

Requested by Senator LIEBER

**PROPOSED AMENDMENTS TO
SENATE BILL 871**

1 In line 2 of the printed bill, after “buildings” insert “; creating new pro-
2 visions; amending ORS 279A.010, 279A.065, 469.754 and 469.756; and prescrib-
3 ing an effective date”.

4 Delete lines 4 through 9 and insert:

5 **“SECTION 1. Section 2 of this 2023 Act is added to and made a part**
6 **of ORS chapter 279C.**

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

8 **“(a) ‘Cost effective’ means that over the useful life of an energy**
9 **conservation measure the present value of a reduction in costs to a**
10 **contracting agency associated with energy use in a public improve-**
11 **ment is greater than the net present value, discounted at the cost of**
12 **public borrowing, of the costs to the contracting agency of construct-**
13 **ing or installing, maintaining and operating the energy conservation**
14 **measure that provides the reduction in energy use.**

15 **“(b) ‘Energy conservation measure’ means equipment, a fixture or**
16 **a furnishing that a qualified energy service company identifies, eval-**
17 **uates, recommends, designs and constructs or installs for or in a**
18 **public improvement as a means for reducing energy consumption and**
19 **related costs of energy use in the public improvement, including re-**
20 **ductions and cost savings associated with using electrical energy,**
21 **thermal energy and water, reductions in generated waste, including**

1 greenhouse gas emissions, and reductions in costs associated with
2 waste or disposing of waste.

3 “(c) ‘Guarantee’ means an enforceable agreement between a con-
4 tracting agency and a qualified energy service company that:

5 “(A) Allocates responsibilities between the contracting agency and
6 the qualified energy service company for achieving specific energy
7 savings or performance from an energy conservation measure in a
8 public improvement; and

9 “(B) Provides remedies to a contracting agency, including damages
10 and appropriate equitable relief, if an energy conservation measure the
11 qualified energy service company identifies, evaluates, recommends,
12 designs, constructs or installs for or in a public improvement fails to
13 achieve the energy savings or performance specified in an energy
14 savings performance contract.

15 “(d) ‘Qualified energy service company’ means a person that:

16 “(A) Has demonstrated a technical, operational, financial and
17 managerial capability for, and a prior record of success in, identifying,
18 evaluating, recommending, designing and constructing or installing
19 an energy conservation measure;

20 “(B) Has developed expertise in measuring and verifying energy use
21 and reductions in energy use in buildings and other structures; and

22 “(C) Has prequalified with the State Department of Energy as pro-
23 vided under rules the department adopts under ORS 276.915.

24 “(2) An energy savings performance contract must:

25 “(a) Permit a contracting agency to purchase or finance the costs
26 of an energy conservation measure with any combination of:

27 “(A) Financing that a qualified energy service company provides;

28 “(B) Tax-exempt lease purchase agreements;

29 “(C) Municipal lease financing;

30 “(D) Financing from financial institutions or other parties; or

1 **“(E) Other financing that the State Treasurer approves;**
2 **“(b) Permit the contracting agency to pay the costs of an energy**
3 **conservation measure and any costs of financing the energy conser-**
4 **vation measure from:**
5 **“(A) Energy cost savings, reductions in utility costs or savings in**
6 **operating or maintaining the public improvement;**
7 **“(B) Proceeds from grants or gifts, incentives from utilities, refi-**
8 **nancing or other financing; or**
9 **“(C) Other funding sources, including appropriations, the contract-**
10 **ing agency’s capital budget or other funds that the contracting agency**
11 **may lawfully use for the purpose set forth in this paragraph;**
12 **“(c) Provide that the contracting agency may purchase or finance**
13 **an energy conservation measure as provided in paragraph (a) of this**
14 **subsection if the utility cost savings that will result from the energy**
15 **conservation measure is sufficient to pay, within the useful life of the**
16 **energy conservation measure, the cost of the energy conservation**
17 **measure and the costs of financing the energy conservation measure;**
18 **“(d) Provide that a contracting agency may finance the costs of all**
19 **energy conservation measures for a public improvement as provided**
20 **in paragraph (a) of this subsection if the aggregated utility cost**
21 **savings that will result from all energy conservation measures is suf-**
22 **ficient to pay, within the useful life of the energy conservation meas-**
23 **ures, the cost of the energy conservation measures and the costs of**
24 **financing the energy conservation measures; and**
25 **“(e) Provide a guarantee to the contracting agency of a specific and**
26 **measurable reduction in energy use and utility costs as a consequence**
27 **of installing and operating the energy conservation measures that are**
28 **the subject of the energy savings performance contract.**
29 **“(3) A contracting agency may enter into only those energy savings**
30 **performance contracts that are cost effective.**

1 “(4) A contracting agency may choose only a qualified energy ser-
2 vice company as a contractor for an energy savings performance con-
3 tract. The exemption set forth in ORS 279C.335 (1)(f) exempts the
4 contracting agency from any requirement to issue a request for pro-
5 posals or otherwise conduct a competitive procurement. In soliciting
6 an energy savings performance contract, the contracting agency may
7 use any lawful process that complies with the contracting agency’s
8 rules and policies.

9 “SECTION 3. (1) As used in this section, ‘state agency’ has the
10 meaning given that term in ORS 278.005.

11 “(2)(a) The Oregon Department of Administrative Services shall
12 cooperate with the State Department of Energy to develop and imple-
13 ment a comprehensive assessment of energy use and greenhouse gas
14 emissions of all state-owned buildings. At a minimum, the assessments
15 must:

16 “(A) Examine and quantify each building’s greenhouse gas emis-
17 sions, using where feasible existing data such as energy use reporting
18 to the State Department of Energy, existing work the State Depart-
19 ment of Energy performs in connection with the United States De-
20 partment of Energy’s Standard Energy Efficiency Data program and
21 data from other existing programs and contracts;

22 “(B) Identify equipment or usage that contributes to greenhouse
23 gas emissions from each building; and

24 “(C) Determine and quantify the useful life of equipment in each
25 building that contributes to greenhouse gas emissions.

26 “(b) The Oregon Department of Administrative Services may con-
27 duct the assessments described in paragraph (a) of this subsection in
28 phases or stages where necessary or appropriate.

29 “(c) The Oregon Department of Administrative Services may pro-
30 cure services from a private contractor to conduct the assessments

1 described in paragraph (a) of this subsection throughout the state.

2 “(3) All agencies of state government shall cooperate with and as-
3 sist the Oregon Department of Administrative Services or the
4 department’s contractor in conducting the assessments, and shall
5 timely provide relevant information to the department or the con-
6 tractor in accordance with methodology the department specifies.

7 “(4) The Oregon Department of Administrative Services and the
8 State Department of Energy shall cooperate to create a searchable and
9 modifiable database with the data that the Oregon Department of Ad-
10 ministrative Services, or the department’s contractor, collects from
11 the assessments described in subsection (2) of this section. State
12 agencies shall use baseline data from the database as a tool for plan-
13 ning greenhouse gas emission reduction targets in capital projects.

14 “(5)(a) The Oregon Department of Administrative Services and the
15 State Department of Energy shall cooperate to oversee all capital
16 projects in which:

17 “(A) A state agency constructs or performs a major renovation on
18 a state building; and

19 “(B) The estimated contract price for the capital project exceeds \$1
20 million.

21 “(b) In performing the oversight described in paragraph (a) of this
22 subsection, the departments shall:

23 “(A) Develop and implement guidelines for sustainable design that:

24 “(i) Apply to all state agencies and all capital projects described in
25 paragraph (a) of this subsection;

26 “(ii) Take into account the building’s life cycle and the life cycle
27 of all of the building’s systems, components, materials, operations and
28 maintenance; and

29 “(iii) Consider each building’s size, cost or purpose;

30 “(B) Provide guidance and technical expertise to each state agency

1 with respect to construction methods, materials, energy conservation
2 measures and other techniques and technologies that will aid in
3 achieving the state’s green building, energy efficiency and greenhouse
4 gas emissions reduction goals; and

5 “(C) Use existing work the State Department of Energy performed
6 in connection with the United States Department of Energy’s Standard
7 Energy Efficiency Data program, data from other existing programs
8 and contracts and, where appropriate, data from the database de-
9 scribed in subsection (4) of this section.

10 “(c) Each state agency shall report regularly to the Oregon De-
11 partment of Administrative Services concerning progress on a capital
12 project described in paragraph (a) of this subsection, with an emphasis
13 on progress toward meeting the goals described in paragraph (b)(B)
14 of this subsection. A state agency may combine a report under this
15 paragraph with a report from another state agency.

16 “(6) The Oregon Department of Administrative Services and the
17 State Department of Energy shall participate on behalf of the state in
18 the National Building Performance Standards Coalition.

19 “SECTION 4. ORS 279A.010 is amended to read:

20 “279A.010. (1) As used in the Public Contracting Code, unless the context
21 or a specifically applicable definition requires otherwise:

22 “(a) ‘Bidder’ means a person that submits a bid in response to an invita-
23 tion to bid.

24 “(b) ‘Contracting agency’ means a public body authorized by law to con-
25 duct a procurement. ‘Contracting agency’ includes, but is not limited to, the
26 Director of the Oregon Department of Administrative Services and any per-
27 son authorized by a contracting agency to conduct a procurement on the
28 contracting agency’s behalf. ‘Contracting agency’ does not include the judi-
29 cial department or the legislative department.

30 “(c) ‘Days’ means calendar days.

1 “(d) ‘Department’ means the Oregon Department of Administrative Ser-
2 vices.

3 “(e) ‘Director’ means the Director of the Oregon Department of Adminis-
4 trative Services or a person designated by the director to carry out the au-
5 thority of the director under the Public Contracting Code.

6 “(f) ‘Emergency’ means circumstances that:

7 “(A) Could not have been reasonably foreseen;

8 “(B) Create a substantial risk of loss, damage or interruption of services
9 or a substantial threat to property, public health, welfare or safety; and

10 “(C) Require prompt execution of a contract to remedy the condition.

11 “[*(g) ‘Energy savings performance contract’ means a public contract between*
12 *a contracting agency and a qualified energy service company for the identifi-*
13 *cation, evaluation, recommendation, design and construction of energy conser-*
14 *vation measures, including a design-build contract, that guarantee energy*
15 *savings or performance.*]

16 “(g) ‘**Energy savings performance contract**’ means a public contract
17 between a contracting agency and a qualified energy service company,
18 as defined in section 2 of this 2023 Act, including a design-build con-
19 tract as defined in rules the Attorney General or a contracting agency
20 adopts under ORS 279A.065, in which the qualified energy service
21 company:

22 “(A) **Identifies, evaluates, recommends, designs and constructs or**
23 **installs an energy conservation measure for use in a public improve-**
24 **ment; and**

25 “(B) **Guarantees that the energy conservation measure will provide**
26 **a specified level or amount of energy savings or reduction in utility**
27 **costs.**

28 “(h) ‘Executive department’ has the meaning given that term in ORS
29 174.112.

30 “(i) ‘Goods’ includes supplies, equipment, materials, personal property,

1 including any tangible, intangible and intellectual property and rights and
2 licenses in relation thereto, and combinations of any of the items identified
3 in this paragraph.

4 “(j) ‘Goods and services’ or ‘goods or services’ includes combinations of
5 any of the items identified in the definitions of ‘goods’ and ‘services.’

6 “(k)(A) ‘Grant’ means:

7 “(i) An agreement under which a contracting agency receives moneys,
8 property or other assistance, including but not limited to federal assistance
9 that is characterized as a grant by federal law or regulations, loans, loan
10 guarantees, credit enhancements, gifts, bequests, commodities or other assets,
11 from a grantor for the purpose of supporting or stimulating a program or
12 activity of the contracting agency and in which no substantial involvement
13 by the grantor is anticipated in the program or activity other than involve-
14 ment associated with monitoring compliance with the grant conditions; or

15 “(ii) An agreement under which a contracting agency provides moneys,
16 property or other assistance, including but not limited to federal assistance
17 that is characterized as a grant by federal law or regulations, loans, loan
18 guarantees, credit enhancements, gifts, bequests, commodities or other assets,
19 to a recipient for the purpose of supporting or stimulating a program or ac-
20 tivity of the recipient and in which no substantial involvement by the con-
21 tracting agency is anticipated in the program or activity other than
22 involvement associated with monitoring compliance with the grant condi-
23 tions.

24 “(B) ‘Grant’ does not include a public contract for a public improvement,
25 for public works, as defined in ORS 279C.800, or for emergency work, minor
26 alterations or ordinary repair or maintenance necessary to preserve a public
27 improvement, when under the public contract a contracting agency pays, in
28 consideration for contract performance intended to realize or to support the
29 realization of the purposes for which grant funds were provided to the con-
30 tracting agency, moneys that the contracting agency has received under a

1 grant.

2 “(L) ‘Industrial oil’ means any compressor, turbine or bearing oil, hy-
3 draulic oil, metal-working oil or refrigeration oil.

4 “(m) ‘Judicial department’ has the meaning given that term in ORS
5 174.113.

6 “(n) ‘Legislative department’ has the meaning given that term in ORS
7 174.114.

8 “(o) ‘Local contract review board’ means a local contract review board
9 described in ORS 279A.060.

10 “(p) ‘Local contracting agency’ means a local government or special gov-
11 ernment body authorized by law to conduct a procurement. ‘Local contract-
12 ing agency’ includes any person authorized by a local contracting agency to
13 conduct a procurement on behalf of the local contracting agency.

14 “(q) ‘Local government’ has the meaning given that term in ORS 174.116.

15 “(r) ‘Lowest responsible bidder’ means the lowest bidder who:

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

18 “(B) Has met the standards of responsibility set forth in ORS 279B.110
19 or 279C.375;

20 “(C) Has not been debarred or disqualified by the contracting agency un-
21 der ORS 279B.130 or 279C.440; and

22 “(D) If the advertised contract is a public improvement contract, is not
23 on the list created by the Construction Contractors Board under ORS
24 701.227.

25 “(s) ‘Lubricating oil’ means any oil intended for use in an internal com-
26 bustion crankcase, transmission, gearbox or differential or an automobile,
27 bus, truck, vessel, plane, train, heavy equipment or machinery powered by
28 an internal combustion engine.

29 “(t) ‘Person’ means a natural person capable of being legally bound, a sole
30 proprietorship, a corporation, a partnership, a limited liability company or

1 partnership, a limited partnership, a for-profit or nonprofit unincorporated
2 association, a business trust, two or more persons having a joint or common
3 economic interest, any other person with legal capacity to contract or a
4 public body.

5 “(u) ‘Post-consumer waste’ means a finished material that would normally
6 be disposed of as solid waste, having completed its life cycle as a consumer
7 item. ‘Post-consumer waste’ does not include manufacturing waste.

8 “(v) ‘Price agreement’ means a public contract for the procurement of
9 goods or services at a set price with:

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

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

14 “(w) ‘Procurement’ means the act of purchasing, leasing, renting or oth-
15 erwise acquiring goods or services. ‘Procurement’ includes each function and
16 procedure undertaken or required to be undertaken by a contracting agency
17 to enter into a public contract, administer a public contract and obtain the
18 performance of a public contract under the Public Contracting Code.

19 “(x) ‘Proposer’ means a person that submits a proposal in response to a
20 request for proposals.

21 “(y) ‘Public body’ has the meaning given that term in ORS 174.109.

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

27 “(aa) ‘Public contracting’ means procurement activities described in the
28 Public Contracting Code relating to obtaining, modifying or administering
29 public contracts or price agreements.

30 “(bb) ‘Public Contracting Code’ or ‘code’ means ORS chapters 279A, 279B

1 and 279C.

2 “(cc) ‘Public improvement’ means a project for construction, recon-
3 struction or major renovation on real property by or for a contracting
4 agency. ‘Public improvement’ does not include:

5 “(A) Projects for which no funds of a contracting agency are directly or
6 indirectly used, except for participation that is incidental or related prima-
7 rily to project design or inspection; or

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

10 “(dd) ‘Public improvement contract’ means a public contract for a public
11 improvement. ‘Public improvement contract’ does not include a public con-
12 tract for emergency work, minor alterations, or ordinary repair or mainte-
13 nance necessary to preserve a public improvement.

14 “(ee) ‘Recycled material’ means any material that would otherwise be a
15 useless, unwanted or discarded material except for the fact that the material
16 still has useful physical or chemical properties after serving a specific pur-
17 pose and can, therefore, be reused or recycled.

18 “(ff) ‘Recycled oil’ means used oil that has been prepared for reuse as a
19 petroleum product by refining, rerefining, reclaiming, reprocessing or other
20 means, provided that the preparation or use is operationally safe, environ-
21 mentally sound and complies with all laws and regulations.

22 “(gg) ‘Recycled paper’ means a paper product with not less than:

23 “(A) Fifty percent of its fiber weight consisting of secondary waste ma-
24 terials; or

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

27 “(hh) ‘Recycled PETE’ means post-consumer polyethylene terephthalate
28 material.

29 “(ii) ‘Recycled product’ means all materials, goods and supplies, not less
30 than 50 percent of the total weight of which consists of secondary and post-

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

6 "(jj) 'Secondary waste materials' means fragments of products or finished
7 products of a manufacturing process that has converted a virgin resource
8 into a commodity of real economic value. 'Secondary waste materials' in-
9 cludes post-consumer waste. 'Secondary waste materials' does not include
10 excess virgin resources of the manufacturing process. For paper, 'secondary
11 waste materials' does not include fibrous waste generated during the manu-
12 facturing process such as fibers recovered from waste water or trimmings of
13 paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood
14 residue from a manufacturing process.

15 "(kk) 'Services' mean services other than personal services designated
16 under ORS 279A.055, except that, for state contracting agencies with pro-
17 curement authority under ORS 279A.050 or 279A.140, 'services' includes per-
18 sonal services as designated by the state contracting agencies.

19 "(LL) 'Special government body' has the meaning given that term in ORS
20 174.117.

21 "(mm) 'State agency' means the executive department, except the Secre-
22 tary of State and the State Treasurer in the performance of the duties of
23 their constitutional offices.

24 "(nn) 'State contracting agency' means an executive department entity
25 authorized by law to conduct a procurement.

26 "(oo) 'State government' has the meaning given that term in ORS 174.111.

27 "(pp) 'Used oil' has the meaning given that term in ORS 459A.555.

28 "(qq) 'Virgin oil' means oil that has been refined from crude oil and that
29 has not been used or contaminated with impurities.

30 "(2) Other definitions appearing in the Public Contracting Code and the

1 sections in which they appear are:

2 “

- 3 (a) “Administering contracting
- 4 agency”ORS 279A.200
- 5 (b) “Affirmative action”ORS 279A.100
- 6 (c) “Architect”ORS 279C.100
- 7 (d) “Architectural,
- 8 engineering, photogram-
- 9 metric mapping,
- 10 transportation planning
- 11 or land surveying
- 12 services”ORS 279C.100
- 13 (e) “Bid documents”ORS 279C.400
- 14 (f) “Bidder”ORS 279B.415
- 15 (g) “Bids”ORS 279C.400
- 16 (h) “Brand name”ORS 279B.405
- 17 (i) “Brand name or equal
- 18 specification”ORS 279B.200
- 19 (j) “Brand name
- 20 specification”ORS 279B.200
- 21 (k) “Class special
- 22 procurement”ORS 279B.085
- 23 (L) “Consultant”ORS 279C.115
- 24 (m) “Contract-specific
- 25 special procurement”ORS 279B.085
- 26 (n) “Cooperative
- 27 procurement”ORS 279A.200
- 28 (o) “Cooperative procurement
- 29 group”ORS 279A.200
- 30 (p) “Donee”ORS 279A.250

1	(q)	“Engineer”	ORS 279C.100
2	(r)	“Findings”	ORS 279C.330
3	(s)	“Fire protection	
4		equipment”	ORS 279A.190
5	(t)	“Fringe benefits”	ORS 279C.800
6	(u)	“Funds of a public	
7		agency”	ORS 279C.810
8	(v)	“Good cause”	ORS 279C.585
9	(w)	“Good faith dispute”	ORS 279C.580
10	(x)	“Goods”	ORS 279B.115
11	(y)	“Housings”	ORS 279C.800
12	(z)	“Interstate cooperative	
13		procurement”	ORS 279A.200
14	(aa)	“Invitation to bid”	ORS 279B.005
15	and	279C.400
16	(bb)	“Joint cooperative	
17		procurement”	ORS 279A.200
18	(cc)	“Labor dispute”	ORS 279C.650
19	(dd)	“Land surveyor”	ORS 279C.100
20	(ee)	“Legally flawed”	ORS 279B.405
21	(ff)	“Locality”	ORS 279C.800
22	(gg)	“Nonprofit	
23		organization”	ORS 279C.810
24	(hh)	“Nonresident bidder”	ORS 279A.120
25	(ii)	“Not-for-profit	
26		organization”	ORS 279A.250
27	(jj)	“Original contract”	ORS 279A.200
28	(kk)	“Permissive cooperative	
29		procurement”	ORS 279A.200
30	(LL)	“Person”	ORS 279C.500

1	and 279C.815
2	(mm)	“Personal services”ORS 279C.100
3	(nn)	“Photogrammetric
4		mapping”ORS 279C.100
5	(oo)	“Photogrammetrist”ORS 279C.100
6	(pp)	“Prevailing rate of
7		wage”ORS 279C.800
8	(qq)	“Procurement
9		description”ORS 279B.005
10	(rr)	“Property”ORS 279A.250
11	(ss)	“Public agency”ORS 279C.800
12	(tt)	“Public contract”ORS 279A.190
13	(uu)	“Public works”ORS 279C.800
14	(vv)	“Purchasing contracting
15		agency”ORS 279A.200
16	(ww)	“Regularly organized fire
17		department”ORS 279A.190
18	(xx)	“Related services”ORS 279C.100
19	(yy)	“Request for
20		proposals”ORS 279B.005
21	(zz)	“Resident bidder”ORS 279A.120
22	(aaa)	“Responsible bidder”ORS 279A.105
23	and 279B.005
24	(bbb)	“Responsible
25		proposer”ORS 279B.005
26	(ccc)	“Responsive bid”ORS 279B.005
27	(ddd)	“Responsive
28		proposal”ORS 279B.005
29	(eee)	“Retainage”ORS 279C.550
30	(fff)	“Special

1 procurement”ORS 279B.085
2 (ggg) “Specification”ORS 279B.200
3 (hhh) “State agency”ORS 279A.250
4 (iii) “Substantial
5 completion”ORS 279C.465
6 (jjj) “Surplus property”ORS 279A.250
7 (kkk) “Transportation
8 planning services”ORS 279C.100
9 (LLL) “Unnecessarily
10 restrictive”ORS 279B.405

11 “ _____

12 **“SECTION 5.** ORS 279A.065 is amended to read:

13 “279A.065. (1) The Attorney General shall prepare and maintain model
14 rules that specify procedures for public contracting under the Public Con-
15 tracting Code and that are appropriate for all contracting agencies to use.
16 The Attorney General may devise and publish forms for use with the model
17 rules. The Attorney General shall adopt the model rules in accordance with
18 ORS chapter 183. Before adopting or amending a model rule, the Attorney
19 General shall consult with the Director of the Oregon Department of Ad-
20 ministrative Services, the Director of Transportation, representatives of
21 county governments, representatives of city governments, representatives of
22 school boards and other knowledgeable persons.

23 “(2) The Attorney General shall adopt model rules [*that*] **to** specify pro-
24 cedures for all contracting agencies to use to enter into energy savings per-
25 formance contracts **that are consistent with the requirements of section**
26 **2 of this 2023 Act.** Before adopting or amending a rule under this subsection,
27 the Attorney General shall consult with the Oregon Department of Admin-
28 istrative Services, the State Department of Energy, local contracting agen-
29 cies and other knowledgeable persons. The Attorney General may develop
30 standard contract forms for use with energy savings performance contracts.

1 “(3)(a) The Attorney General shall adopt model rules that specify proce-
2 dures for all contracting agencies to use to procure construction
3 manager/general contractor services. Before adopting or amending a rule
4 under this subsection, the Attorney General shall consult with the Director
5 of the Oregon Department of Administrative Services, the Director of
6 Transportation, local contracting agencies, construction contractors, con-
7 struction subcontractors and other knowledgeable persons.

8 “(b) Notwithstanding subsection (6) of this section, a contracting agency
9 may not adopt the contracting agency’s own rules for procuring construction
10 manager/general contractor services.

11 “(4) After each legislative session, the Attorney General shall review all
12 laws the Legislative Assembly passed that affect public contracting to de-
13 termine if the Attorney General should amend or repeal a model rule pre-
14 pared under this section or adopt a new rule. If the Attorney General
15 determines that a modification of the model rules is necessary, the Attorney
16 General shall prepare the modification within such time as to allow the
17 modification to take effect no later than 120 days after the effective date of
18 the legislation that caused the Attorney General to modify the rule. The
19 Attorney General may prepare a modification to take effect 121 or more days
20 after the effective date of the legislation if the Attorney General, in a notice
21 to the state agencies and persons listed in subsection (1) of this section,
22 specifies when the modification will take effect.

23 “(5) A contracting agency that has not adopted the contracting agency’s
24 own rules of procedure in accordance with subsection (6) of this section is
25 subject to the model rules the Attorney General adopts under this section,
26 including all modifications to the model rules that the Attorney General may
27 adopt.

28 “(6)(a) A contracting agency may adopt the contracting agency’s own
29 rules of procedure for public contracts that:

30 “(A) Specifically state that the model rules the Attorney General adopts

1 under this section do not apply to the contracting agency; and

2 “(B) Prescribe the rules of procedure that the contracting agency will use
3 for public contracts, which may include portions of the model rules the At-
4 torney General adopts.

5 “(b) A contracting agency that adopts rules under this subsection shall
6 review the rules each time the Attorney General modifies the model rules
7 under this section to determine whether the contracting agency should
8 modify the contracting agency’s rules to ensure compliance with statutory
9 changes.

10 “**SECTION 6.** ORS 469.754 is amended to read:

11 “469.754. (1) State agencies [*are authorized to*] **may** enter into such con-
12 tractual and other arrangements as [*may be*] **are** necessary or convenient to
13 design, develop, operate and finance projects on-site at state owned or state
14 rented facilities. [*In developing such projects, state agencies shall offer a right*
15 *of first refusal of two months for conservation and direct use renewable re-*
16 *sources and three months for cogeneration and generating renewable resources*
17 *to each local utility providing utility service to the agency to jointly develop,*
18 *finance, operate and otherwise act together in the development and operation*
19 *of such projects. The State Department of Energy shall adopt rules to establish*
20 *the procedure by which the right of first refusal shall be administered. In*
21 *adopting the rules, the department shall insure that the local utility providing*
22 *utility service to the state agency is entitled to the first right to negotiate with*
23 *the state agency and that the utility is entitled to match any offer made by any*
24 *other entity to participate in the project. The department also shall adopt pro-*
25 *cedures that insure that the right to first negotiate and the right to match any*
26 *offer applies to the sale of electrical or steam output from the project.]*

27 “(2)(a) For as long as a project established under ORS 469.752 to 469.756
28 produces savings:

29 “(A) A state agency’s budget [*shall*] **may** not be cut because of savings
30 due to the project; and

1 “(B) A state agency shall retain [50] **100** percent of the net savings to the
2 state agency after any project debt service.

3 “(b) Savings from a project [*shall*] **must** be deposited in a revolving fund
4 administered by the state agency.

5 “(3) A state agency shall spend the savings under subsection (2) of this
6 section to increase productivity through:

7 “(a) Energy efficiency projects;

8 “(b) High-tech improvements, such as the purchase or installation of new
9 desktop or laptop computers or the linkage of computers into systems or
10 networks; or

11 “(c) Infrastructure improvements.

12 “(4) The moneys credited to the revolving fund may be invested and re-
13 invested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105
14 (3) or any other provision of law, interest or other earnings on moneys in
15 the revolving fund [*shall*] **must** be credited to the revolving fund.

16 “[5] *The remaining 50 percent of net savings to the state agency after any*
17 *project debt service shall be deposited in the General Fund.*]

18 “[6] **(5)** [*Nothing in*] ORS 469.752 to 469.756 [*authorizes*] **do not au-**
19 **thorize** a state agency to sell electricity to an entity other than an investor
20 owned utility, a publicly owned utility, an electric cooperative utility or the
21 Bonneville Power Administration.

22 “[7] **(6)** [*Nothing in*] ORS 469.752 to 469.756 [*limits*] **do not limit** the
23 authority of a state agency conferred by any other provision of law, or [*af-*
24 *fects*] **affect** any authority, including the authority of a municipality, to
25 regulate utility service under existing law.

26 “**SECTION 7.** ORS 469.756 is amended to read:

27 “469.756. The State Department of Energy in consultation with other state
28 agencies and utilities shall adopt rules, guidelines and procedures that are
29 necessary to establish savings for projects and to implement other provisions
30 of ORS 469.752 to 469.756, *including, but not limited to, rules prescribing the*

1 *procedures to be followed by an agency in negotiating with local utilities to*
2 *develop agreements suitable for the joint development of projects, and proce-*
3 *dures to determine which local utility, if any, shall be chosen to jointly develop*
4 *the project*]. The department may enter into agreements under ORS chapter
5 190 with state agencies to provide technical assistance in selecting appro-
6 priate projects and to evaluate and determine energy and cost savings.

7 **“SECTION 8. (1) Section 2 of this 2023 Act and the amendments to**
8 **ORS 279A.010 and 279A.065 by sections 4 and 5 of this 2023 Act apply**
9 **to procurements for energy savings performance contracts that a**
10 **contracting agency enters into on and after the operative date speci-**
11 **fied in section 9 of this 2023 Act.**

12 **“(2) The amendments to ORS 469.754 and 469.756 by sections 6 and**
13 **7 of this 2023 Act apply to projects that a state agency commences, and**
14 **to contracts for energy sales into which the state agency enters, on**
15 **and after the operative date specified in section 9 of this 2023 Act.**

16 **“SECTION 9. (1) Sections 2 and 3 of this 2023 Act and the amend-**
17 **ments to ORS 279A.010, 279A.065, 469.754 and 469.756 by sections 4 to 7**
18 **of this 2023 Act become operative on January 1, 2024.**

19 **“(2) The Attorney General, the Director of the Oregon Department**
20 **of Administrative Services, the Director of Transportation, the Direc-**
21 **tor of the State Department of Energy, a contracting agency that**
22 **adopts rules under ORS 279A.065 and a state agency that commences**
23 **a project under ORS 469.752 to 469.756 may adopt rules and take any**
24 **other action before the operative date specified in subsection (1) of this**
25 **section that is necessary to enable the Attorney General, the directors,**
26 **the contracting agency or the state agency to undertake and exercise**
27 **all of the duties, functions and powers conferred on the Attorney**
28 **General, the directors, the contracting agency or the state agency by**
29 **sections 2 and 3 of this 2023 Act and the amendments to ORS 279A.010,**
30 **279A.065, 469.754 and 469.756 by sections 4 to 7 of this 2023 Act.**

