

# Senate Bill 491

Sponsored by Senator GORSEK (Presession filed.)

## 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**.

Allows employee of school district or education service district, or employee's exclusive representative, to challenge cost analysis for procurement that school district or education service district conducted.

Modifies procedure by which school district and education service district conduct cost analysis before procurement and awarding of contract.

Takes effect on 91st day after adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to analyses required before conducting a procurement for services; and prescribing an ef-  
3 fective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 342.**

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

7 (a) **"Exclusive representative" has the meaning given that term in ORS 243.650.**

8 (b) **"Procurement" has the meaning given that term in ORS 279A.010.**

9 (2)(a) **An employee of a school district or education service district, or the employee's**  
10 **exclusive representative, may challenge in an arbitration proceeding under subsection (3) of**  
11 **this section a cost analysis for a procurement that the school district or education service**  
12 **district conducted under ORS 279B.033 or a determination the school district or education**  
13 **service district made under ORS 279B.036 if:**

14 (A) **The school district or education service district allegedly violated a provision of ORS**  
15 **279B.030, 279B.033 or 279B.036;**

16 (B) **The employee or the exclusive representative described the alleged violation in a**  
17 **written notice to the school district or education service district not later than 30 days after**  
18 **the date of the alleged violation;**

19 (C) **The school district or education service district proceeded with the procurement after**  
20 **receiving the notice described in subparagraph (B) of this paragraph; and**

21 (D) **The employee or the exclusive representative exhausted any administrative remedy**  
22 **the school district or education service district provides to address the alleged violation.**

23 (b)(A) **Except as provided in subparagraph (B) of this paragraph, for the purposes of this**  
24 **section, a school district or education service district proceeded with a procurement if the**  
25 **school district or education service district advertised or solicited the procurement in ac-**  
26 **cordance with ORS chapter 279B or otherwise took affirmative steps to seek a contractor to**  
27 **perform services for which the school district or education service district would be required**  
28 **to conduct a procurement in accordance with ORS chapter 279B.**

29 (B) **A school district or education service district does not, for the purposes of this sec-**

**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 tion, proceed with a procurement if:

2 (i) The school district or education service district issued a request for information or a  
3 request for a quotation or otherwise sought to obtain needed information in the course of  
4 complying with ORS 279B.030, 279B.033 or 279B.036; or

5 (ii) The school district or education service district, after advertising or soliciting a pro-  
6 curement, updated a cost analysis or reconsidered a determination in accordance with sec-  
7 tion 4 or 6 of this 2021 Act.

8 (3)(a) An employee or exclusive representative that seeks to initiate an arbitration pro-  
9 ceeding under this section shall notify the school district or education service district within  
10 10 days after the school district or education service district proceeds with a procurement  
11 as described in subsection (2)(a)(C) of this section or after the employee or exclusive repre-  
12 sentative exhausts any available administrative remedies as provided in subsection (2)(a)(D)  
13 of this section, whichever is later. The employee or exclusive representative and the school  
14 district or education service district shall jointly select an arbitrator to conduct an arbi-  
15 tration proceeding as provided in paragraph (c) of this subsection.

16 (b) If the employee or exclusive representative and the school district or education ser-  
17 vice district cannot agree on an arbitrator as provided in paragraph (a) of this subsection,  
18 the employee or exclusive representative and the school district or education service district  
19 shall request from the State Conciliation Service a list of seven prospective arbitrators from  
20 which each may alternately strike a name until the parties select the arbitrator.

21 (c) The arbitrator shall conduct the arbitration proceeding in accordance with the rules  
22 of the Employment Relations Board. The results of the arbitration proceeding are final, are  
23 binding on the parties to the proceeding and are not subject to appeal.

24 (d) Each party to the arbitration proceeding shall share equally in paying the costs for  
25 the arbitrator and the proceeding.

26 (4)(a) If an employee or exclusive representative notifies the school district or education  
27 service district as provided in subsection (2)(a)(B) of this section and timely seeks arbitration  
28 in accordance with subsection (3) of this section, the school district or education service  
29 district, while the arbitration proceeding is pending, may not proceed with the procurement  
30 that is the subject of the arbitration proceeding unless the school district or education ser-  
31 vice district determines that:

32 (A) A compelling governmental interest exists in proceeding with the procurement; or

33 (B) An emergency exists that requires the procurement.

34 (b) A school district or education service district that makes a determination to proceed  
35 with a procurement under paragraph (a) of this subsection shall set forth in writing the  
36 reasons for the determination and immediately provide the reasons to the employee or ex-  
37 clusive representative and to the arbitrator in any arbitration proceeding under this section.

38 (c) Despite a school district's or education service district's determination under para-  
39 graph (a) of this subsection, the arbitrator may stay the procurement while the arbitration  
40 proceeding is pending on the employee's or exclusive representative's motion if the arbitrator  
41 finds that the school district's or the education service district's determination under para-  
42 graph (a) of this subsection is not supported by substantial evidence.

43 (5) If at the conclusion of an arbitration proceeding under this section the arbitrator  
44 finds that a school district or education service district violated ORS 279B.030, 279B.033 or  
45 279B.036, the arbitrator may order the school district or education service district to stop

1 or cancel the procurement and take any other affirmative action the arbitrator determines  
2 will effectuate the purposes of this section. The arbitrator may not in the arbitration pro-  
3 ceeding or in any order that results from the arbitration proceeding award costs to any party  
4 to the proceeding.

5 **SECTION 3.** Section 4 of this 2021 Act is added to and made a part of ORS chapter 332.

6 **SECTION 4.** (1) As used in this section:

7 (a) "Procurement" has the meaning given that term in ORS 279A.010.

8 (b) "Public contract" has the meaning given that term in ORS 279A.010.

9 (2) To obtain information necessary to conduct a cost analysis under ORS 279B.033 or  
10 make a determination under ORS 279B.036, a school district, before advertising or otherwise  
11 soliciting a procurement, shall issue a request for information or a request for a quotation  
12 or shall use another reasonably practicable method to obtain needed information.

13 (3) If, after advertising or otherwise soliciting a procurement and before awarding a  
14 public contract, a school district obtains new or additional information from bids or pro-  
15 posals, or from other sources, that would alter or otherwise affect a cost analysis the school  
16 district conducted under ORS 279B.033 or a determination the school district made under  
17 ORS 279B.036, the school district shall update the cost analysis with the new or additional  
18 information or, if necessary, reconsider the school district's determination as to the feasi-  
19 bility of performing with the school district's own personnel or resources the services that  
20 are the subject of the procurement. The school district may proceed with the procurement  
21 only after updating the cost analysis or, if appropriate, reconsidering the determination and  
22 only if the procurement continues to meet the applicable requirements set forth in ORS  
23 279B.033 (2) or 279B.036 (1).

24 (4) For the purposes of determining whether a school district may proceed with a pro-  
25 curement after conducting a cost analysis, notwithstanding the requirement set forth for  
26 contracting agencies in ORS 279B.033 (2)(a), a school district may not proceed with a pro-  
27 curement if the primary, not the sole, reason that the costs estimated under ORS 279B.033  
28 (1)(b) are lower than the costs estimated under ORS 279B.033 (1)(a) is because the costs es-  
29 timated under ORS 279B.033 (1)(b)(A) are lower than the costs estimated under ORS 279B.033  
30 (1)(a)(A).

31 **SECTION 5.** Section 6 of this 2021 Act is added to and made a part of ORS chapter 334.

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

33 (a) "Procurement" has the meaning given that term in ORS 279A.010.

34 (b) "Public contract" has the meaning given that term in ORS 279A.010.

35 (2) To obtain information necessary to conduct a cost analysis under ORS 279B.033 or  
36 make a determination under ORS 279B.036, an education service district, before advertising  
37 or otherwise soliciting a procurement, shall issue a request for information or a request for  
38 a quotation or shall use another reasonably practicable method to obtain needed information.

39 (3) If, after advertising or otherwise soliciting a procurement and before awarding a  
40 public contract, an education service district obtains new or additional information from bids  
41 or proposals, or from other sources, that would alter or otherwise affect a cost analysis the  
42 education service district conducted under ORS 279B.033 or a determination the education  
43 service district made under ORS 279B.036, the education service district shall update the cost  
44 analysis with the new or additional information or, if necessary, reconsider the education  
45 service district's determination as to the feasibility of performing with the education service

1 district's own personnel or resources the services that are the subject of the procurement.  
2 The education service district may proceed with the procurement only after updating the  
3 cost analysis or, if appropriate, reconsidering the determination and only if the procurement  
4 continues to meet the applicable requirements set forth in ORS 279B.033 (2) or 279B.036 (1).

5 (4) For the purposes of determining whether an education service district may proceed  
6 with a procurement after conducting a cost analysis, notwithstanding the requirement set  
7 forth for contracting agencies in ORS 279B.033 (2)(a), an education service district may not  
8 proceed with a procurement if the primary, not the sole, reason that the costs estimated  
9 under ORS 279B.033 (1)(b) are lower than the costs estimated under ORS 279B.033 (1)(a) is  
10 because the costs estimated under ORS 279B.033 (1)(b)(A) are lower than the costs estimated  
11 under ORS 279B.033 (1)(a)(A).

12 **SECTION 7.** Sections 2, 4 and 6 of this 2021 Act apply to procurements that a school  
13 district or education service district first advertises or otherwise solicits or, if the school  
14 district or education service district does not advertise or solicit the procurement, to pro-  
15 curements that the school district or education service district first conducts on or after the  
16 operative date specified in section 8 of this 2021 Act.

17 **SECTION 8.** (1) Sections 2, 4 and 6 of this 2021 Act become operative on January 1, 2022.

18 (2) A school district board or an education service district board may take any action  
19 before the operative date specified in subsection (1) of this section that is necessary to enable  
20 a school district or education service district to exercise, on and after the operative date  
21 specified in subsection (1) of this section, all of the duties, functions and powers conferred  
22 on the school district or education service district by sections 2, 4 and 6 of this 2021 Act.

23 **SECTION 9.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
24 regular session of the Eighty-first Legislative Assembly adjourns sine die.  
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