

HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3203

By COMMITTEE ON RULES

June 26

1 On page 1 of the printed A-engrossed bill, delete lines 6 through 17 and delete pages 2 through
2 10 and insert:

3 “**SECTION 1.** ORS 279C.305 is amended to read:

4 “279C.305. (1) *[It is]* The policy of the State of Oregon **is** that contracting agencies shall make
5 every effort to construct public improvements at the least cost to the contracting agency.

6 “(2)(a) Not less than 30 days *[prior to adoption of the contracting agency’s]* **before adopting a**
7 **budget for the subsequent budget period or before starting to construct a public improvement,**
8 each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and
9 Industries a list of every public improvement *[known to the contracting agency]* that the contracting
10 agency plans to fund in the budget period, identifying each improvement by name and estimating the
11 total on-site construction costs. The list *[shall]* **must** also *[contain a statement as to]* **state** whether
12 the contracting agency intends to perform the construction through a private contractor. *[If the*
13 *contracting agency intends to perform construction work using the contracting agency’s own equipment*
14 *and personnel on a project estimated to cost more than \$125,000, the contracting agency shall also show*
15 *that the contracting agency’s decision conforms to the policy stated in subsection (1) of this section. The*
16 *list is a public record and may be revised periodically by the agency.]*

17 “(b) **If the contracting agency intends to use the contracting agency’s own equipment or**
18 **personnel to perform construction work on a public improvement, and the estimated value**
19 **of the construction work that the contracting agency intends to perform with the contract-**
20 **ing agency’s own equipment or personnel exceeds \$200,000, the contracting agency shall file**
21 **with the commissioner not later than 180 days before construction begins on the public im-**
22 **provement an analysis that shows that the contracting agency’s decision conforms to the**
23 **policy stated in subsection (1) of this section. The list and the analysis are public records and**
24 **the contracting agency may periodically revise the list or analysis.**

25 “(3) **As part of the analysis required under subsection (2)(b) of this section, a contracting**
26 **agency shall:**

27 “(a) **Estimate the cost of contracting with a private contractor to construct the public**
28 **improvement, including in the estimate all necessary and related costs that the private**
29 **contractor would incur to construct the public improvement;**

30 “(b) **Estimate the costs the contracting agency would incur in constructing the public**
31 **improvement with the contracting agency’s own equipment or personnel and include in the**
32 **estimate:**

33 “(A) **The cost of labor, including all benefits the contracting agency pays to or on behalf**
34 **of employees of the contracting agency who will work on the public improvement, workers’**
35 **compensation insurance premiums and the cost of traveling to and from the site of the**

1 **public improvement;**

2 **“(B) The cost of equipment, including costs associated with leasing, renting or acquiring**
3 **and owning the equipment, costs for transporting the equipment to and from the site of the**
4 **public improvement, costs for depreciation and costs for insuring, operating, storing, re-**
5 **pairing and maintaining the equipment;**

6 **“(C) The costs of administration and overhead the contracting agency will incur, includ-**
7 **ing insurance, shop and office costs that are allocable to the public improvement;**

8 **“(D) The cost of tools and materials;**

9 **“(E) The costs associated with any contracts into which the contracting agency must**
10 **enter;**

11 **“(F) The commercially reasonable value of quality control testing if the contracting**
12 **agency would require a private contractor that constructed the public improvement to un-**
13 **dergo quality control testing; and**

14 **“(G) Any other necessary and related costs that the contracting agency will incur to**
15 **construct the public improvement with the contracting agency’s own equipment or person-**
16 **nel; and**

17 **“(c) Compare the cost the contracting agency estimates under paragraph (a) of this**
18 **subsection with the cost the contracting agency estimates under paragraph (b) of this sub-**
19 **section.**

20 **“[(3)] (4)(a) Before a contracting agency constructs a public improvement with [its] the con-**
21 **tracting agency’s own equipment or personnel[:], the contracting agency shall prepare plans,**
22 **specifications and estimates of the unit cost of each classification of construction work that**
23 **are sufficient to control the performance of the construction work and ensure satisfactory**
24 **construction quality, if the estimated value of the construction work that the contracting**
25 **agency will perform with the contracting agency’s equipment or personnel exceeds \$200,000.**

26 **“[(a) If the estimated cost exceeds \$125,000, the contracting agency shall prepare adequate plans**
27 **and specifications and the estimated unit cost of each classification of work. The estimated cost of the**
28 **work must include a reasonable allowance for the cost, including investment cost, of any equipment**
29 **used. As used in this paragraph, ‘adequate’ means sufficient to control the performance of the work**
30 **and to ensure satisfactory quality of construction by the contracting agency personnel.]**

31 **“(b) The contracting agency shall [cause to be kept and preserved] prepare and preserve a full,**
32 **true and accurate account of the actual costs of performing the construction work, including all**
33 **[engineering and administrative expenses and the cost, including investment costs, of any equipment**
34 **used] categories of costs described in subsection (3)(b) of this section. The final account of the**
35 **costs is a public record.**

36 **“[(4)] (5) Subsections (2) [and (3)] to (4) of this section do not apply to a contracting agency**
37 **[when] if:**

38 **“(a) The public improvement is [to be used for the distribution or transmission of] for distrib-**
39 **uting or transmitting electric power[:]; or**

40 **“(b) The contracting agency did not receive a responsive quotation for constructing the**
41 **public improvement from a responsible bidder or proposer after soliciting quotes for con-**
42 **structing the public improvement, if the solicitation:**

43 **“(A) Occurred within one year before the date on which construction began; and**

44 **“(B) Allowed a commercially reasonable time in which to perform the construction.**

45 **“[(5)] (6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this**

1 section, resurfacing [of] highways, roads or streets at a depth of two or more inches and at an es-
2 timated cost that exceeds [,\$125,000] **\$175,000** is a public improvement.

3 **“(b) A public improvement does not include:**

4 **“(A) Maintenance patching, chip seals or other seals as a maintenance treatment on**
5 **highways, roads, streets or bridges; or**

6 **“(B) Maintenance resurfacing for a single road, highway or street if the total cost of the**
7 **resurfacing exceeds \$175,000 but is less than \$750,000, provided that the cost of resurfacing**
8 **any one location on the road, highway or street does not exceed \$175,000 and provided that**
9 **the contracting agency does not artificially separate the resurfacing into smaller projects in**
10 **order to avoid the application of this section.**

11 **“SECTION 2.** ORS 279C.305, as amended by section 1 of this 2017 Act, is amended to read:

12 **“279C.305. (1)** The policy of the State of Oregon is that contracting agencies shall make every
13 effort to construct public improvements at the least cost to the contracting agency.

14 **“(2)(a)** Not less than 30 days before adopting a budget for the subsequent budget period or before
15 starting to construct a public improvement, each contracting agency shall prepare and file with the
16 Commissioner of the Bureau of Labor and Industries a list of every public improvement that the
17 contracting agency plans to fund in the budget period, identifying each improvement by name and
18 estimating the total on-site construction costs. The list must also state whether the contracting
19 agency intends to perform the construction through a private contractor.

20 **“(b)** If the contracting agency intends to use the contracting agency’s own equipment or per-
21 sonnel to perform construction work on a public improvement, and the estimated value of the con-
22 struction work that the contracting agency intends to perform with the contracting agency’s own
23 equipment or personnel exceeds [,\$200,000] **\$225,000**, the contracting agency shall file with the com-
24 missioner not later than 180 days before construction begins on the public improvement an analysis
25 that shows that the contracting agency’s decision conforms to the policy stated in subsection (1) of
26 this section. The list and the analysis are public records and the contracting agency may period-
27 ically revise the list or analysis.

28 **“(3)** As part of the analysis required under subsection (2)(b) of this section, a contracting agency
29 shall:

30 **“(a)** Estimate the cost of contracting with a private contractor to construct the public im-
31 provement, including in the estimate all necessary and related costs that the private contractor
32 would incur to construct the public improvement;

33 **“(b)** Estimate the costs the contracting agency would incur in constructing the public improve-
34 ment with the contracting agency’s own equipment or personnel and include in the estimate:

35 **“(A)** The cost of labor, including all benefits the contracting agency pays to or on behalf of
36 employees of the contracting agency who will work on the public improvement, workers’ compen-
37 sation insurance premiums and the cost of traveling to and from the site of the public improvement;

38 **“(B)** The cost of equipment, including costs associated with leasing, renting or acquiring and
39 owning the equipment, costs for transporting the equipment to and from the site of the public im-
40 provement, costs for depreciation and costs for insuring, operating, storing, repairing and maintain-
41 ing the equipment;

42 **“(C)** The costs of administration and overhead the contracting agency will incur, including in-
43 surance, shop and office costs that are allocable to the public improvement;

44 **“(D)** The cost of tools and materials;

45 **“(E)** The costs associated with any contracts into which the contracting agency must enter;

1 “(F) The commercially reasonable value of quality control testing if the contracting agency
2 would require a private contractor that constructed the public improvement to undergo quality
3 control testing; and

4 “(G) Any other necessary and related costs that the contracting agency will incur to construct
5 the public improvement with the contracting agency’s own equipment or personnel; and

6 “(c) Compare the cost the contracting agency estimates under paragraph (a) of this subsection
7 with the cost the contracting agency estimates under paragraph (b) of this subsection.

8 “(4)(a) Before a contracting agency constructs a public improvement with the contracting
9 agency’s own equipment or personnel, the contracting agency shall prepare plans, specifications and
10 estimates of the unit cost of each classification of construction work that are sufficient to control
11 the performance of the construction work and ensure satisfactory construction quality, if the esti-
12 mated value of the construction work that the contracting agency will perform with the contracting
13 agency’s equipment or personnel exceeds [~~\$200,000~~] **\$225,000**.

14 “(b) The contracting agency shall prepare and preserve a full, true and accurate account of the
15 actual costs of performing the construction work, including all categories of costs described in
16 subsection (3)(b) of this section. The final account of the costs is a public record.

17 “(5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

18 “(a) The public improvement is for distributing or transmitting electric power; or

19 “(b) The contracting agency did not receive a responsive quotation for constructing the public
20 improvement from a responsible bidder or proposer after soliciting quotes for constructing the public
21 improvement, if the solicitation:

22 “(A) Occurred within one year before the date on which construction began; and

23 “(B) Allowed a commercially reasonable time in which to perform the construction.

24 “(6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this section, re-
25 surfacing highways, roads or streets at a depth of two or more inches and at an estimated cost that
26 exceeds [~~\$175,000~~] **\$193,750** is a public improvement.

27 “(b) A public improvement does not include:

28 “(A) Maintenance patching, chip seals or other seals as a maintenance treatment on highways,
29 roads, streets or bridges; or

30 “(B) Maintenance resurfacing for a single road, highway or street if the total cost of the resur-
31 facing exceeds [~~\$175,000~~] **\$193,750** but is less than \$750,000, provided that the cost of resurfacing any
32 one location on the road, highway or street does not exceed [~~\$175,000~~] **\$193,750** and provided that
33 the contracting agency does not artificially separate the resurfacing into smaller projects in order
34 to avoid the application of this section.

35 “**SECTION 3.** ORS 279C.305, as amended by sections 1 and 2 of this 2017 Act, is amended to
36 read:

37 “279C.305. (1) The policy of the State of Oregon is that contracting agencies shall make every
38 effort to construct public improvements at the least cost to the contracting agency.

39 “(2)(a) Not less than 30 days before adopting a budget for the subsequent budget period or before
40 starting to construct a public improvement, each contracting agency shall prepare and file with the
41 Commissioner of the Bureau of Labor and Industries a list of every public improvement that the
42 contracting agency plans to fund in the budget period, identifying each improvement by name and
43 estimating the total on-site construction costs. The list must also state whether the contracting
44 agency intends to perform the construction through a private contractor.

45 “(b) If the contracting agency intends to use the contracting agency’s own equipment or per-

1 sonnel to perform construction work on a public improvement, and the estimated value of the con-
2 struction work that the contracting agency intends to perform with the contracting agency's own
3 equipment or personnel exceeds [~~\$225,000~~] **\$250,000**, the contracting agency shall file with the com-
4 missioner not later than 180 days before construction begins on the public improvement an analysis
5 that shows that the contracting agency's decision conforms to the policy stated in subsection (1) of
6 this section. The list and the analysis are public records and the contracting agency may period-
7 ically revise the list or analysis.

8 "(3) As part of the analysis required under subsection (2)(b) of this section, a contracting agency
9 shall:

10 "(a) Estimate the cost of contracting with a private contractor to construct the public im-
11 provement, including in the estimate all necessary and related costs that the private contractor
12 would incur to construct the public improvement;

13 "(b) Estimate the costs the contracting agency would incur in constructing the public improve-
14 ment with the contracting agency's own equipment or personnel and include in the estimate:

15 "(A) The cost of labor, including all benefits the contracting agency pays to or on behalf of
16 employees of the contracting agency who will work on the public improvement, workers' compen-
17 sation insurance premiums and the cost of traveling to and from the site of the public improvement;

18 "(B) The cost of equipment, including costs associated with leasing, renting or acquiring and
19 owning the equipment, costs for transporting the equipment to and from the site of the public im-
20 provement, costs for depreciation and costs for insuring, operating, storing, repairing and maintain-
21 ing the equipment;

22 "(C) The costs of administration and overhead the contracting agency will incur, including in-
23 surance, shop and office costs that are allocable to the public improvement;

24 "(D) The cost of tools and materials;

25 "(E) The costs associated with any contracts into which the contracting agency must enter;

26 "(F) The commercially reasonable value of quality control testing if the contracting agency
27 would require a private contractor that constructed the public improvement to undergo quality
28 control testing; and

29 "(G) Any other necessary and related costs that the contracting agency will incur to construct
30 the public improvement with the contracting agency's own equipment or personnel; and

31 "(c) Compare the cost the contracting agency estimates under paragraph (a) of this subsection
32 with the cost the contracting agency estimates under paragraph (b) of this subsection.

33 "(4)(a) Before a contracting agency constructs a public improvement with the contracting
34 agency's own equipment or personnel, the contracting agency shall prepare plans, specifications and
35 estimates of the unit cost of each classification of construction work that are sufficient to control
36 the performance of the construction work and ensure satisfactory construction quality, if the esti-
37 mated value of the construction work that the contracting agency will perform with the contracting
38 agency's equipment or personnel exceeds [~~\$225,000~~] **\$250,000**.

39 "(b) The contracting agency shall prepare and preserve a full, true and accurate account of the
40 actual costs of performing the construction work, including all categories of costs described in
41 subsection (3)(b) of this section. The final account of the costs is a public record.

42 "(5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

43 "(a) The public improvement is for distributing or transmitting electric power; or

44 "(b) The contracting agency did not receive a responsive quotation for constructing the public
45 improvement from a responsible bidder or proposer after soliciting quotes for constructing the public

1 improvement, if the solicitation:

2 “(A) Occurred within one year before the date on which construction began; and

3 “(B) Allowed a commercially reasonable time in which to perform the construction.

4 “(6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this section, re-
5 surfacing highways, roads or streets at a depth of two or more inches and at an estimated cost that
6 exceeds [~~\$193,750~~] **\$212,500** is a public improvement.

7 “(b) A public improvement does not include:

8 “(A) Maintenance patching, chip seals or other seals as a maintenance treatment on highways,
9 roads, streets or bridges; or

10 “(B) Maintenance resurfacing for a single road, highway or street if the total cost of the resur-
11 facing exceeds [~~\$193,750~~] **\$212,500** but is less than \$750,000, provided that the cost of resurfacing any
12 one location on the road, highway or street does not exceed [~~\$193,750~~] **\$212,500** and provided that
13 the contracting agency does not artificially separate the resurfacing into smaller projects in order
14 to avoid the application of this section.

15 “**SECTION 4.** ORS 279C.305, as amended by sections 1, 2 and 3 of this 2017 Act, is amended to
16 read:

17 “279C.305. (1) The policy of the State of Oregon is that contracting agencies shall make every
18 effort to construct public improvements at the least cost to the contracting agency.

19 “(2)(a) Not less than 30 days before adopting a budget for the subsequent budget period or before
20 starting to construct a public improvement, each contracting agency shall prepare and file with the
21 Commissioner of the Bureau of Labor and Industries a list of every public improvement that the
22 contracting agency plans to fund in the budget period, identifying each improvement by name and
23 estimating the total on-site construction costs. The list must also state whether the contracting
24 agency intends to perform the construction through a private contractor.

25 “(b) If the contracting agency intends to use the contracting agency’s own equipment or per-
26 sonnel to perform construction work on a public improvement, and the estimated value of the con-
27 struction work that the contracting agency intends to perform with the contracting agency’s own
28 equipment or personnel exceeds [~~\$250,000~~] **\$275,000**, the contracting agency shall file with the com-
29 missioner not later than 180 days before construction begins on the public improvement an analysis
30 that shows that the contracting agency’s decision conforms to the policy stated in subsection (1) of
31 this section. The list and the analysis are public records and the contracting agency may period-
32 ically revise the list or analysis.

33 “(3) As part of the analysis required under subsection (2)(b) of this section, a contracting agency
34 shall:

35 “(a) Estimate the cost of contracting with a private contractor to construct the public im-
36 provement, including in the estimate all necessary and related costs that the private contractor
37 would incur to construct the public improvement;

38 “(b) Estimate the costs the contracting agency would incur in constructing the public improve-
39 ment with the contracting agency’s own equipment or personnel and include in the estimate:

40 “(A) The cost of labor, including all benefits the contracting agency pays to or on behalf of
41 employees of the contracting agency who will work on the public improvement, workers’ compen-
42 sation insurance premiums and the cost of traveling to and from the site of the public improvement;

43 “(B) The cost of equipment, including costs associated with leasing, renting or acquiring and
44 owning the equipment, costs for transporting the equipment to and from the site of the public im-
45 provement, costs for depreciation and costs for insuring, operating, storing, repairing and maintain-

1 ing the equipment;

2 “(C) The costs of administration and overhead the contracting agency will incur, including in-
3 surance, shop and office costs that are allocable to the public improvement;

4 “(D) The cost of tools and materials;

5 “(E) The costs associated with any contracts into which the contracting agency must enter;

6 “(F) The commercially reasonable value of quality control testing if the contracting agency
7 would require a private contractor that constructed the public improvement to undergo quality
8 control testing; and

9 “(G) Any other necessary and related costs that the contracting agency will incur to construct
10 the public improvement with the contracting agency’s own equipment or personnel; and

11 “(c) Compare the cost the contracting agency estimates under paragraph (a) of this subsection
12 with the cost the contracting agency estimates under paragraph (b) of this subsection.

13 “(4)(a) Before a contracting agency constructs a public improvement with the contracting
14 agency’s own equipment or personnel, the contracting agency shall prepare plans, specifications and
15 estimates of the unit cost of each classification of construction work that are sufficient to control
16 the performance of the construction work and ensure satisfactory construction quality, if the esti-
17 mated value of the construction work that the contracting agency will perform with the contracting
18 agency’s equipment or personnel exceeds [\$250,000] **\$275,000**.

19 “(b) The contracting agency shall prepare and preserve a full, true and accurate account of the
20 actual costs of performing the construction work, including all categories of costs described in
21 subsection (3)(b) of this section. The final account of the costs is a public record.

22 “(5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

23 “(a) The public improvement is for distributing or transmitting electric power; or

24 “(b) The contracting agency did not receive a responsive quotation for constructing the public
25 improvement from a responsible bidder or proposer after soliciting quotes for constructing the public
26 improvement, if the solicitation:

27 “(A) Occurred within one year before the date on which construction began; and

28 “(B) Allowed a commercially reasonable time in which to perform the construction.

29 “(6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this section, re-
30 surfacing highways, roads or streets at a depth of two or more inches and at an estimated cost that
31 exceeds [\$212,500] **\$231,250** is a public improvement.

32 “(b) A public improvement does not include:

33 “(A) Maintenance patching, chip seals or other seals as a maintenance treatment on highways,
34 roads, streets or bridges; or

35 “(B) Maintenance resurfacing for a single road, highway or street if the total cost of the resur-
36 facing exceeds [\$212,500] **\$231,250** but is less than \$750,000, provided that the cost of resurfacing any
37 one location on the road, highway or street does not exceed [\$212,500] **\$231,250** and provided that
38 the contracting agency does not artificially separate the resurfacing into smaller projects in order
39 to avoid the application of this section.

40 “**SECTION 5.** ORS 279C.305, as amended by sections 1, 2, 3 and 4 of this 2017 Act, is amended
41 to read:

42 “279C.305. (1) The policy of the State of Oregon is that contracting agencies shall make every
43 effort to construct public improvements at the least cost to the contracting agency.

44 “(2)(a) Not less than 30 days before adopting a budget for the subsequent budget period or before
45 starting to construct a public improvement, each contracting agency shall prepare and file with the

1 Commissioner of the Bureau of Labor and Industries a list of every public improvement that the
2 contracting agency plans to fund in the budget period, identifying each improvement by name and
3 estimating the total on-site construction costs. The list must also state whether the contracting
4 agency intends to perform the construction through a private contractor.

5 “(b) If the contracting agency intends to use the contracting agency’s own equipment or per-
6 sonnel to perform construction work on a public improvement, and the estimated value of the con-
7 struction work that the contracting agency intends to perform with the contracting agency’s own
8 equipment or personnel exceeds [~~\$275,000~~] **\$300,000**, the contracting agency shall file with the com-
9 missioner not later than 180 days before construction begins on the public improvement an analysis
10 that shows that the contracting agency’s decision conforms to the policy stated in subsection (1) of
11 this section. The list and the analysis are public records and the contracting agency may period-
12 ically revise the list or analysis.

13 “(3) As part of the analysis required under subsection (2)(b) of this section, a contracting agency
14 shall:

15 “(a) Estimate the cost of contracting with a private contractor to construct the public im-
16 provement, including in the estimate all necessary and related costs that the private contractor
17 would incur to construct the public improvement;

18 “(b) Estimate the costs the contracting agency would incur in constructing the public improve-
19 ment with the contracting agency’s own equipment or personnel and include in the estimate:

20 “(A) The cost of labor, including all benefits the contracting agency pays to or on behalf of
21 employees of the contracting agency who will work on the public improvement, workers’ compen-
22 sation insurance premiums and the cost of traveling to and from the site of the public improvement;

23 “(B) The cost of equipment, including costs associated with leasing, renting or acquiring and
24 owning the equipment, costs for transporting the equipment to and from the site of the public im-
25 provement, costs for depreciation and costs for insuring, operating, storing, repairing and maintain-
26 ing the equipment;

27 “(C) The costs of administration and overhead the contracting agency will incur, including in-
28 surance, shop and office costs that are allocable to the public improvement;

29 “(D) The cost of tools and materials;

30 “(E) The costs associated with any contracts into which the contracting agency must enter;

31 “(F) The commercially reasonable value of quality control testing if the contracting agency
32 would require a private contractor that constructed the public improvement to undergo quality
33 control testing; and

34 “(G) Any other necessary and related costs that the contracting agency will incur to construct
35 the public improvement with the contracting agency’s own equipment or personnel; and

36 “(c) Compare the cost the contracting agency estimates under paragraph (a) of this subsection
37 with the cost the contracting agency estimates under paragraph (b) of this subsection.

38 “(4)(a) Before a contracting agency constructs a public improvement with the contracting
39 agency’s own equipment or personnel, the contracting agency shall prepare plans, specifications and
40 estimates of the unit cost of each classification of construction work that are sufficient to control
41 the performance of the construction work and ensure satisfactory construction quality, if the esti-
42 mated value of the construction work that the contracting agency will perform with the contracting
43 agency’s equipment or personnel exceeds [~~\$275,000~~] **\$300,000**.

44 “(b) The contracting agency shall prepare and preserve a full, true and accurate account of the
45 actual costs of performing the construction work, including all categories of costs described in

1 subsection (3)(b) of this section. The final account of the costs is a public record.

2 “(5) Subsections (2) to (4) of this section do not apply to a contracting agency if:

3 “(a) The public improvement is for distributing or transmitting electric power; or

4 “(b) The contracting agency did not receive a responsive quotation for constructing the public
5 improvement from a responsible bidder or proposer after soliciting quotes for constructing the public
6 improvement, if the solicitation:

7 “(A) Occurred within one year before the date on which construction began; and

8 “(B) Allowed a commercially reasonable time in which to perform the construction.

9 “(6)(a) Except as provided in paragraph (b) of this subsection, for purposes of this section, re-
10 surfacing highways, roads or streets at a depth of two or more inches and at an estimated cost that
11 exceeds [§231,250] **\$250,000** is a public improvement.

12 “(b) A public improvement does not include:

13 “(A) Maintenance patching, chip seals or other seals as a maintenance treatment on highways,
14 roads, streets or bridges; or

15 “(B) Maintenance resurfacing for a single road, highway or street if the total cost of the resur-
16 facing exceeds [§231,250] **\$250,000** but is less than \$750,000, provided that the cost of resurfacing any
17 one location on the road, highway or street does not exceed [§231,250] **\$250,000** and provided that
18 the contracting agency does not artificially separate the resurfacing into smaller projects in order
19 to avoid the application of this section.

20 **“SECTION 6. Section 7 of this 2017 Act is added to and made a part of ORS chapter 279C.**

21 **“SECTION 7. (1)(a) A contractor, or a trade association of contractors acting on behalf
22 of a member of the trade association, may allege in a complaint to the Commissioner of the
23 Bureau of Labor and Industries that a contracting agency has violated ORS 279C.305 with
24 respect to a public improvement that the contractor was eligible to construct.**

25 **“(b) A complaint under paragraph (a) of this subsection must set forth the acts or
26 omissions that constitute the alleged violation. The contractor or trade association must file
27 the complaint with the commissioner within one year after the contractor or trade associ-
28 ation discovered or should have known that the violation occurred.**

29 **“(c) The contractor or trade association must submit along with a complaint under par-
30 agraph (a) of this subsection a filing fee of \$250. If the commissioner finds substantial evi-
31 dence of a violation, the commissioner shall refund the filing fee. The commissioner by rule
32 may specify other circumstances in which the commissioner will refund the filing fee.**

33 **“(d) The commissioner shall dismiss a complaint under this subsection if the contractor
34 or trade association brings an action in a court of this state or initiates another proceeding
35 that alleges an act or omission that is the same or substantially similar to an act or omission
36 the contractor or trade association alleged in the complaint.**

37 **“(2)(a) The commissioner may investigate a violation of ORS 279C.305 that is alleged in
38 a complaint under subsection (1) of this section or that the commissioner discovers or oth-
39 erwise has reason to believe occurred.**

40 **“(b) In the course of an investigation under this subsection, the commissioner may:**

41 **“(A) Compel attendance from witnesses, receive testimony and examine the witnesses
42 under oath;**

43 **“(B) Require a contracting agency or an employee of a contracting agency to produce
44 books, records, files and other documents; and**

45 **“(C) Take any other action the commissioner deems necessary to conduct the investi-**

1 **gation.**

2 **“(3)(a) The commissioner must conclude an investigation under subsection (2) of this**
3 **section within 60 days after the date of a complaint under subsection (1) of this section and**
4 **must either find substantial evidence of a violation of ORS 279C.305 or dismiss the complaint.**
5 **If the commissioner finds substantial evidence of a violation, the commissioner shall:**

6 **“(A) Notify the contracting agency in writing that the commissioner has found substan-**
7 **tial evidence of a violation of ORS 279C.305, describe the nature of the violation and, if the**
8 **commissioner has not found a violation in the five years preceding the date of the complaint,**
9 **state that for future violations, the commissioner will require the contracting agency to**
10 **negotiate an agreement under paragraph (b) of this subsection.**

11 **“(B) Provide a copy of any notice the commissioner issued under subparagraph (A) of this**
12 **paragraph to any contractor or trade association that filed a complaint concerning the vio-**
13 **lation under subsection (1) of this section.**

14 **“(b) If the commissioner in the course of an investigation under subsection (2) of this**
15 **section finds that the contracting agency violated ORS 279C.305 within the five years pre-**
16 **ceding the date of the complaint, the commissioner shall specify a period of time within**
17 **which the contracting agency must negotiate an agreement with the contractor or the trade**
18 **association to remedy the violation and prevent future violations.**

19 **“(c) If the contracting agency and the contractor or trade association enter into an**
20 **agreement within the specified period, the commissioner in an order shall set forth, and di-**
21 **rect the contracting agency to comply with, the terms of the agreement.**

22 **“(d) If negotiations between the contracting agency and the contractor or trade associ-**
23 **ation do not result in an agreement within the time the commissioner specifies, the com-**
24 **missioner may:**

25 **“(A) Extend the time period for negotiations;**

26 **“(B) End negotiations and dismiss the complaint; or**

27 **“(C) End negotiations and initiate a contested case hearing against the contracting**
28 **agency under ORS chapter 183.**

29 **“(4)(a) If a contracting agency that is a party to an agreement set forth in accordance**
30 **with an order of the commissioner under subsection (3)(c) of this section breaches the**
31 **agreement, a contractor or trade association that is a party to the agreement may submit**
32 **a complaint to the commissioner that asks the commissioner to enforce the agreement. The**
33 **contractor or trade association must file the complaint within 180 days after the date the**
34 **contractor or trade association discovered or should have known of the breach.**

35 **“(b) The commissioner shall investigate a complaint that a contractor or trade associ-**
36 **ation files under paragraph (a) of this subsection as provided in subsection (2) of this section.**
37 **If the commissioner finds substantial evidence that the contracting agency materially**
38 **breached the agreement, the commissioner may:**

39 **“(A) Issue an order to cease and desist from the contracting agency’s material breach**
40 **and to perform actions that the commissioner determines will carry out the purposes of ORS**
41 **279C.305 and remedy the effects of the breach; or**

42 **“(B) Conduct a contested case hearing in accordance with ORS chapter 183.**

43 **“(c) An order to cease and desist that the commissioner issues under paragraph (b)(A)**
44 **of this subsection may not include an award of attorney fees. The remedy that the commis-**
45 **sioner orders may include requiring the contracting agency to enter into a contract with the**

1 contractor to perform any remaining construction on the public improvement that is the
2 subject of the contracting agency's violation.

3 “(5)(a) If the commissioner finds by a preponderance of the evidence in a contested case
4 hearing under subsection (3)(d)(C) of this section that a local contracting agency violated the
5 least cost policy set forth in ORS 279C.305 (1), or in a contested case hearing under sub-
6 section (4)(b)(B) of this section that a local contracting agency materially breached the
7 agreement described in subsection (3)(c) of this section, the commissioner may impose a civil
8 penalty of not more than \$5,000 for the violation or breach or a civil penalty of not more than
9 \$20,000 if the commissioner determines that the local contracting agency willfully engaged
10 in a violation of the least cost policy set forth in ORS 279C.305 (1).

11 “(b) The commissioner shall impose a civil penalty under paragraph (a) of this subsection
12 in accordance with ORS 183.745 and shall apply the proceeds of the civil penalty first to the
13 costs of the commissioner's investigation and any administrative proceedings that result
14 from the investigation. The commissioner shall deposit any remaining proceeds in the State
15 Treasury to the credit of the General Fund.

16 “**SECTION 8.** ORS 279A.010 is amended to read:

17 “279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-
18 plicable definition requires otherwise:

19 “(a) ‘Bidder’ means a person that submits a bid in response to an invitation to bid.

20 “(b) ‘Contracting agency’ means a public body authorized by law to conduct a procurement.
21 ‘Contracting agency’ includes, but is not limited to, the Director of the Oregon Department of Ad-
22 ministrative Services and any person authorized by a contracting agency to conduct a procurement
23 on the contracting agency's behalf. ‘Contracting agency’ does not include the judicial department
24 or the legislative department.

25 “(c) ‘Days’ means calendar days.

26 “(d) ‘Department’ means the Oregon Department of Administrative Services.

27 “(e) ‘Director’ means the Director of the Oregon Department of Administrative Services or a
28 person designated by the director to carry out the authority of the director under the Public Con-
29 tracting Code.

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

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

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

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

35 “(g) ‘Energy savings performance contract’ means a public contract between a contracting
36 agency and a qualified energy service company for the identification, evaluation, recommendation,
37 design and construction of energy conservation measures, including a design-build contract, that
38 guarantee energy savings or performance.

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

40 “(i) ‘Goods’ includes supplies, equipment, materials, personal property, including any tangible,
41 intangible and intellectual property and rights and licenses in relation thereto, and combinations
42 of any of the items identified in this paragraph.

43 “(j) ‘Goods and services’ or ‘goods or services’ includes combinations of any of the items iden-
44 tified in the definitions of ‘goods’ and ‘services.’

45 “(k)(A) ‘Grant’ means:

1 “(i) An agreement under which a contracting agency receives moneys, property or other assist-
2 ance, including but not limited to federal assistance that is characterized as a grant by federal law
3 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other
4 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the
5 contracting agency and in which no substantial involvement by the grantor is anticipated in the
6 program or activity other than involvement associated with monitoring compliance with the grant
7 conditions; or

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

15 “(B) ‘Grant’ does not include a public contract for a public improvement, for public works, as
16 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-
17 nance necessary to preserve a public improvement, when under the public contract a contracting
18 agency pays, in consideration for contract performance intended to realize or to support the real-
19 ization of the purposes for which grant funds were provided to the contracting agency, moneys that
20 the contracting agency has received under a grant.

21 “(L) ‘Industrial oil’ means any compressor, turbine or bearing oil, hydraulic oil, metal-working
22 oil or refrigeration oil.

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

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

25 “(o) ‘Local contract review board’ means a local contract review board described in ORS
26 279A.060.

27 “(p) ‘Local contracting agency’ means a local government or special government body authorized
28 by law to conduct a procurement. ‘Local contracting agency’ includes any person authorized by a
29 local contracting agency to conduct a procurement on behalf of the local contracting agency.

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

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

32 “(A) Has substantially complied with all prescribed public contracting procedures and require-
33 ments;

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

35 “(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or
36 279C.440; and

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

39 “(s) ‘Lubricating oil’ means any oil intended for use in an internal combustion crankcase,
40 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-
41 ment or machinery powered by an internal combustion engine.

42 “(t) ‘Person’ means a natural person capable of being legally bound, a sole proprietorship, a
43 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-
44 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint
45 or common economic interest, any other person with legal capacity to contract or a public body.

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

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

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

7 “(B) An initial order or minimum purchase combined with a continuing contractor obligation to
8 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-
9 mum additional purchase.

10 “(w) ‘Procurement’ means the act of purchasing, leasing, renting or otherwise acquiring goods
11 or services. ‘Procurement’ includes each function and procedure undertaken or required to be
12 undertaken by a contracting agency to enter into a public contract, administer a public contract and
13 obtain the performance of a public contract under the Public Contracting Code.

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

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

16 “(z) ‘Public contract’ means a sale or other disposal, or a purchase, lease, rental or other ac-
17 quisition, by a contracting agency of personal property, services, including personal services, public
18 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-
19 serve a public improvement. ‘Public contract’ does not include grants.

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

22 “(bb) ‘Public Contracting Code’ or ‘code’ means ORS chapters 279A, 279B and 279C.

23 “(cc) ‘Public improvement’ means a project for construction, reconstruction or major renovation
24 on real property by or for a contracting agency. ‘Public improvement’ does not include:

25 “(A) Projects for which no funds of a contracting agency are directly or indirectly used, except
26 for participation that is incidental or related primarily to project design or inspection; or

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

29 “(dd) ‘Public improvement contract’ means a public contract for a public improvement. ‘Public
30 improvement contract’ does not include a public contract for emergency work, minor alterations, or
31 ordinary repair or maintenance necessary to preserve a public improvement.

32 “(ee) ‘Recycled material’ means any material that would otherwise be a useless, unwanted or
33 discarded material except for the fact that the material still has useful physical or chemical prop-
34 erties after serving a specific purpose and can, therefore, be reused or recycled.

35 “(ff) ‘Recycled oil’ means used oil that has been prepared for reuse as a petroleum product by
36 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use
37 is operationally safe, environmentally sound and complies with all laws and regulations.

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

39 “(A) Fifty percent of its fiber weight consisting of secondary waste materials; or

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

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

42 “(ii) ‘Recycled product’ means all materials, goods and supplies, not less than 50 percent of the
43 total weight of which consists of secondary and post-consumer waste with not less than 10 percent
44 of its total weight consisting of post-consumer waste. ‘Recycled product’ includes any product that
45 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but

1 otherwise is refurbished for reuse without substantial alteration of the product's form.

2 “(jj) ‘Secondary waste materials’ means fragments of products or finished products of a manu-
3 facturing process that has converted a virgin resource into a commodity of real economic value.
4 ‘Secondary waste materials’ includes post-consumer waste. ‘Secondary waste materials’ does not
5 include excess virgin resources of the manufacturing process. For paper, ‘secondary waste
6 materials’ does not include fibrous waste generated during the manufacturing process such as fibers
7 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,
8 sawdust or other wood residue from a manufacturing process.

9 “(kk) ‘Services’ mean services other than personal services designated under ORS 279A.055, ex-
10 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
11 279A.140, ‘services’ includes personal services as designated by the state contracting agencies.

12 “(LL) ‘Special government body’ has the meaning given that term in ORS 174.117.

13 “(mm) ‘State agency’ means the executive department, except the Secretary of State and the
14 State Treasurer in the performance of the duties of their constitutional offices.

15 “(nn) ‘State contracting agency’ means an executive department entity authorized by law to
16 conduct a procurement.

17 “(oo) ‘State government’ has the meaning given that term in ORS 174.111.

18 “(pp) ‘Used oil’ has the meaning given that term in ORS 459A.555.

19 “(qq) ‘Virgin oil’ means oil that has been refined from crude oil and that has not been used or
20 contaminated with impurities.

21 “(2) Other definitions appearing in the Public Contracting Code and the sections in which they
22 appear are:

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- 24 [(a) “Adequate”ORS 279C.305]
- 25 [(b) (a) “Administering contracting
26 agency”ORS 279A.200
- 27 [(c) (b) “Affirmative action”ORS 279A.100
- 28 [(d) (c) “Architect”ORS 279C.100
- 29 [(e) (d) “Architectural,
30 engineering, photogram-
31 metric mapping,
32 transportation planning
33 or land surveying
34 services”ORS 279C.100
- 35 [(f) (e) “Bid documents”ORS 279C.400
- 36 [(g) (f) “Bidder”ORS 279B.415
- 37 [(h) (g) “Bids”ORS 279C.400
- 38 [(i) (h) “Brand name”ORS 279B.405
- 39 [(j) (i) “Brand name or equal
40 specification”ORS 279B.200
- 41 [(k) (j) “Brand name
42 specification”ORS 279B.200
- 43 [(L) (k) “Class special
44 procurement”ORS 279B.085
- 45 [(m) (L) “Consultant”ORS 279C.115

1	[(n)] (m)	“Contract-specific	
2		special procurement”	ORS 279B.085
3	[(o)] (n)	“Cooperative	
4		procurement”	ORS 279A.200
5	[(p)] (o)	“Cooperative procurement	
6		group”	ORS 279A.200
7	[(q)] (p)	“Donee”	ORS 279A.250
8	[(r)] (q)	“Engineer”	ORS 279C.100
9	[(s)] (r)	“Findings”	ORS 279C.330
10	[(t)] (s)	“Fire protection	
11		equipment”	ORS 279A.190
12	[(u)] (t)	“Fringe benefits”	ORS 279C.800
13	[(v)] (u)	“Funds of a public	
14		agency”	ORS 279C.810
15	[(w)] (v)	“Good cause”	ORS 279C.585
16	[(x)] (w)	“Good faith dispute”	ORS 279C.580
17	[(y)] (x)	“Goods”	ORS 279B.115
18	[(z)] (y)	“Housing”	ORS 279C.800
19	[(aa)] (z)	“Interstate cooperative	
20		procurement”	ORS 279A.200
21	[(bb)] (aa)	“Invitation to bid”	ORS 279B.005
22	and	279C.400
23	[(cc)] (bb)	“Joint cooperative	
24		procurement”	ORS 279A.200
25	[(dd)] (cc)	“Labor dispute”	ORS 279C.650
26	[(ee)] (dd)	“Land surveyor”	ORS 279C.100
27	[(ff)] (ee)	“Legally flawed”	ORS 279B.405
28	[(gg)] (ff)	“Locality”	ORS 279C.800
29	[(hh)] (gg)	“Nonprofit	
30		organization”	ORS 279C.810
31	[(ii)] (hh)	“Nonresident bidder”	ORS 279A.120
32	[(jj)] (ii)	“Not-for-profit	
33		organization”	ORS 279A.250
34	[(kk)] (jj)	“Original contract”	ORS 279A.200
35	[(LL)] (kk)	“Permissive cooperative	
36		procurement”	ORS 279A.200
37	[(mm)] (LL)	“Person”	ORS 279C.500
38	and	279C.815
39	[(nn)] (mm)	“Personal services”	ORS 279C.100
40	[(oo)] (nn)	“Photogrammetric	
41		mapping”	ORS 279C.100
42	[(pp)] (oo)	“Photogrammetrist”	ORS 279C.100
43	[(qq)] (pp)	“Prevailing rate of	
44		wage”	ORS 279C.800
45	[(rr)] (qq)	“Procurement	

1		description”ORS 279B.005
2	[(ss)] (rr)	“Property”ORS 279A.250
3	[(tt)] (ss)	“Public agency”ORS 279C.800
4	[(uu)] (tt)	“Public contract”ORS 279A.190
5	[(vv)] (uu)	“Public works”ORS 279C.800
6	[(ww)] (vv)	“Purchasing contracting
7		agency”ORS 279A.200
8	[(xx)] (ww)	“Regularly organized fire
9		department”ORS 279A.190
10	[(yy)] (xx)	“Related services”ORS 279C.100
11	[(zz)] (yy)	“Request for
12		proposals”ORS 279B.005
13	[(aaa)] (zz)	“Resident bidder”ORS 279A.120
14	[(bbb)] (aaa)	“Responsible bidder”ORS 279A.105
15	and 279B.005
16	[(ccc)] (bbb)	“Responsible
17		proposer”ORS 279B.005
18	[(ddd)] (ccc)	“Responsive bid”ORS 279B.005
19	[(eee)] (ddd)	“Responsive
20		proposal”ORS 279B.005
21	[(fff)] (eee)	“Retainage”ORS 279C.550
22	[(ggg)] (fff)	“Special
23		procurement”ORS 279B.085
24	[(hhh)] (ggg)	“Specification”ORS 279B.200
25	[(iii)] (hhh)	“State agency”ORS 279A.250
26	[(jjj)] (iii)	“Substantial
27		completion”ORS 279C.465
28	[(kkk)] (jjj)	“Surplus property”ORS 279A.250
29	[(LLL)] (kkk)	“Transportation
30		planning services”ORS 279C.100
31	[(mmm)] (LLL)	“Unnecessarily
32		restrictive”ORS 279B.405

33 **“SECTION 9. Section 7 of this 2017 Act and the amendments to ORS 279A.010 and**
34 **279C.305 by sections 1 and 8 of this 2017 Act apply to procurements that a contracting agency**
35 **first advertises or otherwise solicits or, if the contracting agency does not advertise or so-**
36 **licit the procurement, to a public contract that a contracting agency enters into on or after**
37 **the operative date specified in section 10 (1)(a) of this 2017 Act.**

38 **“SECTION 10. (1)(a) Section 7 of this 2017 Act and the amendments to ORS 279A.010 and**
39 **279C.305 by sections 1 and 8 of this 2017 Act become operative on January 1, 2018.**

40 **“(b) The amendments to ORS 279C.305 by section 2 of this 2017 Act become operative on**
41 **July 1, 2019.**

42 **“(c) The amendments to ORS 279C.305 by section 3 of this 2017 Act become operative on**
43 **July 1, 2021.**

44 **“(d) The amendments to ORS 279C.305 by section 4 of this 2017 Act become operative on**
45 **July 1, 2023.**

1 “(e) The amendments to ORS 279C.305 by section 5 of this 2017 Act become operative on
2 July 1, 2025.

3 “(2) The Commissioner of the Bureau of Labor and Industries, the Attorney General, the
4 Director of the Oregon Department of Administrative Services, the Director of Transporta-
5 tion or a contracting agency that adopts rules under ORS 279A.065 may adopt rules and take
6 any other action before the operative date specified in subsection (1)(a) of this section that
7 is necessary to enable the commissioner, the Attorney General, the director or the con-
8 tracting agency to exercise all of the duties, functions and powers conferred on the com-
9 missioner, the Attorney General, the director or the contracting agency by section 7 of this
10 2017 Act and the amendments to ORS 279A.010 and 279C.305 by sections 1 and 8 of this 2017
11 Act.

12 “SECTION 11. This 2017 Act takes effect on the 91st day after the date on which the 2017
13 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”.