House Bill 3116

Sponsored by Representative OWENS, Senator FINDLEY (at the request of Ontario Fire Department)

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.

Describes what constitutes just, fair and reasonable rate for purposes of contract between public body and Department of Corrections for public services. Modifies definition of “public services.”

A BILL FOR AN ACT

Relating to contracts for public services; creating new provisions; and amending ORS 421.628.

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

SECTION 1. ORS 421.628 is amended to read:

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

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

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

(4) The Department of Corrections shall seek to obtain public services necessary for the construction and operation of corrections facilities from a public body providing such services. The department shall not acquire or develop and furnish its own public services under this section that could be provided by a public body unless the department concludes that the state can achieve significant cost savings by doing so.

(5)(a) Upon request of the Department of Corrections, a public body furnishing public services shall make public services available to the department that are either necessary for the construction and operation of a corrections facility or required by additions to or remodeling of a corrections facility sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and conditions of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable rate shall assure the public body the recovery of the additional costs of providing and maintaining the requested service to the corrections facility, including, but not limited to, feasibility and design engineering costs, equipment and capital reserves and reasonable capacity replacement, but shall not exceed the public body's actual capital and operating expenses, including reasonable operating costs.
and capital reserves charged to all ratepayers[,] for such service.

(b) Notwithstanding paragraph (a) of this subsection:

(A) The public body’s rates, terms and conditions shall be conclusively deemed to be just, fair and reasonable if the department and public body so agree in writing.

(B) The public body’s rate shall be conclusively deemed to be just, fair and reasonable if the rate is that charged to ratepayers by the public body for the same or similar services.

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

(7) If the mediation fails to resolve the issues in dispute, or if mediation is not requested by either the Department of Corrections or the public body, the department and the public body may agree to submit any disputed matters to arbitration. The arbitration may be either binding or non-binding. If the department and the public body cannot agree on the selection of the arbitrator and the arbitration rules and procedure, upon motion directed to the Court of Appeals, the Chief Judge of the Court of Appeals shall select the arbitrator and decide the rules and procedure. The arbitrator’s decision and award shall be guided by the standards set forth in this section. The decision and award of the arbitrator shall be final and binding on the department and the public body only if they agree to enter into binding arbitration prior to the initiation of the arbitration. If the department and public body have agreed to binding arbitration of disputed issues, either the department or the public body, if dissatisfied with the arbitrator’s decision and award, may file exceptions in the Court of Appeals within 21 days of the issuance of the decision and award. Exceptions shall be limited to the causes set forth in ORS 36.705 (1)(a) to (d), and to the grounds for modification or correction of an award under ORS 36.710. If any of the exceptions requires consideration of facts that do not appear on the face of the arbitrator’s decision and award or is not stipulated to by the parties, the court may appoint a master to take evidence and make the necessary factual findings. The Court of Appeals’ decision shall be final and not subject to further review.

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

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

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

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

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

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

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

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

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

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

(16) As used in this section, “public services” means off-site infrastructure and services pro-
vided by off-site service providers, including, but not limited to, sewer and water systems and
service, fire protection services and road improvements.

SECTION 2. ORS 421.628, as amended by section 9, chapter 516, Oregon Laws 2001, section 45,
chapter 598, Oregon Laws 2003, and section 8, chapter 231, Oregon Laws 2009, is amended to read:

421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other
provision of law, including but not limited to statutes, ordinances, regulations and charter pro-
visions, and except for permit decisions delegated by the federal government to the Department of
State Lands, the decisions of the Corrections Facilities Siting Authority, if approved by the Gover-
nor, shall bind the state and all counties, cities and political subdivisions in this state as to the
approval of the sites and the construction and operation of the proposed corrections facilities. Ex-
cept for those statutes and rules for which permit decisions have been delegated by the federal
government to the Department of State Lands, all affected state agencies, counties, cities and poli-
tical subdivisions shall issue the appropriate permits, licenses and certificates and enter into any
intergovernmental agreements as necessary for construction and operation of the facilities, subject
only to the conditions of the siting decisions.

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

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

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

(5)(a) Upon request of the Department of Corrections, a public body furnishing public services
shall make public services available to the department that are either necessary for the construction
and operation of a corrections facility or required by additions to or remodeling of a corrections
facility sited or constructed under ORS 421.611 to 421.630 or any other law. All rates, terms and
conditions of furnishing public services shall be just, fair and reasonable. A just, fair and reasonable
rate shall assure the public body the recovery of the additional costs of providing and maintaining
the requested service to the corrections facility, including, but not limited to, feasibility and design
engineering costs, equipment and capital reserves and reasonable capacity replacement, but may
not exceed the public body’s actual capital and operating expenses, including reasonable operating
and capital reserves charged to all ratepayers[,] for such service.

(b) Notwithstanding paragraph (a) of this subsection:
(A) The public body’s rates, terms and conditions shall be conclusively deemed to be just, fair
and reasonable if the department and public body so agree in writing.

(B) The public body’s rate shall be conclusively deemed to be just, fair and reasonable if
the rate is that charged to ratepayers by the public body for the same or similar services.

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

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

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

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

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

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

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

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

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

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

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

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

(16) As used in this section, “public services” means off-site infrastructure and services provided by off-site service providers, including, but not limited to, sewer and water systems and service, fire protection services and road improvements.

SECTION 3. The amendments to ORS 421.628 by sections 1 and 2 of this 2023 Act apply to contracts entered into, renewed or extended on or after the effective date of this 2023 Act.