

# Enrolled Senate Bill 7

Sponsored by Senator COURTNEY; Senator JOHNSON

CHAPTER .....

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement of goods, services and personal services for [*the construction, demolition, exchange, maintenance, operation*] **constructing, demolishing, exchanging, maintaining, operating** and equipping [*of*] housing for the purpose of providing care to individuals with intellectual disabilities or other developmental disabilities, subject to applicable provisions of ORS 427.335;

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

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

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

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

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

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

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

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;

(j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;

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

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

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

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

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

(B) All state agency information technology contracts.

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

**(c) If the director has established a price agreement for goods, services or personal services, a state agency identified in subsection (3) or (6)(a) to (k) of this section may not establish a price agreement or enter into a contract for the goods, services or personal services without the approval of the director.**

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

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

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

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

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

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

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

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

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

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

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

*[(B) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and]*

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

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

*[(e) Notwithstanding ORS 279C.335, the director may exempt a public improvement contract or a class of public improvement contracts that the authority is authorized to conduct or manage from the competitive bidding requirements of ORS 279C.335 (1) if the director makes the findings described in*

ORS 279C.335 (2). The provisions in ORS 279C.335 (3) to (8) with respect to the Director of the Oregon Department of Administrative Services apply to the Director of the Oregon Health Authority for exemptions granted by the director under this subsection.]

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

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

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

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

(2) The authority may appoint an advisory committee or designate an existing advisory committee to make recommendations to the authority concerning:

- (a) Performance standards and evaluation methodology;
- (b) Fiscal reporting and accountability;
- (c) Delivery of services; and
- (d) A distribution plan for use of available funds.

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

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

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

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

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

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

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

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

(d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse or abuse of controlled substances;

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

(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

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

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

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

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

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

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

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

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

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

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

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

(i) New hardware, software or services for data processing, office automation or telecommunications;

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

(iii) A substantial expansion of existing data processing, office automation or telecommunications services.

(B) "Information technology initiative" does not include:

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

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

(iii) A renewal of an existing contract for data processing, office automation or telecommunications services under terms and conditions that are substantially the same as in the existing contract; or

(iv) A replacement of a component of an existing data processing, office automation or telecommunications system that is not essential for the system to function as designed or that occurs at the end of the component's anticipated life cycle.

(b) "Preliminary quality assurance services" means a set of services in which a contractor provides an independent and objective review of a state contracting agency's or a public corporation's plans, specifications, estimates, documentation, available resources and overall purpose for an information technology initiative, including services in which the contractor evaluates a proposed information technology initiative against applicable quality standards and best practices from private industry and other sources.

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

(d)(A) "Public corporation" means a corporation:

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

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

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

(B) "Public corporation" does not include:

(i) A person or entity described in ORS 174.108 (3);  
(ii) A city, county, local service district, school district, education service district, community college district or community college service district or a university with a governing board listed in ORS 352.054; or

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

(e) "Quality management services" means a set of services in which a contractor provides an independent and objective review and evaluation of a state contracting agency's, a public corporation's or another contractor's performance with respect to an information technology initiative, such as services in which the contractor:

(A) Identifies quality standards that apply or should apply to the information technology initiative;

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

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

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

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

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

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

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

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

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

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

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

(4)(a) Notwithstanding any procurement authority that a state contracting agency or a public corporation has that is not subject to the authority of the Director of the Oregon Department of Administrative Services under ORS 279A.050 (2) or (7), the state contracting agency or public cor-

poration is subject to the provisions of subsection (2) of this section and shall consult with and follow the rules, policies and procedures of the State Chief Information Officer and the Oregon Department of Administrative Services in determining the extent of preliminary quality assurance services or quality management services that the state contracting agency or public corporation will require for an information technology initiative.

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

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

(A) The State Chief Information Officer;

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

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

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

(ii) The governing body of the public corporation.

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

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

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

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

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

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

**Passed by Senate April 2, 2015**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 19, 2015**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2015

**Approved:**

.....M,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State