

Senate Bill 806

Sponsored by Senator ROSENBAUM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Specifies requirements and conditions for public sector entity to enter into contract with private sector entity.

A BILL FOR AN ACT

1 Relating to contracts entered into by public sector entities.

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

3 **SECTION 1. As used in sections 1 to 4 of this 2009 Act:**

4 (1) **"Contractor" means a private sector entity that contracts with a public sector entity**
5 **to perform work for the public sector entity.**

6 (2)(a) **"Displaced" includes layoff, demotion, involuntary transfer to a new classification,**
7 **involuntary transfer to a new location requiring a change of residence and time base re-**
8 **ductions.**

9 (b) **"Displaced" does not include changes in shifts or days off or reassignment to other**
10 **positions within the same classification and general location.**

11 (3) **"Emergency appointment" means an appointment of an employee that is made for a**
12 **period not to exceed 60 working days to prevent the stoppage of public business during an**
13 **actual emergency or because of the limited duration of the work.**

14 (4) **"Firm" means a corporation, limited liability corporation, partnership, nonprofit or-**
15 **ganization or sole proprietorship.**

16 (5) **"Indirect overhead costs" means the pro rata share of existing administrative salaries**
17 **and benefits, rent, equipment costs, utilities and materials.**

18 (6) **"Majority sign-up recognition process" means a process by which the contractor vol-**
19 **untarily agrees to recognize a union if the union presents signed union authorization cards**
20 **from a majority of the employees the contractor employs.**

21 **SECTION 2. (1) Except as provided in section 3 of this 2009 Act, a public sector entity**
22 **may enter into a contract with a contractor for work customarily performed by employees**
23 **of the public sector entity only if all of the requirements of this section are met.**

24 (2) **The public sector entity shall demonstrate that the proposed contract will result in**
25 **actual overall cost savings to the public sector entity. In comparing costs:**

26 (a) **The public sector entity shall include the cost of providing the work proposed to be**
27 **provided by a contractor. These costs must include the salaries and benefits of additional**
28 **employees and the cost of additional space, equipment and materials needed to perform the**
29 **work.**

30 (b) **The public sector entity may not include the public sector entity's indirect overhead**
31

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 costs unless these costs can be attributed solely to the work in question and would not exist
2 if the work was not performed by the public sector entity.

3 (c) The public sector entity shall include in the cost of a contractor's providing work any
4 continuing public sector entity's costs that would be directly associated with the contracted
5 work. These continuing costs must include, but need not be limited to, costs for inspection,
6 supervision and monitoring.

7 (3) A public sector entity may not approve a contract solely on the basis that savings
8 will result from lower contractor pay rates or benefits. A public sector entity may approve
9 a contract if the contractor's wages are at the industry's level and do not undercut the
10 public sector entity's pay rates.

11 (4) The contract must include a provision that requires the contractor to offer any public
12 sector entity employee who is displaced by the contract a position with the contractor that
13 maintains the employee's existing wages and benefits.

14 (5)(a) The contract must include a provision that requires the contractor to agree to a
15 majority sign-up recognition process for employees who perform work pursuant to the con-
16 tract.

17 (b) The contractor may not support or discourage employees in signing union authori-
18 zation cards during the majority sign-up recognition process.

19 (6) The public sector entity shall demonstrate that:

20 (a) The savings resulting from the contract are large enough to ensure that the savings
21 will not be eliminated by private sector cost fluctuations that can normally be expected
22 during the time period of the contract; and

23 (b) The amount of savings clearly justifies the size and duration of the contract.

24 (7) The process used by the public sector entity for awarding the contract must meet the
25 requirements of ORS chapters 279A, 279B and 279C.

26 (8) The contract must include specific provisions pertaining to the qualifications of the
27 employees who will perform the work under the contract.

28 (9) The contract must include assurance that the contractor's hiring practices meet ap-
29 plicable nondiscrimination standards.

30 (10) The contract must include provisions to ensure that the potential for future eco-
31 nomic risk to the public sector entity from potential contractor rate increases is minimal.

32 (11) The contract must be with a firm.

33 (12) The public sector entity shall demonstrate that the potential economic advantage of
34 entering into the contract is not outweighed by the public's interest in having the public
35 sector entity directly perform a particular function.

36 **SECTION 3.** A public sector entity may enter into a contract with a contractor when any
37 of the following conditions are met:

38 (1) The contract is for new public sector entity functions and state or federal law re-
39 quires independent contractors to perform the work.

40 (2) The work contracted for is not available within the public sector entity, cannot be
41 performed satisfactorily by employees of the public sector entity or is of such a highly spe-
42 cialized or technical nature that the necessary expert knowledge, experience and ability are
43 not available through the public sector entity.

44 (3) The policy, administrative or legal goals and purposes of the public sector entity
45 cannot be accomplished by using a person selected pursuant to the public sector entity's

1 regular or ordinary hiring process. The public sector entity may enter into a contract using
2 this criterion to protect against a conflict of interest or to ensure independent and unbiased
3 findings in cases in which there is a clear need for a perspective that is different from and
4 outside that of the public sector entity. These contracts must include, but need not be lim-
5 ited to, obtaining expert witnesses in litigation.

6 (4) The contract is for work to which the criteria for an emergency appointment of an
7 employee apply. The public sector entity shall determine the method of selection and the
8 qualification standards for an emergency appointment of an employee. The frequency of ap-
9 pointment, the length of employment and the circumstances appropriate for appointment of
10 firms or individuals under emergency appointments must be restricted so as to prevent the
11 use of emergency appointments to circumvent the public sector entity's regular or ordinary
12 hiring process.

13 (5) The contractor can provide equipment, materials, facilities or support services that
14 cannot feasibly be provided by the public sector entity in the location where the work is to
15 be performed.

16 (6) The work is of such an urgent, temporary or occasional nature that the delay
17 incumbent in the implementation of the work under the public sector entity's regular or
18 ordinary hiring process would frustrate the purpose of the work.

19 **SECTION 4.** (1) If a public sector entity employee displaced by a contract or the em-
20 ployee's exclusive representative, as defined in ORS 243.650, asserts that the public sector
21 entity has failed to comply with any of the requirements of section 2 or 3 of this 2009 Act,
22 the employee or the employee's exclusive representative may submit an allegation of non-
23 compliance and a request for arbitration to the public sector entity.

24 (2) Within 10 days following receipt of an allegation of noncompliance and a request for
25 arbitration, the public sector entity shall contact the American Arbitration Association to
26 request an arbitrator to resolve the dispute.

27 (3) An arbitrator assigned to resolve the dispute shall hold a hearing within 90 days of
28 the request for an arbitrator.

29 (4) An arbitrator assigned to resolve the dispute shall determine whether the public
30 sector entity has complied with the conditions imposed by this section.

31 (5) The costs of the arbitration are the responsibility of the public sector entity.

32 **SECTION 5.** Sections 1 to 4 of this 2009 Act apply to contracts:

33 (1) Entered into by a public sector entity on or after the effective date of this 2009 Act.

34 (2) Renewed on or after the effective date of this 2009 Act, regardless of whether the
35 contract is renewed or rebid with the existing contractor or with a new contractor.

36