

House Bill 2892

Sponsored by Representative DEXTER (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**.

Authorizes granting agency to prequalify nonprofit organization to receive block grants for purpose of providing goods and services in areas of critical need. Specifies eligibility and responsibility standards for nonprofit organization to become prequalified. Requires granting agency to receive quarterly reports from nonprofit organization and to conduct annual audits that track how and where nonprofit organization expended block grant moneys.

Requires granting agency that denies prequalification to provide opportunity for hearing to applicant.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to prequalification for nonprofit organizations to receive block grant moneys; and pre-
3 scribing an effective date.

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

SECTION 1. (1) As used in sections 1 to 3 of this 2023 Act:

6 (a) **"Block grant" means a grant that does not identify a specific program area, allo-**
7 **cation, spending target or line item on which a recipient must expend all or a portion of**
8 **grant moneys but instead leaves some or all decisions about specific expenditures to the**
9 **recipient's discretion.**

10 (b) **"Granting agency" means a state agency that receives a direct or indirect appropri-**
11 **ation from the State Treasury for the purpose of granting to a nonprofit organization mon-**
12 **eys necessary to meet a need or provide a service that the Legislative Assembly has**
13 **identified as critical for the health, safety or welfare of residents of this state.**

14 (c) **"Nonprofit organization" means an organization described in section 501(c)(3) of the**
15 **Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal**
16 **Revenue Code.**

17 (d) **"Prequalify" means to verify a nonprofit organization's eligibility and responsibility**
18 **as provided in this section.**

19 (e) **"Responsible" means having met the standards of responsibility specified in section 2**
20 **of this 2023 Act.**

21 (2)(a) **A granting agency may prequalify one or more nonprofit organizations to receive**
22 **block grants from the granting agency for the purpose of providing specified goods or ser-**
23 **vices under the granting agency's general oversight and supervision. A nonprofit organiza-**
24 **tion may apply to the granting agency to request prequalification.**

25 (b) **The Oregon Department of Administrative Services shall adopt model rules that**
26 **specify application procedures, forms for and contents of applications, required public notice,**
27 **eligibility criteria, deadlines and other criteria for prequalifying a nonprofit organization**
28 **under this section. At a minimum, the rules must require as eligibility criteria for prequali-**

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 **fication that the nonprofit organization:**

2 **(A) Is responsible;**

3 **(B) Received grant moneys from a granting agency during at least three out of the pre-**
 4 **vious four biennial appropriation cycles;**

5 **(C) Exercised careful stewardship over public moneys and met the purposes and goals**
 6 **specified for previous grants;**

7 **(D) Spent not more than 10 percent of all previous grants on administration or organ-**
 8 **izational overhead; and**

9 **(E) Otherwise acted in a manner that fostered trust and respect for the nonprofit or-**
 10 **ganization within the granting agency and the community the nonprofit organization served.**

11 **(c) A granting agency may adopt all or a portion of the department's model rules or may**
 12 **adopt the granting agency's own rules if the rules comply with the requirements of sections**
 13 **1 to 3 of this 2023 Act. If the granting agency does not adopt the granting agency's own rules**
 14 **under this paragraph, the granting agency is subject to the department's model rules.**

15 **(3)(a) After receiving an application for prequalification, the granting agency shall in-**
 16 **vestigate the applicant as necessary to determine whether prequalification for the applicant**
 17 **is warranted. If an applicant requests an early decision to allow the applicant as much time**
 18 **as possible to prepare to apply for an available grant, the granting agency shall make the**
 19 **granting agency's determination within 30 days, if practicable.**

20 **(b) In making a determination as to whether prequalification is warranted, a granting**
 21 **agency shall consider only the eligibility criteria specified in subsection (2)(b) of this section.**

22 **(4)(a) If after evaluating a nonprofit organization's application for prequalification a**
 23 **granting agency determines that prequalification is warranted, the granting agency shall**
 24 **notify the nonprofit organization of the prequalification and in the notice:**

25 **(A) State clearly and conspicuously that:**

26 **(i) A prequalification is not a grant and does not entitle a nonprofit organization to a**
 27 **grant or create any rights to or proprietary interest in grant moneys;**

28 **(ii) The nonprofit organization must apply separately to the granting agency for each**
 29 **grant that requires an application and must meet any eligibility criteria required for the**
 30 **grant; and**

31 **(iii) Block grants the nonprofit organization receives are subject to reporting require-**
 32 **ments and annual audits, and the nonprofit organization must remain responsible during the**
 33 **period in which the nonprofit organization makes expenditures from grant moneys;**

34 **(B) Specify any category, classification or type of grant to which the prequalification**
 35 **applies and any applicable limits on the nonprofit organization's eligibility to receive grant**
 36 **moneys as block grants;**

37 **(C) Specify the maximum amount of grant moneys the nonprofit may receive as a block**
 38 **grant during any biennium; and**

39 **(D) Specify the period of time for which the prequalification is valid.**

40 **(b) If a granting agency determines that prequalification for a nonprofit organization is**
 41 **not warranted, the granting agency shall notify the nonprofit organization of the granting**
 42 **agency's determination and in the notice:**

43 **(A) Explain the reasons for denying the prequalification, with specific reference to any**
 44 **standards of responsibility or eligibility criteria the nonprofit organization failed to meet; and**

45 **(B) State that the nonprofit organization has an opportunity for a hearing under section**

1 **3 of this 2023 Act.**

2 (c) **If a nonprofit organization requests a hearing under section 3 of this 2023 Act, the**
 3 **nonprofit organization shall notify the granting agency within three business days after re-**
 4 **ceiving a notice under paragraph (b) of this subsection.**

5 (5) **If a granting agency discovers after prequalifying a nonprofit organization that the**
 6 **prequalification is no longer warranted, the granting agency may revoke or modify the pre-**
 7 **qualification upon reasonable notice to the nonprofit organization, except that a revocation**
 8 **or modification is invalid as to any grant that the nonprofit organization has already re-**
 9 **ceived.**

10 (6) **A granting agency shall require a nonprofit organization to which the granting agency**
 11 **awards a block grant after prequalification to report at least quarterly to the granting**
 12 **agency concerning the nonprofit organization’s use and expenditures of block grant moneys**
 13 **in sufficient detail for the granting agency to determine whether the nonprofit organization**
 14 **is using the moneys in accordance with the purposes and goals of the grant and is providing**
 15 **adequate goods or services at an acceptable level of performance. The granting agency shall**
 16 **also conduct an annual audit of the nonprofit organization’s use of the grant moneys. The**
 17 **granting agency may set aside a portion of the grant moneys to pay the costs of conducting**
 18 **the audit through an experienced contract auditor.**

19 (7) **Before making an appropriation to a granting agency that the granting agency may**
 20 **allocate to a nonprofit organization as a block grant, the Legislative Assembly each biennium**
 21 **shall identify issues, needs and priorities that are critical for the health, safety or welfare**
 22 **of residents of this state. A granting agency that receives moneys the Legislative Assembly**
 23 **appropriates to address critical issues, needs and priorities shall allocate grants solely for**
 24 **the issues, needs and priorities the Legislative Assembly identifies as critical.**

25 (8) **A granting agency shall report not later than September 15 of each year to the Joint**
 26 **Legislative Audit Committee concerning prequalifications the granting agency allowed, the**
 27 **nonprofit organizations to which the granting agency awarded block grants and the results**
 28 **of all audits the granting agency conducted of block grant recipients. The committee shall**
 29 **determine the contents of the reports the granting agency must submit and notify the**
 30 **granting agency of the committee’s requirements.**

31 **SECTION 2. (1) As part of a granting agency’s evaluation of an application for prequali-**
 32 **fication under section 1 of this 2023 Act, the granting agency shall determine whether the**
 33 **applicant is responsible in accordance with the standards of responsibility set forth in sub-**
 34 **section (2) of this section. If the granting agency determines that an applicant is not re-**
 35 **sponsible, the granting agency shall provide the applicant with written notice of the granting**
 36 **agency’s determination.**

37 (2) **In order for a granting agency to determine that an applicant for prequalification is**
 38 **responsible, the applicant must demonstrate to the granting agency that the applicant:**

39 (a) **Has available the appropriate financial, material, equipment, facility and personnel**
 40 **resources and expertise, or has the ability to obtain the resources and expertise, necessary**
 41 **to provide goods and services that meet the purposes and goals of grant moneys that the**
 42 **granting agency administers.**

43 (b) **Used previous grant moneys the applicant received from the state with a satisfactory**
 44 **record of performance. For purposes of this paragraph, a satisfactory record of performance**
 45 **means that the applicant met the purposes and goals of the grant and, to the extent that the**

1 costs associated with and time available to meet the purposes and goals remained within the
2 applicant's control, the applicant stayed within the time and budget allotted for the grant
3 and otherwise performed in a satisfactory manner. The granting agency shall document the
4 applicant's record of performance if the granting agency finds under this paragraph that the
5 applicant is not responsible.

6 (c) Has a satisfactory record of integrity. The granting agency in evaluating the
7 applicant's record of integrity may consider, among other things, whether the applicant or
8 an employee of the applicant has previous criminal convictions for offenses related to ob-
9 taining or attempting to obtain a grant fraudulently or under false pretenses. The granting
10 agency shall document the applicant's record of integrity if the granting agency finds under
11 this paragraph that the applicant is not responsible.

12 (d) Is legally qualified to receive a grant from the granting agency, which qualification
13 includes but is not limited to possessing any required business or professional licenses and
14 registering with the Secretary of State and the Attorney General, if registration is required
15 under the laws of this state.

16 (e) Supplied all necessary information in connection with the inquiry concerning respon-
17 sibility. If an applicant fails to promptly supply information concerning responsibility that
18 the granting agency requests, the granting agency shall determine the applicant's responsi-
19 bility based on available information or may find that the applicant is not responsible.

20 **SECTION 3.** (1) An applicant for prequalification under section 1 of this 2023 Act may
21 appeal a denial of prequalification only in accordance with this section. The applicant's appeal
22 is not subject to ORS chapter 183 unless this section specifically provides otherwise.

23 (2) Immediately after receiving an applicant's request for a hearing under section 1 of
24 this 2023 Act, a granting agency shall notify the Director of the Oregon Department of Ad-
25 ministrative Services and the director, after receiving notice from the granting agency shall
26 promptly notify the person appealing and the granting agency of the time and place of the
27 hearing. The director shall conduct the hearing and decide the appeal within 30 days after
28 receiving the notice from the granting agency. The director shall set forth in writing the
29 reasons for the hearing decision.

30 (3) At the hearing the director shall consider de novo the notice of denial, revocation or
31 revision of a prequalification, the standards of responsibility specified in section 2 of this 2023
32 Act upon which the contracting agency based the denial, revocation or revision of the pre-
33 qualification and any evidence the parties provide. In all other respects, a hearing before the
34 director must be conducted in the same manner as a contested case under ORS 183.417 (1)
35 to (4) and (7), 183.425, 183.440, 183.450 and 183.452.

36 (4) The director may allocate the director's costs for the hearing between the person
37 appealing and the granting agency. The director shall base the allocation upon facts the di-
38 rector finds and states in the final order that, in the director's opinion, warrant the allo-
39 cation of costs. If the final order does not allocate the costs for the hearing, the costs must
40 be paid as follows:

41 (a) If the director upholds the decision to deny, revoke or revise a prequalification of a
42 person, the person appealing the granting agency's decision shall pay the costs.

43 (b) If the director reverses the decision to deny, revoke or revise a prequalification, the
44 granting agency shall pay the costs.

45 (5) A decision of the director may be reviewed only upon a petition, filed within 15 days

1 after the date of the decision, in the Circuit Court for Marion County. The circuit court shall
2 reverse or modify the decision only if the court finds:

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

4 (b) There was evident partiality or corruption on the part of the director that operated
5 to the substantial prejudice of the person appealing the decision; or

6 (c) An evident material miscalculation of figures or an evident material mistake occurred
7 in the description of any person, thing or property referred to in the decision, and the mis-
8 calculation or mistake operated to the substantial prejudice of the person appealing the de-
9 cision.

10 (6) If the court overturns the director's decision, the court may require the granting
11 agency to prequalify the person appealing the decision and may award attorney fees and
12 costs to the person.

13 **SECTION 4.** (1) Sections 1 to 3 of this 2023 Act become operative on January 1, 2024.

14 (2) The Director of the Oregon Department of Administrative Services or a granting
15 agency, as defined in section 1 of this 2023 Act, may adopt rules and take any action before
16 the operative date specified in subsection (1) of this section that is necessary to enable the
17 director or the granting agency, on and after the operative date specified in subsection (1)
18 of this section, to undertake and exercise all of the duties, functions and powers conferred
19 on the director or the granting agency by sections 1 to 3 of this 2023 Act.

20 **SECTION 5.** This 2023 Act takes effect on the 91st day after the date on which the 2023
21 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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