transacting the business of the commissioner’s office or of the bureau. In the absence of the commissioner, the deputy commissioner and the other assistants whom the commissioner employs shall have full authority, under the commissioner’s direction, to do and perform any duty which the law requires the commissioner to perform. However, the commissioner shall be responsible for all acts of the deputy commissioner and of the assistants employed under this subsection.

(4) In accordance with any applicable provisions of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries may adopt such reasonable rules as may be necessary to administer and enforce any statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

(5) The Commissioner of the Bureau of Labor and Industries may conduct and charge and collect fees for public information programs pertaining to any of the statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

SECTION 306. ORS 651.120 is amended to read:

651.120. (1) The Commissioner of the Bureau of Labor and Industries may:
(a) Enter any factory, mill, office, workshop, or public or private works, at any reasonable time, for the purpose of gathering facts such as are contemplated by ORS 279.355, 652.330, 653.045, 653.540 and 659A.835 and section 170 of this 2003 Act.
(b) Examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places, and make a record thereof.
(2) No owner or occupant, or the respective agent, of any factory, mill, office, or workshop, or public or private works, shall refuse to allow an inspector or employee of the Bureau of Labor and Industries to enter.

SECTION 307. ORS 651.170 is amended to read:

651.170. The Commissioner of the Bureau of Labor and Industries may incur such expense and employ such clerical aids as may be necessary to carry out ORS 279.352 (2) and sections 165 to 179 of this 2003 Act; and
651.185. The Prevailing Wage Education and Enforcement Account is created in the General Fund of the State Treasury. All moneys in the account are appropriated continuously to the Commissioner of the Bureau of Labor and Industries to:
(1) Administer and provide investigations under and enforce the provisions of [ORS 279.348 to 279.380] sections 165 to 179 of this 2003 Act;
(2) Provide educational programs on public contracting and purchasing law under [ORS chapter 279] ORS 279.835 to 279.855 and sections 1 to 46, 47 to 87 or 88 to 180 of this 2003 Act; and
(3) Conduct surveys to determine prevailing wages.

SECTION 309. ORS 652.332 is amended to read:

652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has received a wage claim complaint which the commissioner could seek to collect through court action, the commissioner may instead elect to seek collection of such claim through administrative proceedings in the manner provided in this section, subject to the employer’s right to request a trial in a court of law. The commissioner may join in a single administrative proceeding any number of wage claims against the same employer. Upon making such election, the commissioner shall serve upon the employer and the wage claimant an order of determination directing the employer to pay to the commissioner the amount of the wage claim and any penalty amounts under ORS [279.356 (1),] 652.150 and 653.055 (1) and section 171 (1) of this 2003 Act determined to be owed the wage claimant. Service shall be made in the same manner as service of summons or by certified mail, return receipt requested. The order of determination shall include:

(a) A reference to the particular sections of the statutes or rules involved;

(b) A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

(c) A statement of the party’s right to request a contested case hearing and to be represented by counsel at such a hearing, and of the employer’s right to a trial in a court of law, provided that any request for a contested case hearing or trial in a court of law must be received by the commissioner within 20 days after receipt by the party of the order of determination;

(d) A statement that the employer must, within 20 days after receipt of the order of determination, either pay in full the wage claim and any penalties assessed, or present to the commissioner a written request for a contested case hearing or a trial in a court of law as provided in this section;

(e) A statement that failure to make a written request to the commissioner for a contested case hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver of the right thereto and a waiver of the right to a trial by jury; and

(f) A statement that unless the written requests provided for in subsection (1)(c) of this section are received by the commissioner within the time specified for making such requests, the order of determination shall become final.

(2) Upon failure of the employer to pay the amount specified in the order of determination or to request a trial in a court of law within the time specified, and upon failure of any party to request a contested case hearing within the time specified, the order of determination shall become final.

(3) If a party makes a timely request for a contested case hearing, a hearing shall be held in accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the commissioner’s designee. The commissioner shall adopt rules for such hearing. In any hearing before the commissioner’s designee, the designee is authorized to issue the final order in the case. If the employer makes a timely request for a trial in a court of law, the commissioner may proceed against the employer as provided in ORS 652.330 (1)(b).

(4) Final administrative orders issued in a wage claim proceeding are subject to review by the Court of Appeals as provided in ORS 183.480 and 183.482.

(5) When an order issued under this section becomes final, it may be recorded in the County Clerk Lien Record in any county of this state. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.
(6) Where the wage claim arose out of work performed by the claimant for the employer on any public works project to which [ORS 279.350 or 279.352] section 167 or 168 of this 2003 Act applies, and a state agency holds sufficient funds as retainage on such project to pay such claim or any portion thereof, the state agency may, at the request of the commissioner, pay to the commissioner from the retainage all or part of the amount due on the claim under the final order.

SECTION 310. ORS 656.753 is amended to read:

656.753. (1) Except as otherwise provided by law, the provisions of ORS 279.835 to 279.855 and ORS chapters 240, 276, [279] 282, 283, 291, 292 and 293 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to the State Accident Insurance Fund Corporation.

(2) In carrying out the duties, functions and powers imposed by law upon the State Accident Insurance Fund Corporation, the board of directors or the manager of the State Accident Insurance Fund Corporation may contract with any state agency for the performance of such duties, functions and powers as the corporation considers appropriate.

(3) Notwithstanding subsection (1) or (2) of this section, ORS 293.240 except for appeals pursuant to ORS 737.318, ORS 293.260, 293.262 and 293.505 (2) shall apply to the directors, manager, assistants and accounts of the State Accident Insurance Fund Corporation and any subsidiary corporation formed or acquired by the State Accident Insurance Fund Corporation.

(4) Notwithstanding subsection (1) or (2) of this section, ORS 243.305[108], 279.053 and 659A.012 and section 13 of this 2003 Act apply to the directors, manager and employees of the State Accident Insurance Fund Corporation.

SECTION 311. ORS 657.665 is amended to read:

657.665. (1) Information secured from employing units, employees or other individuals pursuant to this chapter:

(a) Shall be confidential and for the exclusive use and information of the Director of the Employment Department in the discharge of duties and shall not be open to the public (other than to public employees in the performance of their public duties under state or federal laws for the payment of unemployment insurance benefits and to public employees in the performance of their public duties under the recognized compensation and retirement, relief or welfare laws of this state), except to the extent necessary for the presentation of a claim and except as required by the regulations of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social Security Act, as amended.

(b) Shall not be used in any court in any action or proceeding pending therein unless the director or the state is a party to such action or proceedings or the proceedings concern the establishment, enforcement or modification of a support obligation and support services are being provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

(2) However, any claimant or legal representative, at a hearing before a hearing officer, shall be supplied with information from such records to the extent necessary for the proper presentation of a claim.

(3) Notwithstanding subsection (1) of this section, information secured from employing units pursuant to this chapter may be released:

(a) To agencies of this state, and political subdivisions acting alone or in concert in city, county, metropolitan, regional or state planning to the extent necessary to properly carry out governmental planning functions performed under applicable law. Information provided such agencies shall be confidential and shall not be released by such agencies in any manner that would be identifiable as
A-Eng. HB 2341

to individuals, claimants, employees or employing units. Costs of furnishing information pursuant to
this subsection not prepared for the use of the Employment Department shall be borne by the parties
requesting the information; and

(b) In accordance with ORS 657.673.

(4) Nothing in this section shall prevent the Employment Department from providing names and
addresses of employing units to the Bureau of Labor and Industries for the purpose of disseminating
information to employing units. The names and addresses provided shall be confidential and shall
not be used for any other purposes. Costs of furnishing information pursuant to this subsection not
prepared for the use of the Employment Department shall be borne by the bureau.

(5) Nothing in this section shall prevent the Employment Department from providing to the
Commissioner of the Bureau of Labor and Industries, for the purpose of performing duties under
[ORS 279.348 to 279.380] sections 165 to 179 of this 2003 Act, the names, addresses and industrial
codes of employer units, the number of employees each unit employs during a given time period and
the firm number assigned to employer units by the Employment Department. Information so provided
shall be confidential and shall not be released by the commissioner in any manner that would ident-
ify such employing units except to the extent necessary to carry out the purposes of this subsection
and as provided in subsection (1)(b) of this section. Costs of furnishing information pursuant to this
subsection not prepared for the use of the Employment Department shall be borne by the bureau.

(6) Nothing in this section shall prevent the Employment Department from providing information
required under ORS 657.660 (3) and (4) to the Public Employees Retirement System for the purpose
of determining the eligibility of members of the retirement system for disability retirement allow-
ances under ORS chapter 238. The information provided shall be confidential and shall not be used
for any other purposes. Costs of furnishing information pursuant to this subsection shall be borne
by the Public Employees Retirement System.

(7) Any officer or employee of the Director of the Employment Department, who, except with
authority of the director or pursuant to regulations, or as otherwise required by law, shall disclose
confidential information under this section, thereafter may be disqualified from holding any ap-
pointment or employment by the director.

(8) Nothing in this section shall prevent the Employment Department from providing information
to the Department of Revenue for the purpose of performing its duties under ORS 293.250, or the
revenue and tax laws of this state. Information provided may include names and addresses of em-
ployers and employees and payroll data of employers and employees. Information so provided shall
be confidential and shall not be released by the Director of the Department of Revenue in any
manner that would identify such employing unit or employee except to the extent necessary to carry
out its duties under ORS 293.250 or in auditing or reviewing any report or return required or per-
mitted to be filed under the revenue and tax laws administered by the department. However, the
Director of the Department of Revenue shall not disclose any information received to any private
collection agency or for any other purpose. Costs of furnishing information pursuant to this sub-
section not prepared for the use of the Employment Department shall be borne by the Department
of Revenue.

(9) Nothing in this section shall prevent the Employment Department from providing information
to the Department of Consumer and Business Services for the purpose of performing its duties under
ORS chapter 656. Information provided may include names and addresses of employers and employ-
ees and payroll data of employers and employees. Information so provided shall be confidential and
shall not be released by the Director of the Department of Consumer and Business Services in any
manner that would identify such employing unit or employee except to the extent necessary to carry out its duties under ORS chapter 656. However, the Director of the Department of Consumer and Business Services shall not disclose any information received to any private collection agency or for any other purpose. Costs of furnishing information pursuant to this subsection not prepared for the use of the Employment Department shall be borne by the Department of Consumer and Business Services.

(10) Nothing in this section shall prevent the Employment Department from providing information to the Construction Contractors Board for the purpose of performing its duties under ORS chapter 701. Information provided to the board may include names and addresses of employers and status of their compliance with this chapter.

(11) Nothing in this section shall prevent the Employment Department from providing information to the State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414. Information so provided shall be the employer or agent name, address, telephone number and standard industrial classification. Information so provided shall be confidential and shall not be released by the State Fire Marshal in any manner that would identify such employing units except to the extent necessary to carry out duties under ORS 453.307 to 453.414. Costs of furnishing information pursuant to this subsection not prepared for the use of the Employment Department shall be borne by the office of the State Fire Marshal.

(12) Nothing in this section shall prevent the Employment Department from providing information to the Oregon Student Assistance Commission for the purposes of performing the commission’s duties under ORS chapter 348 and Title IV of the Higher Education Act of 1965, as amended. Information provided may include names and addresses of employers and employees and payroll data of employers and employees. Information so provided shall be confidential and shall not be released by the Oregon Student Assistance Commission in any manner that would identify such employing unit or employee except to the extent necessary to carry out duties under ORS chapter 348 or Title IV of the Higher Education Act of 1965, as amended. Costs of furnishing information pursuant to this subsection not prepared for the use of the Employment Department shall be borne by the Oregon Student Assistance Commission.

(13) Any person or officer or employee of an entity to whom information is disclosed or given by the Employment Department pursuant to this section, who divulges or uses such information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure, may be disqualified from holding any appointment or employment, or performing any service under contract, with the state agency employing that person or officer.

SECTION 312. ORS 657.710 is amended to read:

657.710. (1) The Director of the Employment Department shall establish and maintain such free public employment offices, including such branch or affiliate offices, as may be necessary for the proper administration of this chapter and for participation in Oregon’s workforce investment system.

(2) The director may enter into such contracts or memoranda of understanding with designated workforce investment system partners, including but not limited to other states and governments, government entities, state agencies, units of local government, intergovernmental entities, community colleges and persons, as appropriate to administer the workforce investment system.

(3) The director may enter into contracts or memoranda of understanding to share confidential information as authorized under federal law and regulations for purposes of a national performance accounting system, including receiving and making available wage records to the extent the wage records are required by another state to carry out that state’s workforce investment system per-
formance plan.

(4) All moneys made available by or received by the state for the Oregon State Employment Service shall be paid to and expended from the Unemployment Compensation Administration Fund.

(5) Each [public] contracting agency shall provide to the director timely information pertinent to all existing job vacancies over which the [public] contracting agency exercises employment control and for which there will be open recruitment. Such information shall be made available to the public by the director. As used in this subsection, “[public] contracting agency” has the meaning given that term in [ORS 279.011] section 2 of this 2003 Act.

SECTION 313. ORS 657.732 is amended to read:

657.732. (1) As used in this section, “participating state agency or organization” means:

(a) The Employment Department;

(b) The Adult and Family Services Division, the Vocational Rehabilitation Division and other divisions and offices within the Department of Human Services that have been approved by the Director of the Employment Department, in consultation with the Education and Workforce Policy Advisor, to participate in the Interagency Shared Information System;

(c) The Department of Education;

(d) The Oregon University System;

(e) The Department of Community Colleges and Workforce Development; and

(f) Other state agencies, other governmental entities or private organizations that have applied to be participating state agencies or organizations and have been approved by the Director of the Employment Department, in consultation with the Education and Workforce Policy Advisor, to participate in the Interagency Shared Information System.

(2) There is established the Interagency Shared Information System. The purpose of the system is to collect, analyze and share information for the development of statistical and demographic data to facilitate the creation of strategies for the purpose of improving the education, training and employment programs related to enhancing Oregon’s workforce system. The system shall share aggregate information with a participating state agency or organization to allow the agency or organization to develop policy, evaluate policy and plan and measure performance for the purpose of improving the education, training and employment programs related to enhancing Oregon’s workforce system.

(3) The Director of the Employment Department shall administer and, in consultation with the Education and Workforce Policy Advisor, shall oversee the development of the Interagency Shared Information System. Participating state agencies or organizations shall enter into an interagency or other applicable agreement with the Director of the Employment Department, as administrator of the system, that:

(a) Establishes protocols for the collection and sharing of data in the system;

(b) Establishes safeguards for protecting the confidentiality of data in the system;

(c) Includes provisions regarding informed consent for sharing information obtained from individuals; and

(d) Provides for the sharing of costs for designing and maintaining the system.

(4) Every participating state agency or organization shall provide information to the Interagency Shared Information System. Information shall be provided in a format that encodes identifying data, including the client’s Social Security number, using a formula unique to the participating state agency or organization that shall not be disclosed to the system.

(5) In disclosing Social Security numbers to the Interagency Shared Information System under
subsection (4) of this section, every participating state agency or organization shall comply with any
state and federal laws that govern the collection and use of Social Security numbers by a participating state agency or organization and any additional requirements specified by the director, in consultation with the Education and Workforce Policy Advisor, that are included in the agreement entered into under subsection (3) of this section.

(6) The information in the Interagency Shared Information System is not a public record for purposes of ORS 192.410 to 192.505. For purposes of ORS 192.410 to 192.505, the information submitted to the system and the information received from the system is a public record, and the custodian of such information is the participating state agency or organization that submits or receives the information. If the participating state agency or organization receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505. As custodian, the Employment Department shall limit the disclosure of, or refuse to disclose, aggregate or summary level information when a small number of aggregated records or some other factor creates a reasonable risk that the identity of individuals may be discovered or disclosed. The department shall refer all other requests for disclosure of system information to the public body that is the custodian of the information.

(7) The Employment Department may charge a reasonable fee pursuant to ORS 192.440 for the disclosure of reports to individuals or state agencies, governmental entities or private organizations that submit data to the system and are not participating state agencies or organizations.

(8) If a participating state agency or organization prepares or acquires a record that is confidential under federal or state law, including ORS 192.502 (2), the participating state agency or organization does not violate state confidentiality laws by providing the information described in this section to the Interagency Shared Information System. Notwithstanding the provisions of ORS 279.355 (3), 279.359 (3), 657.665 and 660.339 and sections 170 (3) and 173 (4) of this 2003 Act, the Bureau of Labor and Industries, the Department of Community Colleges and Workforce Development and the Employment Department are authorized to provide information to the Interagency Shared Information System.

(9) Notwithstanding the provisions of ORS 192.410 to 192.505, a participating state agency or organization shall not allow public access to information received from the Interagency Shared Information System that identifies a particular individual unless required by law. Any participating state agency or organization shall limit the disclosure of, or refuse to disclose, aggregate or summary level information when a small number of aggregated records or some other factor creates a reasonable risk that the identity of individuals may be discovered or disclosed.

(10) Any individual who, without proper authority, discloses confidential information under this section may be disqualified from holding any appointment or employment with the State of Oregon. The Employment Department shall adopt by rule procedures to prevent disclosure of confidential information submitted to the Interagency Shared Information System.

SECTION 314. ORS 657.734 is amended to read:

657.734. (1) The Employment Department may establish a system for the purpose of collecting, analyzing and sharing statistical and demographic data for the development and reporting of the workforce system performance measures required by the federal Workforce Investment Act of 1998 (P.L. 105-220), and for Oregon’s comprehensive workforce system-wide performance indicators. The performance measures system is intended to share the data, by agreement, with all Workforce Investment Act mandatory partners and one-stop delivery system partners. The performance measures
system shall not contain data submitted exclusively for use in the Interagency Shared Information System.

(2) The Director of the Employment Department shall administer and, in consultation with the Education and Workforce Policy Advisor, shall oversee the development of the performance measures system. Mandatory and one-stop system partners, which may include state agencies, other governmental entities and private organizations, shall be designated as participants in the performance measures system by rule of the Employment Department, in consultation with the Education and Workforce Policy Advisor. Mandatory and one-stop system partners shall enter into an interagency or other applicable agreement with the Director of the Employment Department that:

(a) Establishes protocols for the collection and sharing of data in the system;
(b) Establishes safeguards for protecting the confidentiality of data in the system;
(c) Includes provisions regarding informed consent for sharing information obtained from individuals; and
(d) Provides for the sharing of costs for maintaining the system.

(3)(a) All individual record information in the performance measures system shall be confidential and shall not be disclosed as a public record pursuant to the provisions of ORS 192.410 to 192.505. As administrator of the system, the Director of the Employment Department may view all data or individual record information in the performance measures system. Mandatory and one-stop system partners shall not allow public access to information received from the system that identifies a particular individual unless required by law. Mandatory and one-stop system partners shall limit the disclosure of, or refuse to disclose, aggregate or summary level information when a small number of aggregated records or some other factor creates a reasonable risk that the identity of individuals may be discovered or disclosed.

(b) Mandatory and one-stop system partners shall provide information in a format that encodes identifying data, including the client’s Social Security number, using a formula unique to the mandatory or one-stop system partner. In disclosing Social Security numbers to the performance measures system, mandatory and one-stop system partners shall comply with any state and federal laws that govern the collection and use of Social Security numbers by the mandatory or one-stop system partner and any additional requirements specified by the director, in consultation with the Education and Workforce Policy Advisor, that are included in the agreement entered into under subsection (2) of this section.

(4) The information in the performance measures system is not a public record for purposes of ORS 192.410 to 192.505. For purposes of ORS 192.410 to 192.505, the information submitted to the system and the information received from the system is a public record, and the custodian of such information is the mandatory or one-stop system partner that submits or receives the information. If the mandatory or one-stop system partner receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505. As custodian, the Employment Department shall limit the disclosure of, or refuse to disclose, aggregate or summary level information when a small number of aggregated records or some other factor creates a reasonable risk that the identity of individuals may be discovered or disclosed. The department shall refer all other requests for disclosure of system information to the public body that is the custodian of the information.

(5) The Employment Department may charge a reasonable fee pursuant to ORS 192.440 for the disclosure of reports containing only aggregate data to individuals or state agencies, governmental
entities or private organizations that are not mandatory or one-stop system partners.

(6) If a mandatory or one-stop system partner prepares or acquires a record that is confidential under federal or state law, including ORS 192.502 (2), the mandatory or one-stop system partner does not violate state confidentiality laws by providing the information described in this section to the performance measures system. Notwithstanding the provisions of ORS [279.355 (3), 279.359 (3),] 657.665 and 660.339 and sections 170 (3) and 175 (4) of this 2003 Act, the Bureau of Labor and Industries, the Department of Community Colleges and Workforce Development and the Employment Department are authorized to provide information to the performance measures system.

(7) Any individual who, without proper authority, discloses confidential information under this section may be disqualified from holding any appointment or employment with the State of Oregon. The Employment Department shall adopt by rule procedures to prevent disclosure of confidential information submitted to the performance measures system.

SECTION 315. ORS 671.613 is amended to read:

671.613. (1) The failure of a landscaping business to comply with the provisions of this section and ORS [279.348 to 279.363,] 656.021, 657.665, 670.600, 671.520, 671.525, 671.530 and 671.575 and sections 165 to 179 of this 2003 Act or to be in conformance with the provisions of ORS chapter [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 suspension of the landscaping business license, revocation of the landscaping business license, refusal to issue or reissue a landscaping business license, assessment of a civil penalty as set forth in ORS 671.955 or a combination of these sanctions.

(2) Any action against a landscaping business under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

SECTION 316. ORS 674.349 is amended to read:

674.349. (1) Except as otherwise provided by law, the provisions of ORS chapters 240, 276, [279,] 282, 283, 291, 292 and 293 and sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act do not apply to the Appraiser Certification and Licensure Board. The board is subject to all other statutes governing a state agency that do not conflict with ORS 674.346 to 674.367, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS 183.310 to 183.550. The employees of the board are included within the Public Employees Retirement System.

(2) Notwithstanding subsection (1) of this section, the following provisions shall apply to the board:

(a) ORS 240.309 (1) to (6) and 240.321;

(b) ORS 279.800 to 279.830;

(c) ORS 279.835 to 279.855;

(d) Sections 36 to 44 of this 2003 Act;

(e) ORS 293.240.

(3) In carrying out the duties, functions and powers of the board, the board may contract with any state agency for the performance of duties, functions and powers as the board considers appropriate. A state agency shall not charge the board an amount that exceeds the actual cost of those services. ORS 674.346 to 674.367 do not require a state agency to provide services to the board other than pursuant to a voluntary interagency agreement or contract.

(4) The board shall adopt personnel policies and contracting and purchasing procedures. The Oregon Department of Administrative Services shall review those policies and procedures for compliance with applicable state and federal laws and collective bargaining contracts.
(5) Except as otherwise provided by law, members and employees of the board are eligible to receive the same benefits as state employees and are entitled to retain their State of Oregon hire dates, transfer rights and job bidding rights, all without loss of seniority, and to the direct transfer of all accumulated state agency leaves.

SECTION 317. ORS 674.358 is amended to read:
674.358. In addition to other powers granted by ORS 674.346 to 674.367 and by the statutes specifically applicable to the Appraiser Certification and Licensure Board, the board may:
(1) Sue and be sued in its own name.
(2) Notwithstanding [ORS chapter 279] sections 1 to 46, 47 to 87 and 88 to 180 of this 2003 Act, enter into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and dispose of real and personal property.
(3) Fix a per diem amount to be paid to a board member for each day or portion thereof during which the member is actually engaged in the performance of official duties. Board members may also receive actual and necessary travel expenses or other expenses actually incurred in the performance of their duties. If an advisory council or peer review committee is established under the law that governs the board, the board may also fix and pay amounts and expenses for members of the council or committee.
(4) Set the amount of any fee required by statute and establish by rule and collect other fees as determined by the board. Fees shall not exceed amounts necessary for the purpose of carrying out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this subsection, the board shall hold a public hearing prior to adopting or modifying any fee without regard to the number of requests received to hold a hearing. The board shall give notice to all licensees of the board prior to holding a hearing on the adoption or modification of any fee. The board may adopt fees in conjunction with the budget adoption process described in ORS 674.352.
(5) Subject to any other statutory provisions, adopt procedures and requirements governing the manner of making application for issuance, renewal, suspension, revocation, restoration and related activities concerning licenses that are under the jurisdiction of the board.

SECTION 318. ORS 701.227 is amended to read:
701.227. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall not be considered qualified to hold or participate in a public contract for a public improvement upon receipt of information from a public contracting agency or from any person who supplied labor or materials in connection with a public contract for a public improvement indicating that the contractor or subcontractor has not made payment to persons who supplied labor or materials within 60 days after the date when the payment was received by the contractor or subcontractor and that the payment was not a subject of a good faith dispute as defined in [ORS 279.445] section 151 of this 2003 Act.
(2) If the board determines after notice and opportunity for hearing that a contractor or a subcontractor did not make payment to persons who supplied labor or materials in connection with a public contract for a public improvement within 60 days after the date when payment was received by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the list of persons who have been determined not to be qualified to hold or participate in a public contract for a public improvement. The board may not place a contractor or subcontractor on the list if the only reason that the contractor or subcontractor did not make payment to a person when payment was due is that the contractor or subcontractor did not receive payment from the public contracting agency, contractor or subcontractor when payment was due. The contractor or subcon-
tractor shall remain on the list for a period of not less than six months from the date when the board received the information under subsection (1) of this section.

(3) If the board determines that the claim made against a contractor or subcontractor was made in bad faith or was false, the person filing the bad faith or false claim shall be placed on the list of persons who have been determined not to be qualified to hold or participate in a public contract for a public improvement.

(4) The board shall create and maintain a list of contractors and subcontractors who have been determined not to be qualified to hold or participate in a public contract for a public improvement under subsection (2) of this section. The list may include any corporation, partnership or other business entity of which the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner or officer of the business. The board shall provide access to the list to all public contracting agencies, contractors and subcontractors.

**SECTION 319.** ORS 701.410 is amended to read:

701.410. As used in ORS [279.400, 279.435,] 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(1) “Construction” includes:

(a) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling in and other preparation of land for the making and placement of building, structure or superstructure;

(b) Creation or making of a building, structure or superstructure; and

(c) Alteration, partial construction and repairs done in and upon a building, structure or superstructure.

(2) “Contractor” includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(3) “Owner” includes a person who is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and who enters into an agreement with a contractor for the construction.

(4) “Retainage” means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

(5) “Subcontractor” includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans.

**SECTION 320.** ORS 701.435 is amended to read:

701.435. (1) When a contractor on a public contract deposits bonds or securities under [ORS 279.420 (3)] section 148 (3) of this 2003 Act, if the subcontract price exceeds $50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit
the accumulated retainage in an interest-bearing account under [ORS 279.420 (4)] section 148 (4) of this 2003 Act, the contractor, within 30 days following payment of the final amount due for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor’s proportional share of the interest earnings that accrued to the contractor as a result of that election. A subcontractor’s share of the total amount of interest earnings under this subsection shall be determined by the proportion which the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

(a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and

(b) The amount of interest earnings due the subcontractor exceeds $100.

(3) If the contractor incurs additional costs as a result of the exercise of the options described in subsections (1) and (2) of this section, the contractor may recover such costs from the subcontractor by reduction of the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

SECTION 321. ORS 701.440 is amended to read:

701.440. ORS [279.400, 701.410, 701.420 and 701.430] 701.410, 701.420 and 701.430 and section 147 of this 2003 Act do not apply when the owner is the United States or any agency thereof or when the construction is paid for, in whole or in part, with federal moneys.

SECTION 322. ORS 705.145 is amended to read:

705.145. (1) There is created in the State Treasury a fund to be known as the Consumer and Business Services Fund, separate from the General Fund. All moneys collected or received by the Department of Consumer and Business Services, except moneys collected pursuant to ORS 735.612 and those moneys required to be paid into the Workers’ Benefit Fund, shall be paid into the State Treasury and credited to the Consumer and Business Services Fund. Moneys in the fund may be invested in the same manner as other state moneys and any interest earned shall be credited to the fund.

(2) The department shall keep a record of all moneys deposited in the Consumer and Business Services Fund that shall indicate, by separate account, the source from which the moneys are derived, the interest earned and the activity or program against which any withdrawal is charged.

(3) Should moneys credited to any one account be withdrawn, transferred or otherwise used for purposes other than the program or activity for which the account is established, interest shall accrue on the amount withdrawn from the date of withdrawal and until such funds are restored.

(4) Moneys in the fund shall provide and are appropriated for the administrative expenses of the department and for its expenses in carrying out its functions and duties under any provision of law.

(5) Except as provided in ORS 705.165, it is the intention of the Legislative Assembly that the performance of the various duties and functions of the department in connection with each of its
programs shall be financed by the fees, assessments and charges established and collected in connection with those programs.

(6) There is created by transfer from the Consumer and Business Services Fund a revolving administrative account in the amount of $100,000. The revolving account shall be disbursed by checks or orders issued by the director or the Workers’ Compensation Board and drawn upon the State Treasury, to carry on the duties and functions of the department and the board. All checks or orders paid from the revolving account shall be reimbursed by a warrant drawn in favor of the department charged against the Consumer and Business Services Fund and recorded in the appropriate subsidiary record.

(7) For the purposes of ORS chapter 656, the revolving account created pursuant to subsection (6) of this section may also be used to:

(a) Pay compensation benefits; and

(b) Refund to employers amounts paid to the Consumer and Business Services Fund in excess of the amounts required by ORS chapter 656.

(8) Notwithstanding subsections (2), (3) and (5) of this section, the moneys derived pursuant to ORS 446.003 to 446.200, 446.210, 446.225 to 446.285, 446.395 to 446.420 and 455.220 (1) and deposited to the fund, interest earned on those moneys and withdrawals of moneys for activities or programs under ORS 446.003 to 446.200, 446.210, 446.225 to 446.285 and 446.395 to 446.420, or education and training programs pertaining thereto, must be assigned to a single account within the fund.

(9) Notwithstanding subsections (2), (3) and (5) of this section, the moneys derived pursuant to ORS 455.240 or 460.370 or from state building code or specialty code program fees for which the amount is established by department rule pursuant to ORS 455.020 (2) and deposited to the fund, interest earned on those moneys and withdrawals of moneys for activities or programs under ORS 455.240 or 460.310 to 460.370, structural or mechanical specialty code programs or activities for which a fee is collected under ORS 455.020 (2), or programs described under subsection (10) of this section that provide training and education for persons employed in producing, selling, installing, delivering or inspecting manufactured structures or manufactured dwelling parks or recreation parks, must be assigned to a single account within the fund.

(10) Notwithstanding [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act, the department may, after consultation with the appropriate specialty code advisory boards established under ORS 446.280, 455.132, 455.138, 480.535 and 693.115, contract for public or private parties to develop or provide training and education programs relating to the state building code and associated licensing or certification programs.

SECTION 323. ORS 706.515 is amended to read:

706.515. (1) The Director of the Department of Consumer and Business Services may enter into cooperative, coordinating and information sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch or other office or place of business in this state of any non-Oregon institution, or any branch of a banking institution located in any other state. The director may accept such supervisory agencies’ reports of examination and reports of investigation in lieu of conducting the director’s own examinations or investigations. The agreement may resolve conflicts of laws and specify the manner in which examination, supervision and application processes shall be coordinated between this state and the home state of the non-Oregon institution.

(2) The director may enter into contracts with any bank supervisory agency that has concurrent

[183]
jurisdiction over a banking institution or non-Oregon institution operating a branch or other office or place of business in this state, to engage the services of such agency’s examiners at a reasonable rate of compensation, or to provide the services of the director’s examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed exempt from competitive bidding requirements under the provisions of [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act. The contract may resolve conflicts of laws and specify the manner in which examination, supervision and application processes shall be coordinated between this state and the home state of the non-Oregon institution.

(3) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch or other office or place of business in this state of a non-Oregon institution, or any branch of a banking institution located in any other state, provided that the director may at any time take such actions independently if the director deems such actions to be necessary or appropriate to carry out the director’s responsibilities or to ensure compliance with the laws of this state, but provided further, that in the case of a non-Oregon institution, the director shall recognize:

(a) The exclusive authority of the banking supervisory agency of the home state or country of the non-Oregon institution over corporate governance matters; and
(b) The primary responsibility of the banking supervisory agency of the home state or country of the non-Oregon institution over safety and soundness matters.

(4) Any fees collected by the director from non-Oregon institutions under the provisions of the Bank Act may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the director.

SECTION 324. ORS 723.136 is amended to read:

723.136. (1) The Director of the Department of Consumer and Business Services may enter into cooperative, coordinating and information sharing agreements with any other credit union supervisory agency or any organization affiliated with or representing one or more credit union supervisory agencies with respect to the periodic examination or other supervision of any branch or other office or place of business in this state of any non-Oregon institution, or any branch of a credit union that is chartered in Oregon and is located in any other state. The director may accept the supervisory agency’s reports of examination and reports of investigation in lieu of conducting the director’s own examinations or investigations. The agreement may resolve conflicts of laws and specify the manner in which examination, supervision and application processes shall be coordinated between this state and the home state of the non-Oregon institution. The director may also share information with the Federal Home Loan Bank and its directors.

(2) The director may enter into contracts with any credit union supervisory agency that has concurrent jurisdiction over a credit union operating a branch or other office or place of business in this state, to engage the services of such agency’s examiners at a reasonable rate of compensation, or to provide the services of the director’s examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed exempt from competitive bidding requirements under the provisions of [ORS chapter 279] sections 1 to 46 and 47 to 87 of this 2003 Act. The contract may resolve conflicts of laws and specify the manner in which examination, supervision and application processes shall be coordinated between this state and the home state of the non-Oregon institution.

(3) The director may enter into joint examinations or joint enforcement actions with other credit...
union supervisory agencies that have concurrent jurisdiction over any branch or other office or place of business in this state of a non-Oregon institution, or any branch of a credit union that is chartered in Oregon and is located in any other state, provided that the director may at any time take the actions independently if the director deems the actions to be necessary or appropriate to carry out the director’s responsibilities or to ensure compliance with the laws of this state. In the case of a non-Oregon institution, the director may recognize:

(a) The exclusive authority of the credit union supervisory agency of the home state of the non-Oregon institution over corporate governance matters; and
(b) The primary responsibility of the credit union supervisory agency of the home state of the non-Oregon institution over safety and soundness matters.

(4) Any fees collected by the director from non-Oregon institutions under the provisions of this chapter may be shared with other credit union supervisory agencies or any organization affiliated with or representing one or more credit union supervisory agencies in accordance with agreements between such parties and the director.

SECTION 325. Section 1, chapter 336, Oregon Laws 1995, is amended to read:

Sec. 1. (1) As used in this section, “project” means the group of projects that make up the combined sewer overflow program.

(2) Notwithstanding ORS 279.320, 656.126, 737.346 or 746.160 or section 143 of this 2003 Act, an insurer approved to transact insurance in the State of Oregon, including a guaranty contract insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the Department of Consumer and Business Services a policy of insurance or a guaranty contract covering and insuring the City of Portland, the prime contractor under contract for the construction of the project, any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations in construction of the project and any other contractors engaged by the City of Portland to provide architectural or other design services, engineering services, construction management service or other consulting services relating to the design and construction of the projects or any combination thereof.

(3) The director, upon application of any insurer, shall approve the issuance of a policy of insurance or a guaranty contract to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or a series of related contracts for the design and construction of the project;
(b) The combined total estimated cost of the project exceeds $100 million;
(c) The City of Portland can reasonably demonstrate that the formation and operation of the grouping will substantially improve accident prevention and claims handling to the benefit of the City of Portland and the contractors and workers employed in the project;
(d) The established rating and auditing standards required by authorized advisory organizations and rating organizations are adhered to;
(e) Adequate protection is guaranteed by the insurer for the grouping to any other insurance agency or agent that demonstrates that without such protection the insurance agency or agent will suffer losses which will constitute a threat to the continuation of the insurance business of the agency or agent;
(f) The City of Portland can reasonably demonstrate that a substantial savings will result from the formation of the grouping;
(g) The insurer for the grouping will guarantee insurance coverage of the classes of insurance
issued to the grouping to any contractor who, because of participation in the group, has been unable
to maintain the contractor’s normal coverage. The insurer’s obligation under this paragraph shall
continue 12 months after substantial completion of the contractor’s work on the project;

(h) Monoline workers’ compensation insurers domiciled in the State of Oregon had the oppor-
tunity to propose a policy of insurance or a guaranty contract covering persons referred to in sub-
section (2) of this section; and

(i) The insurer places with the Department of Consumer and Business Services a special deposit
of $25,000 per $100 million of construction project value per project phase, or an amount prescribed
by rule of the director, whichever is greater.

SECTION 326. ORS 737.602 is amended to read:

737.602. (1) As used in this section:

(a) “Project” means a construction project, a plant expansion or improvements within Oregon
with an aggregate construction value in excess of $90 million that is to be completed within a de-
 fined period. The average construction value during the defined period of the project must be at
least $18 million per year. “Project” does not mean a series of unrelated construction projects arti-
ficially aggregated to satisfy the $90 million requirement.

(b) “Project sponsor” means public bodies, utilities, corporations and firms undertaking to con-
struct a project in excess of $90 million and conducting business in the State of Oregon.

(c) “Public body” has the meaning given the term in ORS 30.260.

(2) Notwithstanding ORS [279.320, 656.126, 737.600 or 746.160 or section 143 of this 2003 Act,
an insurer approved to transact insurance in this state, including the State Accident Insurance Fund
Corporation or a guaranty contract insurer as defined in ORS 656.005, may issue with the prior
approval of the Director of the Department of Consumer and Business Services a policy of insurance
or a guaranty contract covering and insuring the project sponsor, the prime contractor under a
contract for the construction of the project, any contractors or subcontractors with whom the prime
contractor may enter into contracts for the purpose of fulfilling its contractual obligations in con-
struction of the project and any other contractors engaged by a project sponsor to provide archi-
tectural or other design services, engineering services, construction management services, other
consulting services relating to the design and construction of the project or any combination
thereof.

(3) The following provisions apply to premiums under a policy of insurance or guaranty contract
described in subsection (2) of this section:

(a) A project sponsor or a prime contractor may not charge a premium for coverage under a
policy of insurance or a guaranty contract to a contractor or subcontractor with whom the project
sponsor or prime contractor enters into a contract or engages for services described in subsection
(2) of this section.

(b) A prime contractor may not charge a project sponsor a premium for coverage under a policy
of insurance or a guaranty contract other than a premium approved by the director under ORS
chapter 737 prior to or at the same time as the director approves the project to which the policy
or guaranty contract applies.

(c) Charging a premium prohibited by this subsection constitutes the unlawful transaction of
insurance in violation of ORS 731.354.

(4) The director, upon application of any insurer, shall approve the issuance of a policy of in-
surance or a guaranty contract to any grouping of the persons described in subsection (2) of this
section if:
(a) The grouping was formed for the purpose of performing a contract or a series of related
contracts for the design and construction of a project for the project sponsor;
(b) The project sponsor can reasonably demonstrate that the formation and operation of the
grouping will substantially improve accident prevention and claims handling to the benefit of the
project sponsor and the contractors and workers employed by the project sponsor on construction
related projects;
(c) The established rating and auditing standards required by authorized advisory organizations
and rating organizations are adhered to;
(d) The insurer for the grouping guarantees adequate protection to any other insurance agency
or agent that demonstrates that without such protection the agency or agent will suffer losses that
will constitute a threat to the continuation of the business of the agency or agent;
(e) The insurer for the grouping guarantees insurance coverage of the classes of insurance is-
sued to the grouping to any contractor who, because of participation in the group, has been unable
to maintain the contractor’s normal coverage. The insurer’s obligation under this paragraph shall
continue until 12 months after substantial completion of the contractor’s work;
(f) By permitting this grouping for a project sponsor, greater opportunities will be made avail-
able for historically underutilized businesses to bid on the project;
(g) The project insurers agree to provide not less than 90 days’ notice to all insured parties of
the cancellation or any material reduction in coverage for the project;
(h) The insurance coverage for the grouping contains a severability of interest clause with re-
spect to liability claims between individuals insured under the group policy and includes contractual
liability coverage that applies to the various contracts and subcontracts entered into in connection
with the project; and
(i) The insurer places with the Department of Consumer and Business Services a special deposit
of $25,000 per $100 million of construction project value, or an amount prescribed by rule of the
director, whichever is greater.

SECTION 327. ORS 737.604 is amended to read:

ORS 737.604. In addition to other rulemaking authority of the Director of the Department of Con-
sumer and Business Services, the director may make rules:

(1) Stating the necessary attributes that a construction project of a project sponsor and the
participants in the project must have in order to qualify for the grouping permitted under ORS
737.602. The rules may include but are not limited to matters regarding an appropriate trust agree-
ment for special deposit and adjustment of the construction project value according to an appropri-
ate cost index; and

(2) Establishing a process for a state agency or local contract review board created under [ORS
279.055] section 9 of this 2003 Act to evaluate the purchase by a public body of insurance author-
ized by ORS 737.602, or any agreements related thereto.

SECTION 328. ORS 742.061 is amended to read:

ORS 742.061. (1) Except as otherwise provided in subsections (2) and (3) of this section, if settlement
is not made within six months from the date proof of loss is filed with an insurer and an action is
brought in any court of this state upon any policy of insurance of any kind or nature, and the
plaintiff’s recovery exceeds the amount of any tender made by the defendant in such action, a rea-
sonable amount to be fixed by the court as attorney fees shall be taxed as part of the costs of the
action and any appeal thereon. If the action is brought upon the bond of a contractor or subcon-
tractor executed and delivered as provided in ORS [279.029 or] 701.430 or section 50, 51 or 118 of
**this 2003 Act** and the plaintiff’s recovery does not exceed the amount of any tender made by the defendant in such action, a reasonable amount to be fixed by the court as attorney fees shall be taxed and allowed to the defendant as part of the costs of the action and any appeal thereon. If in an action brought upon such a bond the surety is allowed attorney fees and costs and the contractor or subcontractor has incurred expenses for attorney fees and costs in defending the action, the attorney fees and costs allowed the surety shall be applied first to reimbursing the contractor or subcontractor for such expenses.

(2) Subsection (1) of this section does not apply to actions to recover personal injury protection benefits if, in writing, not later than six months from the date proof of loss is filed with the insurer:

(a) The insurer has accepted coverage and the only issue is the amount of benefits due the insured; and

(b) The insurer has consented to submit the case to binding arbitration.

(3) Subsection (1) of this section does not apply to actions to recover uninsured or underinsured motorist benefits if, in writing, not later than six months from the date proof of loss is filed with the insurer:

(a) The insurer has accepted coverage and the only issues are the liability of the uninsured or underinsured motorist and the damages due the insured; and

(b) The insurer has consented to submit the case to binding arbitration.

**SECTION 329.** ORS 757.552 is amended to read:

757.552. (1) It is the function of the board of directors to operate the Oregon Utility Notification Center, through which a person shall notify operators of underground facilities of proposed excavations and request that the underground facilities be marked.

(2) The board of directors shall:

(a) Utilize a competitive process to contract with any qualified person to provide the notification required under subsection (1) of this section.

(b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which subscribers shall pay to fund all of the activities of the Oregon Utility Notification Center.

(c) Adopt rules according to ORS 183.310 to 183.550 that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.

(3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except as provided in subsection (2) of this section, the provisions of 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 shall not apply to the Oregon Utility Notification Center.

(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than $500 for any of the following subscribers:

(a) Cities with a population under 15,000;

(b) Telecommunications utilities serving fewer than 50,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(c) Cable system operators serving fewer than 15,000 customers;

(d) Utilities, special districts, people’s utility districts or authorities providing electricity, water 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 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-
eral and local contracting agencies may take any action before the operative date specified in section 337 of this 2003 Act that is necessary to enable them to exercise, on and after the operative date specified in section 337 of this 2003 Act, the duties, functions and powers granted to them under this 2003 Act.

(2) Notwithstanding section 10 of this 2003 Act, the Attorney General shall review this 2003 Act and adopt model rules implementing the Public Contracting Code on or before September 1, 2004, with an effective date of March 1, 2005.

SECTION 336. Applicability. Sections 1 to 21, 23 to 91, 94 to 103, 106 to 108, 111, 114 to 125 and 128 to 192 of this 2003 Act, the amendments to statutes by sections 193 to 331 of this 2003 Act and the repeal of statutes by section 332 of this 2003 Act apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

SECTION 337. Operative date. (1) Sections 1 to 21, 23 to 91, 94 to 103, 106 to 108, 111, 114 to 125 and 128 to 192 of this 2003 Act, the amendments to statutes by sections 193 to 331 of this 2003 Act and the repeal of statutes by section 332 of this 2003 Act become operative on March 1, 2005.

(2) Section 22 of this 2003 Act becomes operative on September 30, 2003.

SECTION 338. Emergency clause. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.