

# House Bill 2962

Sponsored by Representative PARRISH

## 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 **as introduced**.

Removes certain exemptions that State Treasurer has from Public Contracting Code. Requires State Treasurer to submit findings and public notice of approval related to special procurements to President of Senate, Speaker of House of Representatives and Legislative Fiscal Officer.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the State Treasurer's public contracting activities; creating new provisions; amending  
3 ORS 279A.025, 279B.040 and 279B.085; and prescribing an effective date.

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

5 **SECTION 1.** ORS 279A.025 is amended to read:

6 279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting  
7 Code applies to all public contracting.

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

9 (a) Contracts between a contracting agency and:

10 (A) Another contracting agency;

11 (B) The Oregon Health and Science University;

12 (C) A public university listed in ORS 352.002;

13 (D) The Oregon State Bar;

14 (E) A governmental body of another state;

15 (F) The federal government;

16 (G) An American Indian tribe or an agency of an American Indian tribe;

17 (H) A nation, or a governmental body in a nation, other than the United States; or

18 (I) An intergovernmental entity formed between or among:

19 (i) Governmental bodies of this or another state;

20 (ii) The federal government;

21 (iii) An American Indian tribe or an agency of an American Indian tribe;

22 (iv) A nation other than the United States; or

23 (v) A governmental body in a nation other than the United States;

24 (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or  
25 other authority for establishing agreements between or among governmental bodies or agencies or  
26 tribal governing bodies or agencies;

27 (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and  
28 414.145 for purposes of source selection;

29 (d) Grants;

30 (e) Contracts for professional or expert witnesses or consultants to provide services or testimony

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 relating to existing or potential litigation or legal matters in which a public body is or may become  
 2 interested;

3 (f) Acquisitions or disposals of real property or interest in real property;

4 (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source se-  
 5 lection;

6 (h) Contracts for *[the procurement or distribution of]* **procuring or distributing** textbooks;

7 (i) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

8 (j) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001,  
 9 or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

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

12 (L) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry  
 13 and the State Forestry Department;

14 (m) Contracts for activities necessary or convenient for the sale of timber under paragraph (L)  
 15 of this subsection, either separately from or in conjunction with contracts for the sale of timber,  
 16 including but not limited to activities such as timber harvesting and sorting, transporting, gravel  
 17 pit development or operation, and road construction, maintenance or improvement;

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

20 (o) Contracts *[entered into by]* **into which** the Housing and Community Services Department  
 21 **enters** in exercising the department's duties prescribed in ORS chapters 456 and 458, except that  
 22 the department's public contracting for goods and services is subject to ORS chapter 279B;

23 (p) Contracts *[entered into by]* **into which** the State Treasurer **enters** in exercising the powers  
 24 of *[that office]* **the State Treasurer** *[prescribed]* in *[ORS 178.010 to 178.100 and]* ORS chapters 286A,  
 25 287A[, 289,] **and** 293[, 294 and 295], including but not limited to investment contracts and agree-  
 26 ments, *[banking services, clearing house services and collateralization agreements,]* bond documents,  
 27 certificates of participation and other debt repayment agreements, and any associated contracts,  
 28 agreements and documents, regardless of whether the obligations that the contracts, agreements or  
 29 documents establish are general, special or limited, except that *[the]*:

30 **(A) The State Treasurer may procure under ORS 279B.085 banking services and services**  
 31 **related to municipal finance, if the State Treasurer has immediate need of the services and**  
 32 **the procurement otherwise meets the requirements set forth in ORS 279B.085; and**

33 **(B) The State Treasurer's** public contracting for goods and services is subject to ORS chapter  
 34 279B;

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

37 (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a public body;

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

41 (C) *[The]* **A public body's** investment of funds *[by a public body]* as authorized by law[,] and  
 42 other financial transactions of a public body that, *[by their]* **because of the character of the fi-**  
 43 **ancial transactions,** cannot practically be *[established]* **conducted** under the competitive con-  
 44 tractor selection procedures of ORS 279B.050 to 279B.085;

45 (r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221,

1 243.275, 243.291, 243.303 and 243.565;

2 (s) Contracts for employee benefit plans as provided in ORS 243.860 to 243.886; or

3 (t) Any other public contracting of a public body **that is** specifically exempted from the code  
4 by another provision of law.

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

6 (a) The Oregon State Lottery Commission;

7 (b) The legislative department;

8 (c) The judicial department;

9 (d) Semi-independent state agencies listed in ORS 182.454, except as provided in ORS 279.835 to  
10 279.855 and 279A.250 to 279A.290;

11 (e) Oregon Corrections Enterprises;

12 (f) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to  
13 279A.290;

14 (g) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

15 (h) The Oregon 529 Savings Network and the Oregon 529 Savings Board;

16 (i) The Oregon Innovation Council;

17 (j) The Oregon Utility Notification Center; or

18 (k) Any other public body **that is** specifically exempted from the code by another provision of  
19 law.

20 (4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with  
21 qualified nonprofit agencies providing employment opportunities for individuals with disabilities un-  
22 der ORS 279.835 to 279.855.

23 **SECTION 2.** ORS 279B.040 is amended to read:

24 279B.040. (1) Except as provided in subsection (2) of this section, a state contracting agency that  
25 procures personal services for the purpose of advising or assisting the state contracting agency in  
26 developing specifications, a scope or statement of work, an invitation to bid, a request for proposals  
27 or other solicitation documents and materials related to a procurement may not accept from the  
28 contractor, or an affiliate of the contractor, that advised or assisted the state contracting agency  
29 a bid or proposal for the goods or services described, specified or identified in the solicitation doc-  
30 uments or materials if a reasonable person would believe that, by giving the advice or assistance,  
31 the contractor or affiliate would have or would appear to have an advantage in obtaining the public  
32 contract that is the subject of the solicitation.

33 (2)(a) If a state contracting agency anticipates that the state contracting agency will or must  
34 seek advice or assistance of the type described in subsection (1) of this section from a contractor  
35 that is also engaged in providing goods or services that will be described or identified in the solici-  
36 tation documents and materials that result from the advice or assistance, and the state contracting  
37 agency wishes to accept a bid or proposal from the contractor, the state contracting agency, before  
38 awarding a contract for the advice or assistance, shall apply to the Director of the Oregon Depart-  
39 ment of Administrative Services for an exception to the prohibition set forth in subsection (1) of this  
40 section.

41 (b) The state contracting agency in the application for the exception shall include findings and  
42 justifications, along with sufficient facts to support the findings and justifications, that will enable  
43 the director to make an independent judgment as to whether:

44 (A) The state contracting agency needs advice or assistance from a contractor to develop the  
45 solicitation documents and materials described in subsection (1) of this section;

1 (B) Accepting a bid or proposal from the contractor that gives the advice or assistance is the  
 2 only practicable way in which the state contracting agency can conduct the procurement success-  
 3 fully; and

4 (C) Approving the exception:

5 (i) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish  
 6 competition for public contracts; and

7 (ii)(I) Is reasonably expected to result in substantial cost savings to the state contracting agency  
 8 or the public; or

9 (II) Otherwise substantially promotes the public interest in a manner that could not be  
 10 practicably realized by complying with the prohibition described in subsection (1) of this section.

11 (c)(A) If the director approves the state contracting agency's application, the director shall  
 12 prepare written findings and justifications for the approval. The state contracting agency's findings,  
 13 justifications and facts and the director's findings, justifications and approval are public records that  
 14 are subject to disclosure as provided in ORS 192.410 to 192.505.

15 (B) If the director disapproves the state contracting agency's application, the director shall state  
 16 the director's reasons for the disapproval in a written notice to the state contracting agency and  
 17 shall indicate whether the disapproval extends only to the state contracting agency's acceptance of  
 18 a bid or proposal from a contractor that gives advice or assistance in preparing solicitation docu-  
 19 ments and other materials or whether the director also disagrees with the state contracting agency's  
 20 stated need for advice or assistance from a contractor.

21 (C) The director's approval or disapproval is final.

22 (3) As used in this section, "affiliate" means a person that, directly or indirectly through one  
 23 or more intermediaries, controls, is controlled by or is under common control with a contractor  
 24 described in this section.

25 (4) This section does not apply to:

26 (a) The Secretary of State [*or the State Treasurer*]; or

27 (b) A bid or proposal for quality management services, as defined in ORS 291.035, that a state  
 28 contracting agency receives from a contractor that provided preliminary quality assurance services,  
 29 as defined in ORS 291.035, for the same information technology initiative that is the subject of the  
 30 state contracting agency's solicitation for quality management services.

31 **SECTION 3.** ORS 279B.085 is amended to read:

32 279B.085. (1) As used in this section and ORS 279B.400:

33 (a) "Class special procurement" means a contracting procedure that differs from the procedures  
 34 described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into  
 35 a series of contracts over time or for multiple projects.

36 (b) "Contract-specific special procurement" means a contracting procedure that differs from the  
 37 procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of  
 38 entering into a single contract or a number of related contracts on a one-time basis or for a single  
 39 project.

40 (c) "Special procurement" means, unless the context requires otherwise, a class special pro-  
 41 curement, a contract-specific special procurement or both.

42 (2) Except as provided in subsection (3) of this section, to seek approval of a special procure-  
 43 ment, a contracting agency shall submit a written request to the Director of the Oregon Department  
 44 of Administrative Services or the local contract review board, as applicable, that describes the  
 45 contracting procedure, the goods or services or the class of goods or services that are the subject

1 of the special procurement and the circumstances that justify the use of a special procurement under  
2 the standards set forth in subsection (4) of this section.

3 (3) [When] If the contracting agency is the office of the Secretary of State or the office of the  
4 State Treasurer, to seek approval of a special procurement, the contracting agency shall submit a  
5 written request to the Secretary of State or the State Treasurer, as applicable, that describes the  
6 contracting procedure, the goods or services or the class of goods or services that are the subject  
7 of the special procurement and the circumstances that justify the use of a special procurement under  
8 the standards set forth in subsection (4) of this section.

9 (4) The director, a local contract review board, the Secretary of State or the State Treasurer  
10 may approve a special procurement if the director, board, Secretary of State or State Treasurer finds  
11 that a written request submitted under subsection (2) or (3) of this section demonstrates that the  
12 use of a special procurement as described in the request, or an alternative procedure prescribed by  
13 the director, board, Secretary of State or State Treasurer:

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

16 (b)(A) Is reasonably expected to result in substantial cost savings to the contracting agency or  
17 to the public; or

18 (B) Otherwise substantially promotes the public interest in a manner that could not practicably  
19 be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060,  
20 279B.065 or 279B.070 or under any rules adopted thereunder.

21 (5) **A contracting agency shall give** public notice of the approval of a special procurement  
22 [*must be given*] in the same manner as provided in ORS 279B.055 (4).

23 **(6) The State Treasurer shall send copies of findings that the State Treasurer makes**  
24 **under subsection (4) of this section and of the State Treasurer's public notice under sub-**  
25 **section (5) of this section to the President of the Senate, the Speaker of the House of Rep-**  
26 **resentatives and the Legislative Fiscal Officer.**

27 [(6)] (7) If a contracting agency intends to award a contract through a special procurement that  
28 calls for competition among prospective contractors, the contracting agency shall award the con-  
29 tract to the offeror the contracting agency determines to be the most advantageous to the con-  
30 tracting agency.

31 [(7)] (8) [When] If the director, a local contract review board, the Secretary of State or the State  
32 Treasurer approves a class special procurement under this section, the contracting agency may  
33 award contracts to acquire goods or services within the class of goods or services in accordance  
34 with the terms of the approval without making a subsequent request for a special procurement.

35 **SECTION 4. The amendments to ORS 279A.025, 279B.040 and 279B.085 by sections 1 to 3**  
36 **of this 2017 Act apply to procurements that the State Treasurer advertises or otherwise so-**  
37 **licits or, if the State Treasurer does not advertise or otherwise solicit the procurement, to**  
38 **public contracts into which the State Treasurer enters on and after the operative date**  
39 **specified in section 5 of this 2017 Act.**

40 **SECTION 5. (1) The amendments to ORS 279A.025, 279B.040 and 279B.085 by sections 1**  
41 **to 3 of this 2017 Act become operative January 1, 2018.**

42 **(2) The State Treasurer may take any action before the operative date specified in sub-**  
43 **section (1) of this section that is necessary to enable the State Treasurer, on and after the**  
44 **operative date specified in subsection (1) of this section, to exercise the duties, functions and**  
45 **powers conferred on the State Treasurer by the amendments to ORS 279A.025, 279B.040 and**

1 **279B.085 by sections 1 to 3 of this 2017 Act.**

2 **SECTION 6. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
3 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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