

# 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

1  
2 Relating to contracts for public services; creating new provisions; and amending ORS 421.628.

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

4 **SECTION 1.** ORS 421.628 is amended to read:

5 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other  
6 provision of law, including but not limited to statutes, ordinances, regulations and charter pro-  
7 visions, the decisions of the Corrections Facilities Siting Authority, if approved by the Governor,  
8 shall bind the state and all counties, cities and political subdivisions in this state as to the approval  
9 of the sites and the construction and operation of the proposed corrections facilities. Affected state  
10 agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and  
11 certificates and enter into any intergovernmental agreements as necessary for construction and op-  
12 eration of the facilities, subject only to the conditions of the siting decisions.

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

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

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

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

**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 **and capital** reserves charged to all ratepayers[,] for such service.

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

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

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

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

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

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

42 (9) If a hearing is requested, the department shall provide the public body with an opportunity  
43 to be heard and shall issue its final order upon conclusion of the hearing. The department shall es-  
44 tablish procedures to regulate and provide for the nature and extent of the proofs and evidence and  
45 the method of taking and furnishing the same in order to afford the public body a reasonable op-

1 portunity for a fair hearing. The procedures shall ensure that the public body has a reasonable op-  
 2 portunity to place in the record the information upon which the public body relies as a basis for its  
 3 position. The department’s order shall be guided by the standards set forth in this section.

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

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

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

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

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

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

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

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

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

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

29 421.628. (1) Notwithstanding ORS 169.690, 195.025, 197.180, 215.130 (4) and 227.286 or any other  
 30 provision of law, including but not limited to statutes, ordinances, regulations and charter pro-  
 31 visions, and except for permit decisions delegated by the federal government to the Department of  
 32 State Lands, the decisions of the Corrections Facilities Siting Authority, if approved by the Gover-  
 33 nor, shall bind the state and all counties, cities and political subdivisions in this state as to the  
 34 approval of the sites and the construction and operation of the proposed corrections facilities. Ex-  
 35 cept for those statutes and rules for which permit decisions have been delegated by the federal  
 36 government to the Department of State Lands, all affected state agencies, counties, cities and poli-  
 37 tical subdivisions shall issue the appropriate permits, licenses and certificates and enter into any  
 38 intergovernmental agreements as necessary for construction and operation of the facilities, subject  
 39 only to the conditions of the siting decisions.

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

42 (3) Except as provided in subsections (4) to (16) of this section, nothing in ORS 421.611 to  
 43 421.630 expands or alters the obligations of cities, counties and political subdivisions to pay for  
 44 infrastructure improvements for the proposed corrections facilities.

45 (4) The Department of Corrections shall seek to obtain public services necessary for the con-

1 struction and operation of corrections facilities from a public body providing such services. The  
 2 department may not acquire or develop and furnish its own public services under this section that  
 3 could be provided by a public body unless the department concludes that the state can achieve sig-  
 4 nificant cost savings by doing so.

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

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

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

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

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

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

45 (8) If the Department of Corrections and the public body have submitted disputed matters to

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

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

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

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

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

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

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

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

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

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

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

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