

# Senate Bill 796

Sponsored by Senator TELFER; Senators FERRIOLI, GEORGE, KRUSE, OLSEN, Representatives CONGER, WHISNANT

## 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**.

Prohibits development or use, in areas planned and zoned for residential use, of buildings containing more than 2,500 square feet for governmental purposes.

## A BILL FOR AN ACT

1  
2 Relating to local zoning of government buildings; creating new provisions; and amending ORS  
3 227.286, 421.628, 421.645 and 565.080.

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

5 **SECTION 1. In areas planned and zoned for residential use, a county may not authorize**  
6 **the development of government buildings that contain more than 2,500 square feet or the use**  
7 **of buildings that contain more than 2,500 square feet for governmental purposes.**

8 **SECTION 2.** ORS 227.286 is amended to read:

9 227.286. (1) City ordinances regulating the location, construction, maintenance, repair, alter-  
10 ation, use and occupancy of land and buildings and other structures shall apply to publicly owned  
11 property, except as [*the*] **this section or city** ordinances prescribe to the contrary.

12 **(2) In areas planned and zoned for residential use, a city may not authorize the develop-**  
13 **ment of government buildings that contain more than 2,500 square feet or the use of**  
14 **buildings that contain more than 2,500 square feet for governmental purposes.**

15 **SECTION 3.** ORS 421.628 is amended to read:

16 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286, **section 1**  
17 **of this 2011 Act** or any other provision of law, including but not limited to statutes, ordinances,  
18 regulations and charter provisions, the decisions of the Corrections Facilities Siting Authority, if  
19 approved by the Governor, shall bind the state and all counties, cities and political subdivisions in  
20 this state as to the approval of the sites and the construction and operation of the proposed cor-  
21 rections facilities. Affected state agencies, counties, cities and political subdivisions shall issue the  
22 appropriate permits, licenses and certificates and enter into any intergovernmental agreements as  
23 necessary for construction and operation of the facilities, subject only to the conditions of the siting  
24 decisions.

25 (2) Each state or local governmental agency that issues a permit, license or certificate shall  
26 continue to exercise enforcement authority over the permit, license or certificate.

27 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to  
28 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for  
29 infrastructure improvements for the proposed corrections facilities.

30 (4) The Department of Corrections shall seek to obtain public services necessary for the con-  
31 struction and operation of corrections facilities from a public body providing such services. The

**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 department shall not acquire or develop and furnish its own public services under this section that  
2 could be provided by a public body unless the department concludes that the state can achieve sig-  
3 nificant cost savings by doing so.

4 (5) Upon request of the Department of Corrections, a public body furnishing public services shall  
5 make public services available to the department that are either necessary for the construction and  
6 operation of a corrections facility or required by additions to or remodeling of a corrections facility  
7 sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions  
8 of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall  
9 assure the public body the recovery of the additional costs of providing and maintaining the re-  
10 quested service to the corrections facility, including, but not limited to, feasibility and design engi-  
11 neering costs, and reasonable capacity replacement, but shall not exceed the public body's actual  
12 capital and operating expenses, including reasonable reserves charged to all ratepayers, for such  
13 service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair  
14 and reasonable if the department and public body so agree in writing.

15 (6) If the Department of Corrections and the public body cannot agree on the rates, terms and  
16 conditions of furnishing necessary public services to a corrections facility, either the department or  
17 the public body may deliver to the other a notice of request to mediate any disputed issues, includ-  
18 ing, but not limited to, whether the department can achieve significant cost savings to the state by  
19 acquiring or developing and furnishing its own public services. If either the department or the public  
20 body requests mediation, the other shall participate in good faith in such mediation. Unless other-  
21 wise agreed by the department and the public body, the mediation shall be concluded within 30 days  
22 of delivery of the notice of request to mediate.

23 (7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by ei-  
24 ther the Department of Corrections or the public body, the department and the public body may  
25 agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-  
26 binding. If the department and the public body cannot agree on the selection of the arbitrator and  
27 the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge  
28 of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The  
29 arbitrator's decision and award shall be guided by the standards set forth in this section. The deci-  
30 sion and award of the arbitrator shall be final and binding on the department and the public body  
31 only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the  
32 department and public body have agreed to binding arbitration of disputed issues, either the de-  
33 partment or the public body, if dissatisfied with the arbitrator's decision and award, may file ex-  
34 ceptions in the Court of Appeals within 21 days of the issuance of the decision and award.  
35 Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for  
36 modification or correction of an award under ORS 36.710. If any of the exceptions requires consid-  
37 eration of facts that do not appear on the face of the arbitrator's decision and award or is not  
38 stipulated to by the parties, the court may appoint a master to take evidence and make the neces-  
39 sary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

40 (8) If the Department of Corrections and the public body have submitted disputed matters to  
41 nonbinding arbitration or if the department and public body have chosen not to submit disputed  
42 matters to arbitration, the department shall issue a preliminary order to the public body that either  
43 concludes that the state can achieve significant costs savings by acquiring or developing and fur-  
44 nishing its own public services, or establishes the rates, terms and conditions upon which the public  
45 body shall make necessary public services available to the department for the corrections facility.

1 The public body, no later than 15 days following the department's issuance of its preliminary order,  
2 may contest the preliminary order by filing a written notice to that effect with the department. The  
3 preliminary order shall become final, binding and conclusive if the public body fails to request a  
4 hearing within the time permitted in this section.

5 (9) If a hearing is requested, the department shall provide the public body with an opportunity  
6 to be heard and shall issue its final order upon conclusion of the hearing. The department shall es-  
7 tablish procedures to regulate and provide for the nature and extent of the proofs and evidence and  
8 the method of taking and furnishing the same in order to afford the public body a reasonable op-  
9 portunity for a fair hearing. The procedures shall ensure that the public body has a reasonable op-  
10 portunity to place in the record the information upon which the public body relies as a basis for its  
11 position. The department's order shall be guided by the standards set forth in this section.

12 (10) Proceedings for review of the department's final order shall be instituted when the affected  
13 public body files a petition with the Court of Appeals that meets the following requirements:

14 (a) The petition shall be filed within 21 days of issuance of the final order on which the petition  
15 is based.

16 (b) The petitioner shall serve a copy of the petition by registered or certified mail upon the  
17 Department of Corrections and the Attorney General.

18 (11) Within 30 days after service of the petition, the department shall transmit to the Court of  
19 Appeals the original or a certified copy of the entire record and any findings that may have been  
20 made.

21 (12) The Court of Appeals shall review the final order of the Department of Corrections. The  
22 Court of Appeals' decision shall be final and not subject to further review.

23 (13) Proceedings for review in the Court of Appeals under this section shall be given priority  
24 over all other matters before the Court of Appeals.

25 (14) The Department of Corrections or other state agency shall not be required to make pay-  
26 ments to the public body for necessary public services to a corrections facility in excess of funds  
27 that are legally available for such purposes.

28 (15) Nothing in this section shall require a public body to furnish public services to the De-  
29 partment of Corrections for a corrections facility in the event that the Legislative Assembly fails  
30 to make funds available in an amount sufficient to pay the state's share of costs of such services  
31 as determined under this section.

32 (16) As used in this section, "public services" means off-site infrastructure, including, but not  
33 limited to, sewer and water systems and service, and road improvements.

34 **SECTION 4.** ORS 421.628, as amended by section 9, chapter 516, Oregon Laws 2001, section 45,  
35 chapter 598, Oregon Laws 2003, and section 8, chapter 231, Oregon Laws 2009, is amended to read:

36 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286, **section 1**  
37 **of this 2011 Act** or any other provision of law, including but not limited to statutes, ordinances,  
38 regulations and charter provisions, and except for permit decisions delegated by the federal gov-  
39 ernment to the Department of State Lands, the decisions of the Corrections Facilities Siting Au-  
40 thority, if approved by the Governor, shall bind the state and all counties, cities and political  
41 subdivisions in this state as to the approval of the sites and the construction and operation of the  
42 proposed corrections facilities. Except for those statutes and rules for which permit decisions have  
43 been delegated by the federal government to the Department of State Lands, all affected state  
44 agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and  
45 certificates and enter into any intergovernmental agreements as necessary for construction and op-

1 eration of the facilities, subject only to the conditions of the siting decisions.

2 (2) Each state or local governmental agency that issues a permit, license or certificate shall  
3 continue to exercise enforcement authority over the permit, license or certificate.

4 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to  
5 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for  
6 infrastructure improvements for the proposed corrections facilities.

7 (4) The Department of Corrections shall seek to obtain public services necessary for the con-  
8 struction and operation of corrections facilities from a public body providing such services. The  
9 department may not acquire or develop and furnish its own public services under this section that  
10 could be provided by a public body unless the department concludes that the state can achieve sig-  
11 nificant cost savings by doing so.

12 (5) Upon request of the Department of Corrections, a public body furnishing public services shall  
13 make public services available to the department that are either necessary for the construction and  
14 operation of a corrections facility or required by additions to or remodeling of a corrections facility  
15 sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions  
16 of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall  
17 assure the public body the recovery of the additional costs of providing and maintaining the re-  
18 quested service to the corrections facility, including, but not limited to, feasibility and design engi-  
19 neering costs, and reasonable capacity replacement, but may not exceed the public body's actual  
20 capital and operating expenses, including reasonable reserves charged to all ratepayers, for such  
21 service. The public body's rates, terms and conditions shall be conclusively deemed to be just, fair  
22 and reasonable if the department and public body so agree in writing.

23 (6) If the Department of Corrections and the public body cannot agree on the rates, terms and  
24 conditions of furnishing necessary public services to a corrections facility, either the department or  
25 the public body may deliver to the other a notice of request to mediate any disputed issues, includ-  
26 ing, but not limited to, whether the department can achieve significant cost savings to the state by  
27 acquiring or developing and furnishing its own public services. If either the department or the public  
28 body requests mediation, the other shall participate in good faith in such mediation. Unless other-  
29 wise agreed by the department and the public body, the mediation shall be concluded within 30 days  
30 of delivery of the notice of request to mediate.

31 (7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by ei-  
32 ther the Department of Corrections or the public body, the department and the public body may  
33 agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-  
34 binding. If the department and the public body cannot agree on the selection of the arbitrator and  
35 the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge  
36 of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The  
37 arbitrator's decision and award shall be guided by the standards set forth in this section. The deci-  
38 sion and award of the arbitrator shall be final and binding on the department and the public body  
39 only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the  
40 department and public body have agreed to binding arbitration of disputed issues, either the de-  
41 partment or the public body, if dissatisfied with the arbitrator's decision and award, may file ex-  
42 ceptions in the Court of Appeals within 21 days of the issuance of the decision and award.  
43 Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for  
44 modification or correction of an award under ORS 36.710. If any of the exceptions requires consid-  
45 eration of facts that do not appear on the face of the arbitrator's decision and award or is not

1 stipulated to by the parties, the court may appoint a master to take evidence and make the neces-  
2 sary factual findings. The Court of Appeals' decision shall be final and not subject to further review.

3 (8) If the Department of Corrections and the public body have submitted disputed matters to  
4 nonbinding arbitration or if the department and public body have chosen not to submit disputed  
5 matters to arbitration, the department shall issue a preliminary order to the public body that either  
6 concludes that the state can achieve significant costs savings by acquiring or developing and fur-  
7 nishing its own public services, or establishes the rates, terms and conditions upon which the public  
8 body shall make necessary public services available to the department for the corrections facility.  
9 The public body, no later than 15 days following the department's issuance of its preliminary order,  
10 may contest the preliminary order by filing a written notice to that effect with the department. The  
11 preliminary order shall become final, binding and conclusive if the public body fails to request a  
12 hearing within the time permitted in this section.

13 (9) If a hearing is requested, the department shall provide the public body with an opportunity  
14 to be heard and shall issue its final order upon conclusion of the hearing. The department shall es-  
15 tablish procedures to regulate and provide for the nature and extent of the proofs and evidence and  
16 the method of taking and furnishing the same in order to afford the public body a reasonable op-  
17 portunity for a fair hearing. The procedures shall ensure that the public body has a reasonable op-  
18 portunity to place in the record the information upon which the public body relies as a basis for its  
19 position. The department's order shall be guided by the standards set forth in this section.

20 (10) Proceedings for review of the department's final order shall be instituted when the affected  
21 public body files a petition with the Court of Appeals that meets the following requirements:

22 (a) The petition shall be filed within 21 days of issuance of the final order on which the petition  
23 is based.

24 (b) The petitioner shall serve a copy of the petition by registered or certified mail upon the  
25 Department of Corrections and the Attorney General.

26 (11) Within 30 days after service of the petition, the department shall transmit to the Court of  
27 Appeals the original or a certified copy of the entire record and any findings that may have been  
28 made.

29 (12) The Court of Appeals shall review the final order of the Department of Corrections. The  
30 Court of Appeals' decision shall be final and not subject to further review.

31 (13) Proceedings for review in the Court of Appeals under this section shall be given priority  
32 over all other matters before the Court of Appeals.

33 (14) The Department of Corrections or other state agency is not required to make payments to  
34 the public body for necessary public services to a corrections facility in excess of funds that are  
35 legally available for such purposes.

36 (15) This section does not require a public body to furnish public services to the Department  
37 of Corrections for a corrections facility in the event that the Legislative Assembly fails to make  
38 funds available in an amount sufficient to pay the state's share of costs of such services as deter-  
39 mined under this section.

40 (16) As used in this section, "public services" means off-site infrastructure, including, but not  
41 limited to, sewer and water systems and service, and road improvements.

42 **SECTION 5.** ORS 421.645 is amended to read:

43 421.645. (1) Notwithstanding ORS 195.025, 197.175, 197.180, 215.130 (4), 227.286, 455.148 or  
44 455.150, **section 1 of this 2011 Act** or any other provision of law, including but not limited to  
45 statutes, ordinances, regulations and charter provisions, the Director of the Department of Con-

1 sumer and Business Services, through the Building Codes Division, shall exercise authority for the  
2 issuance of all permits required under the state building code for the construction and operation of  
3 the women's correctional facility and intake center complex approved under ORS 421.643.

4 (2) All other state agencies, including but not limited to the Department of Environmental  
5 Quality, shall issue such permits within the authority of the agency as may be necessary for the  
6 construction and operation of the complex.

7 (3) Within the authority of the city, county or political subdivision, each city, county and poli-  
8 tical subdivision shall issue the appropriate permits, licenses and certificates not issued under sub-  
9 sections (1) and (2) of this section, including all necessary construction permits over public rights  
10 of way, and enter into any intergovernmental agreements as may be necessary for the construction  
11 and operation of the complex.

12 (4) A state agency or local government that issues a permit, license or certificate under sub-  
13 sections (1) to (7) of this section shall continue to exercise enforcement authority over the permit,  
14 license or certificate.

15 (5) Except as provided in ORS 421.649, nothing in ORS 421.635 to 421.657 expands or otherwise  
16 alters the obligations of a city, county or political subdivision to pay for infrastructure improve-  
17 ments for the complex.

18 (6)(a) State agencies and local governments shall issue any permit, license or certificate required  
19 under subsections (1) to (3) of this section within 60 days of receiving a completed application for  
20 the permit, license or certificate from the Department of Corrections or a person acting on behalf  
21 of the department. A state agency or local government may impose reasonable conditions on any  
22 permit, license or certificate but may not deny the permit, license or certificate unless denial is re-  
23 quired under federal law.

24 (b) If a permit, license or certificate required under subsections (1) to (7) of this section is not  
25 issued within 60 days of receiving a completed application, the Department of Corrections may file  
26 a petition for a writ of mandamus in the circuit court for the jurisdiction of the affected local gov-  
27 ernment to compel issuance of the permit, license or certificate. The writ shall issue unless the local  
28 government can demonstrate by clear and convincing evidence that issuing the permit, license or  
29 certificate would violate a substantive provision of the state building code, exceed the local  
30 government's statutory authority or violate federal law.

31 (c) Proceedings on a petition for a writ of mandamus under this subsection shall comply with  
32 the applicable provisions of ORS chapter 34.

33 (7) The issuance of any permit, license or certificate under subsections (1) to (7) of this section  
34 and any construction or development undertaken pursuant to such permit, license or certificate shall  
35 not be considered in support of or in opposition to an application for a land use decision under ORS  
36 chapter 197, 215 or 227.

37 (8) In accordance with the applicable provisions of ORS chapter 183 and notwithstanding ORS  
38 455.035, the Director of the Department of Consumer and Business Services shall adopt such rules  
39 as the director determines necessary to implement the provisions of subsections (1) to (7) of this  
40 section.

41 **SECTION 6.** ORS 565.080 is amended to read:

42 565.080. (1) The State Parks and Recreation Director shall have care of the Oregon State Fair  
43 property and be entrusted with the direction of its business and financial affairs. The director shall  
44 prepare, adopt, publish and enforce all necessary rules for the management of the Oregon State Fair,  
45 its meetings and exhibitions and for the guidance of its officers or employees.

1           (2) The director may appoint all necessary marshals to keep order on the grounds and in the  
2 buildings of the Oregon State Fair during all exhibitions. The marshals so appointed shall be vested  
3 with the same authority for such purposes as executive peace officers are vested by law.

4           (3) The director shall establish charges for entrance fees, gate money, lease stalls, stands,  
5 parking space, buildings, restaurant sites; conduct shows, exhibitions, races and all manner of busi-  
6 ness, notwithstanding the provisions of ORS 227.286 **or section 1 of this 2011 Act**, and do all other  
7 things the director considers proper in the operation of a year-round fair and exposition center and  
8 the annual state fair. The state is in no event liable for any premium awarded or debt created by  
9 the director beyond the amount annually appropriated therefor.

10          (4) The director may enter into sponsorship agreements for the receipt of moneys, services,  
11 products or other items of value. A sponsorship agreement entered into under this subsection is  
12 not subject to ORS 279.835 to 279.855 or ORS chapter 279A or 279B.

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