

A-Engrossed
Senate Bill 7

Ordered by the Senate March 31
Including Senate Amendments dated March 31

Sponsored by Senator COURTNEY

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.

Requires Oregon Health Authority to exercise procurement authority under Public Contracting Code and under supervision of Oregon Department of Administrative Services, for specified purposes.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to procurement authority for the Oregon Health Authority; creating new provisions;
3 amending ORS 279A.050, 413.033, 413.520 and 475.225 and section 1, chapter 77, Oregon Laws
4 2014; and declaring an emergency.

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

6 **SECTION 1.** ORS 279A.050 is amended to read:

7 279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting
8 agency shall exercise all procurement authority in accordance with the provisions of the Public
9 Contracting Code.

10 (b) *[When]* **If** a contracting agency has authority under this section to carry out functions de-
11 scribed in this section, or has authority to make procurements under a provision of law other than
12 the Public Contracting Code, the contracting agency *[is not required to]* **need not** exercise *[that]* **the**
13 **contracting agency's** authority in accordance with the provisions of the code if, under ORS
14 279A.025, the code does not apply to the contract or contracting *[authority]* **agency**.

15 (2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director
16 of the Oregon Department of Administrative Services has all the authority to carry out the pro-
17 visions of the Public Contracting Code.

18 (3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation
19 has all the authority to:

20 (a) Procure or supervise the procurement of all services and personal services to construct, ac-
21 quire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking
22 facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

23 (b) Procure or supervise the procurement of all goods, services, public improvements and per-
24 sonal services *[relating to the operation, maintenance or construction of]* **that relate to operating,**
25 **maintaining or constructing** highways, bridges and other transportation facilities that are subject
26 to the authority of the Department of Transportation; and

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 (c) Establish standards for, prescribe forms for and conduct the prequalification of prospective
2 bidders on public improvement contracts [*related to the operation, maintenance or construction of*]
3 **that relate to operating, maintaining or constructing** highways, bridges and other transportation
4 facilities that are subject to the authority of the Department of Transportation.

5 (4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all
6 the authority to procure or supervise the procurement of goods, services and personal services re-
7 lated to programs under the authority of the Secretary of State.

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

11 (6) The state agencies listed in this subsection have all the authority to do the following in ac-
12 cordance with the Public Contracting Code:

13 (a) The Department of Human Services to procure or supervise the procurement of goods, ser-
14 vices and personal services under ORS 179.040 for the department's institutions and the procurement
15 of goods, services and personal services for [*the construction, demolition, exchange, maintenance, op-*
16 *eration*] **constructing, demolishing, exchanging, maintaining, operating** and equipping [*of*] hous-
17 ing for the purpose of providing care to individuals with intellectual disabilities or other
18 developmental disabilities, subject to applicable provisions of ORS 427.335;

19 (b) The Oregon Health Authority to procure or supervise the procurement of goods, services and
20 personal services under ORS 179.040 and construction materials, equipment and supplies for the
21 authority's institutions and the procurement of goods, services, personal services, construction ma-
22 terials, equipment and supplies for [*the construction, demolition, exchange, maintenance, operation*]
23 **constructing, demolishing, exchanging, maintaining, operating** and equipping [*of*] housing for
24 [*persons*] **individuals** with chronic mental illness, subject to applicable provisions of ORS 426.504;

25 (c) The State Department of Fish and Wildlife to procure or supervise the procurement of con-
26 struction materials, equipment, supplies, services and personal services for public improvements,
27 public works or ordinary construction described in ORS 279C.320 that is subject to the authority
28 of the State Department of Fish and Wildlife;

29 (d) The State Parks and Recreation Department to procure or supervise the procurement of all
30 goods, services, public improvements and personal services [*relating*] **related** to state parks;

31 (e) The Oregon Department of Aviation to procure or supervise the procurement of construction
32 materials, equipment, supplies, services and personal services for public improvements, public works
33 or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon
34 Department of Aviation;

35 (f) The Oregon Business Development Department to procure or supervise the procurement of
36 all goods, services, personal services and public improvements related to its foreign trade offices
37 operating outside the state;

38 (g) The Housing and Community Services Department to procure or supervise the procurement
39 of goods, services and personal services as provided in ORS 279A.025 (2)(n);

40 (h) The Department of Corrections to procure or supervise the procurement of construction
41 materials, equipment, supplies, services and personal services for public improvements, public works
42 or ordinary construction described in ORS 279C.320 that is subject to the authority of the Depart-
43 ment of Corrections;

44 (i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120,
45 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, ser-

1 vices and personal services under ORS 179.040 for its institutions;

2 (j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate
3 broker and principal real estate broker services related to programs under the department's au-
4 thority;

5 (k) The Oregon Military Department to procure or supervise the procurement of construction
6 materials, equipment, supplies, services and personal services for public improvements, public works
7 or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon
8 Military Department;

9 (L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085
10 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to pro-
11 cure or supervise the procurement of goods, services, personal services and information technology
12 [*relating*] **related** to student assessment; and

13 (m) Any state agency to conduct a procurement when the agency is specifically authorized by
14 any provision of law other than the Public Contracting Code to enter into a contract.

15 (7)(a) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Depart-
16 ment of Administrative Services has exclusive authority, unless the director delegates this authority,
17 to procure or supervise the procurement of:

18 (A) All price agreements on behalf of the state agencies identified in subsection (6)(a) to (k) of
19 this section under which more than one state agency may order goods, services or personal
20 services; and, *except for contracts procured by the Oregon Health Authority,*]

21 (B) All state agency information technology contracts.

22 (b) This subsection does not apply to contracts under which the contractor delivers to the state
23 agency information technology products or services incidental to the performance of personal ser-
24 vices contracts described in ORS chapter 279C or construction contracts described in ORS chapter
25 279C. [*A state agency identified in subsection (3) or (6)(a) to (k) of this section may not establish a price
26 agreement or enter into a contract for goods, services, personal services, construction materials, equip-
27 ment or supplies without the approval of the director if the director has established a price agreement
28 for the goods, services or personal services.*]

29 (c) **If the director has established a price agreement for goods, services or personal ser-**
30 **VICES, a state agency identified in subsection (3) or (6)(a) to (k) of this section may not es-**
31 **tablish a price agreement or enter into a contract for the goods, services or personal**
32 **services without the approval of the director.**

33 **SECTION 2.** ORS 413.033 is amended to read:

34 413.033. (1) The Oregon Health Authority is under the supervision and control of a director, who
35 is responsible for [*the performance of*] **performing** the duties, functions and powers of the authority.

36 (2) The Governor shall appoint the Director of the Oregon Health Authority, who holds office
37 at the pleasure of the Governor. The appointment of the director [*shall be*] **is** subject to confirmation
38 by the Senate in the manner provided by ORS 171.562 and 171.565.

39 (3) **In addition to the procurement authority granted by ORS 279A.050 (6)(b) and except**
40 **as provided in ORS 279A.050 (7), the director has all powers necessary to effectively and ex-**
41 **peditiously carry out the duties, functions and powers vested in the authority by ORS 413.032.**

42 [(3)(a) *In addition to the procurement authority granted by ORS 179.040 and 279A.050, the director*
43 *shall have all powers necessary to effectively and expeditiously carry out the duties, functions and*
44 *powers vested in the authority by ORS 413.032, and the duties, functions and powers that are shared*
45 *by or delegated to the authority with respect to the following agencies:]*

1 [(A) *The Oregon Department of Administrative Services;*]

2 [(B) *The Department of Consumer and Business Services; and*]

3 [(C) *The Department of Human Services.*]

4 [(b) *With respect to procurements and contracts that the authority is authorized to conduct or*
5 *manage, the director may make procurements on behalf of, and supervise the procurement, establish-*
6 *ment and administration of contracts entered into by, the departments described in paragraph (a) of this*
7 *subsection.*]

8 [(c) *Notwithstanding ORS 279B.085, the director may approve a special procurement under para-*
9 *graph (b) of this subsection that:*]

10 [(A) *Describes the proposed contracting procedure and the goods or services, or the class of goods*
11 *or services, to be acquired through the special procurement;*]

12 [(B) *Is unlikely to encourage favoritism in the awarding of public contracts or to substantially di-*
13 *minish competition for public contracts; and*]

14 [(C) *Is reasonably expected to result in substantial cost savings to the authority or to the public.*]

15 [(d) *The director shall give public notice of the approval of a proposed special procurement as*
16 *provided by the authority by rule. The requirements applicable to the Director of the Oregon Depart-*
17 *ment of Administrative Services under ORS 279B.400 apply to the Director of the Oregon Health Au-*
18 *thority with respect to special procurements under this subsection.*]

19 [(e) *Notwithstanding ORS 279C.335, the director may exempt a public improvement contract or a*
20 *class of public improvement contracts that the authority is authorized to conduct or manage from the*
21 *competitive bidding requirements of ORS 279C.335 (1) if the director makes the findings described in*
22 *ORS 279C.335 (2). The provisions in ORS 279C.335 (3) to (8) with respect to the Director of the Oregon*
23 *Department of Administrative Services apply to the Director of the Oregon Health Authority for ex-*
24 *emptions granted by the director under this subsection.*]

25 (4) The director shall have the power to obtain such other services as the director considers
26 necessary or desirable, including participation in organizations of state insurance supervisory offi-
27 cials and appointment of advisory committees. A member of an advisory committee so appointed
28 [shall] **may not** receive [no] compensation for services as a member, but, subject to any other ap-
29 plicable law regulating travel and other expenses of state officers, shall receive actual and neces-
30 sary travel and other expenses incurred in [the performance of] **performing** official duties.

31 (5) The director may apply for, receive and accept grants, gifts or other payments, including
32 property or services from any governmental or other public or private person, and may make ar-
33 rangement [for the] **to** use [of] the receipts, including [the] **for** undertaking [of] special studies and
34 other projects [relating] **that relate** to the costs of health care, access to health care, public health
35 and health care reform.

36 **SECTION 3.** ORS 413.520 is amended to read:

37 413.520. (1) The Oregon Health Authority, in collaboration with county representatives, shall
38 develop a plan for the administration of the statewide gambling addiction programs and delivery of
39 program services.

40 (2) The authority may appoint an advisory committee or designate an existing advisory com-
41 mittee to make recommendations to the authority concerning:

42 (a) Performance standards and evaluation methodology;

43 (b) Fiscal reporting and accountability;

44 (c) Delivery of services; and

45 (d) A distribution plan for use of available funds.

1 (3) The distribution plan for the moneys available in the Problem Gambling Treatment Fund
2 shall be based on performance standards.

3 (4) The authority may enter into an intergovernmental agreement or other contract, **subject to**
4 **ORS chapters 279A, 279B and 279C**, for the delivery of services related to programs for the pre-
5 vention and treatment of gambling addiction and other emotional and behavioral problems related
6 to gambling.

7 (5) Before entering into an agreement or contract under subsection (4) of this section, the au-
8 thority must consider the experience, performance and program capacity of those organizations
9 currently providing services.

10 **SECTION 4.** ORS 475.225 is amended to read:

11 475.225. (1) The Oregon Health Authority shall carry out educational programs designed to
12 prevent and deter misuse and abuse of controlled substances. In connection with these programs it
13 may:

14 (a) Promote better recognition of the problems of misuse and abuse of controlled substances
15 within the regulated industry and among interested groups and organizations;

16 (b) Assist the regulated industry and interested groups and organizations in contributing to the
17 reduction of misuse and abuse of controlled substances;

18 (c) Consult with interested groups and organizations to aid them in solving administrative and
19 organizational problems;

20 (d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of ed-
21 ucational programs on misuse or abuse of controlled substances;

22 (e) Disseminate the results of research on misuse and abuse of controlled substances to promote
23 a better public understanding of what problems exist and what can be done to combat them; and

24 (f) Assist in the education and training of state and local law enforcement officials in their ef-
25 forts to control misuse and abuse of controlled substances.

26 (2) The authority shall encourage research on the medical use, misuse and abuse of controlled
27 substances. In connection with the research, and in furtherance of the enforcement of ORS 475.005
28 to 475.285 and 475.752 to 475.980, it may:

29 (a) Establish methods to assess accurately the physiological, psychological and social effects of
30 controlled substances and identify their medical uses, relative hazard potential, and potential for
31 abuse;

32 (b) Make studies and undertake programs of research to:

33 (A) Develop new or improved approaches, techniques, systems, equipment and devices to
34 strengthen the enforcement of ORS 475.005 to 475.285 and 475.752 to 475.980;

35 (B) Determine patterns of use, misuse and abuse of controlled substances and the social effects
36 thereof; and

37 (C) Improve methods for preventing, predicting, understanding and dealing with the misuse and
38 abuse of controlled substances; or

39 (c) Enter into contracts with public agencies, institutions of higher education, and private or-
40 ganizations or individuals for the purpose of conducting research, demonstrations or special projects
41 which bear directly on misuse and abuse of controlled substances.

42 (3) The authority may enter into contracts for educational and research activities without per-
43 formance bonds and without regard to ORS [279A.125, 279A.140, 279B.025, 279B.240, 279B.270,
44 279B.275, 279B.280,] 459A.475, 459A.480, 459A.485 and 459A.490.

45 **SECTION 5.** Section 1, chapter 77, Oregon Laws 2014, is amended to read:

1 **Sec. 1.** (1) As used in this section:

2 (a)(A) “Information technology initiative” means a project to develop or provide, with the state
3 contracting agency’s or public corporation’s own personnel and resources, or to obtain by means of
4 a procurement or set of related procurements:

5 (i) New hardware, software or services for data processing, office automation or telecommuni-
6 cations;

7 (ii) An overhaul, upgrade or replacement of a substantial portion of the hardware or software
8 in an existing data processing, office automation or telecommunications system; or

9 (iii) A substantial expansion of existing data processing, office automation or telecommuni-
10 cations services.

11 (B) “Information technology initiative” does not include:

12 (i) A procurement for preliminary quality assurance services or quality management services;

13 (ii) A routine update to or purchase of hardware or software within an existing data processing,
14 office automation or telecommunications system;

15 (iii) A renewal of an existing contract for data processing, office automation or telecommuni-
16 cations services under terms and conditions that are substantially the same as in the existing con-
17 tract; or

18 (iv) A replacement of a component of an existing data processing, office automation or tele-
19 communications system that is not essential for the system to function as designed or that occurs
20 at the end of the component’s anticipated life cycle.

21 (b) “Preliminary quality assurance services” means a set of services in which a contractor pro-
22 vides an independent and objective review of a state contracting agency’s or a public corporation’s
23 plans, specifications, estimates, documentation, available resources and overall purpose for an in-
24 formation technology initiative, including services in which the contractor evaluates a proposed in-
25 formation technology initiative against applicable quality standards and best practices from private
26 industry and other sources.

27 (c) “Procurement” has the meaning given that term in ORS 279A.010.

28 (d)(A) “Public corporation” means a corporation:

29 (i) The operations of which are subject to control by this state or by an agency or
30 instrumentality of this state, or by officers of this state or of an agency or instrumentality of this
31 state;

32 (ii) That is organized, at least in part, to serve a public purpose; and

33 (iii) That receives public funds or other support from an entity described in sub-subparagraph
34 (i) of this subparagraph.

35 (B) “Public corporation” does not include:

36 (i) A person or entity described in ORS 174.108 (3);

37 (ii) A city, county, local service district, school district, education service district, community
38 college district or community college service district or a university with a governing board listed
39 in ORS 352.054; or

40 (iii) An administrative subdivision of an entity described in sub-subparagraph (ii) of this sub-
41 paragraph.

42 (e) “Quality management services” means a set of services in which a contractor provides an
43 independent and objective review and evaluation of a state contracting agency’s, a public
44 corporation’s or another contractor’s performance with respect to an information technology initi-
45 ative, such as services in which the contractor:

1 (A) Identifies quality standards that apply or should apply to the information technology initi-
2 ative;

3 (B) Suggests methods and means by which the state contracting agency, the public corporation
4 or the other contractor may meet quality standards identified in subparagraph (A) of this paragraph;

5 (C) Reviews and evaluates the state contracting agency's, the public corporation's or the other
6 contractor's performance regularly as the information technology initiative progresses from start to
7 finish;

8 (D) Identifies omissions or gaps in the state contracting agency's, the public corporation's or the
9 other contractor's planning, execution, control, methodology, communication or reporting as the in-
10 formation technology initiative progresses from start to finish;

11 (E) Identifies risks in the state contracting agency's, the public corporation's or the other
12 contractor's plans or approach to designing, developing or implementing the information technology
13 initiative and suggests methods to reduce, mitigate or eliminate the risks;

14 (F) Assists the state contracting agency or the public corporation in testing or otherwise eval-
15 uating the hardware, software or services that are developed, provided or obtained as part of an
16 information technology initiative to determine whether the hardware, software or services conform
17 with the quality standards identified in subparagraph (A) of this paragraph;

18 (G) Advises the state contracting agency or the public corporation as to whether the hardware,
19 software or services that are developed, provided or obtained as part of an information technology
20 initiative meet the contracting agency's or the public corporation's needs, specifications or expec-
21 tations and otherwise enable the state contracting agency or the public corporation to achieve the
22 objectives for the information technology initiative; or

23 (H) Identifies unsatisfactory performance and suggests methods the state contracting agency, the
24 public corporation or the other contractor might use to eliminate the causes of unsatisfactory per-
25 formance.

26 (f) "State contracting agency" has the meaning given that term in ORS 279A.010.

27 (2)(a) A state contracting agency or a public corporation that implements an information tech-
28 nology initiative shall obtain quality management services from a qualified contractor if the value
29 of the information technology initiative exceeds \$5 million or if the information technology initiative
30 meets criteria or standards that the State Chief Information Officer or the Director of the Oregon
31 Department of Administrative Services specifies by rule or policy.

32 (b) A state contracting agency or public corporation may, subject to ORS 279B.040, procure
33 preliminary quality assurance services from a contractor if the information technology initiative
34 meets the standards set forth in paragraph (a) of this subsection or if the state contracting agency
35 or public corporation otherwise believes that the preliminary quality assurance services will enable
36 the contracting agency or public corporation to implement an information technology initiative
37 successfully.

38 (3) A state contracting agency or public corporation may not artificially divide or fragment an
39 information technology initiative so as to avoid the application of this section.

40 (4)(a) Notwithstanding any procurement authority that a state contracting agency or a public
41 corporation has that is not subject to the authority of the Director of the Oregon Department of
42 Administrative Services under ORS 279A.050 (2) or (7), the state contracting agency or public cor-
43 poration is subject to the provisions of subsection (2) of this section and shall consult with and fol-
44 low the rules, policies and procedures of the State Chief Information Officer and the Oregon
45 Department of Administrative Services in determining the extent of preliminary quality assurance

1 services or quality management services that the state contracting agency or public corporation will
2 require for an information technology initiative.

3 (b) *[Notwithstanding the Oregon Health Authority's exemption in ORS 279A.050 (7) from the au-*
4 *thority that the Oregon Department of Administrative Services has over all state agency information*
5 *technology procurements,]* The Oregon Health Authority shall consult with and follow the rules,
6 policies and procedures of the State Chief Information Officer and the Oregon Department of Ad-
7 ministrative Services in determining the extent of preliminary quality assurance services or quality
8 management services that the state contracting agency or public corporation will require for an
9 information technology initiative.

10 (5)(a) If a state contracting agency or a public corporation awards a contract for preliminary
11 quality assurance services or quality management services, the contract must provide that at the
12 same time a contractor provides a preliminary or final report to the contract administrator, the
13 contractor shall also provide a copy of the report to:

14 (A) The State Chief Information Officer;

15 (B) The Director of the Oregon Department of Administrative Services; and

16 (C) As appropriate for the specific information technology initiative, to:

17 (i) The director of the state contracting agency or, if a board or commission sets policy for the
18 state contracting agency, to the board or commission; or

19 (ii) The governing body of the public corporation.

20 (b) The state contracting agency or public corporation shall provide the contractor with names,
21 addresses and other contact information the contractor needs to comply with paragraph (a) of this
22 subsection.

23 (6) This section does not apply to the Secretary of State or the State Treasurer.

24 **SECTION 6. The amendments to ORS 279A.050, 413.033, 413.520 and 475.225 and section**
25 **1, chapter 77, Oregon Laws 2014, by sections 1 to 5 of this 2015 Act apply to procurements**
26 **that the Oregon Health Authority advertises or otherwise solicits on or after the operative**
27 **date specified in section 7 of this 2015 Act.**

28 **SECTION 7. (1) The amendments to ORS 279A.050, 413.033, 413.520 and 475.225 and section**
29 **1, chapter 77, Oregon Laws 2014, by sections 1 to 5 of this 2015 Act become operative January**
30 **1, 2016.**

31 **(2) The Director of the Oregon Health Authority and the Director of the Oregon De-**
32 **partment of Administrative Services may take any action before the operative date specified**
33 **in subsection (1) of this section that is necessary to enable the director to exercise, on and**
34 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
35 **and powers conferred on the director by the amendments to ORS 279A.050, 413.033, 413.520**
36 **and 475.225 and section 1, chapter 77, Oregon Laws 2014, by sections 1 to 5 of this 2015 Act.**

37 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
39 **on its passage.**

40