

CHAPTER 3

AN ACT HB 4010
[2002 First Special Session]

Relating to transportation; creating new provisions; amending ORS 279.015, 279.019, 279.103, 366.543 and 367.620; and declaring an emergency.

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

SECTION 1. ORS 367.620 is amended to read:

367.620. (1) Except as provided in subsection (2) of this section, the principal amount of Highway User Tax Bonds issued under ORS 367.615 shall be subject to the provisions of ORS 286.505 to 286.545.

(2) Highway User Tax Bonds may be issued under ORS 367.615 for the purposes described in ORS 367.622 in an aggregate principal amount sufficient to produce net proceeds of not more than ~~[\$400]~~ **\$500** million. The provisions of ORS 286.505 to 286.545 do not apply to bonds described in this subsection.

SECTION 2. The Department of Transportation may not issue bonds under the authority granted by ORS 367.620 (2) in an aggregate principal amount that exceeds an amount the department reasonably believes can be paid with **\$71.2 million in biennial debt service.**

SECTION 3. Notwithstanding section 4, chapter 669, Oregon Laws 2001, if Highway User Tax Bonds described under ORS 367.620 (2) are issued in an amount sufficient to produce net proceeds that exceed \$400 million, the Oregon Transportation Commission shall select projects to be funded from the net proceeds that exceed \$400 million from among the projects that were considered by the commission under ORS 367.622 but were not chosen for funding. Projects to be funded under this section may be selected at any time prior to issuance of the bonds, the net proceeds of which would bring the total net bond proceeds under ORS 367.620 (2) to more than \$400 million.

SECTION 4. ORS 366.543 is amended to read:

366.543. Each biennium, **any portion of the \$71.2 million** *[of moneys available to the Department of Transportation shall be used to pay any principal and interest due on bonds described in ORS 367.620 (2). However, any portion of the \$71.2 million that is not needed for payment of principal and interest on the bonds]* **referred to in ORS 366.524 that remains after deducting an amount equal to total debt service payments payable on outstanding Highway User Tax Bonds described in ORS 367.620 (2)** shall be allocated 50 percent to the Department of Transportation, 30 percent to counties and 20 percent to cities. Moneys allocated to counties and cities under this section shall be distributed in the same manner as moneys allocated under ORS 366.524 are distributed.

SECTION 5. ORS 279.015 is amended to read:

279.015. (1) Subject to the policies and provisions of ORS 279.005 and 279.007, all public contracts shall be based upon competitive bids or proposals except:

(a) Contracts made with other public agencies or the federal government.

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.

(c) A public contract exempt under subsection (2) of this section.

(d) A contract for products, services or supplies if the value of the contract is less than \$5,000.

(e) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(f) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(g) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(A) The original contract met the requirements of this chapter;

(B) The contract allows other public agency usage of the contract; and

(C) The original contracting public agency concurs.

(h) If a project is competitively bid and all responsive bids from responsible bidders exceed the public agency's cost estimate, the public agency, in accordance with rules adopted by the public agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project within the agency's cost estimate. A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

(2) Subject to subsection (6)(b) of this section, the Director of the Oregon Department of Administrative Services, *[or]* a local contract review board **or, for contracts described in ORS 279.712 (2)(c), the Director of Transportation** may exempt certain public contracts or classes of public contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the public contracting agency seeking the exemption:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency **or, if the contracts are for public improvements described in ORS 279.712 (2)(c), to the agency or the public.** In making such finding, the [director] **Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board** may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(3)(a) Before final adoption of the findings required by subsection (2) of this section exempting a contract for a public improvement, **or a class of contracts for public improvements described in ORS 279.712 (2)(c),** from the requirement of competitive bidding, a public agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the public agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the public agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a public agency is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(4) A public contract also may be exempted from the requirements of subsection (1) of this section if:

(a) Emergency conditions require prompt execution of the contract;

(b) In case of sale of surplus property by a public agency, the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bidding will be such that a liquidation sale will result in substantially greater net revenue to the public agency; or

(c)(A) The public contract is made between regularly organized fire departments, as defined in ORS 652.050, for fire protection equipment, as defined in ORS 476.005, and:

(i) The recipient regularly organized fire department makes a written request for the fire protection equipment to the transferor regularly organized fire department;

(ii) The fire protection equipment is surplus to or unusable by the transferor;

(iii) The total fair market value of fire protection equipment received by the recipient does not exceed \$50,000 per calendar year; and

(iv) The transferor holds a public hearing, with notice given as outlined in subsection (3)(b) of this section, and finds that the public contract is in the public's interest.

(B) As used in subparagraph (A) of this paragraph, "public contract" includes a sale at no cost.

(5) The **Director of the Oregon Department of Administrative Services or the local contract review board** shall adopt rules allowing the governing body of a public agency and the officer of a public agency for contracts under \$50,000 to declare that an emergency exists and establishing procedures for determining when the conditions in subsection (4)(a) of this section are present. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection and subsection (4)(a) of this section must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

(6) In granting exemptions pursuant to subsection (2)(a) and (b) of this section, the **Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board** shall:

(a) Where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the public contracting agency that support the awarding of a particular public contract or a class of public contracts, without the competitive requirements of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2)(a) and (b) of this section.

(7) A written agreement under ORS chapter 190 is not necessary under subsection (1)(g) of this section if the arrangement is between or among units of local government.

SECTION 6. ORS 279.019 is amended to read:

279.019. (1) Exemptions granted by the Director of the Oregon Department of Administrative Services pursuant to ORS 279.015 (2) or 279.017 (2) constitute rulemaking and not contested cases under ORS 183.310 to 183.550. However, an exemption granted with regard to a specific contract **by the Director of the Oregon Department of Administrative Services, or an exemption granted by the Director of Transportation with regard to a specific contract or class of contracts for public improvements described in ORS 279.712 (2)(c),** shall be granted by order, [of the director,] which order shall set forth findings supporting the decision [of the director] to grant or deny the request for exemption. Such order shall be reviewable pursuant to ORS 183.484 and shall not constitute a contested

case order. Jurisdiction for review of the order shall be with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(2) Any person except the public contracting agency or anyone representing it may bring a petition for a declaratory judgment to test the validity of any rule adopted by the Director **of the Oregon Department of Administrative Services** under ORS 279.015 and 279.017 in the manner provided in ORS 183.400.

(3) Any person except the public contracting agency or anyone representing it may bring an action for writ of review pursuant to ORS chapter 34 to test the validity of any exemption granted pursuant to ORS 279.015, 279.017 and 279.055 by a board.

SECTION 7. ORS 279.103 is amended to read:

279.103. (1) Upon completion of and final payment for any public improvement contract, **or class of contracts for public improvements described in ORS 279.712 (2)(c)**, in excess of \$100,000 for which the public agency did not use the competitive bidding process, the public agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, [or] the local contract review board **or, for a class of contracts for public improvements described in ORS 279.712 (2)(c), the Director of Transportation** an evaluation of the public improvement project **or the class of contracts.**

(2) The evaluation shall include but not be limited to the following matters:

(a) The actual project cost as compared with original project estimates.

(b) The amount of any guaranteed maximum price.

(c) The number of project change orders issued by the public agency.

(d) A narrative description of successes and failures during the design, engineering and construction of the project.

(e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279.015.

(3) Evaluations required by this section shall be made available for public inspection.

(4) The evaluations required by this section must be completed within 30 days of the date that the public agency accepts:

(a) The public improvement project; **or**

(b) The last public improvement project if the project falls within a class of contracts for public improvements described in ORS 279.712 (2)(c).

SECTION 8. This 2002 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2002 Act takes effect on its passage.

Approved by the Governor February 25, 2002

Filed in the office of Secretary of State February 25, 2002

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