BILL DRAFTING MANUAL

prepared primarily for use
by staff members
of the
Legislative Counsel's office

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FOREWORD

The preparation of bills and other measures for legislators, legislative committees and state agencies is one of the major functions of the Office of the Legislative Counsel. This manual is intended primarily for drafters in the Legislative Counsel's office.

This manual also is intended to encourage uniformity in the form, style and language of legislative measures, because experience has demonstrated that uniformity contributes greatly to the framing of sound and effective legislation. However, it is impossible in a manual of this kind to anticipate or resolve all of the issues that arise in drafting legislation.

In preparing this manual, we have drawn upon manuals of other states and on textbooks. Reed Dickerson's outstanding textbooks *Legislative Drafting* (1954) and *The Fundamentals of Legal Drafting* (1965) were especially helpful. Extensive parts of this manual have also been derived from the *Form and Style Manual for Legislative Measures*, published by the Publication Services staff of the Legislative Counsel's office. We gratefully acknowledge our debt to all of these sources.

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*Office of the Legislative Counsel use only

INTRODUCTION

Poorly drafted statutes are a burden upon the entire state. Judges struggle to interpret and apply them, attorneys find it difficult to base any sure advice upon them, the citizen with an earnest desire to conform is confused. Often, lack of artful drafting results in failure of the statute to achieve its desired result. At times, totally unforeseen results follow. On other occasions, defects lead directly to litigation. Failure to comply with certain constitutional requisites may produce total invalidity. Menard, "Legislative Bill Drafting," 26 Rocky Mt. L. Rev. 368 (1954).

* * *

It is hard to put a price tag on badly constructed legislation. How can we measure the cost of litigating the uncertainties of meaning that are brought about by language that is ambiguous or needlessly vague? And how can we evaluate the cost of finding legislative provisions that have been obscured by inept legislative placement? And, I might add, how frustrating is the effort when ambiguities exist and the search for legislative intent becomes fruitless, as is so often the case. L. Jaworski, "The American Bar Association's Concern with Legislative Drafting" in *Professionalizing Legislative Drafting*, p.5 (R. Dickerson, Editor, 1973).

* * *

The legal drafter must write for unidentified foe as well as known friend. The drafter must write so that not only a person reading in good faith understands but a person reading in bad faith cannot misunderstand.

* * *

In formulating any legislation, three phases are involved. The first phase is to secure accurate factual information about a problem. The second phase is to find an approach to meet the problem, to resolve the policy issues. The third phase is to produce a bill that reflects the policy accurately in a form consistent with constitutional provisions and other laws.

The first two factors are inherently and exclusively legislative, but in practice are only as effective as the language in which they are clothed. An accurate expression of the legislative will requires skill in the mechanics of bill drafting.

* * *

Until courts chart their statutory construction course, legislative drafters would be wise to take certain defensive measures. One is to recognize that they cannot draft so as to determine absolutely the results of litigation. In fact, it is not desirable to determine results absolutely; a drafter cannot foresee all the situations to which the law may apply, so courts must have some flexibility. Rather than conceiving of their task as ensuring that cases will come out a certain way, drafters should conceive of it as determining the boundaries of, and the terms of, the future judicial discourse that will be construction of the statute being drafted. In order to prevent further usurpation by the courts of legislatures' authority, drafters should pull in those boundaries and more fiercely defend them. They can do those things by constantly remembering a draft's main purpose while creating its details, by imagining possible facts to which the statute may apply, by seeing the new statute in relation to current statutes, and especially by frequently and carefully using definitions.

Some of the carelessness and imperfection seen in adopted legislation reflects lack of skill on the part of the drafter. Unfortunately, some of the problems of poorly drafted legislation result from the failure to recognize that good drafting requires time and a specialized skill.

Drafting is a craft in which one becomes proficient only by experience, which includes much trial and many errors. However, this manual can assist a drafter in avoiding many of the errors that others have experienced. Although it is designed primarily for use in drafting legislative measures in Oregon, most of the principles set out in this manual apply equally to measures drawn for local governments and other states, and even to the preparation of legal instruments generally.

CHAPTER ONE

THE BILL DRAFTER

The office of the Legislative Counsel provides Oregon legislators and state agencies with bill drafting services. Further, during each session, the legal staff prepares amendments for measures it drafted.

Despite widespread popular misconceptions, some amusing, some not, a statute-writing lawyer does try to draft statutory language so that it can be understood by laypersons as well as by administrators and other lawyers. The complexity of social problems to which the statute is addressed, the ambiguities of meaning and the enacting process combine, if not conspire, to make the drafting task difficult. The drafter is a lawyer functioning in the public arena, trying to put into statutory form what the requester (client) asked for in substance. The drafter must first isolate an idea or concept to express adequately the requester's goal and then find the language to express that idea or concept. This manual deals largely with techniques for handling the language aspect of drafting. But regardless of the facility of language a drafter may possess, there can be no substitute for cultivating the ability to see drafting problems and the wisdom to devise answers. These come from experience with the legislative process.

The first step is understanding what the substance of a drafting request is, for it is often expressed in less than adequate detail. The drafter who relies solely on the requester for complete understanding of the substance of a request will soon encounter trouble. Requesters do not always know or understand the current law or the ramifications of their requests. One advantage of the Oregon practice of assigning subject areas to particular drafters is that it allows the drafter to become familiar with the law and with developments in the subject area. The former comes in part with the drafting process. The latter comes in part from association with legislative and agency staff and with lobbyists, in part from news reports and relevant case law and other reference sources. The drafter who is knowledgeable about the subject area has two advantages: (1) Knowing the questions to ask in order to be as responsive as possible to the requester; and (2) Taking less time to think through the problems and compose the draft.

A drafting request sometimes comes into the office in the form of a draft, rather than (or in addition to) a narrative explanation of the problem to be solved and the requester's preferred solution. The drafter should not assume that the requester is wedded to the language of a draft that is submitted from outside the office. Legislative drafting is a specialized endeavor, with its own rules, and few people outside of the Office of Legislative Counsel know enough to be very good at it. Submitted drafts frequently have sloppy language, violate our form and style and, worst of all, fail to accomplish what the requester wants. A drafter who adheres slavishly to a submitted draft is not doing the client a favor.

The drafter cannot and must not become involved in deciding the wisdom or desirability of a particular course of action. That is the prerogative of the requester. But

the experiences of the drafter, the factual knowledge, the legal training, all must be called into play in advising a requester on the potential problems that a particular course may encounter. This advice may affect the policy decisions of the requester, but it must not usurp the right of the requester to make the final decision. The requester, whether legislator, legislative committee or state agency administrator, is officially charged with policymaking. The drafter is not.

The drafter has a professional responsibility to serve the requester objectively in accomplishing the requester's ends. This duty is further enforced in Oregon by ORS 173.240, which prohibits the Office of the Legislative Counsel from opposing, urging or attempting to influence legislation.

There is reason beyond the division of responsibility between policymakers and drafters for drafters to stay out of policymaking. That reason goes to the composition aspects of bill drafting. Persons highly involved in policy often "see" things in a bill draft that are not there – gaps that have been filled in the opponent's or proponent's mind but not on paper. Analysis will reveal these gaps more accurately and more quickly if it is dispassionate. The old adage concerning the lawyer having a fool for a client is not too far off the mark in describing bill drafters who become unduly involved in substantive policy.

If there is any key to distinguishing situations where policy comment is required to fulfill professional responsibilities from situations where comment is inappropriate, it lies in the drafter's attitude. If that attitude is one of accomplishing the requester's goals, one of professional service, then the drafter has a better chance of distinguishing the situations. However, a drafter who approaches a drafting request with questions concerning the wisdom of the request will often fail to make the necessary distinctions. And the price the drafter (and the office) pays for that failure is to be shunted aside, becoming unable to render any service.

Nevertheless, attorneys in the Legislative Counsel office must be mindful of the fact that they are subject to the Oregon Rules of Professional Conduct and to the jurisdiction of the Oregon State Bar in matters of legal ethics. While many of the disciplinary rules seem to be inapplicable to the work of legislative drafters, situations could arise in which there would at least be a question as to whether a course of conduct was allowed by the code. For example, Rule 8.4 says, in part:

> (a) It is professional misconduct for a lawyer to:
>
> * * *
>
> (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
>
> * * *

Formal ethics opinions of the Oregon State Bar contain little guidance for government lawyers as a group and even less for Legislative Counsel drafters. For example, there is no opinion discussing the question of whether it would be a violation of Rule 8.4(a)(3) if a drafter (following a request) were to "hide" or obscure a particular provision of a bill, or to omit from the measure summary some significant fact or to do any of a number of

other things to disguise the actual effect of a bill. Would those acts be misrepresentation? Deceit? The answer is unclear, but drafters should be aware of possible restraints imposed by the Oregon Rules of Professional Conduct. The Legislative Counsel Library contains a copy of the formal ethics opinions issued by the Oregon State Bar.

Requesters see the drafter as being heavily involved in choosing the right words. To some extent that view is reflected by the amount of space in this manual directed toward usage. The deeper problems of good bill drafting stem from determining what is apparently requested and what is actually meant. Drafting is the reduction of thought to writing, but if the drafter has not thought through the problem, the most artful drafting only tends to conceal that lack of clarity. Manuals cannot teach drafters how to sense issues, how to frame relevant hypothetical situations or how to get at the meaning. Only experience can do that. It is a difficult, challenging and rewarding task.

A perfect law never has been written, and never will be; the passage of time ultimately renders every law obsolete in some respect. However, a drafter can do much to reduce inconsistency and ambiguity and to anticipate foreseeable problems. Success as a drafter depends on the extent to which the drafter achieves these ends.

*COUNSEL'S LAMENT**

I'm the Legislative Counsel,
I compose the sundry laws,
And of half the litigation
I'm supposedly the cause.
If I employ the kind of English
Which is hard to understand,
The members do not like it,
But the lawyers think it's grand.
I'm the Legislative Counsel,
And they tell me it's a fact
That I often make a muddle
Of a simple little Act.
I'm a target for the critics,
And they wish to see me fried--
Oh, how nice to be a critic
Of a job you've never tried.

*Adapted from J.P.C., *Poetic Justice 31 & 32 (1947)*

CHAPTER TWO

STEPS IN DRAFTING A BILL

This chapter gives a bird's eye view of the entire drafting process. Some of the subjects mentioned only briefly are dealt with in detail in subsequent chapters.

1. TAKING A DRAFTING REQUEST.

The Legislative Counsel's office furnishes bill drafting services at the request of legislators, legislative committees and, as time permits, state agencies (referred to categorically in this manual as "the requester"). Requests are submitted in various forms and with widely varying degrees of specificity. If the request is taken during an interview with the requester, the person taking the request, who may not ultimately have anything to do with the actual drafting, has an opportunity to elicit more details. This office uses a form to assist in obtaining suitable information, including the name of any person or agency that the requester desires to have consulted. Processing of these forms is described in Appendix G on office procedures.

2. CONFIDENTIALITY.

a. Member Requests.

A drafting request from a member of the Legislative Assembly received by the office of the Legislative Counsel will be treated as confidential and the name of the requester and nature of the request will not be revealed to any person except as follows:

1. Without revealing the identity of the requester, a drafter may consult with others to gain necessary background information for drafting.

2. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made, but may not inform the second requester of the name of the first requester without the authorization of the first requester.

3. A drafter may discuss the draft with any person the requester authorizes the drafter to consult in preparing the draft.

Each member of the staff who takes requests will make an effort to determine the names of other persons who may be contacted with respect to the draft. The draft request form will be marked to reflect the names of those persons. A drafter may presume that legislative aides and other persons on the member's staff have authority to discuss a draft requested by the member.

b. Committee Requests.

A committee request is a publicly made request based on the authorization of a majority of the members of the committee. As a publicly made request, a committee request is not confidential. Committee requests are treated as follows:

1. A drafter may acknowledge receipt of a committee request and may reveal the nature of the request and the name of the committee. All inquiries as to the specifics of committee requests other than inquiries from members of the committee should be referred to committee staff.

2. The office will not supply a list of committee requests except to members of the committee. Persons seeking general information of this nature will be directed to committee staff. Persons other than members of the committee seeking copies of drafts prepared for committees will be directed to committee staff.

3. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made and may inform the second requester of the name of the committee that made the request without further authorization from the committee.

4. A drafter may discuss the specifics of a committee request with others to gain information needed to prepare the draft.

c. Agency Requests.

An agency drafting request received by the office of the Legislative Counsel will be treated as confidential and the name of the requester and nature of the request will not be revealed to any other person except as follows:

1. Without revealing the identity of the requester, a drafter may consult with others to gain necessary background information for drafting.

2. A drafter may inform subsequent requesters who request an identical or almost identical draft that the earlier request has been made, but may not inform the second requester of the name of the first requester without the authorization of the first requester.

3. A drafter may discuss the draft with any officer or employee of the Oregon Department of Administrative Services or the office of the Governor if the draft requires the approval of the Governor under ORS 171.133.

4. A drafter may discuss the draft with any person the requester authorizes the drafter to consult in preparing the draft.

It is presumed that all officers and employees of an agency have authority to discuss an agency draft.

3. THE PURPOSE OF THE REQUEST.

Before beginning to prepare a bill, the drafter must determine what the requester wants to accomplish. A drafter's function is to devise appropriate statutory language to carry out requested objectives, and not to supply substance or policy. Obviously, a drafter is unlikely to achieve the objective of the requester in a satisfactory manner if the drafter has an imprecise idea of what the requester wants. This is why it is so important that the person taking the request ask the right questions.

Usually there is no one from the office of Legislative Counsel involved in taking a drafting request from a state agency. Therefore, prior to beginning work on an agency draft, the drafter should check with the person named as the agency contact to be sure that the drafter and the agency agree on what the agency is requesting. The Oregon Department of Administrative Services (DAS) requires executive agencies to submit suggested statutory language to DAS with each request; it is part of the DAS approval process. Remember that suggested language is usually written and reviewed by people with no drafting training who may be in a hurry. Agency employees sometimes have a stake in seeing their exact words in the final bill draft. Nonetheless, the drafter's obligation is to produce a draft that accomplishes what the agency wants to accomplish. The "how" – the actual drafting – is ultimately the drafter's responsibility.

Because of the complexity of some requests, it often happens that the requester cannot give explicit instructions at first, nor can the person taking the request anticipate every question that will arise in the course of drafting. When the instructions are not precise, the

requester's objective and the various means by which that objective can be accomplished must be analyzed. Then the drafter can check with the requester so that the requester can consider and answer these questions. As drafting proceeds, the drafter may encounter additional questions that require subsequent contacts with the requester. However, these contacts **should** be kept to a minimum. Requesters, particularly legislators, generally are busy and are relying on the expertise of the drafter to isolate policy issues. It is sometimes better for the drafter to fill in the interstices and advise the requester in writing of the options used in the draft than to seek additional details from the requester during initial drafting.

4. IS IT CONSTITUTIONAL?

Legislation must conform to state and federal Constitutions. If the drafter fails to observe constitutional requirements prescribed for legislative Acts or constitutional restrictions imposed thereon, the bill will be invalid in whole or part.

The drafter must consider state constitutional requirements as to form. For example, does the proposed bill embrace more than one subject? (Article IV, section 20, Oregon Constitution) Constitutional requirements as to substance also exist. For example, does the proposed bill violate the requirement for uniformity of taxation? (Article IX, section 1, Oregon Constitution) A drafter ordinarily need not render a formal opinion on each constitutional issue. However, the requester has a right to expect that the drafter will point out any such issue and, if possible, indicate an alternative, constitutional means of accomplishing the objective. The drafter is wise to record in the file, however briefly, the nature of the problem and the fact that the requester has been notified of its existence.

Specific constitutional provisions are discussed at appropriate places in this manual. There is a brief discussion of constitutional limitations on legislation in Appendix B.

5. WHAT IS EXISTING LAW?

A drafter must become an expert on constitutional provisions, court decisions and statutes relating to the subject matter of each bill the drafter is requested to prepare. If the bill passes, it will take its place in the body of existing law. The drafter must be sure that the bill will not create conflicts or produce unintended results. It may appear to be saving time to neglect to search for conflicting provisions of existing law that should be amended or repealed. However, sooner or later individuals, agencies and the courts may have to spend much more time and money trying to resolve such conflicts.

To determine the application and meaning of existing statutes, the drafter may begin by using the ORS classification outline, index and annotations. Annotations that have been written but not yet published in the cumulative supplement to the ORS annotations are stored in a file in the computer and may be obtained by consulting the annotations staff.

Many statutory provisions are of general application. See, for example, ORS chapter 174. The drafter ought to be familiar with them so that the bill will not duplicate material already covered by general provisions.

Federal laws establishing standards for state programs in certain areas such as welfare, health, education and highways may limit state activities in these areas. A requester probably will not want to cause the state to lose federal funds through noncompliance with these standards. Other areas may be preempted by federal action. If there is suspicion that a bill may conflict with federal programs, the federal laws and regulations should be checked. This can be done most easily by a call to the appropriate federal or state agency. The call is subject to the rule on confidentiality.

6. USING OTHER LEGISLATION AS A BASIS.

A drafter should avoid the temptation to reinvent the wheel. A drafter can avoid writing a bill "from scratch" if a law or a previously prepared bill that is similar or analogous to the one requested can be found. It may be possible to revise the previous bill or adapt the law in much less time than would be required to write a new bill. Also, the benefit of someone else's thinking, perhaps even the drafter's own on some occasion when more time was available, may be desirable. Problems and solutions that otherwise would be overlooked may be found. Some of the different types of material that may be helpful are explained below.

a. Other Oregon Statutes.

The bill can be patterned on an existing Oregon statute, even though that statute is not precisely on the same subject. For example, if requested to draft a bill creating a board to license a certain profession, by examining ORS chapters 670 to 704, occupational and professional licensing laws, the drafter will probably find many provisions that suggest appropriate substance and language.

The procedure prescribed by an existing law **usually** can be assumed to be workable. The language used in an existing law often has been construed administratively or judicially. Consequently, it may be preferable to use the "tried and tested" procedure and language rather than take chances on something new. However, existing laws are not always perfect in form, style or substance, and must be adjusted in all cases to fit the needs of the present bill. The drafter should check the workability of an existing statute with the appropriate state agency before using it as the basis for a new bill. The drafter should also review the annotations for court cases and Attorney General opinions that may suggest problems with the proposed model.

b. Bills of Past Sessions.

Use the checklist in Appendix E, Redrafts of Bills from Previous Sessions, to prepare redrafts. A bill introduced but not passed, or a draft prepared by the Legislative Counsel office but never introduced, may help in preparing a new bill. However, the drafter should **never use a bill drafted for an earlier session without checking for amendments or other changes in existing statutes after it was prepared.** The drafter should also consider any amendments proposed to the bill itself. Dates appearing in the draft may need to be revised. Usually the style and substance of a previous draft can be improved.

The drafter cannot assume, merely because the bill was introduced at a prior session, that it is satisfactory for present purposes. It may have failed to pass because of its inadequacies.

Bills introduced at a previous session can be found by using the subject matter approach, employing the indexes in the final Legislative Calendar, or the sections-amended-or-repealed-by-bills approach using tables in the final Legislative Calendar.

If a bill of a past session was prepared by the Legislative Counsel's office, the bill request file may contain helpful information. For bills introduced in 1953 and at subsequent sessions, the LC file numbers are entered on the printed bills or in conversion tables located in the LC library. To find bills prepared in the office, the drafter may use the subject matter approach by using the bill request index file or the requester approach by using the requester index file, both in the office.

Time can often be saved if the bill contains many new sections of law by obtaining an office printout from Publication Services for the immediate preceding session or copies of last session's printed bills from Publication Services or the Distribution Center, or by photocopying old bills from the LC library or by obtaining copies from the Oregon State Library (earlier sessions). Copy can then be prepared by marking the required changes, using the most recent version of ORS for amendments to statutes. It is helpful to Publication Services if the source of the material is given. For example, the bill number and session year or ORS citation should be retained.

c. Bills of Current Session.

As a legislative session progresses and the number of bill introductions increases, it becomes more important for the drafter to check the weekly cumulative bill index or various computer sources of similar information. The drafter may find bills similar to the one requested by using the topical index, the table of sections amended, repealed and "added to," the STAIRS search program for bills or possibly the Legislative Counsel docket. If a similar bill already has been introduced, the drafter must call that fact to the attention of the requester. Sometimes the requester's objective can be more easily accomplished by amendment of a bill already introduced. However, a drafter should not undertake to draft amendments instead of a bill without first consulting the requester. If a similar bill already has passed both houses, it may be necessary to adjust the bill being drafted to make it consistent with the earlier bill. The weekly cumulative legislative calendars and their daily supplements contain detailed information on the progress of all bills. The information is also available on the computer. Drafters should consult Publication Services personnel for instructions on how to access current bill information.

d. Laws and Bills of Other States.

If legislation similar to the bill being drafted has been presented in another state, that bill (or law, if it was enacted) often is helpful. Sometimes a similar law can be found by checking the codes of other states in the Supreme Court Library or on the Internet. However, unless the drafter is prepared to check 49 codes, some ingenuity must be

exercised in selecting those states more likely to have confronted the same problem. For example, if the drafter is drafting a bill relating to commercial fishing, it is unlikely that anything useful will be found among the Utah statutes.

In adapting a measure from another state for purposes of legislation in Oregon, the drafter must be sure that necessary changes are made to conform to terminology and procedure used in other Oregon statutes. A drafter must remember, too, that a bill may be perfectly constitutional in another state but unconstitutional in Oregon. Therefore, bills from other states should usually be used only as general guidelines to regulatory approaches and direction, and not as copy to be followed in detail.

Copies of **bills** from other states usually are furnished promptly by the legislative service agencies of those states. The text of **statutes** of other states may be obtained in the same manner but often statutes can be found more quickly by consulting computer legal research databases or the codes and session laws in the Supreme Court Library. Since many experiences are common to the states and the various Canadian provinces, a drafter should not overlook provincial legislation for assistance.

e. Constitutional Provisions of Other States.

For up-to-date versions of other states' Constitutions, check the computer legal research databases. The Constitutions of all the states are printed in full in *Constitutions of the United States, National and State* (1962), published by the Legislative Drafting Research Fund, Columbia University. The various constitutional provisions are summarized in the Index Digest volume of the same publication. However, the index has not been maintained up to date. A copy of this reference work is in the LC library.

f. Uniform and Model Acts.

A drafter may find that a bill similar to the one being drafted has been prepared by the National Conference of Commissioners on Uniform State Laws. The conference prepares uniform Acts that are intended, for the most part, to be followed exactly. The text of any such uniform Act can be found in Uniform Laws Annotated at the Supreme Court Library or at www.uniformlaws.org (National Conference of Commissioners on Uniform State Laws.)

Model Acts, intended merely as guides for legislation in areas where uniformity is not necessary, come from a variety of sources, including trade groups, occupational associations, etc.

A drafter should be familiar with an annual publication of the Council of State Governments titled *Suggested State Legislation*. Another annual publication of value is the State Legislative Program of the Advisory Commission on Intergovernmental Relations. Copies of most of these works are in the LC library.

g. Interim Committee Bills.

Legislative interim committees and task forces usually recommend legislation, drafts of which sometimes are printed in their reports. Copies of all interim committee reports submitted in recent years are in the LC library; earlier reports are available from the State Library.

h. Oregon State Bar Bills.

Committees of the Oregon State Bar frequently propose legislation. The reports of these committees, including in most cases the full text of their proposals, are published each year for consideration by the annual meeting of the Bar. Copies of these publications from 1953 to date are in the LC library; copies for earlier years are in the Supreme Court Library.

i. Other Sources.

Federal legislation often suggests approaches to be taken in drafting but a drafter should take careful note that the mere existence of federal legislation on a subject suggests either preemption or supremacy. Further, federal legislation rarely provides a desirable drafting model.

Local ordinances may be used as samples. There are two caveats: (1) If the matter can properly be subject to local ordinance, is the matter within the authority of the Legislative Assembly or is the matter a subject of home rule; and (2) Ordinances are usually not good drafting models.

Quasi-public associations such as those at the Local Government Clearing House in Chicago may be good sources for suggested legislation. The League of Oregon Cities, the Association of Oregon Counties and the Oregon School Boards Association are examples of local contacts for these types of associations.

Trade associations are also sources for draft legislation on the subjects affecting their interests. The State Library can usually provide addresses if there are no local affiliates.

7. USE OF LIBRARY FACILITIES AND COMPUTER RESOURCES.

The drafter should become thoroughly familiar with the research and reference tools available on the computer and in the Legislative Library, Supreme Court Library and Oregon State Library. A visit to each of the libraries is the best way to find out what is available. The Legislative Librarian and the Documents Librarian at the Oregon State Library have information on types of materials of special interest to the drafters. The research and reference tools available on the computer include Lexis, STAIRS, Oregon LegisLaw, Loislaw, Shepards and the Internet.

Lexis is the preferred online research service for the office of the Legislative Counsel. The preferred research service for federal income tax is RIA Checkpoint. The office maintains one subscription to RIA checkpoint.

Sometimes another state, or a private group in Oregon or in another state, has made a comprehensive study of the problem being worked on and has collected comparative legislation and expert opinion in a published report. A drafter may find a report on the effectiveness and background of a law that is being used as a model in preparing a bill for introduction in Oregon. If there is reason to believe some other state or group may have made such a study, the Research Librarian at the State Library or the Legislative Librarian for the Legislative Administration Committee can make a search.

The drafter should periodically examine the materials in the LC office library so that its contents are familiar.

A variety of resources are available on the computer. STAIRS may be used to research ORS, session laws and other databases. Lexis also may be used to research ORS, as well as Oregon case law, United States Supreme Court case law and other databases. Shepards may be used to shepardize a particular case. LegisLaw provides access to Oregon laws, drafts, amendments and LC opinions from previous sessions. The Internet is useful for researching the laws of other states, federal laws and policies, Oregon Administrative Rules and other topic areas.

The computer resources available in the office for research frequently change. The drafter should periodically review them.

The State Archivist has the records and files of standing committees and interim committees of recent legislative sessions. A check of the State Archives may provide background on an existing Oregon statute. The Chief Clerk of the House and the Secretary of the Senate retain all recordings of the floor debates. The Legislative Library has committee minutes for the preceding session.

The State Library, Supreme Court Library and the Willamette Law School Library have facilities to photocopy pages of books and other library materials. For the drafter's convenience, the Legislative Counsel office has "charge cards" available for copying purposes at these libraries (fees charged to this office). A charge card can be checked out at the Legislative Counsel front desk and must be returned by the end of that day.

8. CONSULTATION WITH EXPERTS.

Sometimes a drafter will not be sufficiently familiar with a given area to determine the practical effect of a new procedure or change in the law. In these cases, **if the requester consents** and if time permits, the drafter may consult experts in the area to be affected. For example, if the bill being drafted would impose new duties and powers on a state agency, it would be proper to confer with appropriate personnel of that agency. Problems of a practical nature may occur to them that would not occur to others. However, the drafter must protect the requester from possible agency lobbying attempts

by protecting the requester's identity unless **specific** permission has been given to reveal that identity.

Usually it is easy to find the appropriate official for consultation if a state agency is involved. More difficulty will be experienced with respect to city or county officials. However, the League of Oregon Cities or the Association of Oregon Counties can provide useful information concerning procedures and operations of the local governments represented by each.

The Legislative Fiscal Officer and the Legislative Revenue Officer may be able to assist in problems concerning state revenues, expenditures and fiscal matters generally.

9. REVIEWED FOR FORM AND STYLE ONLY.

Do not caption a draft "Reviewed for Form and Style Only." A drafter may receive a bill draft request with instructions that no changes are to be made or for which there is not sufficient time before the draft is due for the drafter to examine the draft, much less rewrite it.

In either case, consult with the Legislative Counsel or Chief Deputy Legislative Counsel instead of adding a caption that reads "Reviewed for Form and Style Only."

10. ANALYZING PROVISIONS TO BE IN BILL.

After completing the necessary background research, the drafter must begin to visualize the elements of the bill to be drafted. While the bill may embrace only one general subject, it will do so by doing one or more of the following:

1. **Creating new law.**
2. **Amending existing law.**
3. **Repealing existing law.**

If an existing statute is not found that can be amended to accomplish what is desired, the bill must **create new law** (new sections) imposing duties, conferring powers, granting privileges, decreeing prohibitions, prescribing penalties, making appropriations, etc., as necessary to accomplish its purpose.

Research may indicate that there are existing statutes dealing with the subject covered by the request and that a change in or an addition of language to one or more of these existing statutes will accomplish the requester's purpose. If so, the bill will need to **amend existing sections**. Language may be taken from other statutes to express the changes in or additions to the section amended. It is important to harmonize the language added with that already used in the section amended, and to avoid creating inconsistencies and conflicts with unamended portions of the law. Because it is more important to maintain consistency of language between the new material and the unamended existing law than to create a "pearl," the drafter may need to exercise particular self-restraint.

Often a bill must **repeal existing law** (removing sections). It is important to check a statute carefully prior to its repeal, to be certain that nothing in the statute should be in force after the bill being drafted becomes law. In addition, internal references to the repealed law may exist in sections not otherwise being amended. These references must be reconciled. **STAIRS** (Storage and Information Retrieval System) is available on the computer for checking on repealed sections and renumbered subsections. See the STAIRS training and reference manuals for information on how to use STAIRS.

11. OUTLINING A BILL.

For many bills, a mental or written outline of a bill, prepared before writing the bill itself, is a necessity. The outline should express the results of the analysis of provisions to be included in the bill, following the suggestion in Chapter 6 of this manual with respect to arrangement. For a simple bill, an outline may be unnecessary. Probably there will be less need for a detailed written outline for an experienced drafter, but some advance planning for drafting a bill will always be required.

A carefully structured outline, based on a sound analysis of the required provisions, is a good basis for dividing a lengthy or complex bill dealing with many aspects of the subject into smaller, manageable units.

12. WRITING A BILL.

After completing an outline, a drafter must begin to write. Writing should never be delayed until all research is completed. Research is **never** completed. Judgment is necessary to distinguish between the research effort necessary to produce a draft and research for its own sake or as a tactic to delay drafting.

An outline is useful in preparing the first draft. Form and style can be imposed later, but on a first draft the drafter should concentrate on getting the **substance** of the bill down on paper.

If the bill amends current ORS, read the entire ORS section before inserting the amendments and again after inserting the amendments. Many drafting mistakes can be avoided, or will be caught, if you read the entire section.

After completing the first draft and letting a day or two elapse, if time permits, for a fresh look at it, the drafter can reread and rewrite the bill as many times as necessary to:

- Attain clarity, giving careful attention to style and grammar and the use of specific words.

- Arrange the provisions in the most useful order. The organization initially should have followed the outline. When a rough draft is completed, the drafter is able to reconsider arrangement.

- Ensure constitutionality or, if not ensured, review and comment upon it.

- Take into account statutory and common law rules for interpreting statutes.

- Comply with mechanical, formal and substantive requirements.

- Ensure that there is no conflict with or duplication of constitutional or statutory provisions of general application.

- Resolve "birds in flight," i.e., actions and proceedings already under way or to be initiated that may be affected by the bill.

Finally, when the body of the bill is complete, the drafter drafts an appropriate title. If the draft is "**final**," the drafter should also prepare a measure summary.

13. TIPS THAT SAVE TIME.

In drafting a lengthy bill, the drafter may be wise not to number sections or insert section numbers in internal references until the final arrangement of sections is determined. If the bill is exceptionally long, it may be helpful to make a cross-reference card file to help keep track of internal references.

14. COMPILATION IN ORS.

The bill should be drafted in such a way that it will fit into *Oregon Revised Statutes*. To anticipate codification, the drafter must understand the system of classification and arrangement of ORS.

During the drafting of a bill, the drafter should examine ORS to discover whether there is an affirmative reason to direct that new provisions of the draft be placed in a particular place in ORS. If there is an adequate reason to do so, the direction is accomplished by saying that the new section is "added to and made a part of . . . " an existing series or chapter or code in ORS. There are two basic requirements for adding something to and making it a part of: There must be an affirmative reason to do so; and the series, chapter or code added to must exist as something more than an editorial convenience. For a more detailed discussion of adding a new section to an existing ORS series, chapter or code, see "DRAFTING NEW SECTIONS" in chapter 13.

15. NUMBERS-REFERRED-TO SEARCH.

When amending or repealing an existing ORS section, the drafter must **ALWAYS** do a computer search (STAIRS) of ORS for all references to the amended or repealed section. See "Editorial Substitutions" under "ALTERNATIVES TO AMENDMENTS," 13, for discussion of editorial substitutions that may be effected in lieu of extensive "housekeeping" amendments and of situations that may require the drafter to scrutinize more carefully those sections in which reference is made to the amended or repealed section in the bill. See also "NUMBERS-REFERRED-TO PROCEDURES," Chapter 13.

16. SECTIONS AMENDED, REPEALED OR ADDED TO.

Legislative Counsel's office maintains information on sections amended, repealed or added to for each current legislative session. This information is available on-line and in the tables printed weekly. These tables contain an entry for each ORS section, ORCP section, uncodified Act section or Oregon Constitution section for which an amendment or repeal has been proposed, and for each series of sections or chapter of ORS or Article of the Constitution to which one or more sections has been proposed to be added by a measure introduced at the session. See "CONFLICTING AMENDMENTS," Chapter 13, for further discussion of "A and R" tables.

17. SPECIAL ATTENTION NOTES.

Since 1949, Legislative Counsel's staff has accumulated a large number of notes concerning ambiguities, conflicts and defects in the statutes. These notes, commonly referred to as "special attention notes," are kept in loose-leaf binders in the office and are noted on the computer printout of the appropriate section as follows: "**NOTE:** This section has an SA note."

Unfortunately, not all defects in the statutes have been noted in the special attention file. Part of the job of a drafter is to discover and record additional ambiguities, conflicts and defects. Special forms, known as "pink sheets," have been provided to record these. The notes should be prepared even though the draft cures the problem, in case the draft does not become law.

When encountering a special attention note in ORS retrieval, a drafter should check the pink sheets to determine whether the special attention note may be addressed in the bill.

18. RETRIEVAL NOTES.

Retrieval notes appear in the retrieval files of ORS sections affected by phased-in amendments, repeals of amendments, delayed repeals and similar anomalies that require a drafter's attention. The note sets forth the timelines affecting the section and may suggest ways to deal with its various versions. In the example that follows, ORS 326.111 was amended by section 1, chapter 757, Oregon Laws 1991, to provide authority to the Office of Community College Services to negotiate for federal funds. That amendment is repealed in 1993. ORS 326.111 also was amended by section 2, chapter 886, Oregon Laws 1991, to delete reference to the State Textbook Commission. That amendment is repealed in 1996. The note suggests that in the meantime the drafter should amend both "temporary" versions, as well as the version of ORS 326.111 as it appears when the repeals have taken effect. The disclaimer sections indicate that the amendments presently added by the drafter are not intended to affect the repeals of the previous amendments.

SECTION ___. ORS 326.111 is amended to read:

NOTE: Amendments repealed 6/30/93 and 1/1/96. Safest to amend all three versions and use two disclaimers.

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education . . . :

(a) The State Board of Education . . . ;

(b) The State Textbook . . . ;

(c) The Office of Community . . . ;

(d) Such other agencies and officers . . . ; and

(e) The administrative organizations and staffs . . . .

(3) All administrative functions of the State Board . . . .

SECTION XX. ORS 326.111, as amended by section 1, chapter 757, Oregon Laws 1991, is amended to read:

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education shall consist . . . :

(a) The State Board of Education . . . ;

(b) The Office of Community College Services which shall . . . ;

(c) Such other agencies and officers . . . ; and

(d) The administrative organizations and staffs . . . .

(3) All administrative functions of the State Board of Education shall . . . .

SECTION XXX. Nothing in the amendments to ORS 326.111 by section XX of this Act affects the provisions of section 14, chapter 474, Oregon Laws 1987, as amended by section 8, chapter 757, Oregon Laws 1991.

SECTION YY. ORS 326.111, as amended by section 2, chapter 886, Oregon Laws 1991, is amended to read:

326.111. (1) The Department of Education shall function under the direction . . . .

(2) The Department of Education . . . :

(a) The State Board of Education . . . ;

(b) The Office of Community College . . . ;

(c) Such other agencies and officers . . . ; and

(d) The administrative functions of the State Board of Education shall be exercised . . . .

SECTION YYY. Nothing in the amendments to ORS 326.111 by section YY of this Act affects the provisions of section 16, chapter 886, Oregon Laws 1991.

Note that as of the 1999 legislative session the Legislative Counsel's office no longer routinely uses these disclaimers.

19. REVISER'S BILL.

The Reviser's Bill amends ORS sections to correct errors in syntax, internal references, gender references, etc. ORS retrieval printouts for affected sections contain notes after the amending clause and before the text as follows: "**NOTE:** This section is amended in the Reviser's Bill."

When encountering such a note in retrieval, check the Reviser's Bill change and, if there is no conflict, do not make the Reviser's Bill change to the ORS section in the current draft. In cases of conflict between the Reviser's Bill and the current draft, see the conflicts team.

20. CHECKING FINAL DRAFT.

When a draft is finished, the drafter should check it **carefully**. No matter how experienced in drafting bills, a drafter will never cease to be amazed at how often errors that escape repeated checks will be ridiculously obvious when the draft is reviewed.

Several **separate** readings are advisable to check arrangement, style, grammar, use of specific words, definitions, incorporations by reference, internal references to other sections, etc. As a final check, there is a Checklist for Drafters inside the request folder. The drafter should consider each point in this checklist and not mechanically check items in the list if the item has not been separately considered.

21. THE REQUEST FOLDER.

The bill request folders should be maintained in good order at all times. The Legislative Counsel or some other drafter may need to refer to one of them instantly, and under severe limitations of time, when the drafter is not available.

Ordinarily a drafter should arrange the material in each folder in chronological order, latest material on top, but in a way that associates each draft with the notes and correspondence relating thereto. The drafter or some other person may have to refer to the file several years after the session is over.

22. TRANSMITTAL.

Often a drafter will want to point out important features of a bill, or problems not dealt with therein, in a memo accompanying the draft. A drafter should preserve for the record any constitutional or other legal objections that might be raised against the bill, even though the requester has been advised of them orally.

Having been advised of serious difficulties, the requester may still choose to adhere to original instructions. A drafter must accept that decision with good grace. Because of staff limitations during sessions, a drafter need not and should not send a formal, nonsubstantive letter with each draft.

23. SUMMARY.

In performing the duties of a bill drafter, a drafter must:

1. Ascertain the exact purpose the requester has in mind, and the means by which that purpose can be accomplished.

2. Explore in detail alternative approaches and, by pointing out the policy questions involved, help the requester think the problem through and decide the issues.

3. Find out which constitutional provisions and existing statutes relate to the subject of the proposed bill, and what adjustments, if any, must be made in existing law.

4. Develop a plan for the organization and arrangement of the bill.

5. Prepare a draft in a form meeting legal and technical requirements.

6. Check doubtful substantive matters with experts (unless the requester directs otherwise) or by independent research.

7. Check with the requester on further questions of policy.

8. Reread and revise the draft as many times as necessary to produce a satisfactory result.

9. **Recheck** the draft for arrangement, consistency, coherence and clarity.

10. **Re-recheck** the draft, using the **Checklist for Drafters** inside the request folder.

24. REVIEW.

(Taken from: *Applied Imagination* by Alex F. Osborn; published by Charles Scribner's Sons, p. 125, 1953 ed.)

1. Phases of Creative Procedure.
   a. Orientation: Pointing up the problem.
   b. Preparation: Gathering pertinent data.
   c. Analysis: Breaking down the relevant material.
   d. Hypotheses: Piling up alternatives by way of ideas.
   e. Incubation: Letting up, to invite illumination.
   f. Synthesis: Putting the pieces together.
   g. Verification: Judging the resultant ideas.

2. Devices Designed to Help Activate Imagination.
   a. Make a start.
   b. Make notes and use checklists.
   c. Set deadlines and quotas.
   d. Set time and place (for thinking).

CHAPTER THREE

STYLE AND GRAMMAR

_____

A drafter must deal constantly with difficult problems of expression. The material in this and the next two chapters is intended to help a drafter write not only bills but other materials that reflect the A,B,C's of drafting: **accuracy, brevity** and **clarity**.

1. GENERALLY.

Drafters who resort to forms of stilted and foggy drafting do so because common words lack dignity; polysyllables lend distinction; precision is unsafe (loopholes in the form of vagueness or ambiguity); and simple writing is hard work (correct). However, the frequency of these forms is reduced by emphasis on plain language and plain English. Poor drafting may be very expensive because it produces a flood of inquiries, endless interpretations, repeated amendment, poor compliance and adverse court decisions.

At least seven types of word surplusage form part of usual legal writing. They are not necessarily incorrect, and they may not be unclear, but they do waste the reader's time and energy.

(1) Deadwood. Deadwood, by definition, should be eliminated. Vague, empty or pretentious words and phrases should be replaced by specific and direct language.

(2) Unnecessary repetition. Repetition is one means of achieving coherence in a written work, but if repetition does not contribute to the design, establish a pattern, emphasize important material or link parts, it is not functional and should be eliminated.

(3) Overuse of passives. The active voice is shorter and more direct than the passive voice.

(4) Weak intensifiers and qualifiers. Since legal propositions may have to include a number of modifying phrases or clauses, fitting them into the sentence simply and clearly is sometimes difficult. Words like "very," "quite," "rather," "completely," "definitely" and "so" can usually be struck from a sentence without loss.

Usually the best places to put modifying phrases and clauses are before the subject or after the predicate or, in cases where the modifier is short, next to the word being modified. The least desirable place to put a long modifying phrase or clause is between the verb and the predicate noun.

(5) Negative constructions. When an idea can be accurately expressed either positively or negatively, it should be expressed positively.

(6) Extra sentences and clauses. Sentences are sometimes wordy because ideas are given more elaborate grammatical constructions than they need. These constructions can be grammatically subordinated or reduced. Several rules help the drafter tighten the draft:

If two consecutive sentences have the same subject, they often can be combined.

If the idea at the end of one sentence is picked up as the subject of the next sentence, the two sentences can usually be combined.

Clauses beginning with "who" and "that" can be transformed to embedded phrases.

Sentences and clauses beginning with "it is," "this is" and "there are" can be made more concise by eliminating those useless constructions.

(7) Long-winded introductions. Vague, empty words and phrases clog the beginnings of sentences. When the deadwood is cleared, the subjects appear early, and the main verbs appear close to them.

The following is a list of elements that will lead to good drafting practices:

- Short statements.
- Positive rather than negative statements.
- Active rather than passive voice.
- Present tense as much as possible.
- The indicative mood as much as possible.
- Simple, finite verbs rather than their infinitives, participles or gerunds.
- Singular rather than plural nouns.

- The same words consistently for the same meaning – avoidance of synonyms.
- Avoidance of unnecessary modifiers, unnecessary definitions, unnecessary references, long and unfamiliar words, legalistic expressions and circumlocutions.
- Words and forms of popular speech as much as possible.

2. CONSISTENCY.

A drafter must be consistent in the **use of words**. If a word or phrase is used more than once in a bill, there is a presumption that the word or phrase has the same meaning throughout. This presumption governs unless a contrary intent is clear. In view of this rule, two mandates can be framed:

(1) The same word should **not** be used to convey different meanings.

(2) Different words should **not** be used to convey the same meaning.

Consistency in **approach** also is important. For example, in drafting a statute to create an occupational licensing board, the drafter should check existing ORS chapters that provide for the licensing of particular professions, so that the draft will be consistent with the overall approach of existing law. In drafting a new section that will contain material similar to that in an existing ORS section, the new material should be arranged in the same way unless there is good reason to do otherwise. This does not mean that the arrangement and wording of an existing ORS statute must be imitated slavishly if the drafter finds a more precise and concise way to draft the material.

3. BREVITY.

Many statutes are ambiguous or obscure because of long and poorly constructed sentences. **The drafter must make a conscious effort to keep sentences short.** If each sentence expresses a single thought, it generally is easier for the reader to grasp that thought. It does not matter if the result sounds "choppy" so long as it is clear.

As a general rule, when both a short word and a long word have the same meaning, the short word should be used because it may be more easily understood.

By limiting a sentence to one or two thoughts and a paragraph to a single relationship of thoughts, the drafter can avoid the more thorny problems of ambiguity.

These suggestions help: Sentences of no more than 25 words; paragraphs of no more than 75 words.

Everyone wants a short bill. However, greater mischief may result from a bill that treats a complex subject briefly with vague provisions than from a bill that is lengthy but precise.

4. THE LEGISLATIVE SENTENCE.

The simplest legislative sentence consists of a **legal subject** and a **legal action**. These two parts together constitute the **rule**. In more complicated forms, the legislative sentence also may contain **exceptions, conditions** and **cases**.

a. The Legal Subject.

The legal subject identifies the person who is required or permitted to do something or prohibited from doing something. The legal subject determines the person to whom the law will apply. The legal subject must be used precisely to be sure that the rule confers rights or imposes duties on all of the persons whom the requester intends to obligate or benefit, and no others.

Legal duties, liabilities, rights, privileges and powers can reside only in **persons.** A **thing** cannot possess a right or be subject to a liability. However, there are times when stating the persons who constitute the legal subject would require extensive repetition or would result in awkward arrangement. In these instances, if the persons are definite, even though by implication, a thing as the subject of the sentence may be used.

When using descriptive language to limit the legal subject, the drafter should use the present or past tense of the verb and avoid the future and future perfect tenses; for example, "an employee who leaves" or "an employee who has left," **not** "an employee who shall leave" or "an employee who shall have left."

b. The Legal Action.

The legal action describes the particular act that a person is required or permitted to do or prohibited from doing. The legal action should stay close to its subject.

If the rule (legal subject plus action) is **permissive**, that is, confers a right, privilege or power that is to be exercised at the will of the legal subject, the word "may" is used in the legal action. If the rule is **imperative**, that is, imposes a duty or liability on the legal subject, the words "shall" or "may not" are used. "Shall" should never be used to express future action in stating the legal action. "May" or "shall" must never be used in any part of the rule except in the legal action.

The use of "will" results in the following kind of ambiguity: "Any employee of the department will be allowed to undergo courses of training." Since a privilege is conferred and no duty is imposed, the action should read "may take," i.e., "Any employee of the department may take courses of training."

Even when no ambiguity results, use of "will" may cause a thing to be used as the subject. For example, "The duration of the courses will be determined by the administrator." This example should read: "The administrator shall determine the duration of the courses."

The drafter ought to be wary of such constructions as "The department shall be compensated for expenses incurred in the performance of its duties under this section." Does the sentence impose a legal action or is the action simply cast in the future passive? One assumes the former is intended, since the latter would be mere narrative. Upon whom, then, is the duty of compensating the department imposed? Who or what is the legal subject? Cast the sentence in the active voice, and not only is the legal subject immediately apparent, but the imperative is established: "A corporation shall compensate the department for expenses incurred by the department in the performance of its duties under this section."

The drafter also should avoid constructions that use "shall" purportedly to impose a requirement on an entity that is not of a type that can logically fulfill a requirement. An example is "The member appointed under subsection (1) of this section shall be licensed by the Oregon State Boxing and Wrestling Commission." Does this mean the commission shall license the appointee? Probably not. Some drafters attempt to avoid this error by replacing "shall" with "must." While the substitution is arguably preferable to the original, it still does not address the issue, which is one of statutory function. The statutory function in this instance is not to authorize, require or forbid a legal action, but to impose a condition upon the appointment, and "shall" can readily perform its accepted role if the sentence is recast with that function in mind: "The (appointing authority) shall appoint a person licensed by the Oregon State Boxing and Wrestling Commission."

c. The Case.

The extent or application of a legal rule can be limited by stating the case in which it operates. In other words, the case sets out the state of facts upon which the rule is to operate. Ordinarily **"when"** introduces the case. Cases may be stated in the alternative.

Generally, the case should be stated at the beginning of the legislative sentence. The reader has immediate notice that the law is limited in application, and is informed promptly whether the rule deals with a state of facts in which the reader is interested.

The case should not be introduced by words such as "in case," "in the event," "whenever," "where" (meaning "when") or similar phrases. The present or past tense of the verb should be used in stating the case, never the future; for example, not "where the director shall have found"; but "when the director finds" or "when the director has found," depending on whether the facts stated in the case must occur before or at the same time as the legal action.

Sometimes a single rule applies to numerous cases. It may be more convenient to list numerous cases **after** the statement of the rule, rather than before.

d. The Condition.

Sometimes the legal rule applies only upon the fulfillment of stipulated conditions. Ordinarily, **"if," "until"** or **"unless"** introduces the condition.

The logical position for a condition is directly after the statement of the case. Since the rule is suspended until the condition is fulfilled, the condition should be placed before the rule. If there are several conditions, they can be listed in the chronological order in which they are to be performed or occur.

As in the case of other parts of the legislative sentence, the future tense of a verb must not be used to state a condition.

It is sometimes difficult to determine whether something is a case or a condition; indeed, perhaps there is no significant difference. In determining whether to use "when" or "if," the following examples, drawn from the Wisconsin drafting manual, might be helpful:

- When you are expressing a condition that may never occur, use 'if' to introduce the condition, not 'when' or 'where.'

  Correct: If the suspect resists arrest, the officer may use force to subdue the suspect.

- If the condition is certain to occur, use "when," not "if," where" or "whenever."

  Correct: When this section takes effect, the court shall dismiss all pending proceedings.

e. The Exception.

An exception is used to exempt from the application of the law some matter that otherwise would be within the scope of the rule. An exception is introduced by "except," but care must be exercised that all of those items following the word "except" are intended to be governed by it.

An exception may be used to incorporate by reference exemptions that have been stated in other provisions to avoid an overly complex sentence. For example, "Except as provided in sections 2 and 3 of this (year) Act, a person who. . . ." Ordinarily this type of exception should **precede** the case and condition, if any, and the rule.

Probably no single element contributes more to confused legislation than the inept use of exceptions, especially in the form of provisos, when the matter should be covered by a direct statement. Provisos are archaic, confusing and consistently misused. An exception, limitation or condition should be introduced by "except that," "but" or "however," or by a new sentence or paragraph. To avoid pitfalls, a drafter may consider the following techniques:

1. If certain persons are to be excluded from the operation of the rule, the language of the legal subject must be adjusted.

2. If limitations on time, place, manner or circumstance in the operation of the rule are to be made, the language of the legal action must be adjusted.

3. If dispensing with particular conditions is desired, the statement of the condition must be qualified.

4. All other limitations on the application of the rule are placed in the case.

f. Putting the Parts of the Legislative Sentence Together.

A legislative sentence in its most complicated form is made up of the following parts:

EXCEPTION

CASE

CONDITION

Rule — Legal subject

Rule — Legal action

Normally these parts should be stated in the order given, because it is best to state the circumstances in which the rule is to apply before stating the rule itself.

For example:

Exception — Except as provided in section 2 of this (year) Act,

Case — when an application for a license is filed,

Condition — if the applicant has satisfied all the requirements of this (year) Act,

Rule — Legal subject: the director

Rule — Legal action: shall issue a license to the applicant.

If the rule is to apply under several cases or conditions, the rule may be stated first, followed by the cases or conditions.

Rule
- Legal subject: A county
- Legal action: may issue refunding bonds when the outstanding bonds:

Cases
- (1) Have matured but have not been paid;
- (2) Are about to mature and become payable; or
- (3) Are redeemable at the option of the county.

Another example:

Rule
- Legal subject: The state
- Legal action: may give preference to a bidder under section 5 of this (year) Act only if:

Conditions
- (1) The bid does not exceed by more than five percent the lowest bid; and
- (2) The bond or deposit required by section 6 of this (year) Act has been filed by the bidder.

5. TENSE.

The law is considered as speaking continuously. In other words, a statute is a continuing command. Language used in the present tense is construed as referring to the time when the statute is applied, not to the time it is drafted or enacted. There is a natural temptation to regard the time when a statute is being drafted as the present and to cast legislative sentences in the future tense.

Use of the future tense results in statements like the following:

DON'T

> Any person who **will drink** intoxicating liquors on a common carrier or who **will use** profane or obscene language thereon **will be** guilty of a misdemeanor.

Since the law is considered to be speaking continuously, it is much more natural and more concise to state the prohibition as follows:

DO

> Any person who **drinks** intoxicating liquors on a common carrier or who **uses** profane or obscene language thereon **is** guilty of a misdemeanor.

The past tense may be used when the present tense also is used and an expression of the time relationship between two or more activities is desired. Facts concurrent with the operation of the law should be recited as if they were present facts, and facts precedent to the law's operation as if they were past facts. However, there is reason to be wary of the past tense. One court found that the use of the past tense caused the statute in which it was used to operate retrospectively. See State ex rel. Dwight v. Justice, 16 Or. App. 336 (1974).[1]

Use of the word "shall" must be limited to statutory commands. This is the prevailing usage in *Oregon Revised Statutes*, in uniform and model Acts and in other well-drawn statutes.

A drafter should not use "shall be" where "is" or "are" fits. For example, there is a definite difference in meaning between "every partner is an agent" and "every partner shall be an agent."

A drafter should also avoid using "shall" when "must" is meant. For example, ORS 573.096 (repealed in 1973) provided in part:

> If such person does not pay both the license fee plus the penalty fee during the first month in which the license fee is delinquent, thereafter the applicator shall not only pay both amounts but he **shall** also receive a passing grade in a reexamination given by the department for pesticide applicators as prescribed in ORS 573.056.

This provision is absurd unless one assumes that "shall" in the latter clause means "must."

Although the expression "no person shall" is hallowed by long and extensive usage, literally the expression is equivalent to saying "no person is required to," and therefore is

[1] The statute in question was amended in 1971 to say: "The issue of a wife cohabiting with her husband who **was** not impotent or sterile at the time of conception of the child is legitimate." Prior to the amendment, the statute said, "The issue of a wife cohabiting with her husband, who **is** not impotent, is legitimate." Note that the drafter could have resolved all ambiguity – regardless of tense – by adding an applicability clause to the bill that amended the statute.

not truly a prohibition. Use instead "a person may not." A more extensive discussion on the use of "shall," "may," "must," "shall not" and "may not" appears in Chapter 4.

6. VOICE.

Use the active voice rather than the passive voice, if the active voice can be used. If a drafter writes in the passive voice, ambiguities may be created by neglecting to identify the person who is given the right, power or privilege or is subjected to the duty or liability. See Arlington Educ. Ass'n v. Arlington School Dist. No. 3, 177 Or. App. 658 (2001).

"Notice of the meeting shall be given at least 10 days in advance," fails to specify who is responsible for giving the notice. The same mandate written in the active voice requires that the responsible person be designated. The attempt to change something written in the passive voice into something written in the active voice may illuminate gaps that need to be filled by policy decisions before a complete bill can be drafted.

Don't use the passive voice with a double negative; for example, "The powers set out in section 4 of this (year) Act **may not be exercised** by the director **without** the prior approval of a majority of the members of the board." Rather, the sentence should be written: "The director **may** exercise the powers set out in section 4 of this (year) Act **only with** the prior approval of a majority of the members of the board."

7. NUMBER; GENDER; PERSON WITH DISABILITY.

Number. When possible, **use the singular number instead of the plural**. The singular usually makes the meaning clearer. Under ORS 174.127, the singular number may include the plural and the plural number may include the singular.

Gender. ORS 174.127 also provides that words used in the masculine gender may include the feminine and neuter, but the 1979 Legislative Assembly enacted the following:

> **174.129.** It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender.

Use of "he or she" or other similar devices should be avoided because they are not sex neutral.

Person with a disability. It is the policy of the Legislative Assembly to use "person with a disability" and similar terminology that places the person before the disability, to the extent consistent with state and federal law and as described in ORS 182.109.

8. TABULAR ARRANGEMENT.

The readability of a legislative sentence often can be improved by breaking it down into its parts and presenting them in tabular form. If a number of rights, powers, privileges, duties or liabilities are granted to or imposed upon a single subject, a drafter often can save space and make meaning clearer by using the tabular form. A provision should be arranged in this way whenever the subject matter makes short sentences or independent phrases impossible. Ordinarily, the tabular form is achieved by arranging the material in the form of

subsections and paragraphs, as in ORS 205.160, or even lists, as in ORS 475.940. It may be necessary to use a table arranged in columns, as in ORS 825.476.

9. SECTIONS.

A separate, numbered section is needed in the bill for each new section that is created and for each existing ORS section that is amended. The word "**SECTION.**" must be inserted before each section number. The repeals may be grouped together in a separate, numbered section. The sections of a bill are numbered consecutively. However, during the session when amendments make consecutive renumbering of sections in a lengthy bill impractical, sections may be inserted in proper order by numbering "**SECTION 1a.**" or "**SECTION 11a.**" as necessary. Similarly, sections may be deleted and a note inserted in the bill that reads: "**NOTE:** Section 2 was deleted by amendment. Subsequent sections were not renumbered."

How much material should go into a section? There is no definite answer to this question. Generally, the contents of a section should correspond to the contents of a paragraph in ordinary English composition. This means that each distinct concept should be a separate section, except that the drafter may divide a concept into a series of sections to avoid a section of excessive length.

If sections are short, the bill is easier to organize. This practice also reduces the length of any future bill amending the section, because the amendment must conform to the constitutional requirement that the section amended be set forth at length. Short sections also are easier to compile in ORS and to index and annotate.

One test that many drafters use to determine whether a section is too long or too short is mentally to compose a leadline (section caption) for the section. If it is impossible to write a concise leadline that covers all the contents of the section, the section probably is too long. Conversely, the drafter should consider consolidating a series of short sections if it is found that a single, concise leadline covers the entire series. If a series of separate sections covers relatively minor matters that could be described generically by a single leadline, they may be combined.

10. NUMBERING AND DESIGNATION OF SUBSECTIONS AND PARAGRAPHS.

a. Form.

When numbering subsections and paragraphs, the drafter must observe the following rules:

If a section consists of two or more independent subsections, each is numbered with an Arabic numeral in parentheses: "(1)", "(2)", etc.

If a section is unitary in its grammatical construction but includes dependent subsections in parallel construction, a numeral is not placed before the introductory clause, but the dependent subsections are numbered with Arabic numerals in parentheses. For example:

SECTION 1. **The commissioner shall:**
(1) Issue licenses;
(2) Hold hearings; and
(3) Enforce the law.

If a section contains more than one subsection, and any one of the subsections includes subordinate paragraphs, the subordinate paragraphs are identified by means of lowercase letters in parentheses. However, "(L)" is used to identify the paragraph between "(k)" and "(m)" to avoid confusion with the designation of subsection "(1)". Example:

SECTION 5. **The board shall:**
(1) Hear appeals; and
(2) Issue orders relating to:
(a) Revocation of licenses; and
(b) Suspension of registration.

As a general rule, tabulation should not go beyond subsections and paragraphs. If a section being written seems to require further subdivision, it should be reconstructed or split. In those rare cases where it is not possible to avoid further subdivision, as in certain tax laws, capital letters are used in parentheses for subparagraphs and small Roman numerals in parentheses for sub-subparagraphs.

It is generally preferable to avoid the use of numbers or letters in parentheses in the body of a section without indentation to designate clauses. If such separation appears necessary, the clauses probably are of sufficient importance to be designated as separate subsections or paragraphs.

The use of numbered paragraphs or subsections in the middle of running text, the device commonly known as "flush left" or "blank slug flush," must be avoided. An example of this **improper** device is as follows:

SECTION 3. **Any person under 21 years of age who:**
(1) Consumes alcoholic beverages in a public place; or
(2) Operates a school bus without a valid driver's
license,

is guilty of a misdemeanor.

For a number of reasons, sections arranged in this manner are confusing when set out in type. The proper procedure is:

SECTION 3. **A person commits a misdemeanor if the person is under 21 years of age and:**
(1) Consumes alcoholic beverages in a public place; or
(2) Operates a school bus without a valid driver's license.

b. Conjunctive-Disjunctive Tabulation.

When two or more subsections or paragraphs are set out, the drafter must indicate whether they are conjunctive or disjunctive. See Martinez v. Heckler, 735 F.2d 795 (C.A. Tex.) (1984). Note the effect of using an "and" or an "or" in the following:

> **SECTION 4. The board may revoke the license of any person who shoots a duck:**
> **(1) Out of season.**
> **(2) On public land.**

In this example, there are four possible combinations of circumstances:

1. A person might shoot a duck out of season and on public land;
2. A person might shoot a duck out of season and on private land;
3. A person might shoot a duck in season and on public land; and
4. A person might shoot a duck in season and on private land.

If the tabulation is conjunctive ("and"), the board may revoke the person's license in only one of the four circumstances: The duck is shot out of season and on public land.

If the tabulation is disjunctive ("or"), there are three circumstances in which the board may revoke the person's license: The duck is shot:

1. Out of season and on public land;
2. Out of season and on private land; or
3. In season but on public land.

By longstanding usage in the ORS, the "or" in tabulation is always "inclusive." That is, "(1); or (2)" means "Either (1) or (2) or both"; it does not mean "either (1) or (2) but not both." If a drafter wants to say "either (1) or (2) but not both", the drafter needs to find a way other than tabulation to do so.

The ambiguity caused by failure to use an "and" or an "or" is obvious in this example, but may not be so obvious in more complex sections. It is well to form the habit of inserting "and" or "or," even when one can infer from the context whether the disjunctive or conjunctive sense is intended, to avoid the possibility of creating ambiguity by tabulation. An alternative is to preface the tabulation with "any of the following" (for "or") or "all of the following" (for "and"). ORS form is to use the "and" or "or" only after the penultimate phrase in the series.

c. Internal References.

The following rules apply in referring to subsections and paragraphs:

Whether a section contains independent or dependent subsections, if they are numbered "(1)," "(2)," etc., they are referred to within the section and in new sections of a bill as "subsections." Lesser divisions are referred to as "paragraphs," "subparagraphs" and "sub-subparagraphs." However, references to these divisions in a bill are made differently.

Referring to an ORS section: ORS 171.122 (2)(c).

Referring to a new section: "section 4 (2)(c) of this (year) Act" or "paragraph (c) of this subsection" if the reference appears in subsection (2).

The correct reference to a series of new subsections or paragraphs is "section 3 (1) to (6) of this (year) Act." When referring to a series of subsections in an ORS section, the reference is "ORS 164.362 (2) to (6)." The word "inclusive" is not necessary because ORS 174.100 provides that the reference includes both the subsections or paragraphs listed and all intervening ones.

For discussion of references to "this (year) Act" and ORS series, see Chapter 13.

11. PUNCTUATION.

Good drafting requires the barest minimum of punctuation. A short sentence limited to the clear expression of a single idea will go a long way toward meeting this requirement. Punctuation considered essential in other forms of writing is usually excessive in a bill.

Punctuation, although a proper guide to interpretation, will be disregarded by a court if it defeats clear legislative intent. Pilgrim v. Clatskanie People's Utility Dist., 149 Or. App. 234 (1997). No more punctuation should be used than is necessary for clarity. Sentences must be constructed so that their meaning does not depend on punctuation. This requires skillful phrasing to avoid ambiguity and to ensure exact interpretation. A statute that applies to "salaried elected and appointed officials" (no comma) is quite different from one that applies to "salaried, elected and appointed officials." The following rules are designed to promote uniformity in punctuation:

The **period** should be used as frequently as possible. The comma or semicolon can and should be avoided. The long, rambling, "run-on" sentence, somewhat like this one, held together by "ifs," "ands" and "buts," requiring innumerable commas and other little marks to give it meaning should never be employed by a bill drafter.

The **comma** is omitted before the conjunction within a series of words, phrases or clauses. For example, "men, women and children"; **not** "men, women, and children."

The subject of a sentence is never separated from its verb by a single comma. The "all or nothing" rule: A single comma is not used in a parenthetical phrase or clause. For example, "The amendment, which had been approved by the committee was accepted." A comma must be placed after the word "committee" so that the parenthetical phrase "which had been approved by the committee" is isolated from the rest of the sentence, if the intent is to isolate the phrase. If it is not the intent to isolate the phrase, "that" should be substituted for "which" and the comma should be omitted: "The amendment that had been approved by the committee was accepted."

A **colon** is used in the text of a section only to introduce a series of subelements. Usually, within the series, a **semicolon** is used except after the last item. For example:

> **SECTION 8. The department shall:**
> **(1) Adopt rules;**
> **(2) Prosecute violators; and**
> **(3) Disseminate information.**

If a sentence consists of two clauses, either of which requires a comma, a semicolon is used to separate the two clauses. However, in such circumstances it is preferable to use two sentences. If a sentence consists of two independent clauses connected by a conjunction, a comma is used before the conjunction, as in the following circumstance: "The department has jurisdiction, and it may issue appropriate orders to compel obedience." A compound predicate is not separated by a comma: "The department has jurisdiction and may issue appropriate orders to compel obedience."

The **apostrophe** shows possessiveness of nouns and indefinite pronouns. The apostrophe is omitted if the proper name of an entity omits it, e.g., Veterans Administration. Possessive personal pronouns (its, their) never take an apostrophe.

An **apostrophe** is properly used in measure of time and space in the genitive form, e.g., two weeks' pay. If "of" cannot be used in place of the apostrophe, then the apostrophe is misplaced. When there is no genitive relation between the time or quantity and the noun, the apostrophe is not used, e.g., three-day seminar.

Since drafting is formal expression, apostrophes for contractions, as reflecting speech patterns, are not used.

For purposes of consistency, periods and commas are placed inside **quotation marks**. Other punctuation marks should be placed inside quotation marks **only** if the punctuation marks are part of the matter quoted. **Exception**: In writing amendments to bills, no punctuation marks are placed inside the quotation marks unless they are a part of the text of the amendment.

Material in **parentheses** should be avoided in the **text** of a bill because the use may be confused with brackets indicating material to be deleted. Usually it is possible to substitute commas for parentheses; if not, perhaps the sentence needs to be rephrased or split. Em dashes or double dashes should not be used in a bill in place of parentheses for any reason. Parentheses are used to indicate matter to be completed in a statutory form.

Brackets [ ] indicate the deletion of material by amendment and are used for **no other purpose** in bill drafting.

To indicate blank lines in a form prescribed by statute, **underscoring** is used rather than dots or dashes. ORS 108.510 is an example.

If a section prescribes a form or sets out a table, the form or table is separated from the body of the text by a line drawn above and below the form (**hairline rules**). ORS 100.305 is an example.

Commas and the last antecedent:

When adjectives or other qualifying words are intended to apply either to one or to all of a group of nouns, care must be exercised in the construction and punctuation to express the intent clearly. In the following example, does the 3,000 pound limit apply to trailers and semitrailers or only to pole trailers?

> Trailers, semitrailers and pole trailers of 3,000 pounds gross weight or less are not required to be licensed.

If the 3,000 pound limit **is not** intended to apply to trailers and semitrailers, the provision should read:

> Pole trailers of 3,000 pounds gross weight or less and trailers and semitrailers are not required to be licensed.

If the 3,000 pound limit **is** intended to apply also to trailers and semitrailers, the provision should read:

> A trailer, semitrailer or pole trailer is not required to be licensed if it has a gross weight of 3,000 pounds or less.

The drafter should **avoid** reliance on the punctuation rule of the last antecedent because, although cited in grammar books, its use has generated much litigation.

Here is what the Oregon Supreme Court (quoting Sutherland) said about the doctrine of the last antecedent:

> The doctrine of the last antecedent, however, provides:
>
> > Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is "the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence." Thus a proviso usually is construed to apply to the provision or clause immediately preceding it.
> >
> > * * *
> >
> > Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma.

In State v. Webb, 324 Or. 380 (1997), the question arose in the context of a statute that said: "District courts shall have the same criminal and quasi-criminal jurisdiction as justice courts and shall have concurrent jurisdiction with the circuit courts of all misdemeanors

committed or triable in their respective counties where the punishment prescribed does not exceed one year's imprisonment in the county jail or a fine of $3,000[.]"

The court said the statute "contains two grants of jurisdiction. District courts have (1) the same criminal and quasi-criminal jurisdiction as justice courts and (2) concurrent jurisdiction with circuit courts over misdemeanor cases. The disputed issue is whether the clause 'where the punishment prescribed does not exceed … a fine of $3,000' limits both grants of jurisdiction or only the latter."

The court held that under the doctrine of the last antecedent (which they are treating as "a grammatical principle used in interpreting statutes" and which they use on the first level of PGE analysis), the clause refers only to the last antecedent (the second grant of jurisdiction), not to both.

If there were a comma between "counties" and "where," the clause would be read to apply to both grants of jurisdiction.

The point of the (much simpler) examples dealing with trailers, semitrailers and pole trailers is that drafters need to watch for modifying, referential or qualifying words and phrases and try to write the sentence in such a way that its interpretation does not turn on the presence or absence of a comma. But if the interpretation is to turn on that, the drafter must be aware of how the presence or absence of the comma affects the meaning of the sentence.

12. CAPITALIZATION.

CAPITALIZE:

- Proper names.
- Derivatives of proper names used with a proper meaning.
- Common nouns or adjectives forming an essential part of a proper name, such as Marion County, Circuit Court for Baker County, Board of County Commissioners of Lane County, City of Salem, Columbia River, State of Oregon or State Capitol.
- The full official title of an officer or agency at the state level, such as Governor, Secretary of State, Water Resources Director, Supreme Court, Seventy-sixth Legislative Assembly, Legislative Assembly, Senate, Senator, House of Representatives, Representative, Senate Committee on Agriculture and Natural Resources, Department of Revenue or State Fish and Wildlife Commission.
- See Appendix D for ORS citations designating official titles of state officers, agencies, boards, commissions, committees, councils, funds and accounts.
- Months and days of the week.

- The proper name of a state fund or account, such as Geology and Mineral Industries Account, State Highway Fund or the General Fund.

- The words "Miscellaneous Receipts" in budget bills.

- The word "Act," meaning a legislative Act.

- Names of historic events, such as World War II.

- References to the Constitution, such as "Constitution and laws of Oregon" or "Constitutions of the United States and Oregon."

- References to a particular Act by its popular name, such as Uniform Commercial Code or State Personnel Relations Law. However, do not capitalize a general reference to a law on a particular subject, such as "motor carrier law" or "insurance statutes."

- The word "Class" when used to describe a type of felony or misdemeanor, such as Class B felony or Class C misdemeanor.

- The first word in a sentence, the first word following a colon and the first word in an enumeration or schedule paragraphed after a colon.

DO NOT CAPITALIZE:

- Substitute words that are used for second and subsequent references, such as the secretary, the director, the court, the legislature, the committee, the department or the commission.

- The word "federal," except when it is part of a proper name, such as Federal Land Bank.

- The word "state," except when it is part of a proper name, such as State of Oregon, State Apprenticeship and Training Council or State Banking Board. Do not capitalize "state" in such uses as "this state," "state highway" or "the state is not liable."

- Words indicating geographic position, such as "southern Oregon."

- The words "chapter" or "section" in a reference to a particular chapter or section within a sentence, for example, "as provided in ORS chapter 12" or "under section 36 of this (year) Act."

13. ABBREVIATIONS AND ACRONYMS.

Use abbreviations and acronyms sparingly and only if they have been defined. Examples of acronyms that have been defined and used in ORS include "HIV," which means human immunodeficiency virus, and "DNA," which means deoxyribonucleic acid. Exceptions include acronyms such as "radar" and "laser" that have passed into common usage.

"ORS" is the official citation for *Oregon Revised Statutes* (see ORS 174.510) and "ORCP" is the official citation for Oregon Rules of Civil Procedure (see ORCP 1 G) and do not require further definition.

To avoid confusion between a section of law being amended and the section of the bill that is doing the amending, abbreviate the word "**SECTION**" to "**Sec.**" when a section of session law is set forth for amending in a bill. For example:

> **SECTION 49.** Section 4, chapter 1190, Oregon Laws (year), is amended to read:
>
> **Sec. 4.** Sections 2 and 3**, chapter 1190, Oregon Laws (year),** [*of this (year) Act*] are repealed on January 2, [*2008*] **2010**.

When a section of the Oregon Constitution is set forth for amending in a joint resolution, abbreviate the word "**Section**" to "**Sec.**" For example:

> **PARAGRAPH 1.** Section 14, Article IV of the Constitution of the State of Oregon, is amended to read:
>
> **Sec. 14.** The [*deliberations*] **meetings** of each house, of committees of each house or joint committees**,** and of committees of the whole**,** [*and of political party caucuses*] shall be open. Each house shall adopt rules to implement the requirement of this section and the houses jointly shall adopt rules to implement the requirements of this section in any joint activity that the two houses may undertake.

14. NUMBERS AND FIGURES.

Express numbers in figures, not in words. Exceptions:

- **Cardinal and ordinal numbers less than 10** are expressed as words (six, sixth). However, all numbers in connected groups should be in figures if any number in the group, standing alone, would be in figures (1, 2, 3, 15 or 1st, 2nd, 15th).

- **Numbers beginning a sentence** are expressed in words. At the beginning of tabulated items, figures may be used.

- **Fractions.** Spell out fractions for amounts less than one, using a hyphen between the words (one-half, three-fifths, two-thirds). Use figures to express precise amounts greater than one, using a hyphen between the whole number and the fraction (2-2/5, 33-1/3).

- **Percent** is expressed by the word "percent." The symbol "%" may be used in tables. Use a zero before the decimal point for percentages less than one (such as "0.08"), to avoid computer coding problems.

Numbers should not be expressed both in words and figures. **Right:** $100. **Wrong:** $100 (one hundred dollars).

15. MONETARY SUMS.

Monetary sums should be expressed as follows:

one cent	$2,000 (comma)
10 cents	$160,000
$3 (no decimal point)	$3 million
$3.65	$3,504,282
$115	

16. DATES, TIME, AGE AND TIME PERIODS.

DATES: Dates should be expressed as follows:
June 2001 (no comma)
June and July 2001 (no comma)
June 29, 2001 (not June 29th)
June 29 to July 6, 2001, and (comma)
January 15 (not the 15th day of January)
June 19, 2001, and (comma)
2001-2002 (not 2001-02)
21st century

TIME: Time should be expressed as follows:
4:30 p.m.
10 p.m.
1:00 p.m. (colon and double 00 only with the hour "1")
12 noon
12 midnight

AGE: Age should be expressed as "18 years of age."

TIME PERIODS: Normally, a period is to be measured in whole days only, and not in elapsed time less than whole days. Unless the drafter intends otherwise, this distinction is made in the following example: "The appeal must be filed not later than **the 90th day after** the judgment was entered."

If an action must be completed by the end of a designated period that begins in the future, the drafter should indicate whether the action:

1. **May** be done **before** the designated period **begins**, as in "not later than the 90th day after the end of the tax year"; or

2. **Must** be done **within** the designated period, as in "within the 90-day period immediately following the end of the tax year."

The words "**heretofore**" and "**hereafter**" must not be used, particularly to refer to events taking place before or after the effective date of an Act. In a new enactment, "before the effective date of section 10 of this (year) Act" is used instead of "heretofore," and "after the effective date of this (year) Act" is used instead of "hereafter."

The combination of "heretofore and hereafter" is sometimes used to make clear that the bill has application to situations occurring before as well as after its effective date, if one otherwise could infer that it lacked retrospective operation. However, a separate section clarifying retrospective application is decidedly preferable.

17. SPELLING.

Merriam Webster's Collegiate Dictionary, Tenth Edition, and *Webster's Third New International Dictionary, Unabridged,* should be followed in the spelling, compounding and dividing of words, except when otherwise provided in the *Form and Style Manual for Legislative Measures* or in Rules of the Legislative Assembly or by legislative usage.

Use of Hyphens. Hyphens should not be used after the prefixes **co, de, inter, intra, multi, non, pre, pro, re, semi, sub or un** (copayment, decentralize, interagency, intrastate, multistate, nonzoned, preempt, proactive, readmit, semiannual, subparagraph, undocumented). Use a hyphen after any one of these prefixes to join the prefix to a capitalized word or a number (inter-American, pre-1989). Also use a hyphen to prevent misinterpretation (re-mark, meaning to mark again; remark, meaning a comment).

Always use a hyphen after the prefixes ex, post, quasi and self (ex-offender, post-conviction, quasi-judicial, self-propelled). Hyphenate the words "post office" only when they are used as an adjective (post-office address).

Do not hyphenate foreign phrases that are used as adjectives (prima facie evidence).

Compound Modifiers. Hyphenate a compound modifer when the hyphen is needed to avoid misinterpretation or when the modifier is a compound word (such as "cost-effective") that requires a hyphen as indicated in *Merriam Webster's Collegiate Dictionary* (10th Edition). Always check definitions and existing usage in ORS for exceptions, such as "first class mail" and "long term care facility."

Also hyphenate a compound modifier when a number is part of the modifier, such as "three-year plan" and "10-year projections."

Do not hyphenate adjective forms of compound modifiers that include the adverb "very" or an adverb that ends in "-ly," such as "privately owned."

Required Spellings. Extensive usage in existing Oregon statutory law requires the following words to be spelled as indicated:

attorney fees
boldfaced (adj)
cross-claim
driver license
ground water (n, adj)
hotline
insanitary
rescission
right of way
rights of way
rulemaking
up to date (adv)
up-to-date (adj)
X-ray (n, v, adj)

Required Cyberspace Spellings. The following spellings for computing and electronic telecommunications terms have been established for Oregon statutory law:

bandwidth
cellular telephone (not cell phone)
database
disc (for compact discs, etc.)
disk (for hard drives and floppies)
electronic commerce (not e-commerce)
electronic mail (not e-mail)
facsimile (not fax or FAX)
file name
home page
Internet
online (adj, adv)
voice mail
webpage
website
World Wide Web

Plurals. For nouns that have a choice of endings, one English and the other foreign, the English ending is generally preferred. However, some nouns that are used in statutory language require the Latin ending. These nouns include, but are not limited to:

Singular	**Plural**
biennium	biennia
curriculum	curricula
memorandum	memoranda
referendum	referenda

Words with Similar Spellings. The meanings of certain words with similar spellings are frequently confused. For example:

- "Affect" when used as a verb imports action against or upon a person or thing, while "effect" when used as a verb indicates accomplishment or achievement of a result.

- "Appellant" is a noun that means the party who is appealing a decision; "appellate" is an adjective that means having jurisdiction to review decisions of a lower tribunal.

- "Biennially" means once every two years; "biannually" means twice a year.

- "Capitol" means the statehouse; "capital" means the capital city.

- "Continually" connotes frequent recurrence during a period; "continuously" means without interruption.

- "Disburse" means to pay out, while "disperse" means to cause to break up or spread out.

- "Endorse," in Oregon's statutory law, means to approve, to add a notation to a document or to publicly express support; "indorse" means to sign or to place a signature on a negotiable instrument or to amend an insurance policy by adding or subtracting a type of coverage.

- "Ensure" means to make certain or guarantee; "insure" means to procure insurance for something; "assure" means to make certain or to try to increase another's confidence. Of these terms, use "ensure" in drafting unless the topic is insurance.

- "Farther" indicates distance; "further" indicates time, quantity or degree.

- "Forego" means to precede; "forgo" means to do without.

- "Moneys" means sums of money; "money" means currency.

- "Payer" and "payor" both mean the individual or entity that pays a bill or note. The secondary spelling, payor, is used throughout the Uniform Commercial Code (ORS chapters 71, 72, 72A, 73, 74, 74A, 75, 77, 78 and 79) and the Bank Act (ORS chapters 706 to 716). The primary spelling, payer, is used in the remaining ORS chapters.

- "Practicable" means feasible or possible to practice or perform; "practical" means can be actively put to use.

- "Prescribe" means to establish authoritative rules; "proscribe" means to prohibit or forbid.

- "Stationery" means paper and envelopes used for letter writing; "stationary" means immobile.

- "Therefore" indicates a conclusion; "therefor" indicates in place of, in return for or because of.

Words with Special Connotations. The word "to" means "to and including" when used in reference to a series of statute sections, subsections or paragraphs or references to *Oregon Revised Statutes*. The word "person" means individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. See ORS 174.100 for these and other definitions generally applicable to the statute laws of this state.

Gender. In 1979 the Legislative Assembly enacted the following:

> **174.129.** It shall be the policy of the State of Oregon that all statutes, rules and orders enacted, adopted or amended after October 3, 1979, be written in sex-neutral terms unless it is necessary for the purpose of the statute, rule or order that it be expressed in terms of a particular gender.

In 1985 the Legislative Assembly adopted chapter 578, Oregon Laws 1985:

> **SECTION 1.** (1) For purposes of harmonizing and clarifying statute sections in Oregon Revised Statutes, the Legislative Counsel may substitute sex neutral nouns or articles for nouns or pronouns that are not sex neutral or delete pronouns that are not sex neutral except in cases where the substitutions or deletions would alter the meaning or substance of the section.
>
> (2) The Legislative Counsel Committee shall cause to have prepared and submitted to the regular session of the Legislative Assembly measures necessary to achieve with ORS 174.129 and this section that cannot be achieved for reasons stated in subsection (1) of this section.

Be advised that Legislative Counsel will change submitted copy that is not sex neutral unless it is necessary for the purpose of the bill "that it be expressed in terms of a particular gender."

18. OFFICIAL TITLES OF PUBLIC OFFICERS AND AGENCIES.

The official and correct title for a public officer or agency is used when referring to that officer or agency within the text of a bill. The official title should be set out once at the beginning of each section. The advantages to such practice outweigh the alternative of relying on definitions. Use of the official title not only expedites computer searches but enables the reader to identify more readily the agency or officer referred to when the section is set forth alone and outside its context.

Official titles ordinarily are set out in the constitutional or statutory section that created the agencies or positions. Appendix D of this manual includes a list of state officers, agencies, boards, commissions, committees, councils, funds and accounts and their corresponding ORS citations.

Note that, in statute, members of the Supreme Court are "judges," not "justices," except for the "Chief Justice," who is the presiding judge of the Supreme Court and the administrative head of the state Judicial Department. In correspondence, however, all members of the Supreme Court may be referred to as "justices." Members of the Court of Appeals, Oregon Tax Court and circuit courts are judges.

19. CITATIONS.

a. Citing Oregon Constitution.

In the text of a bill, the Oregon Constitution is referred to as, for example, "Article III, sections 2 and 3, Oregon Constitution, provide . . ." or "Article III, sections 2 and 3, of the Oregon Constitution, provide . . . ."

A new Article VII has been adopted, but the original Article VII has not been repealed. The original is referred to as "Article VII (Original), section 15, Oregon Constitution," and the new as "Article VII (Amended), section 4, Oregon Constitution."

In the text of a section of the Constitution itself, another section is referred to as, for example, "sections 2 and 3, Article III of this Constitution" or "section 2 of this Article."

b. Citing Session Laws.

Session laws are referred to in the text of a bill as follows:

Generally, "Oregon Laws 2011" or "Oregon Laws 2012," denoting the year of the regular session in which the laws were enacted. If a special session is held, the reference is to "Oregon Laws 2013 (special session)" or if there is more than one special session in a year, "Oregon Laws 2013 (second special session)."

Chapter: "chapter 27, Oregon Laws 1991."

Section: "section 1, chapter 27, Oregon Laws 1991."

Subsection: "section 1 (2), chapter 27, Oregon Laws 1991."

Paragraph: "section 1 (2)(a), chapter 27, Oregon Laws 1991."

If an Act already adopted at the current session of the Legislative Assembly is to be referred to after it has been filed in the Secretary of State's office, the session law chapter assigned in that office and the enrolled bill number are cited. For example, "chapter 16, Oregon Laws 1999 (Enrolled Senate Bill 85)." Reference to the enrolled bill is useful in this case, because many persons who have copies of the bill will not know the session law chapter number that has been assigned.

c. Citing Other Bills.

If a bill refers to another current session bill, the following form should be used if a chapter number has not been assigned:

section 1, chapter ____, Oregon Laws 1999 (Enrolled Senate Bill 3),

If a chapter number has been assigned, the proper reference is:

section 1, chapter 47, Oregon Laws 1999 (Enrolled House Bill 2005),

If referring to a resolution, the proper reference is:

Senate Joint Resolution 32 (1999)

d. Citing *Oregon Revised Statutes*.

The general statute laws of Oregon, as enacted in 1953 and subsequently amended, are known and cited as *Oregon Revised Statutes*, for which the abbreviation "ORS" may be substituted (ORS 174.510). ORS parts in the text of a bill are cited as follows:

Complete chapter: "ORS chapter 97."

Particular section: "ORS 97.190." The word "section" or the symbol "§" is unnecessary. A statement that the ORS section is amended "as amended by" some previous law is unnecessary when reference to the latest version of the section printed in ORS is intended. A simple reference to "ORS 97.190," for example, means the section as it reads after the 1959, 1965 and 1977 amendments to that section.

Two ORS sections: "ORS 97.180 and 97.190." "ORS" is not placed before the second section number.

Three ORS sections: "ORS 97.170, 97.180 and 97.220."

Series of ORS sections: "ORS 97.010 to 97.130." It is not necessary to say "inclusive" or "to and including," because the series reference, as provided in ORS 174.100, includes both sections mentioned and, usually, all intervening sections. An intervening section is not included in the series if it was not legislatively enacted as part of the series or added to and made a part of the series. If a section has been editorially placed in a series, the fact that it is not legislatively part of the series is so indicated by a note following the section. A different form of citing series may be used in correspondence, since the reader probably does not have access to ORS 174.100.

The drafter should avoid referring to a string of ORS sections as "ORS ____ to ____" unless the numbers referred to are an existing series that can be confirmed either by STAIRS or the numbers-referred-to cards. To inadvertently create a series by reference without regard to the creation's relationship to existing series or series within series permits future drafters to compound the problem by further adding to the creation. Sacrificed, then, to "convenience" is the integrity of the preexisting series as they related to definitions, procedures, penalties, etc.

If the drafter determines that a new series *must* be created by referring to "ORS ____ to ____," the new series will not include any intervening sections that were not previously legislatively part of a smaller series within the newly created series. If the drafter wishes to include those intervening sections in the new series, they must be legislatively added to and made a part of the new series. For a discussion of adding a section to a series, see Chapter 13, "DRAFTING NEW SECTIONS."

List of ORS sections, series and chapters: "ORS 97.010 to 97.130, 97.134 (2), 97.141 and 97.145 and ORS chapters 110 and 125."

Subsections, paragraphs, etc.: See page 3.11 of this manual.

Title numbers in ORS are not used in citing parts; only chapters, series of sections, sections or parts of sections are used.

If a particular ORS section, as it read before a current session has amended it, is to be referred to, the date of the ORS edition in which the section was compiled just prior to the amendment should be used. For example, "ORS 97.190 (1991 Edition)." The drafter also may refer to "the provisions of ORS 97.190 in effect immediately before the 1989 amendment to that section," if only one Act amended ORS 97.190 in 1989. If more than one Act amended the section in 1989, the reference should be to "the provisions of ORS 97.190 in effect immediately before its amendment by section 13, chapter 221, Oregon Laws 1989." Note that a parenthetical reference ["(1999 Edition)"] freezes the reference in time.

e. Citing Oregon Rules of Civil Procedure.

The designation "ORCP (number of rule)" is used to cite a specific rule of the Oregon Rules of Civil Procedure. For example, Rule 7, section D, subsection (3), paragraph (a), subparagraph (i) is cited as ORCP 7 D(3)(a)(i). Any changes to leadlines or rule names in ORCP must be done by amendment, boldfacing new material and bracketing existing material to be deleted.

f. Citing Oregon Administrative Rules.

Oregon Administrative Rules are cited as OAR followed by the number of the rule, but it is definitely preferable to avoid citing an administrative rule in a statute.

g. Citing United States Constitution.

Provisions of the United States Constitution are cited as follows:

Article I, section 3, Constitution of the United States

Amendment XX, section 2, Constitution of the United States.

h. Citing Federal Statutes.

There is no uniform method of citing federal statutes. The cite must be accurate and contain as much material as is available. For example, National Historic Preservation Act of 1966 (P.L. 89-665, 16 U.S.C. 470).

i. Citing Ballot Measures

Cite ballot measures by number and election year: Ballot Measure 11 (1994).

j. Citing Within Bill

Always include the session year when an Act (bill) refers to itself. For example:

… this (year) Act ….
… section 1 of this (year) Act ….
… sections 2 to 10 of this (year) Act ….

CHAPTER FOUR

SPECIFIC WORDS AND PHRASES

Most writers use too many words. One or two well-chosen words can often replace a multiword phrase without loss of meaning. Likewise, short, simple words can replace long ones. And English may often be substituted for Latin in legal terminology. The result is a shorter, less complex sentence.

1. OBJECTIONABLE WORDS AND PHRASES.

Some words have led to so much ambiguity or are so pedantic in style that they should be avoided altogether in drafting a bill.

"Said," when used as a demonstrative adjective, adds nothing in making a noun more definite than "the," "that" or "those." "Same" should not be used as a substitute for "it." If the antecedent is in any doubt, the use of "same" does not clarify the situation. A more specific reference should be used. "Whatsoever," "whensoever," "wheresoever" and "whosoever" may impart a scriptural ring to a statute, but are not favored in modern drafting. A colon (:) is more concise than phrases such as "to wit."

Words that make reference to another section or statutory provision by its **position** are highly objectionable. "Above," "aforesaid, "aforementioned," "before-mentioned," "below," "following," "hereinafter," "hereinbefore" and "preceding" should never be used. In referring to a provision set out in another section of a bill, the drafter should refer to that provision by its precise and proper designation, e.g., "section 4 of this (year) Act."

"And/or" is a "verbal monstrosity which courts have quite generally condemned." Ollilo v. Clatskanie P.U.D., 170 Or. 173, 179 (1942). The expression "and/or" has been attacked by numerous authorities. One authority notes it is "a device for the encouragement of mental laziness."

"Herein" is highly objectionable because it "may refer to the section, the chapter or the entire enactment in which it is used." Gatliff Coal Co. v. Cox, 142 F.2d 876, 882 (6th Cir., 1944). For a lazy, imprecise drafter, "herein" is a best friend.

2. PREFERRED WORDS AND PHRASES.

The following list includes some words and phrases to be avoided in drafting a bill. The preferred word is in the right-hand column. In general, the words in the left-hand column are not proscribed, as are "Objectionable Words," but most of them involve pomposity, redundancy or unnecessary length.

AVOID:	**USE:**
absolutely null and void	void
Accorded	given
Afforded	given
any and all	any, or all
at the time	when
attempt (verb)	try
attorney and counselor at law	attorney at law, or lawyer
be and the same is hereby	is
bonds, notes, checks, drafts and evidences of other indebtedness	indebtedness
Cease	stop
Commence	begin or start
constitute and appoint	appoint
construed to mean	means
Deem	consider
does not operate to	does not
during such time as, during the time that	while
during the course of	during
each and all	each, or all
each and every	each, or every
Effectuate	carry out
employ (meaning "use")	use
endeavor (verb)	try
evidence, documentary or otherwise	evidence
examine witnesses and hear testimony	take testimony
expend	spend
fail, refuse or neglect	fail
final and conclusive	final
for the duration of	during
for the reason that	because

AVOID:	USE:
forthwith	immediately
full force and effect	force, or effect
in case	if
in cases in which	when
in lieu of	instead of
in order to	to
in the case of	when
in the course of	during
in the event that	if
inform	tell
inquire	ask
institute	begin or start
is able to	can
is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be	is
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be the duty of the person to	shall
is hereby vested with power and authority and it shall be the duty of the director in carrying out the provisions of this (year) Act to	shall
is required to	shall
is unable to	cannot
it is lawful to	may
it is the duty of the person to	shall
law passed	law enacted
matter transmitted through the mail	mail
means and includes	means, or includes, as required
modify	change
null and void and of no effect	void
obtain	get
occasion (verb)	cause
ordered, adjudged and decreed	ordered
per annum	each year
per day	a day
per foot	a foot
possess	have
preserve	keep
Prior	earlier
prior to	before
prosecute its business	carry on its business

AVOID:	USE:
provision of law	law
pursuant to	under
render (meaning "cause to be")	make
render (meaning "give")	give
retain	keep
rules and regulations	rules (unless reference is to federal regulations or local provisions when "regulations" is correct)
shall have the power to	may
sole and exclusive	exclusive
subsequent to	after
terminate	end
the place of the abode of the person	the abode of the person
transmit	send
unless and until	unless, or until, as appropriate
until such time as	until
utilize (meaning "use")	use
whenever	if

3. "SHALL," "MAY," "MUST"; "SHALL NOT," "MAY NOT."

To impose an obligation to act, use "shall." To confer a right, power or privilege, use "may." Do not use "shall" to grant permission or "may" to impose a duty.

To prohibit an action, use "may not." See ORS 174.100 (4). Do not use "shall not" to prohibit an action. Although ORS 174.100 (4) makes "shall not" and "may not" equivalent expressions of prohibition, the office has a strong preference for "may not." If you are amending a section in which there is already extensive use of "shall not" (used as a prohibition), you may use "shall not" (to express a prohibition) in order to avoid extensive changes to the statute. Note that there are instances of "shall not" in ORS that are not actually prohibitions. For example, ORS 192.580 (3) (1999 Edition) said, "The provisions of subsection (2) of this section shall not apply in the case of records …." The intended meaning is probably that the provisions "do not" apply. "Shall not" must not be mindlessly replaced with "may not." The drafter must understand the function of the phrase "shall not" before determining whether and how it should be changed.

In a condition precedent, you may use "must." For example, "An applicant must be at least 18 years of age." To express an imperative in the passive voice, you may use "must." For example, "The report must be filed …."

Avoid using "shall" in a manner that indicates a legal result rather than a command. For example, use "This (year) Act becomes operative on …" instead of "This (year) Act shall become operative on …." Or, use "ORS xxx.yyy does not apply to …." rather than "ORS xxx.yyy shall not apply to…."

4. "MAY" SOMETIMES CONSTRUED AS MANDATORY.

Under certain circumstances, "may" has been held to be mandatory in statutes conferring power upon a public officer or agency when the action concerns the public interest or the rights of individuals. Unfortunately, "may at the director's discretion" is not an acceptable cure. No general rule can be set out to determine the effect of the use of "may" in all cases. It will be construed to further the intent and purpose of the Act in which it is found, and this intent will be gathered from a consideration of the Act as a whole. For example, ORS 654.335 (a section in the Employers' Liability Act, 1999 Ed.) read as follows:

> The contributory negligence of a person injured shall not be a defense, but **may** be taken into account by the jury in fixing the amount of damages.

In Donaghy v. Ore.-Wash. R. Nav. Co., 133 Or. 663 (1930), the Oregon Supreme Court said that the word "may" in ORS 654.335 (1999 Edition) should be construed as "must."

If a provision using "may" is likely to be construed to concern the public interest or the rights of individuals and to be mandatory, and if the drafter wants to authorize and not to command, the intent should be made clear by using a separate sentence for this purpose; for example, "The exercise of this power is within the discretion of the director."

Even if "shall" is used, it is possible for a provision to be construed as less than mandatory. If so construed, strict compliance with the provision is not required. A court may permit some variation in the minor details of a procedure even though "shall" has been used, assuming that the legislature did not intend that minor matters and immaterial details in statutes be so firmly fixed that the courts cannot relax such requirements in proper cases.

Mandatory provisions usually contain both a command and a prohibition against varying the terms of the command, even though the prohibition may exist only by implication. If the prohibition is expressed affirmatively and imposes a sanction or penalty, the legislative intent that the provision be mandatory is as clear as it can be made.

5. "WHICH" HUNTING.

"That" is to be used when the intention is to limit or restrict the antecedent. Statute clauses normally are restrictive. "Which," on the other hand, is descriptive and in effect introduces a parenthetic effect, even if not so punctuated. The phrase using "which" may not be construed as restrictive in some cases where a restriction is intended.

According to *The Grammatical Lawyer*, a nonrestrictive clause (beginning with "which") provides only incidental or nonessential information about a previous word. Even if the clause is omitted, the basic meaning of the sentence will remain intact. For example, "The trial manual, which is regularly supplemented, is much in demand." Without the "which" clause, which is merely descriptive, the sentence will nevertheless survive. If "that" had been used ("The trial manual that is regularly supplemented is much in demand."), the

implication would have been that the manual that is not regularly supplemented interests no one. For easy memorization of the above:

THAT -- essential (restrictive) -- no commas
WHICH -- nonessential (nonrestrictive) -- commas

6. "SUCH," "ANY," "EVERY," ETC.

In legalese, "such" often is used as a demonstrative adjective when "the" or "that" suffices. This departure from plain English not only is unnecessary but also may cause confusion when "such . . . as" is used in the same context.

Simple words such as "a," "an" or "the" nearly always can be used instead of "any," "each," "every," "all" or "some" with an attendant gain in clarity. "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" U.S. v. Gonzales, 520 U.S. 1, 5 (1997). The greatest generality is accomplished with the least modification of the operative word, because the function is to make more specific the concept represented by that word. "A person" is at least as general as "any person" or "every person." When the use of "a," "an" or "the" produces an ambiguity, the concept probably needs to be refined and the use of "any," "each" or "every" is not the cure.

7. "PERSON" AND "INDIVIDUAL."

As defined in ORS 174.100, "person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. The drafter may wish to consult the topic "Words and Phrases" in the ORS General Index for other definitions of "person." To refer only to humans and not to business entities, "individual" should be used.

8. "PUBLIC BODIES," "STATE GOVERNMENT," "LOCAL GOVERNMENT," ETC.

ORS 174.108 to 174.118 provide comprehensive definitions for public bodies of this state. The definitions provided by these laws apply **only** if the language of a bill draft makes specific reference to the statute providing the definition. ORS 174.108. For instance, a draft that merely refers to a "public body" will not pick up the definition of "public body" provided by ORS 174.109. The draft must refer to a "public body as defined in ORS 174.109."

The definition provided by ORS 174.109 for "public body" was intended to be the broadest category of governmental entities. The term does not include the federal government, foreign governments or the governments of other states. If the drafter wishes to cover these types of governmental agencies, the draft must make specific reference to them. Nor does the term include the Oregon State Bar or Oregon Health and Science University. ORS 174.108 (3). Under the provisions of ORS 9.010 (OSB) and ORS 353.100 (OHSU), laws relating to public bodies or governmental entities do not apply to these entities unless the laws make a specific reference to OSB or OHSU.

ORS 174.111 defines "state government" as the executive department, judicial department and legislative department. If the drafter wishes to refer only to the executive branch of state government (i.e., state agencies as the term is used in the Administrative Procedures Act), the drafter should use "executive department as defined by ORS 174.112." Drafters should avoid references to "the courts of this state" and use "the judicial department as defined in ORS 174.113." ORS 174.114 provides a definition of the "legislative department" that includes all committees and administrative divisions of the legislative branch.

"Local government" includes cities, counties and districts. ORS 174.116. Note that the definition does not include school districts. When drafting bills relating to cities, use the term "city" and not "incorporated city" (all cities are incorporated).

ORS 174.116 (2) provides a comprehensive list of governmental entities that are frequently treated as districts for statutory purposes. As always, it is important to be sure that a specific draft intends to cover all of these entities if the defined term is used.

"Special government body" is a miscellaneous group of entities that do not fit under the normal definition of state government or local government, but are clearly public bodies. ORS 174.117. It is unlikely that a drafter would ever want to use this term.

9. PRONOUNS.

Nouns are used in preference to pronouns even if the noun must be repeated, especially when a lack of clarity otherwise might result. When a pronoun is used, the drafter should check to see that there is no question as to the antecedent of the pronoun. In Home Builders Association of Metropolitan Portland v. City of West Linn, 204 Or. App. 655 (2006), the Court of Appeals considered a statute (ORS 34.100) that provides:

> Upon the review, the court shall have power to affirm, modify, reverse or annul the decision or determination reviewed, and if necessary, to award restitution to the plaintiff, *or to direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision*. From the judgment of the circuit court on review, an appeal may be taken in like manner and with like effect as from a judgment of a circuit court in an action. (Emphasis added by the court.)

The court, in discussing the meaning of "its," said:

> Although petitioners are correct that, according to common grammatical rules, one way to resolve an ambiguous pronoun is to conclude that the pronoun refers to the nearest antecedent noun, an equally valid resolution is to conclude that it (again, the pronoun) refers to the most prominent noun in the sentence: the subject. *See Landswick v. Lane*, 49 Or. 408, 412, 90 P 490 (1907) (discussing how "the law of prominence" and "the law of proximity" can each be used to resolve pronoun ambiguity). In this case, "the lower court officer or tribunal" is the nearest antecedent noun to the ambiguous pronoun at issue, but the subject of and most prominent noun

in ORS 34.100 is "the court." In short, the rules of prominence and proximity yield equally plausible results."[1]

A drafter could have avoided this ambiguity by replacing "its" with the appropriate noun – which, as found by the court, was most likely intended to be the reviewing court.

ORS 174.129 states that all statutes must be written in sex-neutral terms. This means that gender specific pronouns ("he" and "she," for example) should normally not be used.

10. ENUMERATION OF PARTICULARS.

There are two major canons of statutory construction that relate to the effect of using general words or phrases in association with particular words. These are commonly referred to as "*expressio unius*" and "*ejusdem generis*."

a. Expressio Unius.

The maxim "*expressio unius est exclusio alterius*" means that specifying one person or thing implies the exclusion of other persons or things, the presumption that omissions are intended. 2A Sutherland, *Stat. Const*. §§47:23-47:25 (6th ed.). For example, the Oregon Supreme Court has held that a law permitting the Secretary of State to exclude from the voters' pamphlet matter that is objectionable for several specified reasons did not permit the Secretary of State to exclude matter that the Secretary of State found objectionable for another reason. Lafferty v. Newbry, 200 Or. 685 (1954). See also AT&T Communications of the Pacific Northwest, Inc. v. City of Eugene, 177 Or. App. 379 (2001). The drafter must analyze carefully the situation to which the statutory language may later be applied. The maxim as applied by the courts may also affect the completeness with which the drafter must describe the situation.

b. Ejusdem Generis.

The maxim "*ejusdem generis*" means that general words following an enumeration of particular persons or things apply only to persons or things of the same general character as the enumerated items. This maxim is based on the reasonable assumption that a drafter will not enumerate items if the drafter intends general words to have their unrestricted meaning. For example, a statute that applied to any forged "record, writing, instrument or matter whatever" was held not to apply to forgery of a certificate of nomination for candidacy of a person seeking public office, because it was not a record, writing or instrument as those terms were defined by law. The words "or matter whatever" were limited under *ejusdem generis* by the preceding enumeration of particulars. State v. Brantley, 201 Or. 37 (1954); see also Portland Distributing Company v. Department of Revenue, 307 Or. 94 (1988) . "Other" is often the key word in an enumeration that will cause this maxim to be invoked. Distinctions may help, as with "applies to . . . but does not apply to," both methods of clarifying the general category.

[1] The court used ORS 174.010 and concluded that "its" referred to the "reviewing court's."

c. Clear Intent.

The purpose of the two canons discussed is ostensibly to clarify statutory meaning. Like all canons of statutory interpretation, their application by the courts in particular cases is less than consistent. However, a drafter cannot afford to ignore them. The drafter must consider carefully whether an enumeration of particulars is necessary. If a provision is to apply to a class as a whole, it is generally safer if the class is named in general terms rather than in particulars, even when the particulars would be preceded or followed by general language. It often is virtually impossible to make an enumeration all-inclusive, and omission may be construed as implying deliberate exclusion. Sometimes there will be trouble finding a factor common to all the particulars, and it will not be possible to name them as a class to avoid listing each of the particulars. When it is **necessary** to list them, the drafter must indicate whether the enumeration is exclusive or illustrative. If merely illustrative, a drafter may want to use phrases such as "including, but not limited to." Sometimes particulars can be enumerated that are being excluded from a class expressed in general terms. Other times the class may be named in general terms and those additional particulars that are in doubt as being included in the class may be listed, making it clear that the particulars listed are not exclusive of others that are included within the general class.

11. PROVISOS.

Clauses introduced by "provided, however," "provided, always," "provided, further" or "provided that" are called *provisos*. Provisos generally are undesirable because of uncertainty as to whether a condition or exception is intended. Also, one proviso may tempt drafters to add a second, and then the question arises as to whether the second proviso is a condition only to the first proviso or to the entire section.

If a legislative statement is limited in application or is subject to an exception or condition, the sentence should begin with the condition or exception to call attention to the limitations. More simply, a new sentence can begin with "However." Note that the word "provided" often is used inartistically as a conjunction. Its usual role "in a statute is to create a condition, or to restrain the enacting clause, to except something which would otherwise be in it, or in some manner modify it." Griffa v. City of Monmouth, 95 Or. 433, 436 (1920). Sometimes no special words are necessary to indicate the exception or condition when the controlling statement is placed in a sentence or subsection following the statement that is to be controlled.

If a statement is subject to numerous exceptions or conditions, the exceptions or conditions can be placed in a list tabulated at the end of the sentence or placed in a separate subsection or section. If a statement is subject to a long or complex exception or condition, the exception or condition should be placed in a separate subsection or section.

If the exceptions or conditions are placed in a separate subsection or in one or more sections, the drafter usually will want to make an appropriate reference to the exceptions or conditions in the legislative statement to be controlled by them. The following are typical introductory phrases calling attention to conditions or exceptions that have been placed in a

separate subsection or section: “Subject to subsection (2) of this section, the director shall . . . .”; “Except as provided in section 4 of this (year) Act, the director may . . . .”

12. MODIFIERS.

A common problem with the use of modifiers (adverbs, adjectives and participles) is that they suggest a standard without supplying it. **A drafter does better to stick with unmodified verbs and nouns.** If the modifiers are supposed to supply standards, then probably the standards need to be more specific. One test of the need for a modifier is to try the same sentence with the reverse modifier. If the sentence uses “duly,” the drafter should try reading the sentence with “unduly” as a substitute. If the result is absurd, the modifier is probably not necessary. It is also worth noting that a misused modifier may produce a double standard. For example, “duly performed in a manner that . . .” may precipitate an argument whether “duly” is one standard and “a manner that . . .” is another.

On March 31, 2004, the United States Supreme Court issued an opinion in the case of BedRoc Ltd. v. United States, 541 U.S. 176 (2004). The case involved interpretation of a 1919 federal statute reserving to the United States the right to remove all coal and other “valuable minerals.” The question before the court was whether sand and gravel are “valuable minerals” for purposes of the statute. An earlier case had interpreted another federal statute that reserved to the United States “all coal and other minerals.” That court had concluded that gravel was a mineral. A plurality of the current court agreed that gravel was a mineral, but decided that it was not a “valuable” mineral. Accurate and careful drafting might have avoided all litigation.

13. “IMPLY” AND “INFER.”

Imply and *infer* are often confused with each other. To imply means “to suggest or say indirectly.” To infer means “to surmise or to draw a conclusion.” A speaker who hints, *implies*; a listener who recognizes the hint, *infers*.

The distinction between *imply* and *infer* is easily made if one remembers that just as *im* precedes *in*, one must imply before another can infer. The author implied, the reader inferred.

14. JUDGMENTS.

References to “final” judgments are inherently ambiguous. The reference may be to a judgment that has been entered at the end of the trial court phase of an action (until 2003, the Oregon Rules of Civil Procedure used the term in this fashion). On the other hand, drafters frequently use the term to mean a judgment that is no longer subject to appeal.

All judgments are either limited, general or supplemental judgments. See ORS 18.005 (defining limited, general and supplemental judgments). If the drafter intends to refer to the judgment that is entered at the end of the trial court phase of the action, the drafter should refer to a “general judgment, as defined in ORS 18.005.” If the drafter wishes to refer to a

judgment that is no longer subject to appeal, the drafter should refer to "a judgment that is no longer subject to appeal."

Drafters should be careful about the manner in which they refer to the dates relating to judgments. ORS chapter 18 lays out the following sequence of events surrounding judgments: A judge renders a judgment. That is, the court decides one or more issues. The judge signs a judgment document, and files the document with the court administrator. The court administrator notes in the register that the document has been filed, at which point the judgment is deemed entered.

When the drafter wants to tie the effect of a provision to a specific date connected with a judgment, the best solution will almost always be to refer to the date on which a judgment is "entered as described by ORS 18.075." This date is reflected in the court's register, and is the option least susceptible to creating confusion. The drafter should almost never have occasion to refer to the date on which a judgment is "rendered" or "signed."

Drafters should also be careful in distinguishing between the "judgment" (i.e., the court's decision) and the "judgment document" (defined by ORS 18.005 to be "a writing . . . that incorporates a court's judgment"). Usually, a drafter intends to refer to the "judgment," but there may be occasions when reference to the "judgment document" is more appropriate.

15. "WHERE" OR "WHEN."

Where represents place; *when* time. In the sentence "Where a hearing is held by the commission, the hearing shall be public," *when* should replace *where*. However, depending on the context, the drafter may wish to consider using *if* when the intent of the clause is to establish a condition. Definitions that use *is when* or *is where* are faulty and the marks of immature writing. "Incarceration means confinement in a correctional institution," not "Incarceration is when a person is confined in a correctional institution."

16. ENACTED V. EFFECTIVE DATES.

Be careful when referencing the date that a law, rule or ordinance was "enacted." While the date a law becomes effective or operative may be clear-cut, the date of "enactment" can be murky. A recent Oregon Court of Appeals case found that a local law was enacted on the date passed by the local governing body, rather than the date the law became effective following a referendum by the people. American Energy et al. v. City of Sisters, 250 Or. App. 243 (2012).

17. PRETENTIOUS WRITING AND LEGALISMS.

A drafter may be tempted to make an extravagant use of elegant words when simpler expression is adequate. For example, use of "respectively" usually is superfluous. The drafter needs also to avoid words that give rise to legal arguments. "Valuable consideration" raises a whole series of law school questions that "compensation" does not. "Bona fide" is not only usually mispronounced but is subject to argument on its specific meaning.

CHAPTER FIVE

TITLE; PREAMBLE; ENACTING CLAUSE

1. TITLE
2. PREAMBLE
3. ENACTING CLAUSE

This chapter deals with the drafting of a legally sufficient title, preamble and enacting clause of a bill draft. Chapter 6 of this manual deals with the drafting of the body of a bill draft. The sequence of the two chapters follows the order in which the items appear in a complete draft. However, a drafter generally should draft the title after the body of the draft is finished.

1. TITLE.

Article IV, section 20, of the Oregon Constitution, provides:

> **Sec. 20.** Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.
>
> This section shall not be construed to prevent the inclusion in an amendatory Act, under a proper title, of matters otherwise germane to the same general subject, although the title or titles of the original Act or Acts may not have been sufficiently broad to have permitted such matter to have been so included in such original Act or Acts, or any of them.

For a general discussion of the first paragraph of the constitutional provision, see Probert, "The Constitutional Restriction on Titles of Acts in Oregon," 31 Or. L. Rev. 111 (1952). The article does not discuss the second paragraph because the article was written before section 20 was amended to include that paragraph.

a. Purpose of Title.

The title must identify generally the subject of the bill. By reading the title, a person should be able to determine whether the bill deals with a subject in which the person is interested. The purpose of the constitutional title requirement is to prevent the concealment of the true nature of the provisions of the bill from the legislature and the public. Northern Wasco County PUD v. Wasco County, 210 Or. 1 (1957); State v. Williamson, 4 Or. App. 41(1970). For a violation of the Constitution to be found, the title must give no notice of the questioned provision; the conflict must be palpably plain. Calder v. Orr, 105 Or. 223 (1922); Clayton v. Enterprise Electric Co., 82 Or. 149 (1916). The title serves as a means of identifying the subject of a bill and **not** as an index or table of contents. Calder, supra at 232. The constitutional restriction on titles is designed to prevent use of the title as a means of deceiving legislators and others, and to assure people who cannot examine the body of the bill itself that the bill does not deal with a subject not disclosed in the title. The courts

construe this requirement liberally, Anthony v. Veatch, 189 Or. 462 (1950), and the courts will not hold an Act to be in violation unless the insufficiency of the title is "plain and manifest" or "palpable and clear." Warren v. Marion County, 222 Or. 307 (1960) . See also Croft v. Lambert, 228 Or. 76 (1960).

The requirement of Article IV, section 20, is mandatory. Brugger v. Wagner, 135 Or. 615 (1931); State v. Hawks, 110 Or. 497 (1924). Paraphrasing Article IV, section 20, Oregon Constitution, the requirement is that the title express the subject embraced by the Act. The Oregon Supreme Court has held many times that the single subject is all that is required to be stated in the title, and that it is not necessary to recite all the "matters properly connected therewith" that are contained in the bill. Foeller v. Housing Authority of Portland, 198 Or. 205 (1953); Feero v. Housley, 205 Or. 404 (1955). The Constitution further contemplates that a title be so phrased as to identify the **one subject** of the bill, and should not leave it to the courts to determine, from an enumeration of particulars, what single subject of the legislation the Act concerns.

In summary, the title should express the **subject** of the bill, not what the bill **does** or how the bill accomplishes its purpose.

b. Form of Title Generally.

Since the Oregon Constitution requires that the title express the subject embraced by the bill, titles begin with a "relating to" clause, such as "Relating to personal income taxation." This form expresses the subject of the bill, as contemplated by Article IV, section 20. References to amendments, repeals and other special provisions follow the "relating to" clause not in obedience to constitutional requirements but as a matter of adherence to legislative rules or practices for the convenience of legislators.

First: Relating to. . . .

Second: creating new provisions (if new sections are created and there are amendments or repealers)

Third: amending. . .(ORS or session law, or both)

Fourth: repealing. . .(ORS or session law, or both)

Fifth: prescribing an effective date

Sixth: declaring an emergency

Seventh: supermajority clause

Eighth: referendum clause

c. Designation of Subject.

The subject of a bill should be designated in general terms, not in minute detail. This designation must be honest and within reasonably defined limits. The stated subject may be broader than the subject dealt with in the body of the bill, as long as it is not misleading. For example, a title such as "Relating to personal exemptions under the income tax laws for persons 65 years of age or older" substantially restricts the scope of the bill by its specificity. It may be better to write a title such as "Relating to personal income taxation." The more detailed information may be included in the measure summary.

Note that a narrow description of the subject of a bill also restricts the scope of amendments that may be added to the bill.

The title should not state what the bill **does**, but should designate its **subject**. If a drafter goes into detail in a title, then every detail in the bill must be included in the title and a detail not included may be held invalid. Northern Wasco County PUD, supra.

An Act "relating to the protection of salmon" justified a prohibition on the placing of obstructions to the passage of salmon in the Rogue River, but a 28-line title specifying many other protections for salmon, but not mentioning obstructions, did not justify a section relating to obstructions. State v. Beaver Portland Cement Co., 169 Or. 1 (1942). The provision was clearly related to all other provisions of the Act, but those other provisions were mentioned or at least were generally within the scope of the title; obstructions were not.

An Act "to grant to nonresident owners of motor vehicles the privilege of using the highways of the state," and to subject "**such** nonresident **users** of the highways" to substituted service, did not cover a provision subjecting nonresident users who were not owners to substituted service, because they were not **such** users. State ex rel. Pardee v. Latourette, 168 Or. 584 (1942). In Multnomah County v. First National Bank of Portland, 151 Or. 342 (1935), the court held that an Act "relating to duties and powers of the county auditor of Multnomah County in auditing of claims" did not give adequate notice that the Act went on to authorize the auditor to borrow money when the county treasury did not contain enough money to pay approved claims.

Traditional practices of the House of Representatives and the Senate have prohibited amending the title, which is sometimes necessary if a bill with a narrow title is extensively amended. The prohibition is aimed at preventing the bill from being used as a vehicle for ideas unrelated to those initially expressed in the bill.

d. Expressing One Subject

Article IV, section 20, Oregon Constitution, requires that each Act be limited to one subject, which shall be expressed in the title. The use of a generic expression may make it easier to identify the single subject. However, a title that is so global that it does little more than define the universe with respect to which the legislature is empowered to act is too broad. It fails to identify a single subject. McIntire v. Forbes, 322 Or. 426 (1996).

The drafter should be quite cautious of using the word "and" in the title. An "and" in the relating clause, when used between nouns, may describe two subjects. For example, "Relating to dogs and cats" suggests two subjects; "Relating to certain domestic animals" designates a single subject.

The text of a bill cannot contain a provision not related to the single subject expressed in the title. For this reason, it is best to draft the title **after** every other part of the bill has been finished. In other words, the title is drafted to fit the bill, rather than the bill being drafted to fit the title. After writing the title, the drafter should check each section in the text to be sure that all sections are within the scope of the title.

See also the discussion of the one-subject rule in Chapter 6.

e. Special Matters Mentioned in Title.

While the Oregon Constitution does not require an enumeration of particular features or sections of a bill, the rules and practices of the Legislative Assembly require that the following matters be referred to in the title:

Amendments and repeals. If a bill amends or repeals sections in ORS, session laws or both, all amended or repealed sections are listed in the title in numerical order with the amended sections preceding the repealed sections and the ORS sections preceding the session law sections.

New provisions. If a bill amends or repeals existing law and also enacts a new section not otherwise described in the title, the drafter must add the words "creating new provisions" to the title. These words are added **only** if the bill also amends or repeals existing statutes.

Emergency clause. If a bill contains an emergency clause, the drafter must add the words "and declaring an emergency" to the title. An emergency clause in the body of a bill cannot contain any other provision.

Special effective date clause. If a bill contains a section prescribing a special effective date that is **earlier or later** than the normal effective date, the drafter must add the words "prescribing an effective date" to the title.

Supermajority clause. If the bill contains provisions for revenue raising or criminal sentence reduction and more than a simple majority is required for passage, the drafter must add the words "and providing for revenue raising that requires approval by a three-fifths majority" or "and providing for criminal sentence reduction that requires approval by a two-thirds majority" to the title as appropriate. The appropriate clause appears at the end of the title after all other special clauses except a referendum clause. See Chapter 15 of this manual for a discussion of revenue raising that may require a supermajority and Chapter 11 of this manual for a discussion of criminal sentence reduction that may require a supermajority.

Other supermajority clauses may be required, but are rare. These include: "and providing for transfer of moneys from the Education Stability Fund that requires approval by a three-fifths majority" (see Article XV, section 4, Oregon Constitution); "and providing for revenue estimate modification that requires approval by a two-thirds majority" (surplus revenue kicker, see Article IX, section 14); and "and anticipating reduction in state revenues distributed to local governments that requires approval by a three-fifths majority" (see Article XI, section 15 (7)).

Referendum clause. If the bill contains a referendum clause, the drafter must add the words "and providing that this Act shall be referred to the people for their approval or rejection" to the title.

The following forms of titles are standard examples:

New provisions only:

Relating to water pollution.

New provisions plus **amendment**:

Relating to water pollution; creating new provisions; and amending ORS 440.010.

Amended sections should appear in numerical order in the title, regardless of their order in the bill.

New provisions plus **repeal**:

Relating to water pollution; creating new provisions; and repealing ORS 449.125.

Repealed sections should appear in numerical order in the title, regardless of their order in the bill.

New provisions plus **amendment** and **repeal**:

Relating to water pollution; creating new provisions; amending ORS 449.010; and repealing 449.125.

Amendment only:

Relating to water pollution; amending ORS 449.010.

Amendment and repeal:

Relating to water pollution; amending ORS 449.010; and repealing ORS 449.125.

Repeal only:

Relating to water pollution; repealing ORS 449.125.

f. Order of Title.

It is unlikely that a bill will include all the items described for inclusion in the title, but the following examples indicate the order in which the drafter must list these items:

> Relating to taxation, including but not limited to a general retail sales and use tax; creating new provisions; amending ORS 316.005; repealing ORS 316.101; prescribing an effective date; and providing that this Act be referred to the people for their approval or rejection.

> Relating to taxation, including but not limited to a general retail sales and use tax; creating new provisions; amending ORS 316.005; repealing ORS 316.101; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

g. Title of Amendatory Act.

Before the 1952 amendment of Article IV, section 20, Oregon Constitution, the Oregon Supreme Court had held that nothing could be added to a section by amendment that could not have been included under the title of the **original** Act that enacted the section being amended. The second clause of Article IV, section 20, was added in 1952 to permit inclusion in an existing ORS section of new material that is appropriate under the title of the **amendatory** Act, a change that simplifies the work of the drafter enormously.

h. Title of Bill Amending Several Statutes.

A drafter may amend any number of different statutes in a single bill, as long as **the substance of the amendments** relates to the single subject expressed in the title of the bill. It is perfectly proper to state a subject that describes only the **changes** made by the bill. For example, if a bill to enact a general law covering bonds of public officers amends those provisions in existing statutes that relate to those bonds, the title "Relating to bonds of public officers" may be used even though the unchanged parts of the amended statutes contain provisions dealing with subjects other than bonds of public officers. A drafter must beware of too much "housekeeping" in a bill containing archaic material because the housekeeping changes may be beyond the scope of the title.

i. Titles of Particular Types of Bills.

Appendix A of this manual contains examples of titles of bills to create or abolish state agencies, or to transfer functions from one state agency to another. Chapter 9 of this manual contains an example of a title of a budget bill for a building project.

j. Germaneness.

Germaneness of amendments to measures, including titles to measures, is not a legal question, but a matter of interpretation and application of legislative rules and parliamentary procedure. The rules of the House and the Senate adopt Mason's Manual of Legislative Procedure (House Rule 2.01 and Senate Rule 2.01). On the subject of germaneness of

amendments, section 402 of Mason's points out that whether an amendment is germane is ultimately a matter to be decided by the body.

The drafter has responsibility to adjust a title if amendments make an adjustment necessary to comply with constitutional requirements. However, the drafter should be wary of changing a title because the House and the Senate resist title changes as suggesting that the amendment is not truly germane. Because of this resistance, the drafter should notify the requester of amendments that **require** a change in the title, preferably before preparing them. However, the drafter is professionally responsible to ensure that, when amendments requiring changes in the title are drafted, the title is changed accordingly, without regard to the practices of the House and Senate Desks.

2. PREAMBLE.

Though a preamble is rarely used, a drafter may include a preamble in a bill draft following the title and preceding the enacting clause. A preamble does not become part of the law, but is a preliminary statement of the reasons for the enactment of the law. A preamble cannot supply a provision not appearing in the text of the bill and will not be considered in ascertaining the meaning of the bill unless the text of the bill is ambiguous. Sunshine Dairy v. Peterson, 183 Or. 305 (1948). If a requester insists on inclusion of a preamble, the drafter should explain its effectiveness or lack thereof. Examples of Acts containing preambles are chapters 114 and 152, Oregon Laws 1957; chapter 302, Oregon Laws 1979; chapter 41, Oregon Laws 1981; and chapters 236 and 329, Oregon Laws 1999. A preamble may be in the form of "whereas" clauses or in the form of numbered paragraphs. "Section" should not be used.

3. ENACTING CLAUSE.

The enacting clause immediately precedes the text of the bill. The drafter must include and may not vary the following form, formerly required by Article IV, section 1, Oregon Constitution:

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

Until 1968, the form of the enacting clause was fixed by Article IV, section 1, Oregon Constitution. Before 1968, failure to include an enacting clause invalidated a bill. The enacting clause was the formal expression of legislative enactment, and only sections following the enacting clause became law. Colby v. Medford, 85 Or. 485 (1917). In 1968, this section of the Constitution was repealed and another section 1 was enacted that did not include reference to an enacting clause.

However, judicial recognition of the traditional practice indicated the advisability of continuing to use the enacting clause formerly prescribed. The enacting clause, in the form above, is now prescribed by the Rules of the House and the Senate, and the drafter may not omit it from a bill.

CHAPTER SIX

ORGANIZING A BILL

_____

This chapter describes how to arrange the provisions of a bill. A drafter can help the reader understand a bill by presenting its provisions in a logical and orderly manner. Structure and organization are especially important when a bill is lengthy or complex.

Although a bill does not always fit a uniform pattern, the principles discussed in this chapter are suggestions that a drafter should follow unless there are valid reasons for departing from them in drafting a particular bill.

1. TYPICAL ORDER OF SECTIONS.

Sections of a bill ordinarily should be arranged as follows:

1. Definitions.

2. Short title (rare).

3. Statement of policy (rare).

4. The leading purpose of the bill.

5. Subordinate provisions; i.e., conditions, exceptions and special cases important enough to be stated as separate sections.

6. Administrative provisions; i.e., authority and responsibility for administration and procedure.

7. Subordinate (or "housekeeping") amendments, ordinarily arranged in ascending order of ORS number. The arrangement may be varied, and amended sections may be interspersed with new sections if this arrangement is more conducive to a logical development of the bill.

8. Saving clause (rare).

9. Temporary and transitional provisions.

10. Penalties.

11. Specific repeals.

12. Operative or applicable date.

13. Emergency clause or nonstandard effective date.

14. Referendum clause.

A drafter should never place temporary material in the same section with permanent material. This can happen by adding material that expires by its own terms, as in ORS 465.507 (3) (1997 Edition). It can also happen if amendments to an ORS section are repealed by some other section in the bill. The repeal affects only the amendments and leaves the rest of the text unaffected.

When the ORS editors compile statute sections in *Oregon Revised Statutes*, the editors must compile each section that is of a general, public and permanent nature. If a section contains both permanent and temporary material, it may be impossible for the editors to avoid compiling the temporary part. The code then contains material that becomes obsolete in a relatively short time. If amendments are repealed, then the ORS section must be printed twice in ORS to show both versions.

The drafter can avoid placing temporary material in permanent law by setting forth the temporary provisions in a separate section. See, for instance, page 8.6 for examples of establishing staggered terms of office on a new board or commission. The technique employed in the staggered terms circumstance may be applied to similar situations in which provisions are intended to expire in a given period of time or when their limited purpose has been accomplished.

See Chapter 12, "ACTS OF LIMITED DURATION," for a discussion of double amending permanent law. See "EXTENDING DURATION OF 'SUNSETTED' LEGISLATION" in that chapter for authorized sunset dates for temporary provisions.

2. LEADING PURPOSE.

Legislation generally takes the form of a bill stating a single leading purpose. The section expressing this leading purpose should be short, concise and as near the beginning of the bill as possible. If the leading purpose is expressed by an amendment to ORS, that section should appear first. When the reader understands the leading purpose from this early statement, the reader can proceed with greater ease to the details and special provisions.

The leading purpose is the rule of law to be observed. Other provisions create the agency to administer that rule and provide the procedure to be followed in administering it. In a bill regulating the practice of psychology (chapter 396, Oregon Laws 1963), the leading purpose of the bill is section 2, which prohibits the practice of psychology without certification. The other provisions concern the administrative machinery necessary to make the leading purpose effective. The reader wants to know what the bill does, and what it does is to establish a rule of law that a certificate is required to practice psychology. Only after

the leading purpose has been stated is the reader presented with material relating to the administering agency and the means by which the rule of law is given force.

In some bills, the provision creating an agency may express the leading purpose. An example is chapter 616, Oregon Laws 1967, creating a Division of State Lands. The purpose of the Act was to create a new agency to administer existing law, not to establish major new principles of substantive law.

These two examples illustrate how either the provision stating the law or the provision creating an agency for the enforcement of law may be predominant under different circumstances. Between these extremes, there are many bills in which the provisions for the new rule and its enforcement are more nearly equal in importance.

If practicable, the drafter should place the provisions stating the law before the administrative provisions. Frequently the statement of the law requires a reference to the agency enforcing it. The drafter can solve this problem by inserting a full statement of the name of the agency or by using a referential phrase such as "the board created by section 10 of this (year) Act."

Sometimes the provisions creating an agency are shorter and less complicated than the statement of the legal rule. In that case, the drafter may state the less complicated proposition first and, having disposed of it, the drafter may proceed to the lengthier, more complicated provisions.

The subordinate provisions of a bill vary so much in character and the combinations are so numerous that rules cannot be laid down for their sequence. Here are some general suggestions that may be of assistance in particular cases:

- The drafter should give precedence to the more important provisions. Provisions of normal and general application should be placed first.

- If the provisions of a bill, or some of the provisions, set out successive steps in a procedure, the drafter should set out the provisions in the bill following the normal sequence of the procedure. For example, a provision authorizing issuance of a license should precede a provision describing the grounds for its denial, suspension or revocation.

It may be useful for the drafter to examine the arrangement of analogous laws already compiled in *Oregon Revised Statutes*.

3. BILLS WITHOUT SINGLE LEADING PURPOSE.

Although most bills that create new provisions of law state a single leading purpose, two other types of bills may be encountered.

The suggestions for arrangement of a bill stating one leading purpose apply to a bill that has several related main purposes, each of which has subordinate provisions. The bill may

be divided into parts corresponding to each of these main purposes. Each part can be drafted with its subordinate provisions separate from the other parts. Chapter 419, Oregon Laws 1967, creating a Department of Finance and a Department of General Services, is an example.

The suggestions for arrangement of a bill stating one or several main purposes do not apply to a bill that is composed of provisions of equal importance relating to a common subject. Sometimes in a bill that consists of a series of related and equal provisions all dealing with the same subject, there is a natural sequence of steps that will suggest an order for the provisions. Many bills regulate procedural matters in their customary sequence, beginning with service of notice and ending with appeals. Another type of bill provides for a general change that applies to many agencies. Placing the affected sections in numerical order is probably as effective as any other sequence. In other cases, there is no natural sequence in the provisions and the drafter may have to adopt a somewhat arbitrary order. In a bill with no natural sequence, there are a number of advantages in keeping ORS sections in numerical order. One is that the sections are much easier to locate if they follow the same order as the title.

4. ONE SUBJECT.

A bill may contain any number of sections, ranging from one section having four words (chapter 140, Oregon Laws 1991) to 1,206 sections filling 613 pages (chapter 595, Oregon Laws 2009). There is no limit to the number of sections or number of details that may be incorporated in a bill. However, a drafter must be aware at all times of Article IV, section 20, Oregon Constitution, which provides in part that "every Act shall embrace but one subject, and matters properly connected therewith." The Oregon Supreme Court has said that the object of this constitutional provision is

> to prevent the combining of incongruous matters and objects totally distinct and having no connection nor relation with each other in one and the same bill, as well as to discourage improper combinations by the members of the legislature which would secure support for a bill of an omnibus nature with discordant riders attached, which, if acted upon singly, would neither merit nor receive sufficient support to secure their adoption. In short, as expressed by Cooley in his work on *Constitutional Limitations* §173, it was "to prevent hodge-podge, or logrolling legislations." Northern Counties Trust Co. v. Sears, 30 Or. 388 (1895).

See also McIntire v. Forbes, 322 Or. 426, 439 (1996). "The principal purpose for the one-subject requirement of Article IV, section 20, for the **body** of an act is to guard against logrolling." (Emphasis in original.)

The word "subject" is given a broad and extensive meaning, allowing a drafter full scope to include in one bill all matters having a logical or natural connection. Provisions that reasonably may be said to be subservient to the general subject or purpose are germane and may be included in the bill.

There are limits, however. In McIntire, the court considered an Act that attempted to (1) provide state funding (and land use procedures) for light rail, (2) expand the availability of card-lock service stations, (3) promote "regional problem solving" in land use matters, (4) regulate confined animal feeding, (5) preempt local pesticide regulation, (6) adopt new timber harvesting rules, (7) grant immunity to shooting ranges for "noise pollution," and (8) protect salmon from cormorants. The Supreme Court was unable to find one subject in the body of the Act. In addition, the court found that the legislature, in its title, had failed to identify one subject. The title was "relating to activities regulated by state government." That fails to state a single subject, said the court, because "a 'subject' must be narrower than the universe of those things with respect to which the legislature is empowered to act, or the [single subject] provision would be meaningless." McIntire at 442.

In analyzing a one-subject challenge to the body of an Act, the court will:

> (1) Examine the body of the act to determine whether (without regard to an examination of the title) the court can identify a unifying principle logically connecting all provisions in the act, such that it can be said that the act "embrace[s] but one subject."
>
> (2) If the court has **not** identified a unifying principle logically connecting all provisions of the act, examine the title of the act with reference to the body of the act. In a one-subject challenge to the body of an act, the purpose of that examination is to determine whether the legislature nonetheless has identified, and expressed in the title, such a unifying principle logically connecting all provisions in the act, thereby demonstrating that the act, in fact, "embrace[s] but one subject." McIntire at 444. (Emphasis in original.)

Note that McIntire does **not** address the questions of how to analyze a challenge to the title of an Act or a challenge to the relationship between the title and the body. The McIntire court concluded that the Act challenged in the case violated the single subject requirement and thus the court struck down all parts of the bill over which it had jurisdiction. (The Act in question gave the Supreme Court exclusive and original jurisdiction to determine the constitutionality of parts of the Act.) This does not involve the part of section 20, Article IV, that says that an "Act shall be void only as to so much thereof as shall not be expressed in the title."

The body of a bill cannot contain a provision that is not related to the single subject expressed in the title. Article IV, section 20, Oregon Constitution, provides in part that "if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title." If the title of a bill is so specific or limited as to include only one particular of some general subject, the drafter must limit the body of the bill to the specific or limited particular expressed in the title and matters properly connected therewith. The bill cannot deal with other particulars of that general subject. See the discussion of titles in Chapter 5 of this manual.

There is one exception to the general rule that any matter or thing properly may be included in a bill if it is germane to the subject. Article IX, section 7, Oregon Constitution, provides: "Laws making appropriations for the salaries of public officers and other current expenses of the state shall contain provisions upon no other subject." Under this provision, the Attorney General concluded that appropriations for capital construction and certain other purposes could not be included in a general appropriation bill. Op. Att'y Gen. No. 6388 (1967). However, the provision does not prevent including an appropriation when it is simply a part of the administrative provisions. The distinction relates primarily to the biennial appropriation bills introduced to implement the Governor's budget. See Chapter 9 of this manual for further discussion of appropriations.

CHAPTER SEVEN

DEFINITIONS; SHORT TITLE; POLICY AND PURPOSE STATEMENTS; LEGISLATIVE FINDINGS

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1. DEFINITIONS.

The use of definitions should be considered when drafting a bill. If the drafter desires a particular word to have a particular meaning, a definition is essential. The length of bills can be reduced and the bill made clearer through the use of definitions. However, a word should **not** be defined if it is not used in the bill.

Definitions are useful to:

1. Limit or extend the meaning of a word, particularly if the word is used in other than its normal sense or has several meanings.

2. Translate technical terms or words of art into common language. See, for example, "acknowledgment" in ORS 197.015.

As a general rule, definitions should not be used for a word when that word has a clear and definite dictionary meaning and that meaning is the one intended. A statutory definition is unnecessary and could lead to confusion. On the other hand, if a word has a well-defined legal meaning (that is, one well-defined in case law) and there is no statutory definition, the court will assume that the well-defined legal meaning is what the Legislative Assembly intended. See Johannesen v. Salem Hospital, 336 Or. 211 (2003). Therefore, if there is a common law meaning, and the Legislative Assembly intends that the definition of the term actually be something else, the drafter should define the term whether or not the intended meaning is identical to the dictionary definition. The appellate courts will use *Webster's Third New International Dictionary, Unabridged*, to determine the meaning of a word if there is no statutory definition or well-defined legal meaning. In State v. Cox, 219 Or. App. 319 (2008), the court noted that when resorting to dictionary definitions of a term it is important to consider the form of the word. For example, when a statute uses a word in its noun form, the definitions applicable to the verb form of the same word don't apply.

A definition should not be used to twist a word into meaning something **wholly** foreign to its dictionary meaning; for example "dog" means "cat." After a word is defined, the defined word should be used rather than the definition.

The drafter should take care not to place substantive matter in a definition. To do so makes the substantive matter hard to locate and usually detracts from the clarity of the definition. ORS 656.005 contains several examples of substance entwined with definitions.

Definitions should never be phrased in the alternative unless the use of the defined terms in the bill does not require judgment as to which alternative applies; for example, "commission means XYZ Commission **or** ABC Commission" may be acceptable, but not if the reader has to make a judgment as to which agency fits the definition each time the term "commission" is used.

Acronyms and abbreviations should be used sparingly in bill drafts, and only if previously defined.

ORS chapter 174 contains general rules of construction and certain definitions that apply throughout the statutes. These definitions should not be duplicated in a bill. If any of the words defined in ORS chapter 174 are used in the bill, the words will have the meaning given them in ORS chapter 174 unless specifically provided otherwise. Other terms defined in ORS that have a more or less general application are listed in the cross-references for ORS chapter 174. If a bill relates to crime or criminal procedure, general definitions in ORS 161.015, 161.055 and 161.085 must be considered. The drafter should also consult the topic **WORDS AND PHRASES** in the ORS General Index or the computer search program as a source for definitions of similar words or phrases used elsewhere in the statutes.

The drafter must also keep in mind the definitions and phraseology used in the ORS chapter in which a section being drafted will be compiled, or in which the section being amended is located. If a new section ought to be compiled only in one ORS chapter or within one ORS series, the definitions that apply to the existing ORS chapter or series can be made to apply also to the new section by adding the new section to, and making it a part of, the existing ORS chapter or series. This is one of the basic reasons for the "add" technique.

Definitions usually begin with a reference to the particular sections in the bill that rely on those definitions: "As used in sections x to y of this (year) Act …" or "As used in sections 2, 3 and 10 of this (year) Act …." Housekeeping or amended sections at the end of the bill may not depend on the definitions, so "As used in this (year) Act" should not be used. The ORS editors substitute all sections in an Act for references to "this (year) Act." If only a few sections depend on the definition, the substitution is confusing.

When writing a section of definitions, the drafter should place each definition in a separate subsection or paragraph. The defined words must be placed in quotation marks and arranged in alphabetical order. Disregard spaces when alphabetizing defined terms.

"Means" is used in the definition if the definition restricts or limits the meaning of a word. "Includes" is used if the definition extends the meaning. The combination "means and includes" should **never** be used. A doubt is raised as to whether the definition is intended to be restrictive or extensive. The singular form of "means" and "includes" is used even if the term being defined is plural because the subject of "means" or "includes" is the "word"; e.g., [the word] "Toys" includes teddy bears.

In some cases a drafter may not want to define a word or phrase completely and exactly, yet may want to make certain that the word or phrase **includes** all the specific cases in mind. See American Building Maintenance v. McLees, 296 Or. 772 (1984). If so, the drafter may find the following example useful:

> **SECTION 1. As used in sections ____ to ____ of this (year) Act, "conveyance" includes, but is not limited to, an assignment, lease, mortgage or encumbrance.**

A drafter may want to **exclude** a meaning from an extensive definition. However, a drafter should not use adjustments in a definition to create substantial law such as exceptions to the application of the law. If the exclusion is properly part of the definition, the definition should be phrased as follows:

> **SECTION 1. As used in sections ____ to ____ of this (year) Act, "fish" includes both game fish and nongame fish, but does not include thaleichthys pacificus, commonly known as smelt.**

A drafter may wish to incorporate by reference a definition found elsewhere in ORS. This practice allows more than one definition to be changed by a single amendment and is more efficient than repeating the definition when the desire is to keep the applicable definitions identical. The following form will accomplish the desired result:

> **SECTION 1. As used in sections ____ to ____ of this (year) Act, "renewable energy resource" has the meaning given that term in ORS 469.185.**

When using in the text of a bill a word that is defined in the definition section, the drafter should **always** use the word in the sense in which it is defined. This is true even though the definition section applies "unless the context requires otherwise." Some drafters drop that phrase because it offers a wider possibility of meaning than they wish to allow. Notwithstanding the scope of a definition, judicial construction may limit the application of the word defined by reason of the context in which the word is found. Nilsen v. Davidson Industries, Inc., 226 Or. 164, 167 (1961); State v. Pacific Powder Co., 226 Or. 502, 507 (1961).

Definitions generally should be placed at the beginning of the bill so that the reader can be aware of special meanings given to words and phrases before encountering them in the bill. However, in defining an expression that is used in one section only, it may be more convenient for the reader if the drafter adds the definition to that section, usually in a separate subsection at the beginning of the section. A definition that applies to only two or three sections in a rather lengthy bill may be placed more conveniently just before those sections, rather than at the beginning of the bill.

2. SHORT TITLE.

A short title is seldom used in legislation in Oregon except for Uniform Acts, e.g., the Uniform Commercial Code. Statutes are more conveniently cited by reference to ORS chapter or section numbers. However, if a lengthy bill establishes a continuing program of considerable importance, a short title may be used. See, e.g., ORS 801.010.

An Act should not be titled using a date; for example, the title "Oregon Criminal Code of 1971" cannot be adjusted to reflect later amendments even if the new material is added to one of the series that constitutes the code unless the title section is also amended. The result misleads the reader who may conclude that the 1971 code has never been amended.

3. POLICY AND PURPOSE STATEMENTS.

If a statement of policy or purpose is required, a drafter may make it a section of the bill. It then will follow the enacting clause and, consequently, have the effect of law, as distinguished from a preamble, which appears before the enacting clause and does not have the effect of law. See ORS 696.007 for an example of an enacted purpose statement.

In some instances a declaration of purpose may be intended as a guide for judicial construction or administrative application of a bill. The Oregon Supreme Court relied on ORS 337.110 (since repealed) in its effort to ascertain the meaning of another section in Webb v. State, 217 Or. 1 (1959).

Policy or purpose statements cause some misunderstanding since they are often far more ambitious than the scope of the accompanying provisions. See Peacock v. Veneer Services, 113 Or. App. 732 (1992). Unless requested to do so, the drafter should not include policy or purpose statements. If such a statement is requested, it should be drafted to reflect the scope of the bill. If such a statement is submitted with a proposal, check it for redundancy, conflicts with substantive provisions of the draft or use of undefined terms. A rhetorical exercise in nonlegal concepts becomes law but is not mere window dressing. Where the purpose of a section is highly specific, the phrase "For the purpose of . . .," may be included in the section to which the specific purpose applies.

4. LEGISLATIVE FINDINGS.

Occasionally a drafter is asked to include a legislative finding in a bill. It is wise to ask the requester to supply the text. Caution should be urged. The following statement from City of Portland v. Tidyman, 306 Or. 174, 185 (1988), indicates that the courts may take a dim view of the efficacy of enacting legislative findings into law:

> [Legislative] findings are only a recital of premises for legislation. As such, their vagueness or concreteness and their past or continued accuracy are immaterial. Their omission would not affect the validity of the [law]. If legislative findings mattered, drafters merely would busy themselves with inserting whatever prefatory recitals courts have quoted in sustaining similar laws. But lawmakers do not need to find or declare the factual predicates for legislation, unless some special statute requires it, and such a recital gains nothing for the validity of the legislation, though it can sometimes help toward its purposeful interpretation. It is the operative text of the legislation, not prefatory findings, that people must obey and that administrators and judges enforce.

CHAPTER EIGHT

ADMINISTRATIVE PROVISIONS

1. GENERALLY.

The administrative provisions of a bill ordinarily follow the provisions creating new rights and liabilities. However, in a bill creating a new department or reorganizing an old one, the sections on administration usually express the leading purpose of the bill and should be placed immediately following the definition section. The administrative provisions should be arranged in a manner that gives a clear picture of the administrative organization and procedures. For example, in a bill creating a Corrections Division (renamed the Department of Corrections, chapter 320, Oregon Laws 1987), section 1 set out definitions and section 2 created the agency. The next five sections provided for the duties of the agency, the selection of its chief administrator and subordinate employees, and the adoption of its rules. (Chapter 616, Oregon Laws 1965.)

Bills that transfer functions from one agency to another also should be organized to make it easy for the reader to see what the bill does. Usually the transfer section states the leading purpose of the bill and should be near its beginning. However, if the bill abolishes an existing agency and transfers its functions to one or more other agencies, the provision abolishing the existing agency normally should be first. In either case, the leading purpose section is followed by provisions disposing of the functions transferred. Existing statute sections will probably need to be amended to reflect the transfers and to solve transitional problems. (Chapter 828, Oregon Laws 1979.)

The remainder of this chapter contains sample provisions that cover various problems arising in the drafting of administrative provisions of a bill. The requester may or may not want all of these provisions in the bill. Each sample must be carefully tailored to fit the requirements of the particular bill in which it is used. There is no such thing as a "prefab" bill.

2. ESTABLISHING NEW STATE AGENCY.

See Appendix A for the complete text of the BOILER NEWAGNCY boilerplate. The following section provides for the establishment of a new state agency:

ESTABLISHING NEW STATE AGENCY

SECTION 1. (1) The Department of _____ is established.
(2) The department shall _____.
(3) The department may _____.

Sometimes the provision creating a new agency attempts to summarize its functions. This is dangerous! If this is done, the drafter must be careful not to create an inconsistency between these provisions and later sections that spell out the agency's functions in detail. However, a drafter may want to make a general statement of the functions of the new agency in the section creating it. The following provision is based on ORS 184.125 (1967 Replacement Part):

SECTION _____. (1) The _____ Division is established within the Department of Commerce.

(2) The division shall formulate and direct a program of economic development for the state. Through research, promotion and coordination of activities in this state, the division shall foster the most desirable growth and diversification of resources, agriculture, industry and commerce in this state. The division shall serve as a central coordinating agency and clearinghouse for activities and information concerning the resources and economy of this state.

A drafter may, but generally does not need to, indicate specifically that an enumeration of functions is not a limitation of other powers. However, when there is need, the following may be used:

SECTION _____. The enumeration of duties, functions and powers in section _____ of this (year) Act is not intended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the department by other statutes.

3. DIRECTOR OF NEW AGENCY.

A state agency is usually headed by a chief executive officer known as a director (department) or assistant director (division). Although "commissioner" is used occasionally, its use suggests a commission and may be misleading if there is none.

a. Basic Provision.

The following sample may be considered as basic for a section establishing a state office:

DIRECTOR

SECTION 2. (1) The Department of _____ is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the department.

(2) The Governor shall appoint the Director of the Department of _____, who holds office at the pleasure of the Governor.

(3) The director shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) For purposes of administration, subject to the approval of the Governor, the director may organize and reorganize the department as the director considers necessary to properly conduct the work of the department.

(5) The director may divide the functions of the department into administrative divisions. Subject to the approval of the Governor, the director may appoint an individual to administer each division. The administrator of each division serves at the pleasure of the director and is not subject to the provisions of ORS chapter 240. Each individual appointed under this subsection must be well qualified by technical training and experience in the functions to be performed by the individual.

b. Confirmation by Senate.

Article III, section 4, of the Oregon Constitution, provides that the Legislative Assembly by law may require that gubernatorial appointments be subject to Senate confirmation. If the requester wants confirmation, use the following text from the BOILER NEWAGNCY boilerplate:

CONFIRMATION BY SENATE

SECTION 3. The appointment of the Director of the Department of _____ is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

c. Term of Office.

A general statute governs the status of persons holding appointive offices. ORS 236.140 provides:

> 236.140. Any person holding an appointive office in any of the offices, departments or institutions of this state, shall hold the same for an indefinite term, not exceeding four years, and shall at all times be subject to removal by the appointive power which made the appointment. The appointive power may in all cases appoint a successor.

Because of ORS 236.140, a special provision for a specific term of office is rarely needed for an individual executive officer. Although ORS 236.140 also applies to boards and commissions, board and commission members generally serve for fixed terms that are staggered.

A drafter may be asked to provide that an officer serve for a specified term. Article XV, section 2, Oregon Constitution, limits terms of officers other than judges to four years,

while Article VII (Amended), section 1, limits the terms of judges to six years. If a longer term is requested, the requester should be told of the constitutional problem. The following alternate language is available as a standard phrase:

<spm agency-term>

(2) The Governor shall appoint the Director of the Department of _____. The director holds office for a term of _____ years, but may be removed at any time during the term at the pleasure of the Governor.

d. Salary.

In a bill creating the position of an officer or employee, it is not customary to set a definite amount of salary nor to limit the maximum amount of salary. The Personnel Relations Law provides for the setting of salaries of employees in the classified service. In the case of an employee in the unclassified or exempt service, the draft should include a provision like subsection (3) of the basic provision, indicating the officer or body authorized to prescribe the amount of compensation but not specifying a definite amount.

e. Travel and Subsistence Expenses.

Except in unusual cases, a drafter does not need to provide for the reimbursement of the director for necessary travel and subsistence expenses. This is covered by ORS 292.220. However, if directed to draft such a provision, the drafter should use the following standard phrase:

<spm agency-expenses>

SECTION __. In addition to being paid a salary, but subject to any applicable law regulating travel and other expenses of state officers and employees, the Director of the Department of _____ shall be reimbursed for actual and necessary travel and other expenses incurred by the director in the performance of official duties.

f. Fidelity Bond.

ORS 291.011 provides that the Director of the Oregon Department of Administrative Services may require a fidelity bond of any officer, employee or agent of a state agency, who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a fidelity bond. The director may fix the amount of the bond, except as otherwise provided by law, and must approve the sureties. The premium on the bond is to be paid by the state agency employing the individual who is bonded, usually through a blanket bond obtained for the state by the Oregon Department of Administrative Services. Although this section generally makes specific bonding provisions unnecessary, it does not require a corporate surety and it does not prescribe any definite amount. If the request requires something other than the statutory default language, adapt the following standard phrase:

<spm agency-bond>

SECTION __. Before assuming the duties of the office, the Director of the Department of _____ shall give to the state a fidelity bond, with one or more corporate sureties authorized to do business in this state, in a penal sum prescribed by the Director of the Oregon Department of Administrative Services, but not less than $50,000.

ORS 742.354 provides that a state or local officer or employee who is required to give a bond for the faithful performance of duties is allowed the amount paid to a surety company for the bond. The premium is to be paid out of the proper state or local funds. Consequently, a drafter does not have to require that the state or local government pay the cost of the bond. But if there is any doubt as to the account or fund from which the premium on the bond is to be paid, it can be made clear as follows: "The premium on the bond shall be paid from the State Forestry Department Account."

g. Special Requirements and Qualifications.

Most statutes creating a state office do not prescribe special qualifications for an appointee. It is assumed that the appointing authority will choose an individual well suited to fill the position. However, the requester may wish to establish special qualifications. A drafter can do this by adding them to subsection (2) of the basic provision or may set them out in a separate section, particularly if the qualifications are lengthy. The standard phrase reads as follows:

<spm agency-require>

SECTION __. An individual is not eligible to hold the office of Director of the Department of _____, or to hold any office or employment in the Department of _____, if the individual has any connection with persons engaged in or conducting any _____ business of any kind, holds stock or bonds in any _____ business of any kind, or receives any commission or profit from or has any interest in the purchases or sales made by the department.

ORS 756.026 provides another example.

The drafter should be aware of constitutional and statutory provisions that proscribe certain types of qualifications.

Sometimes the following sentence is added to subsection (2) of the basic provision: "The person appointed as director must be well qualified by training and experience to perform the duties of the office." This provision seems hardly necessary, but it does no harm if the requester wants it included.

h. Oath of Office.

Few statutes require an oath of office. If requested, the following standard phrase may be added:

<spm agency-oath>

SECTION __. Before assuming the duties of the office, the Director of the Department of _____ shall subscribe to an oath that the director faithfully and impartially will discharge the duties of the office and that the director will support the Constitution of the United States and the Constitution of the State of Oregon. The director shall file a copy of the signed oath with the Secretary of State.

4. ESTABLISHING NEW BOARD OR COMMISSION.

a. Basic Provision.

The following is the basic section used in creating a new board or commission: <BOILER BOARD>

SECTION 1. (1) There is established a _____ of _____ consisting of _____ members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on _____ next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of the _____ is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) A member of the _____ is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 2. Notwithstanding the term of office specified by section 1 of this (year) Act, of the members first appointed to the _____:

(1) One shall serve for a term ending _____, (year+1).
(2) One shall serve for a term ending _____, (year+2).
(3) One shall serve for a term ending _____, (year+3).
(4) Two shall serve for terms ending _____, (year+4).

The term for new members added later may be done as follows:

SECTION 2. Notwithstanding the term of office specified in ORS 359.020, of the additional two members added to the Oregon Arts Commission by the amendment to ORS 359.020 by section 1 of this (year) Act:

(1) One shall serve for a term ending _____, (year+2).
(2) One shall serve for a term ending _____, (year+3).

The material in section 2 of the examples should use the same day in each subsection. The provision is temporary and should not be placed in section 1 of the example. If enacted in one section, the temporary part must be compiled. By placing the temporary material in a separate section, it need not be compiled in *Oregon Revised Statutes* but will be carried as a note in ORS for as long as it has current application.

If staggered terms are desired but the number of members is not specified:

SECTION _____. Notwithstanding the provisions of section ____ of this (year) Act, the State Board of _____ shall adopt by rule a method for establishing the initial terms of office of board members so that the terms of office do not all expire on the same date.

If members of one board automatically are made members of another board, the following may be used:

SECTION _____. The members incumbent on the State Board of _____ on December 31, (year), shall become the members of the New State Board of ____ on January 1, (year+1), subject to the terms of office to which the members were appointed.

ORS 440.330 is an example of a determination by lot of the length of terms of first board members. This method is not ordinarily used for state boards but sometimes is found at the local government level.

Changes in terms of office may require a special provision, e.g., section 35, chapter 198, Oregon Laws 1977.

ORS 204.017 and 264.410 are examples for electing members.

If the board is changing from appointed to elected members, the following may be used:

SECTION 2. A person is eligible for election as a commissioner of the port who at the time of the person's election is an elector registered in the port, and who has for one year immediately preceding election resided within the port.

SECTION 3. (1) Commissioners of the port shall be nominated and elected as provided in ORS chapter 255.

(2) Except as provided in ORS 778.235, a commissioner, when elected, shall hold office for a term of four years and until a successor has been elected and qualified.

SECTION 4. (1) Each office of commissioner of the port shall be assigned a position number.

(2) The secretary of the port shall assign the position number to each office of commissioner. The number so assigned shall be certified by the secretary to the commissioner in office holding that position. The secretary shall file a copy of the certification with the election officer for the port.

SECTION 5. (1) At the first regular district election after the effective date of this (year) Act, five commissioners shall be elected, each to hold office for a term of four years commencing on July 1 following that election. At the second regular district election after the effective date of this (year) Act, four commissioners shall be elected, each to hold office for a term of four years commencing on July 1 following that election.

(2) Not later than 30 days after the effective date of this (year) Act, the secretary of the board of commissioners of the Port of Portland shall assign a position number to each office of commissioner as provided in section 4 of this (year) Act. The assignment of position numbers shall be determined by lot. The five appointed commissioners holding the offices assigned to lowest position numbers shall serve until June 30, (year+2), when they shall be succeeded by persons elected at the regular

district election in that year. The remaining appointed commissioners shall serve until June 30, (year+4).

(3) Until the office of a commissioner of the port is held by a person elected to the office as provided in this (year) Act, the Governor may continue to appoint persons to that office and fill a vacancy in that office after the effective date of this (year) Act as if this (year) Act had not been enacted.

b. Confirmation by Senate.

With appropriate adjustments in terminology, the confirmation provisions are the same as for confirmation of the appointment of a director (see page 8.3). However, the drafter should not assume that the requester wants members confirmed by the Senate and should request instructions. Members of boards or commissions appointed by persons other than the Governor usually are not subject to Senate confirmation.

c. Fidelity Bond.

If the requester wants a fidelity bond for members of a board or commission, the form used for directors (see page 8.4) can be used with necessary adjustments.

d. Oath of Office.

If the requester wants to require an oath of office for members of a board or commission, the form for directors (see page 8.5) may be used as adjusted to fit the needs of the bill being drafted. An example may be found in ORS 677.240.

e. Qualification of Members.

A drafter may be asked to include in a bill special eligibility requirements for members of a board or commission. The qualifications should be placed as a separate subsection of the basic provision or, if they are lengthy, should be set out in a separate section. For example:

SECTION _____. The members of the Wildlife Commission must be residents of this state who are well informed on the principles of wildlife restoration and conservation and the correlation of this resource with industry, agriculture and other natural resources.

A drafter may be requested to include a provision that members be selected from congressional districts in order to distribute board membership geographically. There are now five congressional districts in Oregon. For example: "The board shall consist of one member from each congressional district and one member from the state at large," or "not more than two members may be appointed from any one congressional district." The boundaries and even the number of congressional districts may change each decade. The requester may prefer to have members selected from areas or zones, as in the case of the State Board of Forestry under ORS 526.009, boundaries for which are fixed by statute and do not change automatically (and perhaps unexpectedly) when congressional districts are redrawn.

If the drafter is requested to require special qualifications for membership, it is important to take care in describing those qualifications. For instance, appointment by a private organization is not acceptable. According to the Attorney General, giving a private organization the right to appoint public officers constitutes an impermissible delegation of governmental power to private parties, in violation of the Oregon Constitution. 45 Op. Att'y Gen. 160, 167 (1987). Legislation that requires the appointment of privately selected persons violates Article IV, section 1, of the Oregon Constitution. That provision vests the power to make and declare laws exclusively in the Legislative Assembly conditioned by the initiative and referendum process. Further, section 1 of Article III separates government into three departments: legislative, executive (including administrative) and judicial. Section 21 of Article I requires that no law be passed that depends upon any other authority to take effect. 45 Op. Att'y Gen. at 167-170. See also Van Winkle v. Fred Meyer, Inc., 151 Or. 455 (1935), finding it unconstitutional to delegate price-setting authority to private parties. In Corvallis Lodge No. 1411 v. OLCC, 67 Or. App. 15, 19-22 (1984), the court held that delegation of governmental authority to private parties fails to provide procedural safeguards against unaccountable exercise of authority. In 28 Op. Att'y Gen. 69 (1957), the Attorney General concluded that "all appointive power is vested in the three departments of government" and may not constitutionally be delegated to nongovernmental bodies.

The creation of a **nonadvisory** board or commission that exercises governmental functions and that includes members of more than one branch of government raises constitutional separation of powers issues under Article III, section 1, of the Oregon Constitution. The situation usually arises with a request for an executive branch board or commission that includes legislators, though a drafter should consider the issue with any request for a board, commission or other body that includes individuals from more than one branch of government. A board or commission exercises executive powers if, for example, it awards grants, establishes standards or sets policy for an agency. For a discussion of separation of powers issues see Monaghan v. School District No.1, 211 Or. 360 (1957) (superseded by Article XV, section 8, Oregon Constitution, which allows public school teachers to serve in legislature, eliminating separation of powers issue, 49 Op. Att'y Gen. 254 (2000); 46 Op. Att'y Gen. 133 (1989); 43 Op. Att'y Gen. 205 (1983)).

If a drafter receives a request to have representatives from more than one branch of government on a **nonadvisory** board or commission, the drafter should:

1. Discuss with the requester the possibility of removing some of the members so that all members are from one branch of government;
2. Change the duties of the board or commission so that the board or commission is **advisory**. For example, place the nonadvisory functions of the board or commission in an independent executive branch agency; or
3. If it is an executive board or commission, allow the legislators or judges to remain on the board or commission, but as advisory members and without a vote on the matters that are properly under the purview of the executive branch.

Note: If you want a member of a board or commission to be a nonvoting member, say that the person is a nonvoting member. "Ex officio" does **not** mean "nonvoting"; it means "by virtue of office."

If a requester wishes to have legislative representation on an advisory board or commission, the appointing authorities should be the legislative leadership rather than the Governor. Appointment of a legislator to a position that requires Senate confirmation raises serious protocol questions.

f. Salary, Per Diem and Travel Expenses.

Many state boards and commissions in Oregon consist of part-time members who serve without compensation or for the per diem specified by ORS 292.495. A provision allowing members of a board or commission travel expenses can be included in a bill, by referring to ORS 292.495. The drafter should be sure that the requester intends both the per diem and the expense allowance. Legislator members receive per diem and expenses under ORS 171.072 when serving ex officio on other than legislative committees if the reimbursement is specified. Legislators are considered full-time public officials and can receive no per diem under ORS 292.495.

If a per diem is intended, the drafter should incorporate the standardized ORS 292.495 by reference rather than to write a new per diem or expense provision.

> **SECTION _____. A member of the State Board of _____ is entitled to compensation and expenses as provided in ORS 292.495.**

Note that ORS 292.495 applies only to boards and commissions. If a drafter would like the provisions of ORS 292.495 to apply to a different type of public entity, such as an advisory committee or task force, one of the following may be used:

> **SECTION _____. A member of the _____ is entitled to compensation and expenses in the manner and amounts provided in ORS 292.495. Claims for compensation and expenses incurred in performing the functions of the _____ shall be paid out of funds appropriated to the _____ for that purpose.**
>
> **OR**
>
> **SECTION _____. A member of the _____ is not entitled to compensation, but in the discretion of the _____ may be reimbursed from funds available to the _____ for actual and necessary travel and other expenses incurred by the member in the performance of the member's official duties in the manner and amount provided in ORS 292.495.**

g. Officers of Board; Quorum; Voting.

The following is a typical section providing for the designation of the officers of the board and specifying a quorum:

> **SECTION _____. (1) The State Board of _____ shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.**
>
> **(2) A majority of the members of the board constitutes a quorum for the transaction of business.**

The provision does not provide for the election of a secretary for the board, but assumes the usual practice that the secretary will be an employee who is not a member of the board. If this is not to be the case, the drafter must also provide for the election of a secretary. A drafter also may want to provide for the election of a treasurer of the board. Sometimes the office of secretary-treasurer is combined. If there is provision for a treasurer or secretary-treasurer, ORS 198.220 is an example of a provision requiring a bond. The drafter should be sure of the requester's purpose because the issue of secretary-member v. secretary-employee has generated some controversy.

ORS 174.130 provides that "[a]ny authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law." It is not clear whether action may be taken by a majority vote, a quorum being present, or whether action may be taken only upon the approval of a majority of the members of the board. The draft should provide specifically for the number of members required to make a quorum, pending clarification of ORS 174.130.

Customarily, the vote of a majority of the quorum is required for official action. Occasionally a drafter is requested to increase the number of affirmative votes, usually on issues perceived to be more significant. When a drafter is requested to require a greater number of votes, it should be done specifically so that the majority of the quorum can adjourn meetings, etc. The drafter should also be aware of Larson v. State Board of Parole, 91 Or. App. 642 (1988). In ORS 144.054 reference is made to the "full membership of the board." The court held that the phrase does not require all five members at all times because of provisions for filling vacancies and for disqualification of a member in a conflict of interest situation. The court construed the phrase to mean all voting members holding office and not disqualified from voting rather than the number of members who constitute the full membership authorized by law.

h. Meetings.

The following section is typical of those relating to meetings of a board or commission if the number of meetings is to be specified:

> **SECTION _____. The State Board of _____ shall meet at least once every three months at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.**

Unless otherwise specified, every board is subject to the Open Meetings Law (ORS 192.610 to 192.690). A drafter should never presume that a board is to be exempted from that law since state policy is to the contrary. An exemption would not be "boilerplate" and must be checked with the requester.

5. EMPLOYEES.

A bill creating a new state agency usually contains a section providing for the appointment of employees. Most state employees are in the classified civil service, and the

State Personnel Relations Law (ORS chapter 240) provides the procedure for their appointment and discharge and for the fixing of their salaries. The following sample provision for employees of a department, including a deputy director, is part of the <BOILER NEWAGNCY> boilerplate:

EMPLOYEES

SECTION 4. (1) The Director of the Department of _____ shall, by written order filed with the Secretary of State, appoint a deputy director. The deputy director serves at the pleasure of the director, has authority to act for the director in the absence of the director and is subject to the control of the director at all times.

(2) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all subordinate officers and employees of the Department of _____, prescribe their duties and fix their compensation.

Another consideration when providing for employees is their status in PERS. Most state agencies will be covered by the definition of "public employer" in ORS 238.005. Other agencies, such as semi-independent state agencies and public or public/private corporations, may require clarification of their PERS status, including which PERS pool they are in.

6. DUTIES AND POWERS.

Having provided for creation of a state agency and for the selection of officers and employees and their tenure, qualifications and salary, the drafter is ready to specify the duties and powers of the agency and its general operation. The duties and powers ordinarily should be stated in a single section with numbered subsections. However, if the section becomes unduly lengthy or the powers differ in type, new sections should be used. The detailed procedures to be followed by the agency would then follow. The procedures should be consistent with the Administrative Procedures Act (ORS chapter 183). ORS 657.683 is an example of a provision relating to hearings before a state agency that is not subject to the Administrative Procedures Act.

If there is a desire to cause judicial review of agency orders that differs from the Administrative Procedures Act or is to be expedited, usually because of the controversial nature of the powers in which the order is based, the following may be useful:

SECTION ____ (1) Any person dissatisfied with the final order issued by the Department of _____ after a contested case hearing may petition the Court of Appeals for review of the department's final order.

(2) The petition must be filed not later than the 20th day after the final order is issued upon conclusion of the hearing.

(3) The Court of Appeals shall conduct its review of the order according to the provisions of ORS chapter 183 applicable to review of a final order in a contested case.

(4) The review by the Court of Appeals shall be conducted expeditiously to ensure the orderly and timely determination of whether or not the department has met the requirements of section ____ of this (year) Act to allow the department to _____.

7. RULEMAKING.

a. Authority to Adopt Rules.

The extension of governmental supervision over business and individuals has made it necessary to authorize state agencies to adopt rules to "fill in the details" in the statutes. Rulemaking is discussed in Planned Parenthood Assn. v. Department of Human Resources, 297 Or. 562 (1984), and in the *CLE Administrative Law Handbook*. As defined in ORS 183.310, "rule" means an agency directive, standard, regulation or statement of general applicability. This definition makes it unnecessary to use the older expression "rules and regulations." The word "regulations" in place of "rule" should not be used unless the regulations referred to are of federal or local government origin. Since the Administrative Procedures Act uses "adopt" rather than "adopt and publish" or "promulgate," "adopt" should be used in context of administrative rules. The following excerpt from the BOILER NEWAGNCY boilerplate is a sample provision in a bill creating a new agency:

GENERAL AUTHORITY TO ADOPT RULES

SECTION 5. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules necessary for the administration of the laws that the Department of _____ is charged with administering.

The following standard phrase language contains provisions that might be included in a bill giving an existing agency additional duties or more limited authority to adopt rules:

<spm agency-rules>

SECTION __. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules necessary for the administration of sections _____ to _____ of this (year) Act.

Use or adapt the following standard phrase language for agency rulemaking regarding licensing:

<spm agency-lic-rules>

SECTION __. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules:

(1) Establishing standards for _____;

(2) Relating to the professional methods and procedures used by persons licensed by the Department of _____;

(3) Governing the examination of applicants for licenses issued by the department and the renewal, suspension and revocation of the licenses; and

(4) Establishing fees for _____.

Violations of rules can constitute grounds for revocation or suspension of a license. A criminal penalty also may be provided for violations and should be set out in a separate section with the following standard phrase:

<spm agency-penalty>

SECTION __. Violation of section _____ of this (year) Act, or of any rule adopted under section _____ of this (year) Act, is a Class C misdemeanor.

The following is an example of a section under which an agency may go into court to enforce compliance with rules:

> **SECTION _____. The State Board of _____ may apply to any circuit court for an order compelling compliance with any rule adopted by the board under section ___ of this (year) Act. If the court finds that the defendant is not complying with any rule so adopted, the court shall grant an injunction requiring compliance. The court, on motion and affidavits, may grant a preliminary injunction ex parte upon such terms as are just. The board need not give security before the issuance of any injunction under this section.**

b. Delegation of Powers.

By Article III, section 1, and Article IV, section 1, Oregon Constitution, the legislative power of this state is vested in the Legislative Assembly. Numerous cases have held that these constitutional provisions mean that the Legislative Assembly cannot divest itself of its legislative power by conferring it on someone else. However, the Legislative Assembly may authorize others to do certain things that it might properly do, but cannot advantageously undertake. There is no invalid delegation of power so long as a bill determines the policy of the law and prescribes a method for its application or prescribes procedures to protect the public, even though it delegates to an agency the application of these principles in particular cases.

In older cases, regulatory acts lacking adequate standards have been held unconstitutional. For example, a crop dusting statute was held invalid in Demers v. Peterson, 197 Or. 466 (1953).

More recently, however, the Oregon Supreme Court has stated that the important consideration is not whether the statute delegating the power expresses **standards**, but whether the procedure established for the exercise of the power furnishes adequate **safeguards** to those who are affected by the administrative action. Warren v. Marion County, 222 Or. 307 (1960); Oregon Assn. of Rehab. Prof. v. Dept. of Ins. and Fin., 99 Or. App. 613 (1989). Roseburg Lumber Co. v. State Tax Comm., 223 Or. 294 (1960), required an administrative agency to state reasons for a decision made in an administrative hearing.

The decision to supply standards or to rely on procedural safeguards lies with the requester and may to some extent depend on the subject of the bill. The use of standards may limit administrative discretion more than the procedural approach but, because of the detail involved, may excite more controversy.

Though a bill probably can direct an agency to adopt the rules of a public or private entity as those rules exist on a given date not later than the effective date of the bill, the bill cannot adopt, or compel adoption of, rules of another entity that may be adopted in the future. Hillman v. N. Wasco Co. P.U.D., 213 Or. 264 (1958) (overruled on other grounds); General Electric Co. v. Wahle, 207 Or. 302 (1956). A bill probably could, however, direct an agency to consider, and to the extent practicable to adopt, rules or policies of a public or private entity as those rules or policies exist at the time of the agency rule adoption (which may be long after the enactment of the enabling legislation). For example, "In adopting rules under section ___ of this (year) Act, the (adopting agency) shall consider, and to the

greatest extent practicable shall adopt, the rules of the (federal agency)." The decision about the content of the rules is the agency's, but the legislative direction is clear.

The drafter should carefully examine the phrase "rules of ____, as they may be from time to time amended" wherever it or a similar phrase appears. A fixed date is more proper, even if it is less flexible.

In enacting a law complete in itself and designed to accomplish the regulation of particular matters falling within its jurisdiction, the Legislative Assembly may authorize an administrative agency, within definite limits, to adopt rules for the complete operation and enforcement of the law within its stated purpose. Cancilla v. Gehlhar, 145 Or. 184 (1933), upheld a provision authorizing the State Department of Agriculture to make rules regarding transportation of produce by certain licensees. In Southern Pacific Ry. Co. v. Consolidated Freightways, 203 Or. 657 (1955), a statute was upheld that authorized the Public Utility Commissioner to fix maximum speeds for railroad trains, such speeds to be "commensurate with the hazards presented and the practical operation of the trains." McCarthy v. Coos Head Timber Co., 208 Or. 371 (1956), is another example.

In a bill that affects the property rights of individuals or their privilege to engage in a trade or profession, more definite standards may be needed than are required in one dealing with the public health, safety or welfare. State ex rel. Public Welfare Commission v. Malheur County Court, 185 Or. 392 (1949).

In Van Riper v. Oregon Liquor Control Comm., 228 Or. 581 (1961), the court held that an agency cannot undertake anything contrary to a statute, but it can "fill in interstices in the legislation" and help the statute accomplish its purpose. Many other Oregon authorities hold that unless the Constitution expressly provides otherwise, the Legislative Assembly may not delegate legislative functions to executive officers or bodies, but that, having established a policy, standard or rule for their guidance, it may leave to them matters of administrative detail, including the making of rules and the determination of facts:

Winslow v. Fleischner, 112 Or. 23 (1924).
Livesay v. DeArmond, 131 Or. 563 (1930).
Van Winkle v. Fred Meyer, Inc., 151 Or. 455 (1935).
City of Portland v. Welch, 154 Or. 286 (1936).
Savage v. Martin, 161 Or. 660 (1939).
LaForge v. Ellis, 175 Or. 545 (1945).
M.& M. Wood Working Co. v. State Ind. Acc. Comm., 176 Or. 35 (1945).
Foeller v. Housing Authority of Portland, 198 Or. 205 (1953).
Seale v. McKennon, 215 Or. 562 (1959).
Dilger v. School Dist. 24 CJ, 222 Or. 108 (1960).

The question for the drafter is how much detail the requester wants to leave to the administrative agency. The current rule in Oregon according to later cases seems to permit greater authority in the agencies, but the issue of whether to shift emphasis from standards to procedural safeguards is a policy decision for the Legislative Assembly to make.

When rulemaking authority is granted and there is need to ensure initial adoption by a specified date, it is unwise to insert that date in the section granting the authority because the date raises the issue that perhaps after that date, the authority lapses. The better approach is:

SECTION _____. The rules initially adopted under the authority of section _____ of this (year) Act must be adopted on or before _____.

8. ADMINISTRATIVE PROCEDURES ACT; OFFICE OF ADMINISTRATIVE HEARINGS.

The Administrative Procedures Act (APA) (ORS chapter 183) applies to all state agencies that are not exempted by law. Generally, a drafter will not want to exempt a new agency from the rulemaking requirements of the APA (ORS 183.325 to 183.410), since all agencies need to have some procedure governing the manner in which rules will be adopted.

If the requester requests that specific provisions of the Administrative Procedures Act not apply to the new agency, the following standard phrase may fit:

<spm agency-apa>

SECTION _____. Except as otherwise provided in section _____ of this (year) Act, ORS chapter 183 applies to the Department of _____.

If the drafter wishes to exempt the new agency from the contested case procedures of the Administrative Procedures Act, the drafter should amend ORS 183.315 to add the agency to the list of exempt agencies. Most of the exempt agencies have alternative statutory procedures (e.g., workers' compensation cases) for adjudicatory hearings.

An agency is required to use administrative law judges from the Office of Administrative Hearings (ORS 183.605 to 183.690) to conduct adjudicatory proceedings (primarily contested case hearings) unless the agency is specifically exempted. If the requester asks that the new agency be exempted from the requirement of using administrative law judges from the office, ORS 183.635 should be amended to add the new agency to the list of exempted agencies.

Unless the requester specifically so requests, it is preferable not to exempt agencies or officers from provisions of generally applicable law. There might be exceptions to this general rule if federal requirements impose different procedures or a collective bargaining remedy has replaced a statutory procedure.

9. OATHS; DEPOSITIONS; SUBPOENAS.

The following standard phrase provision provides authority to administer oaths, take depositions and subpoena witnesses:

<spm agency-subpoena>

SECTION ___. The Director of the Department of _____, the deputy director and authorized representatives of the director may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the

production of documents or other written information necessary to carry out the provisions of sections _____ to _____ of this (year) Act. If any person fails to comply with a subpoena issued under this section or refuses to testify on matters on which the person lawfully may be interrogated, the director, deputy director or authorized representative may follow the procedure set out in ORS 183.440 to compel obedience.

The drafter should verify that the requester wants to grant authority to subpoena witnesses because this provision has proved controversial.

10. ADVISORY AND TECHNICAL COMMITTEES.

The following standard phrase section may suggest a provision authorizing advisory and technical committees:

<spm agency-comm>

SECTION __. (1) To aid and advise the Director of the Department of _____ in the performance of the functions of the Department of _____, the director may establish such advisory and technical committees as the director considers necessary. These committees may be continuing or temporary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director is an ex officio member of each committee.

(2) Members of the committees are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

Examples of legislation authorizing or establishing permanent advisory committees may be found in ORS 329.700 (2005 Edition) (Oregon 21st Century Schools Advisory Committee), ORS 366.112 (advisory committee on bicycle lanes and paths), ORS 418.005 (advisory committee on child welfare services) and ORS 682.039 (State Emergency Medical Service Committee).

11. TRANSFER OF FUNCTIONS FROM ONE STATE AGENCY TO ANOTHER.

A sample of provisions necessary to transfer functions from one state agency to another has been set out in Appendix A.

12. CHANGING NAME OF AGENCY.

Sometimes a drafter is asked to prepare a draft that changes the name of an agency, program or account. The general rule in such a situation is that each statute containing the name must be examined and amended. However, if there are many statutes containing the name, the drafter may use what is called a “name change provision” in the following form:

<spm name-change>

SECTION __. (1) The amendments to ORS _____ by section __ of this (year) Act are intended to change the name of the "Old Agency" to the "New Agency."

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "Old Agency," wherever they occur in statutory law, other words designating the "New Agency."

This language enables Legislative Counsel, in the editing process, to substitute the new name for the old name. Even if a name change provision is used, however, the drafter must amend the statute that establishes the state agency, account or program whose name is being changed and must amend any statutes in which a straight editorial substitution will not work. For example, if a statute says "The Motor Vehicles Division shall notify the Motor Carrier Division of the status of a person's driver license…." and the bill changes the names of both the Motor Vehicles Division and the Motor Carrier Division to the Department of Transportation, a name change will not work. All that could be done at editing was to substitute "the Department of Transportation" for both divisions, resulting in a sentence saying "The Department of Transportation shall notify the Department of Transportation …."

Because use of a name change provision might raise questions of delegation of authority to Legislative Counsel, such a provision should be used sparingly. The following guidelines should be kept in mind:

- Use a name change provision only for proper names.
- Be precise in identifying the new name and the old name.
- Never use a name change provision for the primary purpose of "picking up" references to the old name in new legislation.
- If you use a name change provision, you must still read each statute that contains the old name and determine whether it needs to be amended.

When you change the name of an agency, program or account, be sure to look for related names that might need to be changed. For example, a bill that changes the name of Oregon Health and Science University should also change the name of the Oregon Health and Science University Board of Directors.

13. ABOLISHING AGENCY.

Some of the provisions that could be used in a bill to abolish a state agency and transfer its functions to another agency are set out in Appendix A. ORS 182.080 provides an example for abolishing an agency if the function that the agency performed is no longer to be performed. That section provides a procedure to be used in winding up the affairs of an abolished state agency. It also saves any rights or liabilities accruing prior to the repeal of the statute.

A state agency may have property held in trust. Chapter 196, Oregon Laws 1957, is an example of an Act that abolished an agency (Battleship Oregon Commission) and disposed of its property.

14. SEMI-INDEPENDENT STATE AGENCIES.

Semi-independent state agencies develop and finance their own budgets instead of receiving a biennial legislative appropriation from the General Fund. When creating a semi-independent state agency, the drafter should exempt the agency from ORS chapters 291, 292 and 293, dealing with state financial administration, budgeting and salaries. Also consider the agency's status regarding PERS, including which PERS pool it is in. The agency should remain subject to audit by the Secretary of State.

Semi-independent state agencies establish the fees they charge, although maximum fee amounts are sometimes established by statute. The agency fee decisions are not subject to review by the Legislative Assembly, the Oregon Department of Administrative Services or the Emergency Board. The agencies also establish their own compensation for board members and are therefore not covered by the per diem language of ORS 292.495.

Semi-independent state agencies usually arise from the conversion or replacement of an existing state agency. The agency transfer boilerplate can provide a useful guide for identifying and addressing transition issues. ORS 182.456 to 182.472 may help a drafter to reduce the number of new sections that must be drafted from scratch.

A drafter using or copying ORS 182.456 to 182.472 should be aware that ORS 182.462 allows an agency to adopt rules donating all or part of the agency's civil penalty receipts to the General Fund. This may require amending civil penalty and appropriation sections to reflect the optional nature of the disposition.

Because a semi-independent state agency handles its own finances, the drafter should provide for moneys received by the agency to be deposited to an account established by the semi-independent state agency in compliance with ORS chapter 295. ORS 182.470 provides an example. If the drafter is making an agency subject to ORS 182.456 to 182.472, it is a good practice to draft language that specifically identifies the agency to whose account moneys are continuously appropriated instead of relying on the account appropriation language in ORS 182.470. The drafter must also address initial budgeting, funding and expenditure control issues to cover the start-up period for the agency.

15. STATUTORY FORMS.

When a state agency is to have authority to administer a bill, generally it is sufficient that the agency be given authority to prescribe any necessary forms. However, if the bill imposes a duty on a number of local officials or other persons throughout the state and if uniformity is desired, it may be necessary to set out in detail the forms to be used.

Use beginning and ending hairline rules to set off the text of a form from the rest of the section. Hairline rules are coded and may be inserted at your request by publication specialists. Text that is set forth between hairline rules does not require quotation marks.

Blanks in a statutory form are indicated by coded underscored blank spaces rather than dashes. The matter to be completed in a statutory form should be indicated, either by a

statement following the form, as in the example, or by using parentheses immediately after the blank; for example, "(insert name of county)." Since brackets are used to indicate the deletion of material by amendment, brackets **must not** be used in a statutory form. If the section later is amended, confusion may result with respect to what material is being deleted. In new (boldfaced) material, the code for short blanks is :HR3B. and the code for long blanks is :HR6B.. For example, to insert an unknown dollar amount in the text of a form, type $:HR3B.. When printed, it will look like this: **$_____**. To insert an unknown year in the text of a form, type 2:HR3B.. When printed, it will look like this: **2_____**. Publication specialists and copy editors check that coding for short blanks and long blanks is standardized.

Forms are usually introduced with phrases such as "substantially the following form," "the following notice" or "the following statement." Use of these phrases enhances database text searches.

Although type size is generally consistent within a form, notice or table, publication specialists may need to change type sizes in order to accommodate tab stops within a form and the varying column widths of legislative publications.

The form is separated from the rest of the section by lines known as hairline rules that are drawn above and below the form as follows:

> **SECTION _____. (1) Each tax statement, in addition to the information required by ORS 311.250, shall be in substantially the following form:**
>
> ---
>
> **By Act of the 1981 Legislature, $_____ has been distributed from the Local Property Tax Relief Account as relief for local property taxpayers. Because of this tax relief, your tax rate is $_____ per thousand dollars of true cash value less than it otherwise would be.**
>
> ---
>
> **(2) The appropriation under ORS 310.715 and the tax rate relief determined for the county under ORS 310.730 shall be indicated in the proper spaces.**

ORS 25.384, 90.610 and 279C.370 provide additional examples of statutory forms. ORS 472.470 (1981 Replacement Part) provides an example of a ballot form used to submit a measure to the voters of a county or city. The form text should generally follow legislative form and style. Capitalization and punctuation should be consistent within each form.

16. REPORTS TO LEGISLATURE.

Many statutes require state agencies to report regularly to the Legislative Assembly. Task forces, special interim committees and advisory bodies may also be required to report summarily or periodically to the legislature as a logical consequence of their reason for being. However, the question has often been raised by reporting agencies and the legislature itself as to the procedure for complying with reporting requirements, a question resolved with the enactment in 1991 of ORS 192.230 to 192.250. The drafter must be familiar with

the general provisions of these statutes and the particular provisions of ORS 192.245 when drafting a bill that requires a report to the legislature.

17. DELAYED OPERATIVE DATE.

Often a bill that creates a new state agency requires administrative machinery to be set up before the bill is fully operative. For example, a drafter may be asked to require the appointment of the director of the state agency prior to the date on which the state agency is to begin operation. The following language in combination with a delayed operative date may be used:

> **SECTION _____. The Director of the Department of _____ may be appointed before the operative date of section _____ of this (year) Act and may take any action before that date that is necessary to enable the director to exercise, on and after the operative date of section _____ of this (year) Act, the duties, functions and powers of the director pursuant to section _____ of this (year) Act.**

See chapter 12 of this manual for a discussion of the use of operative dates.

CHAPTER NINE

FISCAL PROVISIONS

A drafter cannot rely solely on the material in this chapter or other parts of this manual in preparing a bill that involves fiscal matters. The law applicable to and the procedures followed by agencies change from time to time. ORS chapters 291, 292, 293 and 294 are relevant when the draft relates to fiscal affairs of a state agency. Chapter 12 of this manual deals with problems involving effective dates and emergency clauses.

1. APPROPRIATIONS.

a. Constitutional Provisions.

Article IX, section 4, Oregon Constitution, provides that money shall not be drawn from the State Treasury except in pursuance of an appropriation made by law. This means that a bill launching a new activity that requires expenditure of moneys must contain an appropriation to pay for the activity. The appropriation must be either in that bill or in a separate bill, unless the Emergency Board (ORS 291.322 to 291.334) is to be the source of moneys. This decision is always a matter for the requester. But if the Emergency Board is to be the source, the drafter should verify that the expenditure is within the board's authority. For an example where the Emergency Board would exceed its authority, see 41 Op. Att'y Gen. 462 (1981); Planned Parenthood Assn. v. Department of Human Resources, 297 Or. 562 (1984); and Gilliam County v. Department of Environmental Quality, 316 Or. 99 (1993); rev'd on other grounds sub nom. Oregon Waste Systems, Inc. v. Department of Environmental Quality, 511 U.S. 93 (1994). (**Note**: A continuing appropriation fulfills the requirement of Article IX, section 4. Holmes v. Olcott, 96 Or. 33 (1920).)

In addition to Article IX, section 4, there are several other constitutional provisions relating to appropriations. Article I, section 5, provides that no money may be appropriated for the benefit of any religious or theological institution. A free textbook statute was held invalid under this section in Dickman v. School Dist. 62C, 232 Or. 238 (1961), *cert. denied,* 371 U.S. 823 (1962). Article V, section 15a, authorizes the Governor to veto single items in appropriation bills. Article IV, section 24, provides that no special Act making

compensation to any person claiming damages against the state shall be passed. The enactment of ORS 30.260 to 30.300 in 1967 makes it unlikely that a drafter ever will be asked to draft a bill of this sort.

A drafter must be attentive to Article IX, section 7, which provides:

> **Sec. 7.** Laws making appropriations, for the salaries of public officers, and other current expenses of the State, shall contain provisions upon no other subject.

The Oregon Supreme Court has held that this provision does not invalidate, in an Act designed to accomplish a particular purpose, a provision appropriating the moneys necessary to accomplish that purpose. Thus, an Act that creates an agency also may appropriate moneys to pay the expenses of that agency. Evanhoff v. State Ind. Acc. Comm., 78 Or. 503 (1915).

A bill also may comply with the "particular purpose" requirement if it appropriates moneys to and limits expenditures of an existing agency for specific programs or agency functions that are demonstrably distinct from the agency's general expenses.

Here is an example, in which sections 2 to 9 of the Act establish a pesticide use reporting system:

> **SECTION 10. Notwithstanding any other law, the amount of $80,000 is established for the biennium beginning July 1, (year), as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the State Department of Agriculture for the purposes of developing and implementing the pesticide use reporting system under sections 2 to 9 of this (year) Act.**

The Attorney General appears to take the view that a bill appropriating moneys for current expenses may not include provisions appropriating moneys for capital construction or reflecting "major policy changes." See 33 Op. Att'y Gen. 403 (1967), and 33 Op. Att'y Gen. 417 (1967).

b. State Fund Structure.

The single largest source of funding for the state's activities is the General Fund. Moneys within the General Fund can be said to be divided into two separate classifications: those that are available for general governmental purposes and those that by statute are continuously appropriated for specific purposes. Moneys within the General Fund that are available for general governmental purposes are revenues received by the state from the personal income tax, the corporate income and excise taxes and all other sources of revenue that by statute or by the Oregon Constitution are not set aside or appropriated for specific purposes.

c. Appropriation of Specific Amounts.

If the bill other than an appropriation bill appropriates a specific amount of money, the draft must designate all of the following:

(1) The state officer or agency to which the appropriation is made;

(2) The source of the appropriation (most often the General Fund);

(3) The amount of the appropriation;

(4) The period for which it is appropriated (usually a biennium beginning on July 1 of an odd-numbered year and ending on June 30 of the next odd-numbered year); and

(5) The purpose for which the moneys are appropriated.

This is the most common type of appropriation in a nonbudget bill, and it takes the following form: <spm approp-sec>

SECTION __. There is appropriated to the Oregon Department of Administrative Services, for the biennium beginning July 1, (year), out of the General Fund, the amount of $1,400,000 for the purpose of carrying out the provisions of section ___ of this (year) Act.

Moneys remaining at the end of the designated period are no longer available for expenditure because, absent any directive, the moneys revert to the source from which they were appropriated. See ORS 293.190. In making an appropriation for a project that may not be completed within a single biennium, it is necessary that the unexpended portion of the appropriation be available until completion of the project, without reverting. The following is an appropriation for capital purposes:

SECTION __. There is appropriated to the Oregon Department of Administrative Services, out of the General Fund, the amount of $50,000 for the purpose of erecting a bicycle shed on the Capitol Mall. This appropriation is available continuously until expended for the purpose specified in this section.

With an appropriation that does not revert automatically, all of the moneys may not be expended in completing the project contemplated by the appropriation. If unexpended and unobligated moneys remain when the project is completed, a provision somewhat like the following example should be used to avoid another bill at a later session to transfer that unexpended balance back to its source:

SECTION ___. Not later than the 60th day after completion of the project described in section _____ of this (year) Act, the Director of the Oregon Department of Administrative Services shall certify the completion of the project and the amount of the unobligated balance of the appropriation made by section _____ of this (year) Act. Upon certification, the unobligated balance reverts to the General Fund.

The phrase "in addition to and not in lieu of any other appropriation" may be placed at the beginning of any appropriation to an agency that is in addition to its biennial appropriation in order to indicate that the subsequent appropriation is not intended to supersede the earlier one.

The Legislative Assembly may make a special purpose appropriation to the Emergency Board as follows: <spm approp-spec-purp>

SECTION __. (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Emergency Board, for the biennium beginning July 1, (year), out of the General Fund, the amount of $_____, to be allocated to _____ (agency) for _____ (purpose).

(2) If any of the moneys appropriated by subsection (1) of this section are not allocated by the Emergency Board prior to December 1, (year+1), the moneys remaining on that date become available for any purpose for which the Emergency Board lawfully may allocate funds.

d. Appropriations for Building Projects.

In drafting an appropriation for a building project, the drafter must consider whether some of the money appropriated is to be expended for the acquisition of real property. If authority to purchase real property is intended, that authority should be expressly stated. The following example does not provide for the acquisition of real property but does authorize the construction, furnishing and equipping of a specified project:

A BILL FOR AN ACT

Relating to a shop building for Oregon Institute of Technology.

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

SECTION 1. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon University System, out of the General Fund, the sum of $414,360 for planning, constructing, altering, repairing, furnishing and equipping a shop building at Oregon Institute of Technology, to be expended as follows:

(1) Shop building.....$322,960

(2) Equipment.....91,400

SECTION 2. The appropriation made by section 1 of this (year) Act is available continuously until expended for the purposes specified in section 1 of this (year) Act. However:

(1) Except for planning, the Oregon University System may not begin any project or allow any contract to be let for such project without first reporting to the Emergency Board.

(2) Not later than the 60th day after completion of the project described in section 1 of this (year) Act, the president of the State Board of Higher Education shall certify to the Oregon Department of Administrative Services the completion of the project and the amount of the unobligated balance of the appropriation made by section 1 of this (year) Act. Upon certification, the unobligated balance reverts to the General Fund.

A provision similar to subsection (1) of section 2 in the example is usually used when appropriating moneys for a building project. Examples include ORS 291.336 and section 2, chapter 223, Oregon Laws 1967.

An appropriation to prepare plans and specifications, and to locate and purchase land, for a particular building, may be drafted somewhat as follows:

SECTION 1. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services, out of the General Fund, the sum of $250,000 for preparing plans and specifications, and locating and purchasing land, for a general mental hospital to be located within a 20-mile radius of the county courthouse of Multnomah County.

SECTION 2. The Oregon Department of Administrative Services shall report to the Emergency Board before accepting plans and specifications or purchasing or contracting to purchase land for the project described in section 1 of this (year) Act.

A provision similar to section 2 in the example is often used.

e. Initial Appropriation for New Agency.

The alternative to a lump sum appropriation for a new agency is an appropriation that segregates the amount appropriated into classes of expenditures based on the Governor's

budget even though the agency is not included in that budget. If the appropriation for a new agency is not included in the bill creating the agency, and the appropriation is not provided for in any other bill, then the Emergency Board (ORS 291.322 to 291.334) probably will be called on to finance the new agency. All this is a matter of policy to be decided by the requester.

The expenses of organizing a new agency that is to be self-supporting may be met by a provision advancing moneys from the General Fund. Repayment to the General Fund out of receipts of the new agency can be specified. See page 9.11 for an example.

f. For Current Biennium.

Occasionally an agency requires an additional appropriation or increased expenditure limitation to complete the biennium during which the session occurs. A deficiency for a past biennium is a "current expense of the state." Burch v. Earhart, 7 Or. 58 (1879). An additional appropriation is worded in the same manner as the usual appropriation provision **except** that the biennium is the one beginning prior to the session and may be referred to either as "the biennium beginning July 1, 1999" or "the biennium ending June 30, 2001." For example: <spm approp-addition>

> **SECTION 1. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Department of Administrative Services for the biennium ending June 30, (year), out of the General Fund, the amount of $250,000, which may be expended for the purpose of. . .**

For an increase in an expenditure limitation, reference to intervening legislative or Emergency Board action may be required, for example: <spm ex-limit-adj-no> (var.)

> **SECTION 4. Notwithstanding any other law limiting expenditures of the Oregon Health and Science University hospital for the payment of expenses from fees, moneys or other revenues, excluding lottery funds and federal funds, collected or received by the Oregon University System for the Oregon Health and Science University, for the biennium ending June 30, (year), the limitation on expenditures established by law, as modified by legislative or Emergency Board action, is increased by $3,190,493.**

Here is another example:

> **SECTION 5. Notwithstanding any other law limiting expenditures by the State Department of Agriculture for the payment of expenses from federal funds received by the State Department of Agriculture for the biennium beginning July 1, (year), there is authorized to be expended, in addition to other limitations established by law, as modified by legislative or Emergency Board action, the sum of $41,600. Such sum may be expended only as follows:**
>
> **(1) Personal services $15,500**
>
> **(2) Services and supplies. . . .26,100**

Appropriation and expenditure limitation bills that make fiscal adjustments for the current biennium require an emergency clause to make the bill effective "on its passage" because the Governor must sign the bills and the bills must take effect **before** the end of the current biennium.

g. Appropriation for Expenses of Interim Committees.

ORS 171.640 provides for the appointment of interim committees. However, if an interim committee is created by joint resolution (see ORS 171.610), moneys cannot be appropriated by the resolution (see Article IX, section 4, Oregon Constitution). An appropriation is enacted each session for the payment of expenses of the Legislative Assembly. Chapter 433, Oregon Laws 1993, is an example. The joint resolution creating an interim committee may authorize it to expend a certain amount of the moneys already appropriated for legislative expenses. If the expenses of a committee are to be paid from some source other than the legislative appropriation, a bill must be used.

Specific authorization probably is necessary for an interim committee to accept and use moneys offered by other public or private sources. 29 Op. Att'y Gen. 284 (1959). An example is House Joint Resolution 52, paragraph (12) (1979). In a Letter of Advice (OP-6373) dated April 9, 1991, the Attorney General opined that certain legislative interim committees or studies cannot be funded from lottery funds.

Chapters 16 and 19 of this manual contain other provisions that may be included in a joint resolution creating an interim committee. The requester of a resolution to establish an interim committee should be advised, however, that under current practice, interim committees are more often created under the authority of the presiding officers. See ORS 171.640.

h. Emergency Clause for Appropriations.

The fiscal biennium begins on July 1 of the odd-numbered year. Because adjournment sine die often does not occur until **after** the beginning of the biennium, and bills **normally** take effect on January 1 of the year following enactment, it is necessary to include an emergency clause in a regular biennial appropriation bill. When the July 1 date is used, but the Governor signs the bill after July 1, the effective date is the date of the signature notwithstanding the date given in the bill.

In the case of regular biennial appropriations, the following emergency clause should be used: <spm emer>

> **SECTION __. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect July 1, (year).**

An emergency clause may be included in any other appropriation bill if it is desired to have the moneys available for expenditure soon after adjournment. The clause may specify an effective date "on its passage" or on some specified date. However, it is wise to avoid using "on its passage" when the bill involves a biennial appropriation because the agency might argue that it can commence spending its biennial appropriation before the biennium commences. An emergency clause is not required if the authority to expend moneys is delayed by, for example, an operative date.

i. Audit and Warrant Clause.

The procedure for approval and payment of claims is set out in ORS 293.295 to 293.515, and it is unnecessary to have a provision in a bill with respect to this matter unless an exceptional procedure is being established.

j. Consumer Price Index.

If inflation becomes a factor in computing some cost or benefit, the Consumer Price Index may be useful. It is defined in ORS 327.006.

k. Federal Funding.

Many state programs operate with federal funding on which certain conditions are placed. In order to protect the federal funding when there is a potential for conflict, the following may be useful; but note that it also may be a questionable delegation and should be used only when the need for it is raised as an issue:

> **SECTION 4. Notwithstanding any provision of sections 1 to 3 of this (year) Act, the applicable federal laws and regulations shall apply in any case where federal funds are involved and the federal laws and regulations conflict with any of the provisions of sections 1 to 3 of this (year) Act or require additional conditions not authorized by sections 1 to 3 of this (year) Act.**

L. New Funds and Accounts. (See also FUNDS AND ACCOUNTS, this chapter.)

The legislature has declared that interest earned by state funds should be paid to the General Fund unless otherwise provided by law. ORS 293.140. When creating a new fund (or account), the drafter should ask the requester for directions as to disposition of the interest. [1]

If the requester wants the interest earned by the new fund to be paid into the fund, the draft must specifically indicate that the interest "earned by the fund shall be credited to the fund." In addition, the State Treasurer and the Legislative Fiscal Office would like the draft to indicate that the fund is "separate and distinct from the General Fund." The following language should be used: <spm interest-to-fund>

> **SECTION 1. The (name) Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the (name) Fund shall be credited to the fund.**

[1] Some accounts or funds may have enough money for their purposes without retaining their interest. For example, if an account is established for fees from issuance of a license, the fees are designed to cover the costs to the agency of regulating licensees, and the amount of the fee is set so that the agency will collect enough to cover its costs, the requester may want the interest to go to the General Fund for general governmental purposes.

2. EXPENDITURE LIMITATIONS.

a. Other Funds.

When the Legislative Assembly has by past action continuously appropriated funds to an agency or for a purpose, a biennial appropriation is no longer required. Technically the agency can expend any amount of money it collects. Traditionally, continuing appropriations are made for self-supporting activities, such as occupational licensing, that are fee-supported. However, in developing a biennial budget, neither the Governor nor the Legislative Assembly is willing to omit these agencies from overall budgetary control. The technique used is referred to as an "expenditure limitation," and the effect is to say, "Regardless of the amount collected, the agency may spend no more than $___ in the coming biennium." An example, including the title, is: <spm ex-limit-no-fed>

A BILL FOR AN ACT

Relating to the financial administration of the Oregon State Veterinary Medical Examining Board; and declaring an emergency.

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

SECTION 1. Notwithstanding any other law limiting expenditures, the amount of $85,735 is established for the biennium beginning July 1, (year), as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon State Veterinary Medical Examining Board.

SECTION 2. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect July 1, (year).

Much of the material relating to appropriations also applies to expenditure limitations. See page 9.5 of this chapter for examples of increasing expenditure limitations for the current biennium.

b. Federal Funds.

In the foregoing discussion, little has been said about the manner in which moneys received from the federal government are handled. With the exception of revenue sharing moneys, federal funds are processed in the same manner as any dedicated or continuously appropriated revenue. Again, neither the Governor nor the Legislative Assembly has been willing to allow state agencies to spend federal funds without overall budgetary control. The result is that expenditure of federal funds to which a state agency is otherwise entitled is made subject to an expenditure limitation: <spm ex-limit-fed>

SECTION __. Notwithstanding any other law limiting expenditures, the amount of $_____ is established for the biennium beginning July 1, (year), as the maximum limit for payment of expenses for _____ from federal funds collected or received by the Department of Transportation.

When state agencies are supported in part by federal grants for administrative expenses or for carrying out particular programs, it is important that federal funds are not lost because of a requirement in a bill that conflicts with the terms of a federal grant. See page 9.7.

3. LOTTERY ALLOCATIONS.

Revenues from lottery sales are transferred from the Oregon State Lottery Commission to the Administrative Services Economic Development Fund. Lottery proceeds are then **allocated** to various agencies to finance specific projects. For example: <spm lottery-alloc>

> **SECTION __. There is allocated for the biennium beginning July 1, (year), from the Administrative Services Economic Development Fund, to the _____, the amount of $_____ for _____.**

Note that for purposes of the title, the allocation provision is "creating new provisions."

4. FUNDS AND ACCOUNTS.

ORS 291.001 provides:

> **291.001** (1) As used in the statute laws of this state, unless the context or specially applicable definition requires otherwise, the words "subaccounts," "accounts" or "funds" are used interchangeably, where such use is consistent with state accounting principles and is accepted for use by the State Treasurer.
>
> (2) Unless the context or a specific provision of law provides otherwise, when a law of this state requires that a payment or transfer of moneys be made by warrant, check or electronic funds transfer the payment or transfer may be made by warrant, check, electronic funds transfer or an accounting entry in the appropriate records of any affected state agency. The Oregon Department of Administrative Services shall determine which method of payment or transfer is most appropriate, taking into consideration the established state banking, funds transfer and accounting practices at the time of the payment or transfer.
>
> (3) The State Treasurer, in consultation with the Oregon Department of Administrative Services, may establish or designate, whenever necessary or convenient to the carrying out or administration of the accounting, budget preparation, cash management, financial management, financial reporting or similar laws of this state, subaccounts, accounts and funds in addition to or within the subaccounts, accounts and funds created by the Oregon Constitution and statutes. Subaccounts, accounts and funds established or designated under this subsection shall be administered as prescribed by written directive or policy issued or approved by the State Treasurer. The authority granted by this subsection is in addition to, and not in limitation of, the authority granted by ORS 293.445 and 293.447.

The result of this statute is that drafters usually do not need to worry whether something is called a "fund" or an "account" or whether moneys are drawn from it by check or by warrant. While the difference between a fund and an account may be important for accounting purposes, it is no longer important for drafting purposes. [2]

Currently, the moneys in the General Fund that are appropriated or dedicated for specific purposes are carried in separate **accounts** in the General Fund. Not all the accounts in the General Fund are designated as such; some are incorrectly designated as "funds." Although there are many statutory examples of specially dedicated accounts established in

[2] Generally, moneys are drawn from a fund through a warrant process. Moneys in an account may be drawn through a check or a warrant. All funds are subject to the control accounting process at the Oregon Department of Administrative Services.

the General Fund, it is not clear that establishing such accounts in the General Fund accomplishes anything anymore. As of October 2000, the State Treasurer would prefer that moneys appropriated or dedicated for specific purposes be carried in funds separate and distinct from the General Fund. Thus when a drafter is creating a new "pot of money" and dedicating it to a specific purpose or continuously appropriating it to a specific agency for a specific purpose, the following language should be used:

SECTION 2. The _____ Fund is established separate and distinct from the General Fund.[3]

The bill should also specify the sources and uses of the moneys in the fund.

In addition to the General Fund, there are many other separate funds maintained in the State Treasury. Many of these are trust funds. ORS 291.002 defines a trust fund as a "fund in the State Treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by gift, grant, contribution, devise or bequest that limits its use to designated objects or purposes."

Many of these trust funds are moneys donated to the state. An example of this type of fund was the State Flag Donation Fund, which was established for the purposes of acquiring and sending state flags to units of the Armed Forces of the United States. Other trust funds include the Public Employees Retirement Fund, the State Accident Insurance Fund and the State Highway Fund.

Other funds are established by provisions of the Oregon Constitution. These include the Common School Fund and various bond funds, including funds for the proceeds from the sale of the bonds and sinking funds to redeem the outstanding bonds and interest coupons. In addition, some funds, such as the State School Fund, are established as separate funds by statute. Still other funds are established as a result of federal requirements. For example, moneys received by the Employment Department for the purpose of providing unemployment benefits are held in a separate fund.

a. "Self-Sustaining" Activities; "Earmarked" or "Dedicated" Funds and Accounts.

In a great number of instances, the financing of governmental activity is supplied by the direct recipients or beneficiaries of such activities. The revenue from each such activity is "earmarked" or "dedicated" solely for that particular activity. A fund or account is established by statute, and the money is **continuously appropriated** from the specific fund or account, again by statute, for a specific purpose. The balance in these funds and accounts has in recent years been well in excess of $100 million.

One example of a self-sustaining account is the State Capitol Operating Account, which is under the control of the Legislative Administration Committee. All moneys received by the committee for the rental of quarters in the State Capitol are to be credited to the State Capitol Operating Account. ORS 276.003 provides that moneys credited to the account are continuously appropriated to the committee to pay the expenses of operating and maintaining, protecting and insuring the Capitol.

[3] For language for a fund that is to retain its interest, see "f. Interest to Fund." in this section.

The receipts of most occupational and professional licensing boards from fees for licenses and other activities are used to pay the expenses of licensing and regulating the occupation or profession. This used to be accomplished by depositing the receipts to the credit of a specified account within the General Fund and continuously appropriating all the moneys deposited in that account for the purpose of paying the expenses arising out of the activity. Examples are ORS 342.430 and 677.290.

As of October 2000, the State Treasurer and the Legislative Fiscal Office would prefer that for these purposes, newly created funds be established separate and distinct from the General Fund. Unless the requester wants interest earned by the fund to be deposited to the fund, the draft should **remain silent** on the disposition of interest. This will mean, in accordance with ORS 293.140, that interest earned by the fund will be paid to the General Fund.

Since self-sustaining functions initially have to operate for a brief period before any revenue comes in, it is usual to give the operating agency a start-up loan. For example:

> **SECTION 9. (1) There is appropriated to the State Board of _____, for the biennium beginning July 1, (year), out of the General Fund, the amount of $4,500 for the purpose of carrying out the provisions of sections ___ to ___ of this (year) Act.**
>
> **(2) When the board determines that moneys in sufficient amount are available in the State Board of _____ Fund created by section ___ of this (year) Act, but in no event later than June 30, (year+2), the board shall reimburse the General Fund without interest, in an amount equal to the amount from the General Fund appropriated and expended as provided in subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered as a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific biennial appropriations or amounts authorized to be expended from continuously appropriated moneys for any biennial period.**

ORS 291.272 to 291.278 provide for the allocation of governmental service expenses among all state agencies. This system replaced the "tithing" system under which certain state agencies paid 10 percent of their revenues to the General Fund. As in the case of the older tithing system, ORS 291.272 to 291.278 recognize that many governmental costs are attributable to each state agency, regardless of the manner in which the agency is financed.

The State Treasurer maintains approximately 200 so-called unreceipted or checking accounts in the State Treasury. These accounts are maintained with the various agencies, and records of the accounts are not maintained by the Oregon Department of Administrative Services. As in the case of trust funds, the unreceipted or checking accounts have been established for a variety of reasons. Many are revolving funds, such as the Public Employees Retirement Fund. In this instance, the Public Employees Retirement System submits a claim to the Oregon Department of Administrative Services for the total monthly retirement benefits. The Oregon Department of Administrative Services in turn issues one warrant to PERS. The warrant is then deposited into a checking account, and PERS then issues individual checks to retired employees. The same procedure is used for unemployment benefits, welfare benefits and numerous other activities where the volume and the nature of the disbursements make it more economical for the agency to issue checks than for the Oregon Department of Administrative Services to issue individual warrants. In addition, many agencies initially deposit their revenue collections into one of these

unreceipted or checking accounts. After issuing any refund checks that may be payable, the agency then requests the State Treasurer to transfer the balance from its unreceipted or checking account to an account within the General Fund or to one of the separate funds. This transfer is then recorded by the Oregon Department of Administrative Services as a deposit to the individual agency's account within the General Fund or to a separate fund. The drafter should consider whether the draft needs to contain special provisions authorizing or modifying these types of transactions.

b. Continuing Appropriation of Earmarked or Dedicated Funds.

The following is a sample provision making a continuing appropriation from a newly created earmarked or dedicated fund:

> **SECTION ___. Not later than the 10th day of each month, the State Board of _____ shall pay into the State Treasury all moneys received by the board during the preceding calendar month. The moneys shall be deposited in the State Board of _____ Fund. The moneys in the State Board of _____ Fund are continuously appropriated to the board to pay its expenses in administering and enforcing sections ___ to ___ of this (year) Act.**

c. One General Account for State Agency.

Some state agencies that administer several laws involving different activities have a single account into which all moneys received are deposited. In other words, even though the receipts from a particular self-sustaining activity are continuously appropriated for that activity, the moneys from many of such activities are deposited in the single account. The agency keeps internal accounting records to determine the receipts and expenditures for its various activities.

A drafter should **not** create a new account if the state agency that is to administer an activity already has one general account into which all its receipts are deposited. ORS 423.097 is one example of a section creating a general account for a state agency:

> 423.097. (1) The Department of Corrections Account is established in the General Fund of the State Treasury. Except for moneys otherwise designated by statute, all fees, assessments, proceeds from the issuance of certificates of participation and other moneys received by the Department of Corrections shall be paid into the State Treasury and credited to the account. All moneys in the account are continuously appropriated to the department for purposes authorized by law.
>
> (2) The department shall keep a record of all moneys deposited in the account. The record shall indicate by separate cumulative accounts the sources from which the moneys are derived and the individual activity or program against which each withdrawal is charged.
>
> (3) The department may accept gifts, grants and donations from any source to carry out the duties imposed upon the department.

If a drafter is asked to prepare a bill draft that creates a new source of moneys for an agency that already has a single account, the following language could be used to deal with receipts from the new source and to provide for the deposit of the moneys into the agency's general account:

> **SECTION ___. All moneys received by the _____ Department under sections ___ to ___ of this (year) Act shall be paid into the State Treasury and deposited to the credit of the Department of _____ Account. Such moneys shall be used by the Department of _____ for the purposes of sections ___ to ___ of this (year) Act.**

The section in the preceding example does not appropriate the moneys to the department. The appropriation already has been accomplished by the section that establishes the account. If the section that establishes the account does not continuously appropriate the moneys in the account, the appropriation must be done in a specific section. For example, if ORS 423.097, above, did not continuously appropriate the moneys in the Department of Corrections Account, the drafter could include a section like this:

SECTION ___. All moneys received by the Department of Corrections under section ___ of this (year) Act shall be paid into the State Treasury and deposited in the Department of Corrections Account. Such moneys are continuously appropriated to the department for the purposes of sections ___ to ___ of this (year) Act.

In creating a general account for a state agency to replace many separate accounts, it may be helpful to review chapter 414, Oregon Laws 1987.

d. Petty Cash Fund.

Many state agencies have statutes that establish petty cash funds. A general procedure for establishing a petty cash fund is provided by ORS 293.180. This procedure is satisfactory in most cases and a special statute is probably unnecessary. If a special statute is needed, see ORS 561.155 and 677.305 for examples.

e. Revolving Fund.

The establishment of a revolving fund for a state agency may be requested. Generally, a revolving fund statute permits a state agency to deposit designated moneys with the State Treasurer and to write checks against the revolving fund. The revolving fund is periodically reimbursed by drawing warrants against the appropriate funds or accounts to cover the checks issued. The following is typical:

SECTION ___. (1) When requested in writing by the Director of the Department of _____, the Oregon Department of Administrative Services shall draw a warrant on the Department of _____ Account in favor of the Department of _____ for use as a revolving fund. Warrants drawn to establish or increase the revolving fund, rather than to reimburse it, may not exceed the aggregate sum of $_____. The revolving fund shall be held in a special account against which the Department of _____ may draw checks.

(2) The Department of _____ may use the revolving fund for the purposes specified in section __ of this (year) Act.

(3) All claims for reimbursement of advances paid from the revolving fund are subject to approval by the Director of the Department of _____ and by the Oregon Department of Administrative Services. When such claims have been approved, a warrant covering them shall be drawn in favor of the Department of _____, charged against the appropriate funds and accounts and used to reimburse the revolving fund.

For another example, see ORS 1.007, which establishes a revolving fund for the Judicial Department.

ORS 279A.290 provides for Miscellaneous Receipts accounts for state agencies. These accounts can be used as revolving funds when one state agency performs services for another.

f. Interest to Fund.

At the request of the State Treasurer, when establishing a fund that is to retain its interest, please use the following language: <spm interest-to-fund>

> **SECTION 1. The (name) Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the (name) Fund shall be credited to the fund.**

The standard drafting approach is to remain silent on the disposition of interest in a fund. Silence means the interest will be paid to the General Fund.

Do not put the provision about interest in a section separate and distinct from the section establishing the fund. The State Treasurer needs to find the interest provision and is more likely to do so if it is with the provision establishing the fund.

g. Investment of Moneys in a Fund Separate and Distinct From the General Fund.

ORS 293.723 addresses investment of moneys in various funds and accounts. As described earlier in this chapter, if a bill draft is silent on the disposition of interest earned by a fund, the interest will be paid to the General Fund in accordance with ORS 293.140. If interest earned by the fund is instead to be credited to the fund, the section creating the fund should specifically state that "interest earned by the fund shall be credited to the fund." See sections 4a. and 4f. of this chapter.

In addition to decisions about the disposition of interest earned by a fund, the legislature may also specify how moneys in the fund are to be invested by the Oregon Investment Council and the State Treasurer. ORS 293.701 to 293.857 generally govern the investment of state funds. Under those laws, state funds may be invested separately (discretely) or as part of a pool. Funds invested as part of a pool are generally invested in the Oregon Short Term Fund, which is a lower risk investment vehicle. ORS 293.723 describes how the legislature should provide guidance to the State Treasurer regarding how moneys in a particular fund should be invested.

Under ORS 293.723, moneys in a fund separate and distinct from the General Fund must be invested as part of pooled moneys unless the law specifically states that moneys in the fund may be "invested." Language that requires interest earned by the fund to be retained by the fund is not enough to allow moneys in the fund to be discretely invested.

Put another way, if you want to allow the State Treasurer to discretely invest moneys in a fund, and therefore assume higher investment risk, the bill needs to say that the "moneys in the fund may be invested" or "may be invested as provided in ORS 293.701 to 293.857." Some form of the word "invest" must be used. Do not use this "invest" language unless specifically requested to do so.

If you want to require the State Treasurer to invest moneys in a fund in the pooled Oregon Short Term Fund, do not include language referring to "investment" of moneys in the fund. This is the standard default position.

To summarize:

(1) The standard drafting approach is to remain silent on the disposition of interest in a fund. Silence means the interest will be paid to the General Fund. (See section 4a.)
(2) If you want the fund to retain the interest, include language stating that interest earned by the fund shall be credited to the fund. (See section 4f.)
(3) If you want to allow discrete (more risky) investment of moneys in a fund, use the "invest' language described in this section. This language should be used only in response to a specific request. Do not use the "invest" language as a standard approach.

h. Trust Fund or Account.

A fund (or account) should not be called a trust fund (or account) unless it meets the definition of 'trust fund' in ORS 291.002.

i. Allotment System.

The control procedures maintained by the Oregon Department of Administrative Services include the allotment system, which is prescribed by ORS 291.232 to 291.260. It was established (1) to ensure that the various state agencies operate their programs within legislatively established limitations or within the amounts appropriated, and (2) to avoid excessive expenditures early in the biennium that would deplete the appropriations. It also provides the method by which the Governor is able to reduce state agency expenditures in order to avoid a deficit.

At the beginning of each biennial period, each state agency files with the Oregon Department of Administrative Services an expenditure plan showing the amount of limitation or appropriations, or both, that it plans to spend during each three-month period of the biennium. Budget analysts review each agency's expenditure plan and then notify the agency whether the plan is approved. The agency in turn submits an allotment request for the first three-month period of the biennium that, when approved by the Oregon Department of Administrative Services, is allotted to the appropriation or limitation established by statute. The amount of the allotment then becomes the maximum amount that the agency can expend during the first three-month period. This procedure is then repeated for each three-month period of the biennium. If a requester asks for an exception to the allotment system, the drafter may be well advised to consult with senior staff members.

There is some difference of opinion as to the types of appropriations to which the allotment system applies. See 42 Op. Att'y Gen. 332 (1982). Budget bills (for odd-year sessions, House bills numbered in the 5000s and Senate bills numbered in the 5500s) may make specific reference to the allotment system in a separate section that reads: "Notwithstanding any other law, sections ___ to ___ of this (year) Act are subject to Oregon Department of Administrative Services rules related to allotting, controlling and encumbering funds."

j. Bonds. (See chapter 21 of this manual for a description of bonding issues.)

k. Certificates of Participation. (Also see chapter 21 of this manual related to bonding.)

A newer method of financing construction is through certificates of participation. See State ex rel Kane v. Goldschmidt, 308 Or. 573 (1989). If an agency has authority to enter into lease purchase agreements, bonding attorneys generally opine that the agency may issue certificates of participation to finance the lease purchase. See ORS 271.390 and 283.085 to 283.092. Under ORS 286A.035, the Legislative Assembly sets biennial limits on certificates of participation that may be incurred by state agencies. See, e.g., chapter 903, Oregon Laws 2009.

5. "DIS"APPROPRIATIONS.

When it is necessary to reduce appropriations to avoid a deficiency, either generally or specifically, the format that has been used may be found in chapter 32, Oregon Laws 1982, and chapter 95, Oregon Laws 2010. Another type of disappropriation may be found in chapter 1, Oregon Laws 1982 (second special session). In 42 Op. Att'y Gen. 332 (1982), the Attorney General has ruled that the allotment system can be used to avoid a deficiency, which opens the possibility that no legislation is required. See ORS 291.261.

6. FEES.

Fees often are established by statute, either as a fixed figure or as "not to exceed" a specified figure. Occasionally, the agency is given discretion to set fees, usually with the limitation that the fees not exceed the cost of providing the service or administering the program for which the fees are charged. Note that ORS 291.050 to 291.060 provide that some new agency fees and increases in fees are automatically rescinded unless approved by the Legislative Assembly.

7. LOCAL MANDATES.

Article XI, section 15, Oregon Constitution, generally requires the Legislative Assembly to appropriate and allocate moneys to a local government when the Legislative Assembly enacts a law that requires the local government to establish a new program or increase the level of services under an existing program.

The moneys allocated to a local government under this constitutional provision must be at least 95 percent of the usual and reasonable costs incurred by the local government in operating the program or an amount that does not require the local government to spend more than one-hundredth of one percent of the local government's budget for the program.

For the purposes of the local mandates provision, a "program" is any program under which a local government must provide specified services to persons, government agencies or the public generally. A "local government" includes all units of local government except school districts.

Unlike other constitutional provisions relating to legislation, such as Article IV, section 25 ("[t]hree-fifths of all members elected to each house shall be needed to pass bills for raising revenue"), failure by the Legislative Assembly to comply with Article XI, section 15, does not, with one exception, result in an invalid law, but only in a law that local governments are not required to obey.

The one instance in which noncompliance with Article XI, section 15, prevents the Legislative Assembly from validly enacting a law is described in Article XI, section 15 (6). That subsection requires approval by three-fifths of the membership of each house to enact a law that has an anticipated effect of reducing the amount of state revenues derived from a specific state tax and distributed to local governments as an aggregate during a specified distribution period.

In lieu of appropriating and allocating moneys to a local government to pay the costs of a required state program, the Legislative Assembly may identify and direct the imposition of a fee or charge to be used by the local government to recover the actual costs of the program.

Article XI, section 15, also describes a variety of laws that require local governments to establish programs but to which the requirement for state funding does not apply. Perhaps the most important of these exceptions to the state funding requirement is any law approved by three-fifths of the members of each house of the Legislative Assembly.

A basic obligation of a drafter who prepares a bill that may reduce the amount of state revenues derived from a specific state tax that are distributed to local governments is to notify the requester that the bill may require passage by three-fifths of the members of each house of the Legislative Assembly. Unlike a bill for raising revenue, the requirement for a "supermajority" is not required to appear in the title of the bill, but the drafter may choose to include it. To avoid unpleasant surprise, embarrassment or enactment of a bill of doubtful constitutionality, a requester must be made aware by the drafter of the possibility of a requirement for a supermajority.

Similarly, when a drafter prepares any bill that imposes a requirement for a new program or an increased level of services for an existing program and the bill is not one of the class of bills excepted from the requirements of Article XI, section 15, the drafter should so inform the requester. If the requester nonetheless decides to introduce the bill and urge its passage, the drafter can suggest the following five methods of complying with Article XI, section 15:

(1) Appropriate money (in the requested bill or an appropriation bill) to the local government to pay the usual and reasonable costs of the new program or the increased level of services under an existing program.

(2) Identify and direct the imposition of a fee or charge to be used by the local government to recover the actual costs of the new program or increased level of services.

(3) Obtain approval by three-fifths of the members of each house of the Legislative Assembly.

(4) Obtain approval by a simple majority of the members of the Legislative Assembly with no appropriation of moneys or identification of a charge or fee and allow local governments to comply with the law at their discretion.

(5) Make the program or service levels described in the bill optional and not mandatory.

8. CONTINUING RESOLUTION.

A new biennium begins on July 1 of each odd-numbered year. Generally, agency authority to spend money ends at the end of a biennium. If the Legislative Assembly has not enacted a budget for an agency by the beginning of the biennium, the agency usually has no authority to spend money. When the legislature knows that it will not complete budget work by July 1, it often enacts a measure (called, in the Capitol vernacular, a "continuing resolution") to authorize spending until budgets are adopted. The "continuing resolution" is neither continuing nor a resolution. It is a bill that usually allows any agency for which a budget has not been adopted to spend an amount of money based on the amount authorized for the last quarter of the prior biennium. The bill appropriates the money necessary for those expenditures and subjects actual spending levels and final reconciliation to rules of the Oregon Department of Administrative Services. Usually, the substantive sections of the bill are repealed at the end of July. The bill contains an emergency clause, effective July 1.

If it is necessary to extend the "continuing resolution," a bill amending the section of the session law that repeals the substantive parts of the bill will accomplish the extension. (See chapter 626, Oregon Laws 2003.)

The continuing resolution for 2003 (chapter 514, Oregon Laws 2003) has been turned into boilerplate and may be used as a model (<boiler nobudget>). Like all boilerplate, it should be read carefully to be sure it fits the current circumstances.

9. DUTIES OF STATE TREASURER.

The State Treasurer sent this message (edited for clarity) in March 2004 and asked Legislative Counsel to keep this distinction in mind:

> Because Treasury is simply acting as the bank for state agencies, any language assigning an administrative duty to the Treasurer, like transferring funds once certain conditions are met, is almost always inappropriate. Duties should instead be assigned to the subject agency. This is probably the most common language tweak we have to make each session.

The example given was: "The balance of moneys received shall be transferred by the State Treasurer to the account of the … (agency)." The State Treasurer would prefer language that requires the agency that receives the money to do the transfer.

10. EMERGENCY BOARD.

Article III, section 3, Oregon Constitution, authorizes the Legislative Assembly to establish (by law) a joint committee to function during the interim and to exercise specific, enumerated powers dealing with budgetary matters. ORS 291.322 to 291.334 establish the Emergency Board and give it the powers authorized by Article III, section 3. Note that if a committee like the Emergency Board had not been specifically authorized by the Constitution, the powers given it would likely violate section 1 of Article III. See 25 Op. Att'y Gen. 139 (1951). The Emergency Board is an administrative body, not a legislative body. It allocates moneys appropriated by the Legislative Assembly and makes other budgetary decisions that would, absent the constitutional authority, be carried out by the executive branch (or by the Legislative Assembly as a whole). 37 Op. Att'y Gen. 130 (1974).

Oregon courts have said that the Emergency Board may not be given powers other than those specified in the Constitution.[4] In Gilliam County v. DEQ, 114 Or. App. 369 (1992), the court declared former ORS 459.298 unconstitutional. The statute provided that rules of the Environmental Quality Commission could not become effective until the Emergency Board (during the interim) or the Ways and Means Committee (during the session) had approved the rules. The court held that the provision amounted to a legislative veto of the rules and that such a veto is not among the powers authorized by Article III, section 3, so cannot be statutorily granted to the Emergency Board. (The court also held that the power could not be given to the Ways and Means Committee because the committee is a subset of the Legislative Assembly and the "veto" would be a legislative act – one that only the Legislative Assembly as a whole may exercise.) Note that ORS 291.375 (2) is unconstitutional under the reasoning of the Gilliam County case.

In Planned Parenthood Association v. Department of Human Resources, 297 Or. 562 (1984), the court held that the Emergency Board does not have (and cannot be granted) supervisory power over decisions the Department of Human Resources is statutorily authorized to make. "Neither the constitution nor the statute conferring the Emergency Board's powers ascribe to it a legislative function." Planned Parenthood at 569.

[4] Note that many Attorney General Opinions about the Emergency Board were issued prior to Gilliam County or Planned Parenthood. Be wary, therefore, of citing pre-1984 Attorney General opinions for the proposition that the legislature may delegate to the Emergency Board authority that is not specifically mentioned in the Constitution.

CHAPTER TEN

SPECIAL CLAUSES

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1. CLAUSES RELATING TO BILL'S APPLICATION (SAVING CLAUSES).

Many bills raise issues relating to the application of the bill. These issues may involve deciding whom the bill applies to, the circumstances the bill applies to, and the time period the bill applies to. These issues are frequently considered in court cases interpreting whether or not a bill was intended to have "retroactive" effect. "Retroactivity" is really just another way of expressing the issue. (Does the bill apply to persons licensed before the effective date of the bill? Does the bill apply to conduct that occurs before the effective date of the bill?) The drafter must be aware of the issues of application raised by the draft and deal with those issues by an appropriate clause. The alternative is confusion about the draft's application and the very real possibility of litigation that would not otherwise be necessary. Justice Linde made this point very succinctly in his concurring opinion in Whipple v. Howser, 291 Or. 475, 488 (1981):

> The question of the so-called "retroactive" or "retrospective" effect of a new law is not, or should not be, a question of adjudication. Its answer is not to be sought in judicial precedents. "Retroactivity" is in the first instance a question of legislative draftsmanship. When it becomes a problem, the problem is a failure of drafting, probably reflecting in turn a failure to give adequate attention to the policy choices involved.

The drafter must consider existing conditions in drafting a bill. If a request is based on a situation of a named person, or a case that is currently in litigation, or any other set of specific circumstances, the drafter needs to ask the requester if the bill is intended to cover the person, litigation or other specific circumstances. If the requester wants to affect existing conditions, the failure of the drafter to include an appropriate clause designed to ensure application to those existing conditions may result in a bill that does not accomplish the requester's goals.

Even if the request is not based on a set of specific circumstances, the decision on a bill's application is almost always a policy decision that must be made by the requester. The drafter can alert the requester to the issue by including a clause in the draft that reflects the "normal" application of the bill (prospective application only for all persons and events). Mentioning the clause in a cover letter or memorandum should eliminate any subsequent question about the requester's intent with respect to the bill's application.

Clauses designed to deal with application of the bill have traditionally been referred to as "saving clauses." This terminology arose from the frequent use of these clauses to "save" rights and obligations that existed before the bill's effective date. As can be seen from the many examples given in this chapter, the term is somewhat misleading since clauses relating to the application of a bill can either "save" or extinguish existing rights, subject only to constitutional limitations on the legislature's power to retroactively change the rules (e.g., prohibitions on ex post facto laws and laws impairing the obligations of contracts).

a. Rules of Construction in Absence of Clause.

Chapter 20 of this manual cites several cases establishing rules of construction that are used by the courts in determining whether or not the Legislative Assembly intended that a particular bill be applied retroactively. In each of these cases, the law in question did not contain language indicating the intent of the Legislative Assembly. The general rule found in these cases is that a bill will usually only be applied prospectively, but there are enough qualifications to this rule that it would be unwise for the drafter to place much reliance on the general rule. For instance, the Oregon Court of Appeals has found that even the use of the past tense by a drafter may indicate legislative intent that a law be applied retroactively. State ex rel. Dwight v. Justice, 16 Or. App. 336 (1974). In addition, several cases have allowed retroactive application for "procedural" laws. See, e.g., Fish and Wildlife Dept. v. Land and Conservation Development Commission, 288 Or. 203 (1979).

As already noted, there are some constitutional provisions that automatically limit the application of a new law. For example, existing insurance policies may be immune from the application of a new law by reason of the Contract Clauses of the Oregon and U.S. Constitutions. The new law need not contain any provision to produce that result. However, there are two good reasons why a drafter should never rely on the Constitution to determine the application of a bill. First, failure to include an application clause may mean that the resulting law will generate extended litigation to determine the impact of the constitutional provision, litigation that could be avoided by the inclusion in the bill of a short clause on application. Second, including the clause will alert the requester to the limitations imposed by the Constitution on the retroactive effect of the bill.

In addition to the constitutional provisions, there are several statutes that generally regulate the application of certain new laws. Unlike the constitutional provisions, the statutory provisions eliminate the need for special clauses if the bill being drafted falls in the described categories. The statutory provisions include ORS 161.035 (amendment or repeal of criminal statute as affecting prosecution and punishment of persons who violated the law); ORS 182.080 (effect of repeal or amendment of statute authorizing state agency to collect, receive and expend moneys); ORS 174.070 (effect of repeal of validating or curative Act); ORS 174.080 (effect of repeal of repealing Act); and ORS 174.090 (effect of repeal of repealing constitutional provision).

These statutory saving clauses automatically apply to any bill that is drafted, unless the bill expressly provides otherwise. In addition, ORS 174.520 provides a saving clause for preexisting law repealed when *Oregon Revised Statutes* was enacted in 1953, in case any

provision of *Oregon Revised Statutes* derived from a preexisting statute is held unconstitutional. Another statute (ORS 174.530) saves the Acts from which ORS sections were derived for the purpose of applying rules of construction relating to repeal or amendment by implication or for the purpose of resolving any ambiguity.

With the exception of bills that will be covered by one of the statutory provisions listed above, the only safe course for the drafter is to address problems relating to a bill's application by including an appropriate clause in the draft.

b. General Form of Clause.

The Oregon Supreme Court has noted with disapproval the use of an application clause that tells the reader what the Act does not apply to without indicating what the Act does apply to. Whipple v. Howser, 291 Or. 475 (1981). For instance:

> **SECTION ___. Section ___ of this (year) Act does not apply to an action, suit or other proceeding commenced before the effective date of this (year) Act.**

This language tells the reader only what the new law does not apply to without giving any idea as to what other restrictions might apply to the application of the new law. For instance, does the law apply to an action commenced after the effective date of the Act, but based on conduct that occurred before the effective date of the Act? The better approach is to make a positive statement that limits the application of the bill. For instance: <spm savings>

> **SECTION ___. Section ___ of this (year) Act applies only to actions, suits or other proceedings commenced on or after the effective date of this (year) Act.**

Note that clauses relating to application of a bill are almost always included in a separate section. These clauses are usually temporary in nature and will not be codified in ORS.

Clauses relating to the application of a bill should not be prepared until the other sections of the bill have been drafted, including any repealer clause. The entire bill must be considered when drafting an adequate clause on the application of the bill's provisions.

The use of broad statements as to the effect of a law should almost always be avoided. For instance:

> **SECTION ___. Section ___ of this (year) Act does not affect any duty or right accruing, accrued or acquired, or liability incurred, before the effective date of this (year) Act.**

This type of clause is so general in nature that it is difficult to determine what it does. Litigation could easily result from efforts to determine what is (and what is not) a "duty or right accruing, accrued or acquired" before the effective date of the Act.

c. Repeals (Express and Implied).

It may be necessary to include a saving clause indicating the effect of the repeal of an Act. If the Act repealed is a "criminal statute," ORS 161.035 usually is adequate. If the Act repealed is not a "criminal statute" and a specific saving clause is needed, one of the following examples may help:

SECTION _____. Section ___ of this (year) Act does not relieve a person of any obligation with respect to a tax, fee, fine or other charge, interest, penalty, forfeiture or other liability, duty or obligation accruing under the law repealed by this (year) Act. After the operative date of the repeals made by this (year) Act, the Department of _____ may undertake the collection or enforcement of such tax, fee, fine, charge, interest, penalty, forfeiture or other liability, duty or obligation.

OR

SECTION _____. If section ___ of this (year) Act is repealed, unless otherwise specifically provided in the repealing Act, section ___ of this (year) Act remains in force for the assessment, imposition and collection of the tax and all interest, penalties or forfeitures that have accrued or may accrue in relation to the tax for the calendar year in which the tax is repealed.

OR

SECTION _____. The repeal of ORS _____ by section _____ of this (year) Act does not relieve a person of any obligation with respect to a contribution, tax, fine, interest, penalty or other liability, duty or obligation accruing under ORS _____ prior to the effective date of the repeal by section _____ of this (year) Act.

OR

SECTION _____. Notwithstanding the repeal of ORS _____ by section __ of this (year) Act, that statute remains in force for the purpose of collecting all withholding taxes and all interest, penalties or forfeitures that have accrued or may accrue in relation to the taxes in the period before such repeal.

If an Act is enacted that is inconsistent with a prior Act, the prior Act may be repealed impliedly to the extent of the inconsistency. If a bill is intended to be supplementary to an existing law, but the court might find that the existing law was repealed impliedly by the enactment of the bill, a specific clause in the bill stating its intent to save the existing law is necessary.

SECTION _____. Section ___ of this (year) Act is intended to be supplementary to, and is not intended to repeal, any law relating to the surface waters of this state.

OR

SECTION _____. Section ___ of this (year) Act is intended to be supplementary to any other law enacted before, on or after the effective date of this (year) Act providing for vocational education, and is intended to provide additional powers not in conflict with or exclusive of existing laws on the same subject.

OR

SECTION _____. The remedies provided in sections _____ to _____ of this (year) Act are cumulative, and no action taken by the Department of _____ constitutes an election by the state to pursue a remedy to the exclusion of any other remedy for which provision is made in this (year) Act or any other law.

OR

SECTION _____. The remedies provided in sections _____ to _____ of this (year) Act are in addition to all other remedies, civil or criminal, existing under the laws of this state.

d. Temporary Law.

A special clause is essential for the success of temporary Acts. Without a special clause, a person affected by the Act may choose to disobey the Act in the hope that the final judgment based upon the failure to comply can be postponed until the Act lapses. The following, based on 1 U.S.C. §109, indicates the type of provision that can be written:

SECTION _____. The expiration of section ___ of this (year) Act does not release or extinguish any penalty, forfeiture or liability incurred under section ___ of this (year) Act. Section ___ of this (year) Act remains in force for the purpose of maintaining an action or prosecution for the enforcement of such a penalty, forfeiture or liability.

For provisions that may be helpful when a sunsetted law is extended, see "EXTENDING DURATION OF SUNSETTED LEGISLATION," chapter 12.

e. Specific Types of Clauses by Subject Matter.

The following listing attempts to provide helpful samples based on the subject matter of the bill. These samples may be adapted to address application issues under most subject matter areas. In general, the samples should not be considered as a way to avoid drafting a specific clause that is keyed to the issues raised by a bill. The samples are only for the purpose of providing some language that may be cannibalized to fit a more specialized clause.

A. Actions and Proceedings; Changes in Procedures.

Changes to a statutory procedure almost always raise questions on application and retroactivity because the drafter must assume that proceedings under the preexisting law will be in progress at the time the bill becomes effective. The issue then becomes whether the new procedure applies only to proceedings commenced on or after the effective date of the Act, or if the procedure applies to pending proceedings as well. The same issues arise when a bill changes the nature of the conduct that will allow a person to pursue a claim, whether through judicial or administrative proceedings. Again, it is necessary to determine whether the change applies only to conduct that occurs on and after the effective date of the Act, or also applies to conduct that occurs before the effective date of the Act. The following examples may be helpful:

SECTION _____. Sections 1 to 29 of this (year) Act are first operative January 1, (year+1), and apply only to actions and proceedings that are commenced on or after that date. Actions and proceedings that are commenced before January 1, (year+1), shall continue to be governed by the law applicable to those actions and proceedings in effect immediately before that date.

OR

SECTION _____. The amendments to ORS _____ by section ___ of this (year) Act do not affect an act done or proceeding begun, or right accruing, accrued or acquired, or liability incurred, before the effective date of this (year) Act, under the law then in effect. A proceeding begun before the effective date of this (year) Act in accordance with the law then in effect may be completed after the effective date of this (year) Act as if this (year) Act had not been enacted.

OR

SECTION _____. Section ___ of this (year) Act applies only to conduct giving rise to a cause of action under section 1 of this (year) Act that occurs on or after the effective date of this (year) Act.

OR

SECTION _____. Section ___ of this (year) Act applies to all actions and proceedings, whether commenced before, on or after the effective date of this (year) Act.

OR

SECTION _____. Section ___ of this (year) Act applies both to petitions filed within the time allowed by ORS 116.253, and not finally adjudicated or decided before the effective date of this (year) Act, and to petitions filed on or after the effective date of this (year) Act.

A clause that preserves an existing cause of action, in an Act amending or repealing a statute that authorizes the cause of action, also may require that the cause of action preserved be sued upon within a specified period after the effective date of the amending or repealing Act (in effect, creating a "window of opportunity" for a party to bring an action). For example:

SECTION _____. An employees' trust created before the effective date of this (year) Act is not invalid as violating any rule of law against perpetuities or the suspension of the power of alienation of title to property, unless the trust is terminated by a decree of a court of competent jurisdiction in a suit begun within one year after the effective date of this (year) Act.

OR

SECTION _____. Unless an action to contest the validity of the consolidation is brought in the circuit court not later than the 60th day after the date on which the district boundary board declared the districts consolidated, it is presumed conclusively that all election procedure was correct and that the district was consolidated regularly.

Requests for changes to statutes of limitations or other statutory deadlines present particular problems. The following examples cover some of the possible alternatives:

SECTION _____. The amendments to ORS 12.110 by section 1 of this (year) Act apply only to causes of action arising on or after the effective date of this (year) Act.

OR

SECTION _____. The amendments to ORS 12.110 by section 1 of this (year) Act apply to all causes of action, whether arising before, on or after the effective date of this (year) Act, but do not operate to revive a cause of action barred by the operation of ORS 12.110 ((year-2) Edition) before the effective date of this (year) Act.

OR

SECTION _____. The amendments to ORS 12.110 by section 1 of this (year) Act apply to all causes of action, whether arising before, on or after the effective date of this (year) Act, and operate to revive a cause of action barred by the operation of ORS 12.110 (2001 Edition) before the effective date of this (year) Act if an action is commenced within the time allowed by ORS 12.110 as amended by section 1 of this (year) Act.

B. Contracts.

Constitutional limitations on impairing the obligations of contracts must be borne in mind when attempting to give retroactive effect to bills that impact contracts. However, as noted above, the inclusion of a clause that indicates that the law does not impact existing contracts is almost always a good idea. Examples of clauses that may be useful follow:

SECTION _____. Section ___ of this (year) Act do not apply to a sale, or to a contract to sell, made before the effective date of this (year) Act.

OR

SECTION _____. Section ___ of this (year) Act does not affect a contract made before the effective date of this (year) Act. However, section ___ of this (year) Act applies to a renewal or extension of an existing contract on or after the effective date of this (year) Act as well as to a new contract made on or after the effective date of this (year) Act.

OR

SECTION _____. Section ___ of this (year) Act does not confer or impair a right or defense created by or arising out of a contractor's bond executed before the effective date of this (year) Act.

OR

SECTION _____. ORS _____, as amended by section 2 of this (year) Act, does not affect a contract, sales agreement or security agreement made before the effective date of this (year) Act. However, ORS _____, as amended, applies to a renewal or extension of an existing contract, sales agreement or security agreement on or after the effective date of this (year) Act as well as to a new contract, sales agreement or security agreement made on or after the effective date of this (year) Act.

A requester may wish to declare in statute form what is believed to be an existing common law rule. If this is the case, constitutional provisions prohibiting the impairment of contracts would not apply. For example:

SECTION _____. (1) Section ___ of this (year) Act, being declaratory of existing law, applies to contracts of sale of real property executed before, on or after the effective date of this (year) Act.

(2) It is the intent of the Legislative Assembly that if section ___ of this (year) Act is held to be unconstitutional as applied to contracts of sale of real property executed before the effective date of this (year) Act, section ___ of this (year) Act nevertheless is effective with respect to contracts executed on or after the effective date of this (year) Act.

C. Licenses.

Changes in laws relating to licenses usually raise questions about the application of the new law to existing licenses. The following examples provide some ideas on dealing with these problems:

SECTION _____. Section ___ of this (year) Act does not apply to an individual who was practicing psychiatry lawfully in this state on the effective date of this (year) Act.

OR

SECTION _____. The board shall issue a license to practice massage to an applicant who does not have a diploma from a school of massage but who has been practicing massage in this state continuously for at least one year immediately before the effective date of this (year) Act, who can furnish satisfactory evidence of good moral character and ethical practice and who makes application for a license and pays the fee required by section _____ of this (year) Act not later than the 90th day after the effective date of this (year) Act.

OR

SECTION _____. An individual licensed under ORS chapter 603 as of the day immediately preceding the effective date of this (year) Act, who is subject to ORS chapter 603 on and after the effective date of this (year) Act, need not obtain a license under ORS 603.025, as amended by section ___ of this (year) Act, until the license issued to the individual before the effective date of this (year) Act under ORS chapter 603 has expired. The individual is considered to be licensed under and subject to ORS chapter 603 on and after the effective date of this (year) Act, according to the nature and character of the business conducted by the individual, until the expiration of the license.

OR

SECTION _____. A person licensed under ORS chapter 725 as of the day immediately preceding the effective date of this (year) Act is considered to be licensed under and subject to ORS chapter 725 during the period beginning on the effective date of this (year) Act and ending July 1, (year+1). A person not licensed under ORS chapter 725 but who holds a license under ORS chapter 727 as of the day immediately preceding the effective date of this (year) Act is considered to be licensed under and subject to ORS chapter 725 during the period beginning on the effective date of this (year) Act and ending July 1, (year+1). After the effective date of this (year) Act, only one license may be issued for each office, regardless of whether that office was licensed under both ORS chapters 725 and 727 and whether the two licenses were held by different individuals. In every case the board shall investigate the facts to determine if a person is entitled to a continuation of a license. Every license in effect on June 30, (year+1), shall be continued in force as long as the standards are maintained under ORS chapter 725.

OR

SECTION _____. (1) Section ___ of this (year) Act is not intended to apply retroactively, and nothing in section ___ of this (year) Act affects the validity or authorizes cancellation of a license issued before the effective date of this (year) Act to any practitioner of medicine and surgery or osteopathy and surgery, on account of anything that occurred before the effective date of this (year) Act. However, this section does not prevent the revocation of a license on any ground that was a cause for revocation before the effective date of this (year) Act.

(2) The repeal of ORS chapter 681 ((year-2) Edition) by section ___ of this (year) Act does not affect the validity of a license issued under that chapter before the effective date of this (year) Act. On and after the effective date of this (year) Act, licenses issued under that chapter are governed by section ___ of this (year) Act.

The following examples are useful for converting a licensing period from one period to another, e.g., from a calendar year to a fiscal year. Another example of an amendment to such a section, made several years later to extend its application, may be found in section 5, chapter 314, Oregon Laws 1965.

SECTION _____. Licenses issued by the board under ORS _____ that are effective on June 30, (year-1), expire on July 1, (year+1). The board shall credit on the fee for a license renewed under ORS _____ for the fiscal year beginning July 1, (year+1), the sum of $2.50, representing part of the fee for the license issued or renewed for the calendar year (year+1) under ORS _____ as that section read before its amendment by section _____ of this (year) Act.

OR

SECTION _____. Notwithstanding ORS ___ and ___, for those persons to whom a license was issued under ORS _____ prior to the effective date of this (year) Act, the expiration date of which is before June 30, _____, the State Department of _____ shall issue on that expiration date, upon application therefor by the licensee, a license that is valid until June 30, _____. The department shall charge for such a license a prorated portion of the annual license fee based upon the period of time from the date of license issuance until June 30, _____.

To provide that some section, such as a section increasing license fees, does not apply to a particular licensing period, the following may be useful:

SECTION _____. The amendments to ORS 633.700 by section _____ of this (year) Act do not apply to the license year ending December 31, (year+1).

D. Permits.

Changes in laws relating to permits raise the same problems as changes in laws relating to licenses. The following examples may help:

SECTION _____. Section ___ of this (year) Act does not affect any right to waters or to the use of any waters vested or inchoate before the effective date of this (year) Act.

OR

SECTION _____. Section ___ of this (year) Act controls applications for permits to appropriate water made to the Water Resources Department under ORS 537.130 before, and not yet approved on, the effective date of this (year) Act.

OR

SECTION _____. Any person or public agency claiming a right to appropriate ground water under section ___ of this (year) Act is entitled to receive from the Water Resources Department within three years after the effective date of this (year) Act a certificate of registration as evidence of a right to appropriate ground water under section ___ of this (year) Act. Failure of a person or public agency to request registration within such period creates a presumption that the person or public agency has abandoned the claim.

E. Taxation.

In amending personal and corporation income and excise tax laws, saving existing rights under former law may be desired. There are many forms that have been followed in writing such clauses. The notes following some of the sections compiled in ORS chapters 305 to 323 may suggest appropriate language. In the corporation tax laws, the term "taxable year" is used in place of "tax year." For provisions that preserve the obligation to pay taxes after the repeal or amendment of a tax law, see "Repeals (Express and Implied)" earlier in this chapter.

F. Boards, Commissions and Other State Agencies.

In connection with the transfer of functions from one agency to another, several saving clauses may be needed. These are discussed in Appendix A of this manual.

When terms of board members or other officers are reduced, an example of a savings clause is found in section 50, chapter 792, Oregon Laws 1973.

SECTION 50. Nothing in this (year) Act that reduces the term of office of a person to four years is intended to affect the term of any person appointed for a complete term prior to and holding office on the effective date of this (year) Act. However, any person appointed prior to the effective date of this (year) Act to fill a vacancy in office, the term of which is reduced by this (year) Act to four years, shall serve for a term not longer than four years.

When qualifications for board members are changed, the term of incumbents may be "saved" as follows:

SECTION _____. Nothing in the amendments to ORS _____ by section ___ of this (year) Act affects the term of office of any member of the _____ Board appointed prior to and serving on the effective date of this (year) Act. However, as vacancies occur, appointments shall be made in accordance with the qualifications specified in ORS _____, as amended by section _____ of this (year) Act.

2. CONSTRUCTION CLAUSES.

A provision that an Act receive a liberal interpretation to carry out the purpose expressed therein is found in some bills. The provision for liberal interpretation ordinarily is superfluous. To effectuate the intention of the Legislative Assembly and obtain the most beneficial operation is a familiar rule of construction. About the only place that such a clause is justified is in situations where the provision indicates that the law is to be interpreted in favor of one group and against another (e.g., in favor of employees and against employers). The following is an example of the more traditional clause:

SECTION _____. This (year) Act shall be liberally construed to accomplish its purpose so that all service voters may be afforded an opportunity to exercise fully the voting rights granted to them by this (year) Act.

If construction of a constitutional provision is in doubt, the drafter may wish to specify how a court test can be implemented. See ORS 250.044 for an example that provides for expedited Supreme Court review.

3. INTERPRETATION CLAUSES.

There are some recognized rules as well as general statutory provisions relating to interpretation of legislative Acts, words and phrases with which a drafter must become familiar. See chapter 20 of this manual. Too often these rules are needlessly repeated in the draft.

However, if the requester desires an interpretation different from that reached by the rules of construction, the draft should contain a section setting forth the desired interpretation.

Every Uniform Act contains an interpretation provision, somewhat as follows:

SECTION _____. This (year) Act shall be so interpreted as to effectuate its general purpose to make uniform the law of those states that enact it.

4. GENERAL REPEALS.

A draft should never contain a general repeal clause providing that "all laws and parts of laws in conflict with this (year) Act are repealed." Such a provision is useless because such laws and parts of laws are repealed by implication in any event. Moreover, the difficulty with a general repeal clause or repeals by implication is that of determining whether an irreconcilable conflict exists between a subsequent Act and a prior Act or part of the prior Act. A general repealing clause fails to disclose the legislative purpose as to an earlier Act and thereby adds to the burden of construction a question that properly should be settled by the Legislative Assembly. The drafter must determine whether a bill requires or makes desirable the repeal of an existing statute. That issue should not be left up to the courts, which can resolve the question only after expensive and time-consuming litigation. If the repeal of one or more existing sections is necessary or desirable, the draft should include a specific repeal provision that specifies the sections repealed. Only as a last resort should a drafter use the phrase "Notwithstanding any other provision of law," a phrase that impliedly amends or repeals any number of unspecified statutes. This phrase is an indication of inadequate research and lazy drafting.

To protect a specific existing law or all existing laws from possible implied repeal, a bill may state that no conflict is intended. An example of this type of provision is found earlier in this chapter under "Repeals (Express and Implied)".

Chapter 13 of this manual contains a discussion of specific repeals.

5. SEVERABILITY CLAUSES.

A severability clause provides in effect that if any part of a bill is held unconstitutional, the remainder shall not be affected. The inclusion of a severability clause in a bill is not needed; a severability provision is made applicable by ORS 174.040 to all Acts passed in Oregon. Further, the courts in Oregon generally have followed this principle. Standard Lumber Co. v. Pierce, 112 Or. 314 (1924); Wadsworth v. Brigham, 125 Or. 428 (1928); Gilbertson v. Culinary Alliance, 204 Or. 326 (1955); State v. Hunter, 208 Or. 282 (1956); Foltz v. State Farm Mutual Auto Insurance Co., 326 Or. 294 (1998); however, see 33 Op. Att'y Gen. 311 (1967).

On the other hand, it may be the legislative intent that an entire Act be declared invalid if any part of it is held unconstitutional. In such an instance, a nonseverability clause should be included. City University v. State, Educational Policy and Planning, 320 Or. 422 (1994).

The following are examples of the two types:

SECTION _____. It is the intent of the Legislative Assembly that each part of this (year) Act be considered as essentially and inseparably connected with and dependent upon every other part. The Legislative Assembly does not intend that any part of this (year) Act be the law if any other part is held unconstitutional.

OR

SECTION _____. If this (year) Act is declared unconstitutional, it is the intent of the Legislative Assembly that all sections amended or repealed by this (year) Act shall remain in effect the same as if this (year) Act had not been enacted.

6. UNIT AND SECTION CAPTIONS.

In the case of a very long bill, the use of unit and section captions makes the bill more understandable. Examples are chapters 33 and 615, Oregon Laws 1993. If unit and section captions are used, the drafter must be sure they accurately represent the substance of the units and sections of the bill. An amendment to a captioned bill may require amendment of the unit and section captions.

If unit and section captions are used, it is ESSENTIAL IN ALL CASES that a section substantially as follows be inserted near the end of the bill: <spm captions>

SECTION _____. The unit and section captions used in this (year) Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this (year) Act.

If only unit captions or only section captions are used, the commands <spm captions-unit> or <spm captions-sec> will insert the proper language.

A section like this is necessary because in its absence the captions become law and must be amended in future bills rather than being adjusted by ORS editors if the section is subsequently amended. See State ex rel. Penn v. Norblad, 323 Or. 464 (1996), in which the court relied on unit and section captions in discerning legislative intent because the section in the Act (section 357, chapter 836, Oregon Laws 1973) relating to those captions provided that they were used only for convenience in "*locating or explaining*" (court's emphasis) provisions of the Act.

ORS 174.540 provides that, as used in ORS, title heads, chapter heads, division heads, section and subsection heads or titles, and explanatory notes and cross-references, are not a part of the law. An exception occurs with the Oregon Rules of Civil Procedure in which the headings and captions become part of the law. Also, certain constitutional sections were adopted with captions, a fact noted in the source notes following such sections.

7. STATUTE OF LIMITATIONS.

If the requester wishes to create a new cause of action, the drafter must establish a statute of limitations. If the drafter fails to provide a statute of limitations, ORS 12.140 will probably provide a 10-year statute of limitations. ORS 30.275 (Oregon Tort Claims Act) provides a good example:

> (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury.

CHAPTER ELEVEN

PENALTIES AND SANCTIONS

1. WHEN PROHIBITION AND PENALTY ARE SEPARATED
2. WHEN PROHIBITION AND PENALTY ARE NOT SEPARATED
3. SEPARATE SUBSECTIONS
4. "NO PERSON SHALL"; UNNECESSARY WORDS
5. SPECIFICITY
6. DIFFERENT KINDS OF CRIMINAL PENALTIES
7. JURISDICTION OVER PARTICULAR OFFENSES
8. STATUTES OF GENERAL APPLICATION TO CRIMES AND CRIMINAL PROCEDURE
9. CRIMINAL SENTENCE REDUCTIONS REQUIRING SUPERMAJORITY
10. OTHER SANCTIONS

_____

The subject of penalties and sanctions is often underemphasized. A draft that simply makes a prohibited action punishable as a criminal offense and is done with the subject scarcely meets the problem. A penalty is intended to deter as well as punish. A criminal penalty for a minor offense that a harried district attorney does not have time to prosecute may not be a deterrent nor be particularly suited to the offense. A drafter can exercise great ingenuity in the area of penalties and sanctions. What discomfort inflicted by the law has the greatest potential of preventing violations? More often than not, a criminal penalty does not fit the situation. Often far greater deterrent effect can be achieved by a penalty that has a sure and certain financial impact on the violator.

1. WHEN PROHIBITION AND PENALTY ARE SEPARATED.

Except for criminal statutes of the type compiled in ORS chapters 161 to 169, the penalties for violation of provisions of an ORS chapter usually are collected in the ".990 to .999" sections of the chapter. Consequently, the penalties for violation of the Act should be collected in a single section to permit their compilation in the ".990 to .999" sections of the ORS chapter in which the remainder of the bill is compiled. This requires the separation of the penalty from the prohibition, as in this example:

SECTION 1. A person may not intentionally deface, alter or change a voter's precinct memorandum card other than in a manner authorized by section _____ of this (year) Act.

SECTION 2. Violation of section 1 of this (year) Act is a Class C misdemeanor.

2. WHEN PROHIBITION AND PENALTY ARE NOT SEPARATED.

If drafting a criminal statute of the type compiled in ORS chapters 161 to 169, the drafter should not split the prohibition from the penalty because both will be compiled as one section. For example:

SECTION _____. (1) A person commits the crime of _____ if the person initiates or circulates a report or warning of an impending bombing or other crime or catastrophe,

knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly or facility of public transport, or to cause public inconvenience or alarm.

(2) _____ is a Class A misdemeanor.

3. SEPARATE SUBSECTIONS.

If a bill contains different penalties, they should be stated in separate subsections of the penalty section.

It is not necessary to amend the ".990 to .999" penalty sections in the ORS chapter in which the sections are to be compiled merely to create a new penalty. If the penalty is stated in a separate section of the bill, the ORS editors may compile the penalty provision in the appropriate ORS ".990 to .999" penalty section as a new subsection.

4. "NO PERSON SHALL"; UNNECESSARY WORDS.

A discussion of the use of the phrase "no person shall" is found in chapter 4 of this manual. Drafters should use "a person may not . . ." instead.

In stating a penalty, the words "upon conviction" are unnecessary. In the 1948 revision of Title 18, U.S. Code, relating to crimes and criminal procedure, the revisers methodically deleted these words on the grounds that punishment can be imposed only after conviction whether or not the statute so states.

Under the Criminal Code, violations, misdemeanors and felonies are classified, with the penalty for each class specified. The penalty for a prohibited action should be identified by class. ORS 161.605, 161.615, 161.625, 161.635. This is preferable to formerly used language that provided that the prohibited act was "a misdemeanor punishable by up to one year in jail and a fine not to exceed $_____, or both." Classification tends to standardize penalties as well as to shorten drafts.

The phrase "in the discretion of the court" is unnecessary. Words giving a name to an offense (such as "is guilty of larceny") usually are unnecessary if the punishment is set forth, because what the crime is called should make no difference. The technique of the Criminal Code in this respect is different and if a name is to be given a crime, that name should follow the Criminal Code nomenclature.

The phrase "either directly or indirectly," or "either directly or by artifice, scheme, subterfuge, device or trick" is unnecessary. It scarcely could be argued that a prohibition lacking one of these phrases could be violated indirectly with impunity. As a general rule, the prohibition should be stated in a straightforward manner. If no qualifications are specified, as a rule none will be inferred.

5. SPECIFICITY.

A sweeping provision such as "violation of any provision of this (year) Act is a misdemeanor" must be avoided. The draft must enumerate the sections that are subject to the criminal penalty. The drafter should not provide a penalty for violation of sections that cannot, by their nature, be violated, such as definitions, statements of intent, administrative provisions (unless punishing administrators is intended), saving clauses and the like.

6. DIFFERENT KINDS OF CRIMINAL PENALTIES.

The choice of a penalty depends on the purpose to be accomplished by the prohibition and the seriousness of the offense; it is a choice that must be made by the requester of the bill. The three options are violations (punishable only by a fine, ORS 153.018), misdemeanors (punishable by fines and up to one year in jail, ORS 161.615 and 161.635) and felonies (punishable by fines and 5 to 20 years in jail, ORS 161.605 and 161.625).

A drafter may wish to suggest to the requester that penalties in statutes already existing can be made applicable to a new prohibition by adding the material to and making it a part of an existing ORS chapter or series of ORS sections. The new penalty will then be similar to existing penalties prescribed for offenses of similar nature. The following examples give some idea of the various types of penalties that can be used:

a. Misdemeanor.

One of the most common penalties is a misdemeanor:

SECTION _____. Violation of section _____ of this (year) Act is a Class A misdemeanor.

If conduct is declared to be an offense but no specific penalty or classification is stated, ORS 161.555 provides that the offense is considered a Class A misdemeanor. It is desirable to avoid specifying a different penalty for every crime if the schedule in ORS 161.505 to 161.685 can be made to fit.

b. Violation.

If a fine is to be the only penalty, the penalty section should use the classifications provided by ORS 153.018 for violations. An offense that is declared to be a "violation" without using a classification is a Class B violation. ORS 153.015. Drafters should indicate that the offense is a Class B violation and not rely on ORS 153.015 if the intent is to create a Class B violation.

c. Minimum Penalties.

Minimum periods of imprisonment for felonies provided by law prior to 1989 were abolished by ORS 137.120, which provides for an indeterminate sentence not to exceed the maximum term prescribed by law. In 1989, indeterminate sentencing for felonies was replaced by a system of sentencing guidelines that prescribes minimum periods of imprisonment based on the severity of the crime and the defendant's criminal history. Sentencing guidelines are amended through the administrative rulemaking process. The

legislature can direct the Oregon Criminal Justice Commission to amend the guidelines. See, for example, section 20, chapter 423, Oregon Laws 1995. In recent years, minimum periods of imprisonment have been established through the initiative process. ORS 137.700 et seq. Although some statutes still prescribe minimum fines and periods of imprisonment for misdemeanors, in recent years the Oregon Legislative Assembly has been inclined to prescribe only maximum fines and periods of imprisonment.

d. Cumulative Penalties for Continuing Violation.

If the failure to comply with statute can result in an ongoing violation, the drafter may want provide that each day of violation is a separate offense. For instance:

> **SECTION _____. Failure to comply with section _____ of this (year) Act is a Class A violation for each day a person fails to comply.**

e. Enhanced Penalty for Subsequent Offenses.

Creating an enhanced penalty for repeated violations is a complicated task, involving determinations as to when previous violations are considered to have occurred and whether the subsequent violation must take place within a specific period of time. For examples of statutes that have provided enhanced penalties for subsequent offenses, see ORS 137.712 and 161.610.

f. Criminal Forfeiture and Oregon Racketeer Influenced and Corrupt Organizations Act (ORICO).

When creating a new crime, drafters should consider whether to allow criminal forfeiture of instrumentalities and proceeds of the crime. ORS 131.550 to 131.600. This can be accomplished by adding the section creating the new crime to the list in ORS 131.602. The drafter should not simply indicate in the draft that instrumentalities and proceeds are subject to forfeiture.

A drafter may also want to consider whether violation of a new crime should give rise to remedies under ORICO. ORS 166.715 to 166.735. This can be accomplished by adding the section creating the new crime to the list in ORS 166.715.

7. JURISDICTION OVER PARTICULAR OFFENSES.

The circuit courts in Oregon are courts of general criminal jurisdiction. Although authorized to do so by Article VII (Original), section 12, Oregon Constitution, the Legislative Assembly has not given criminal jurisdiction to county courts. ORS 3.132 provides that circuit courts have concurrent jurisdiction with municipal courts over violations of the charter and ordinances of any city within the circuit court's judicial district.

Justice courts and municipal courts have jurisdiction over violations and misdemeanors. ORS 51.050 and 221.339.

8. STATUTES OF GENERAL APPLICATION TO CRIMES AND CRIMINAL PROCEDURE.

A drafter should become familiar with the content of ORS chapter 161 when drafting a statute relating to crimes and criminal procedure.

9. CRIMINAL SENTENCE REDUCTIONS REQUIRING A SUPERMAJORITY.

Article IV, section 33, of the Oregon Constitution, provides that a two-thirds vote of all the members elected to each house is required to pass a bill that reduces a criminal sentence approved by the people through the initiative or referendum process.

Because section 33 was enacted at the same time that the mandatory minimum sentences found in ORS 137.700 and 137.707 were enacted (Ballot Measure 11 (1994)), it is clear that the supermajority requirement was intended to apply to those sentences. What is less clear is to what other sentences it might apply. Muddying the water further is the fact that both ORS 137.700 and 137.707 have been legislatively amended to add new crimes to the lists that require mandatory minimum sentences. The legislatively added crimes found in ORS 137.700 and 137.707 do not require the supermajority for sentence reduction, because they were not approved by the people through the initiative or referendum process.

The following statutes were enacted through the initiative and referendum process. They contain criminal provisions that, if amended, may have the effect of reducing a criminal sentence. If a drafter is asked to amend one of the following statutes, the drafter must carefully analyze the effect of the amendments to determine if a reduction of a criminal sentence might result. If it would, the constitutional supermajority requirement is triggered and the title of the bill must reflect the requirement ("providing for criminal sentence reduction that requires approval by a two-thirds majority").

ORS 137.700 and 137.707 – Ballot Measure 11 in 1994. These sections establish mandatory minimum sentences for specified crimes. They require that defendants convicted of one of the crimes listed serve the full statutory minimum sentence with no reduction for good time, etc. Reducing the minimum sentences (except as noted later) or allowing a reduction in a sentence for good time, etc., would require a supermajority. ORS 137.700 (2)(a)(B) and (C), (b) and (c) and ORS 137.707 (4)(a)(B) and (C), (b) and (c) (citing 2009 Edition in both instances) were legislatively added; therefore, reductions in sentences prescribed by those provisions would not require a supermajority.

ORS 137.123 – Part of Ballot Measure 10 in 1986. This section deals with the imposition of concurrent and consecutive sentences. If a drafter is asked to amend subsection (2) or (5), the drafter must analyze the effect of the amendment. Subsection (3) was added by the legislature.

ORS 137.635 – Ballot Measure 4 in 1989. This section requires imposition of determinate sentences for specified felonies. It also requires the defendant to serve the entire determinate sentence without reduction for good time, etc. The statute does not set out specific lengths of sentences. It is possible that some amendments to this section would require a supermajority. Any amendment would need to be analyzed for its effect.

ORS 137.690 and 813.011 – Ballot Measure 73 in 2010. These sections create mandatory sentences for repeat offenders. Analysis is required, particularly regarding the interplay between ORS 813.010 (5) and 813.011.

ORS 161.067 – Also part of Ballot Measure 10 in 1986. The section deals with determining the number of separately punishable offenses. Amendments to this section would probably not require a supermajority.

ORS 163.105 – Amended by Ballot Measure 7 in 1984. The ballot measure amendment to this section created a mandatory death or life imprisonment sentence for aggravated murder. A reduction of the sentence would require a supermajority.

ORS 164.061, 475.907, 475.925 and 475.930 – Ballot Measure 57 in 2008. These sections establish mandatory minimum sentences for certain controlled substance and property offenses.

ORS 166.416, 166.418 and 166.438 – Ballot Measure 5 in 2000. This ballot measure created and amended criminal provisions related to the transfer of firearms. Analysis is required.

ORS 498.164 – Ballot Measure 18 in 1994. This section regulates the use of dogs or bait to hunt black bears or cougars.

ORS 680.990 (2) – The result of a 1978 initiative. This section raises the same issues as ORS 774.990. Analysis is required.

ORS 774.990 – Ballot Measure 3 in 1984. This section provides that violations relating to the Citizens' Utility Board are Class A misdemeanors. See ORS 774.120 (1) and (5) and 774.140. If a drafter is asked to amend the section to provide that violation is something less than a Class A misdemeanor or is asked to repeal the section, it may have the effect of reducing a sentence. Analysis is required.

10. OTHER SANCTIONS.

In addition to criminal penalties, other sanctions are:

a. Civil Action.

ORS 496.705 is an example of a statute giving the state a cause of action against an offender. A civil sanction giving a damaged person a cause for treble damages appears in ORS 105.810. Freund v. DeBuse, 264 Or. 447 (1973), discusses the civil consequences of violation of a statute.

b. Civil Penalty.

A civil penalty is one that may be imposed and collected by the enforcing agency without filing an action in court. ORS 441.705 to 441.745 provide sample language for authorizing imposition of civil penalties. If the drafter intends to create a civil penalty, the draft should refer to "civil penalties" **not** to "fines," "monetary penalties" and other variations. "Fine" should be used only when a sanction is to be imposed for the commission of a crime or violation.

ORS 183.745 establishes a standardized procedure for imposition of civil penalties. The procedure will automatically apply to any penalty that the drafter denominates a "civil penalty," unless the draft specifically indicates a contrary intent. Specific aspects of the procedure found in ORS 183.745 may be modified by an exception. See, e.g., ORS 441.712 ("Notwithstanding ORS 183.745 . . ."). ORS 205.125 and 205.126 provide standardized enforcement procedures for civil penalties.

To clarify that the procedure for imposition of civil penalties is to apply (and to alert the requester and agency of the provisions of ORS 183.745), the following standard phrase should be used: <spm civil-penalty>

SECTION __. Civil penalties under section __ of this (year) Act shall be imposed in the manner provided by ORS 183.745.

The language of the draft must not authorize imposition of civil penalties "for violation of any of the provisions of this (year) Act." The drafter should search the provisions of the bill to determine which sections or subsections should be subject to the civil penalty and specify those provisions in the section authorizing the civil penalty.

Significant policy issues that should be raised with the requester and, if appropriate, addressed in the draft, include:

1. The amount of the penalty to be imposed.

2. Whether the amount of the penalty is to be determined by the agency rather than by the legislation (i.e., should the draft authorize a range of penalties?).

3. What particular violations subject a person to the penalty (e.g., violations of the statutory provisions? violation of any rules adopted pursuant to rulemaking authorization?).

4. Whether the legislation should contain a provision allowing for remission or mitigation (see, e.g., ORS 441.720).

5. Disposition of amounts collected.

6. Whether the civil penalty is to be the exclusive remedy.

The following language addresses some of these issues and may be helpful:

SECTION _____. (1) In addition to any other liability or penalty provided by law, the Director of _____ may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a license issued under ORS _____.

(b) Violation of any rule or general order of the _____ Department that pertains to a facility.

(c) Violation of any final order of the director that pertains specifically to the facility owned or operated by the person incurring the penalty.

(d) Violation of ORS _____ or of rules required to be adopted under ORS _____.

(2) A civil penalty may not be imposed under this section for violations other than those involving _____ or a violation of ORS _____ or of the rules required to be adopted by ORS _____ unless a violation is found on two consecutive surveys of the facility. The director in every case shall prescribe a reasonable time for elimination of a violation:

(a) Not to exceed 30 days after first notice of a violation; or

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

SECTION _____. (1)(a) After public hearing, the Director of _____ by rule shall adopt a schedule establishing the civil penalty that may be imposed under section _____ of this (year) Act. However, the civil penalty may not exceed $500 for each violation.

(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for any violation involving _____ or a violation of _____ or rules required to be adopted under _____, a penalty may be imposed for each day the violation occurs in an amount not to exceed $500 per day.

(2) The penalties assessed under subsection (1) of this section shall not exceed $6,000 in the aggregate with respect to a single facility within any 90-day period.

SECTION _____. A civil penalty imposed under section _____ of this (year) Act may be remitted or reduced upon such terms and conditions as the Director of _____ considers proper and consistent with the public health and safety.

SECTION _____. In imposing a penalty pursuant to the schedule adopted pursuant to section _____ of this (year) Act, the Director of _____ shall consider the following factors:

(1) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(2) Any prior violations of statutes, rules or orders pertaining to facilities.

(3) The economic and financial conditions of the person incurring the penalty.

(4) The immediacy and extent to which the violation threatens the public health or safety.

SECTION _____. All penalties recovered under sections _____ to _____ of this (year) Act shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

c. Suspension or Revocation of License.

ORS chapters 670 to 704 contain examples of provisions for suspension or revocation of a license or permit to do business. ORS 497.415 contains provisions regarding revocation or denial of licenses.

d. Unlawful Practice Under ORS Chapter 659A.

If a bill draft addresses the relationship between an employer and an employee, the drafter should consider making the prohibited activity an unlawful employment practice under ORS chapter 659A. See, e.g., ORS 659A.303 (employer prohibited from using genetic information in hiring, etc.). Existing unlawful employment practices are codified at ORS 659A.029 to 659A.350.

If a bill draft prohibits discrimination in providing services based on classifications declared to be invalid by the draft, the drafter should consider making the prohibited activity an unlawful practice under ORS chapter 659A. See, e.g., ORS 659A.403 (unlawful discrimination in public accommodations).

A draft can make the prohibited activity an unlawful practice or unlawful employment practice by adding the section containing the prohibition to ORS chapter 659A and declaring the practice to be either an unlawful practice or unlawful employment practice. See ORS 659A.001 (11) and (12) (defining unlawful practice and unlawful employment practice).

If a drafter adds a new section to ORS chapter 659A, declares the prohibited practice to be either an unlawful practice or an unlawful employment practice, and does nothing else,

the sole remedy for an aggrieved person will be the administrative procedures provided in ORS 659A.800 to 659A.865. Almost all unlawful practices and unlawful employment practices are also subject to enforcement by a civil action under ORS 659A.885. If ORS 659A.885 is amended to provide a civil action, the drafter must determine whether the requester would prefer to have a civil action under ORS 659A.885 (2) (no punitive damages or jury trial; de novo review on appeal) or 659A.885 (3) (punitive damages, jury trial available; no de novo review on appeal).

e. Unlawful Trade Practice.

If a draft prohibits certain activities by persons engaged in commercial activities, the drafter should consider making violation of the prohibition an unlawful trade practice under ORS 646.605 to 646.652. The prohibited activity can be made an unlawful trade practice by amending ORS 646.608 to include a reference to the new section. Unlawful trade practices are subject to enforcement by the Attorney General and district attorneys (ORS 646.632) and by private civil action (ORS 646.638).

f. Bond Provision.

A surety bond in favor of the state may be used to provide protection of the public if the person putting up the security defaults. The bonds are appropriate for construction projects or other types of activity when default is based on a clear finding of fact. For example:

> **SECTION _____. (1) Every person proposing to construct a domestic sewerage system shall file with the agency a surety bond in an amount required by the agency, but not to exceed $25,000. The bond must be executed in favor of the State of Oregon and its form is subject to approval by the Attorney General.**
>
> **(2) The agency may permit the substitution of other security for the bond, in such form and amount as it considers satisfactory. The form of the other security is subject to approval by the Attorney General.**
>
> **(3) The bond or other security shall be forfeited in whole or in part to the State of Oregon by a failure to follow the plans and specifications approved by the agency in the construction of the domestic sewerage system or by a failure to have the system maintained and operated in accordance with the rules of the agency. The bond or other security shall be forfeited only to the extent necessary to obtain compliance with the approved plans and specifications or the rules of the agency. The agency may expend the amount forfeited to obtain compliance with the approved plans and specifications of its rules.**
>
> **(4) If a failure as described in subsection (3) of this section occurs and part of the bond or other security remains unforfeited, any person, including a public body, who has suffered loss or damage by reason of the failure has a right of action upon the bond or other security and may bring a suit or action in the name of the State of Oregon for the use and benefit of the person. This remedy is in addition to any other remedy that the person who suffered loss or damage may have against the person who failed to follow the approved plans and specifications of the rules of the agency.**
>
> **(5) If the ownership of the domestic sewerage system is acquired or its operation and maintenance assumed by a public body, the bond or other security is terminated as security for the purposes of this section. The agency shall return the bond or other security to the person who filed it.**

ORS 658.419 contains another example. Provisions that accomplish the same purpose as a statement under oath are contained in ORS 305.810, 305.815 and 305.990.

g. Adverse Presumption.

It usually is not clear whether an adverse presumption merely shifts the burden of going forward with the presentation of evidence. The following example illustrates this type of provision:

> **SECTION _____. The finding of fish, taken out of season, is prima facie evidence that the fish were taken by the person who has control over the place where the fish were found.**

Other examples are contained in ORS 273.241, 496.690 and 506.610.

h. Denial of Standing to Sue.

The requester may find it advantageous, in enforcing a regulatory law, to deny standing to sue to any person who does not comply with the requirements of the law. The following example is based on ORS 345.210:

> **SECTION _____. A career school may not bring or maintain an action in any court in this state for a cause arising out of its doing business as a career school in this state unless the career school alleges and proves that it held a valid license to operate as a career school in this state at the time the cause of action arose.**

CHAPTER TWELVE

NORMAL EFFECTIVE DATE; EMERGENCY CLAUSE; APPLICABLE DATES; EARLY AND DELAYED EFFECTIVE DATES; OPERATIVE DATES; LIMITED DURATION; REFERENDUM; SPECIAL ELECTIONS

1. NORMAL EFFECTIVE DATE.

The normal effective date for Acts of the Legislative Assembly is January 1 of the year after passage of the Act. ORS 171.022. If a bill is to take effect on any other date, there must be a special provision in the bill. The special provision could be an emergency clause, an early effective date (nonemergency), a delayed effective date or a section ordering a legislative referral of the Act to an election. Bills referred to the people by the people via statewide referendum petition also take effect on a date other than the normal effective date. That date is 30 days after the date the people approve the referendum.

2. EMERGENCY CLAUSE.

a. Generally.

Article IV, section 28, Oregon Constitution, provides that "[n]o Act shall take effect, until ninety days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law." The special clause "declaring an emergency" also must appear in the bill title.

This provision says that if an Act is to take effect **sooner** than the 91st day after the end of the session, an emergency must be declared in the Act. It does not require an emergency clause if an Act is to take effect **before** the normal effective date but **after** the 91st day after the end of the session.

An emergency clause applies to the **entire measure** and **must not** contain any other provision. If a bill is to take effect before the 91st day after the end of the session, it must have an emergency clause. Unless the emergency clause is vetoed, it has the effect of advancing the effective date of the Act, and it also prevents the Act from being referred by

petition. Article IV, section 1, Oregon Constitution; 19 Or. Law Rev. 73 (1939). Also, Sears v. Multnomah County, 49 Or. 42 (1907).

Under Article IX, section 1a, Oregon Constitution, an emergency may not be declared "in any Act regulating taxation or exemption." The primary purpose of this provision is to ensure the right of the people to refer by petition every bill regulating taxation or exemption; but it also has the effect of creating awkward problems when tax bills must coincide with state fiscal years. In that case, the operation of the tax bill usually must be deferred to July 1 of the year following its enactment.

b. Tax Bills.

Although an emergency clause cannot be used on a tax bill, the Attorney General has opined that declaring an emergency on such a bill does not render the Act itself invalid. "An emergency clause on a tax measure is void, but the measure itself is valid and becomes effective 90 days after passage." 42 Op. Att'y Gen. 277 (1982). (Note: This opinion was written 17 years before ORS 171.022 was enacted. Presumably now the measure would become effective on January 1 of the year following enactment.)

c. Determination of an Emergency.

In Oregon, the question of whether an emergency exists is a legislative and not a judicial matter. The courts will not examine the facts to determine if an emergency exists in fact. Kadderly v. City of Portland, 44 Or. 118 (1903); Stoppenback v. Multnomah County, 71 Or. 493 (1914); Multnomah County v. Mittleman et al., 275 Or. 545 (1976).

d. Form.

The following form of emergency clause has been used in Oregon for many years:
<spm emer>

> **SECTION __. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect on its passage.**

If directed to provide for a specific effective date **after** passage but **before** the 91st day after the end of session, substitute the date when the measure is to become effective, such as "July 1, 2011" for the phrase "on its passage":

> **SECTION __. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect July 1, (year).**

If the drafter has to use an emergency clause but does not desire to alter the normal effective date for the remainder of the bill, the following form is to be used:

> **SECTION __. Sections 1, 3, 4, 5, 9, 10 and 11 of this (year) Act become operative on January 1, (year+1).**

3. APPLICABLE DATES.

Although an emergency clause cannot be included in a bill "regulating taxation or exemption," a bill relating to certain types of taxes can be given **retroactive application** (sometimes a rather tenuous distinction) by adding an appropriate provision, such as one of the following:

SECTION __. Sections 1 to 8 of this (year) Act apply to tax years beginning after December 31, (year-1).

OR

SECTION ___. The amendments to ORS ___ by section ___ of this (year) Act apply to property tax years beginning on or after July 1, (year).

OR

SECTION __. Section ___ of this (year) Act applies to all tax years, the returns for which are open to audit or adjustment on the effective date of this (year) Act.

OR

SECTION ___. Section ___ of this (year) Act first applies to taxes levied by cities for the fiscal year beginning July 1, (year-1).

An applicable date is considered to be "creating new provisions" for purposes of the bill title.

If an Act "regulating taxation or exemption" is given retroactive application and then is referred to and approved by the people, the Act becomes operative on the effective date of the Act (30 days after the date of the election). Portland Pendleton Motor Transp. Co. v. Heltzel, 197 Or. 644 (1953).

4. EARLY EFFECTIVE DATES (NONEMERGENCY).

The Oregon Constitution prohibits an Act from taking effect until 90 days from the end of the session unless an emergency is declared. Until the 2001 session, the 91st day after the end of the session was the normal effective date for Acts. Since enactment of ORS 171.022, if a requester wants an Act to take effect on the 91st day after the end of the session, there must be a special clause in the bill and the words "prescribing an effective date" in the title. The following language should be used in the bill: <spm e91>

SECTION __. This (year) Act takes effect on the 91st day after the date on which the (year) regular session of the Legislative Assembly adjourns sine die.

If the requester wants an Act to take effect on a date certain between the 91st day and January 1 of the year following the session, put the date in the bill and the special clause "prescribing an effective date" in the bill title. Do not use an emergency clause in either situation.

5. DELAYED EFFECTIVE DATES.

Designating an effective date **after** the normal effective date is possible and is noted in the title by the clause "prescribing an effective date." For example:

SECTION __. This (year) Act takes effect on March 1, (year+1).

6. OPERATIVE DATES.

a. In General.

If a bill requires that administrative machinery be set up before the bill is fully operative, it is possible to delay operation of all or part of the bill by using an operative date. For purposes of the bill title, an operative date is considered to be "creating new provisions." If an operative date is used, the entire bill takes effect on its effective date. However, a specified part of the Act does not become operational until a later specified date.

When using an operative date, it is important to distinguish between things that are authorized on and after the effective date and things that are not authorized until the operative date. The use of separate sections helps maintain this important distinction:

SECTION 11. Sections 3, 5, 6 and 7 of this 2010 Act and the amendments to ORS 677.265 by section 9 of this 2010 Act become operative on January 1, 2011.

SECTION 12. The Oregon Medical Board may take any action before the operative date specified in section 11 of this 2010 Act that is necessary for the board to exercise, on and after the operative date specified in section 11 of this 2010 Act, all of the duties, functions and powers conferred on the board by sections 3, 5, 6 and 7 of this 2010 Act and the amendments to ORS 677.265 by section 9 of this 2010 Act.

SECTION 13. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

The drafter should note the use of the term "operative date" in the preceding example. This is a useful device when the delay of the operation of an entire Act is desired, but authorization of certain actions to be done before the bill is fully operative is also desired. It would be improper to say that an Act did not become effective until a given date and then authorize certain things to be done under its authority before that time. Ordinarily, it is better to set the effective date and to delay the operation of the relevant parts of the Act until a later date.

Usually, an entire Act becomes effective and only part is subject to an operative date delay. Occasionally it is useful to delay the operation of the entire bill until a special event occurs. The following examples may suggest appropriate language:

SECTION ___. Sections ___ to ___ of this (year) Act become operative on the date the Department of _____ adopts rules under section ___ of this (year).

Some other examples that may prove helpful in writing operative date provisions are:

SECTION ___. The amendments to ORS ___ by section ___of this (year) Act apply to tax years beginning after December 31, (year-1), except that additional taxes attributable to such amendments are not due until January 1, (year+1), for purposes of statutes imposing interest and penalties for late payment of taxes.

OR

SECTION ___. This (year) Act first is operative with respect to the fiscal year beginning July 1, (year+1).

In the text of a lengthy bill, it is better to use phrases such as "the operative date of this section" or "the operative date of sections ___ to ___ of this (year) Act," rather than "the operative date of this (year) Act." If the bill contains two or more operative dates, then a reference to "the operative date of this (year) Act" creates ambiguity. In many cases, it may be impossible to know which operative date is referred to.

b. Operation of Provisions Dependent on Contingency or Future Event.

Article I, section 21, of the Oregon Constitution, prohibits passage of any law "the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution." The purpose of this provision is to prevent unlawful delegation of legislative authority. However, as the Oregon Supreme Court said in Marr v. Fisher et al., 182 Or. 383, 388 (1947):

> While the legislature cannot delegate its power to make a law, it is well settled that it may make a law to become operative on the happening of a certain contingency or future event.

The test used by the Marr court was whether the Act was complete in and of itself when it was passed by the Legislative Assembly and approved by the Governor. If so, it is within the legislature's power to make the Act operative upon the happening of a specific event. In 1947 the legislature referred to the people a Sales Tax Act and enacted two income tax measures that had provisions that were to become operative (or not) upon the passage (or not) of the Sales Tax Act. The court held that the provisions of the income tax acts were complete when the Governor signed them and that those provisions whose operation was dependent on the enactment of the Sales Tax Act were simply dormant "until called into active force by the existence of the conditions on which [they were] intended to operate." Marr at 389, citing 16 C.J.S. 415, section 141.

When an Act or part of an Act is made to become operative upon the happening of a contingency, the drafter should think about how people who want or need to know the law are going to know whether the contingency has happened. In the Marr case, it was easy: the contingency was a vote of the people on a bill referred by the legislature to a specific election. In other situations, a drafter might want to include a provision requiring someone to notify Legislative Counsel when the contingency has occurred. For example, in a bill authorizing the Department of Human Services to do certain things upon receipt of a waiver from the federal government, the drafter included a section that said: "The Director of

Human Services shall notify the Legislative Counsel upon receipt of the waivers or denial of the waiver request." Section 18 (3), chapter 810, Oregon Laws 2003. When the office receives notification, it is filed in the editing file for the appropriate chapter(s) and at the next compilation cycle we know which version of the statute should be in "big print."

7. ACTS OF LIMITED DURATION ("SUNSET" PROVISIONS).

a. Types of Provisions.

If an Act of limited duration is needed, one of the following provisions (commonly referred to as "sunset" provisions) may be useful:

SECTION __. This (year) Act is repealed on January 2, (year).

OR

SECTION __. Section ___ of this (year) Act is repealed on June 30, (year).

OR

SECTION __. The authority granted to the _____ Board by section ___ of this (year) Act ends on January 2, (year). However, this termination does not affect the obligation of repaying to the General Fund all amounts required to be paid under section ___ of this (year) Act.

To avoid the necessity of enacting "lapse language" to extend sunsets during a regular legislative session and to avoid an early effective date to repeal sunsets prior to the normal effective date of a bill, the sunset repeal date should be **either** (1) January 2, **or** (2) June 30 of an even-numbered year. There are **two exceptions** to this rule. If the temporary provisions are dependent on a fiscal year and the biennial budget cycle, a June 30 sunset in an odd-numbered year may be imperative. If the provisions to be sunsetted create an interim committee or interim task force, the sunset date is "the date of the convening of the (odd-year) regular session of the Legislative Assembly as specified in ORS 171.010." See "EXTENDING DURATION OF 'SUNSETTED' LEGISLATION" (section 8 below), for a further discussion of sunset dates and lapse language.

b. Reversion of Appropriated Moneys to General Fund When Act Expires.

If moneys are appropriated from the General Fund for the purposes of an Act and the remainder of the moneys is to revert to the General Fund when the Act expires, consider the following:

SECTION ____. All moneys appropriated by section ___ of this (year) Act that are unexpended and unobligated on the date of the repeal of section ___ of this (year) Act shall revert to the General Fund and be available for general governmental expenses.

If some of the moneys are federal in origin, the provision for their reversion to the General Fund should be omitted if, in fact, the moneys must go elsewhere under federal law.

If appropriating the remainder of the moneys for another purpose, the following may be used:

> **SECTION ____. All moneys appropriated by section ___ of this (year) Act that are unexpended and unobligated on the date of the repeal of section ___ of this (year) Act, after allowing a period of six months for the presentation of additional claims, are appropriated to the Emergency Fire Cost Account to be available for expenditure as in the case of other moneys in that account.**

Moneys appropriated for a limited period, such as a biennium, automatically revert to their source at the expiration of the period.

If moneys were collected by some authority under a temporary Act, rather than being appropriated, and disposal of the remainder when the Act expires is desired, consider the following:

> **SECTION ____. Any balance in the Animal Disease Account that is unexpended and unobligated on the date of repeal of section ___ of this (year) Act, and all moneys that would have been deposited in the Animal Disease Control Account had section ___ of this (year) Act remained in effect, shall be transferred to and deposited in the Hog Cholera Account, and are appropriated for expenditure as in the case of other moneys in the Hog Cholera Account.**

c. Temporary Provisions — Double Amending.

A drafter should avoid amending permanent law with temporary amendments if possible. However, if the intent is to amend an existing ORS section so that it will read a certain way for a limited period, and then another way thereafter, the drafter should use the following technique ("double" amending):

> **SECTION 1.** ORS 418.020 is amended to read:
>
> 418.020. (Text)
>
> **SECTION 2.** ORS 418.020, as amended by section 1 of this (year) Act, is amended to read:
>
> 418.020. (Text)
>
> **SECTION 3. The amendments to ORS 418.020 by section 2 of this (year) Act become operative on July 1, (year).**

When amending the ORS section the second time, the text of the amendment should be based on the section **as it is amended by** the first amendment. This procedure is used even in instances where the second amendment takes the ORS section back to its original text. This practice avoids any possible constitutional questions that might arise if the ORS section is amended and then the amendment is repealed. It also avoids difficult editing problems that occur when a permanent section of law is **temporarily** amended in a single amendment.

Sometimes the Legislative Assembly decides that a previously temporary version of an ORS section should become permanent. In the simplest version of that scenario, the second version of the ORS section (section 2 in the above example) has to be re-amended to make it identical to the temporary version (section 1 in the above example.) The drafter must examine the delayed operative date of the original bill and determine whether it should be repealed, amended or left alone. The answer will depend on the circumstances. (Relevant circumstances include, but are not necessarily limited to, the original operative date and the anticipated operative date of the new amendments.)

A new section setting forth the temporary provisions is preferable to a temporary amendment. This technique can be used when most of the ORS section can be left in place but some requirement, such as a license fee, needs to be changed for a short period. For example:

> **SECTION 1. Notwithstanding ORS 418.020, for the period beginning July 1, (year), and ending _____, the credit allowed under ORS 418.020 shall be reduced . . . .**

d. Tax Credits.

ORS 315.050 provides that any tax credit enacted by the Legislative Assembly on or after January 1, 2010, applies for a maximum of six tax years beginning with the initial tax year for which the credit is applicable, unless the Legislative Assembly expressly provides for another period of applicability. It may be helpful to remind requesters of this provision if they do not ask for a certain sunset.

For tax credits enacted on or after January 1, 2010, without an applicability end date, the Legislative Assembly by law will need to directly extend the credit prior to the end of the applicable six-year period or the credit will not apply after the end of the six-year period. This may be accomplished by enacting an applicability provision.

Note that ORS 315.050 does not apply to tax credits enacted prior to January 1, 2010, or to tax credits enacted by initiative or referendum. Note also that the application of ORS 315.050 can be avoided by adding an applicability clause, which is currently standard procedure, or by indicating that a tax credit applies "notwithstanding ORS 315.050."

e. Health Insurance Mandates.

ORS 743A.001 provides that a statute mandating specific types of health insurance coverage is "repealed on the sixth anniversary of the effective date of the statute." This section does not apply to statutes that became effective before July 13, 1985, to statutes specified in subsection (4) of the statute or if "the Legislative Assembly specifically provides otherwise." If a requested health insurance mandate falls within the types of mandates described in the statute, it is important to remind the requester of this provision.

Most of the health insurance mandates are found in ORS chapter 743A. If a requester wishes to exempt a mandate from the effect of ORS 743A.001, add a subsection stating that "this section is exempt from ORS 743A.001." For example, see ORS 743A.012 (6).

In the editing process, we do not remove statutes that have likely been "repealed" by the operation of ORS 743A.001.

8. EXTENDING DURATION OF "SUNSETTED" LEGISLATION.

a. Generally.

When an Act of limited duration (a law with a specific date of repeal or "sunset" date) is enacted, the Legislative Assembly, at a subsequent legislative session, will often decide either to make the Act permanent or to extend the period of time during which the Act is effective.

If, as recommended earlier, the date on which the Act is scheduled for repeal is January 2 of any year or June 30 of an even-numbered year, the continuance of the Act beyond that date does not usually present any serious legal or administrative problems that must be considered and dealt with by the drafter.

In such cases, the drafter may simply prepare a section that repeals or amends the section in the previous legislation that established the sunset date. A sunset date that is later than the January 1 after the end of a regular legislative session provides assurance that the repeal or amendment of the sunset date will take effect prior to the sunset date and that the affected legislation will remain continuously in effect.

b. Avoiding Lapse of Legislation.

If the sunset date is a date that may be earlier than the date by which the Governor must approve or veto a bill under Article V, section 15b, Oregon Constitution, a possibility exists that the "sunsetted" legislation may lapse. For example, suppose that section 6, chapter 1000, Oregon Laws 2003, repeals sections 1 to 5, chapter 1000, Oregon Laws 2003, on July 1, (year). If, during the regular legislative session in (year), the Legislative Assembly decides to make sections 1 to 5, chapter 1000, Oregon Laws 2003, permanent law, then section 6, chapter 1000, Oregon Laws 2003, must be repealed. However, even with an emergency clause that makes the repeal of the sunset provision effective on July 1, (year), there is no assurance that the Governor will sign the bill on or before that date. If the Governor signs the bill **after** July 1, (year), there is a period of time during which the repeal of the affected legislation apparently takes effect. Since ORS 174.080 declares that "[w]henever a statute which repealed a former statute, either expressly or by implication, is repealed, the former statute shall not thereby be revived unless it is expressly so provided[,]" the affected legislation may be repealed and an entire reenactment of that legislation may be required in order for it to take effect again.

At present, there is no consensus among authorities in this state as to whether the passage of a bill simply repealing a sunset provision, and taking effect after the sunset date, constitutes a clear expression of intent under ORS 174.080 sufficient to revive the affected legislation. Even if the affected legislation is revived by the passage of a bill repealing the sunset provision, uncertainty is created concerning the validity of actions taken or obligations incurred under the affected legislation during the period in which the legislation

is lapsed. Therefore, to avoid the legal and administrative problems caused by a temporary lapse of legislation under the circumstances just described, the following example may be useful. When section 16, chapter 688, Oregon Laws 2003, as amended, repeals sections 6, 7, 8, 9, 10, 11, 12, 13 and 15, chapter 688, Oregon Laws 2003, effective June 30, (year): <spm lapse>

SECTION 6. Section 16, chapter 688, Oregon Laws 2003, is repealed.

SECTION 7. If this (year) Act does not become effective until after June 30, (year), the repeal of section 16, chapter 688, Oregon Laws 2003, by section 6 of this (year) Act revives sections 6, 7, 8, 9, 10, 11, 12, 13 and 15, chapter 688, Oregon Laws 2003. If this (year) Act does not become effective until after June 30, (year), section 6 of this (year) Act shall be operative retroactively to that date, and the operation and effect of sections 6, 7, 8, 9, 10, 11, 12, 13 and 15, chapter 688, Oregon Laws 2003, shall continue unaffected from June 30, (year), to the effective date of this (year) Act and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under the authority of sections 6, 7, 8, 9, 10, 11, 12, 13 and 15, chapter 688, Oregon Laws 2003, after June 30, (year), and before the effective date of this (year) Act, is ratified and approved.

SECTION 8. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect June 30, (year).

It may also be desirable to modify the language of section 7 in the previous example and include it in an Act that extends the period of time during which an Act of a previous session is effective. For example:

SECTION 1. Section 20, chapter 607, Oregon Laws 1987, as amended by section 3, chapter 539, Oregon Laws 1991, and section 4, chapter 436, Oregon Laws 1995, is amended to read:

Sec. 20. Section 19, chapter 607, Oregon Laws 1987, is repealed on July 1, [*1999*] **(year)**.

SECTION 2. If this (year) Act does not become effective until after July 1, (year), the amendments to section 20, chapter 607, Oregon Laws 1987, by section 1 of this (year) Act revive section 19, chapter 607, Oregon Laws 1987. If this (year) Act does not become effective until after July 1, (year), this (year) Act shall be operative retroactively to that date, and the operation and effect of section 19, chapter 607, Oregon Laws 1987, shall continue unaffected from July 1, (year), to the effective date of this (year) Act and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under the authority of section 19, chapter 607, Oregon Laws 1987, after July 1, (year), and before the effective date of this (year) Act, is ratified and approved.

SECTION 3. This (year) Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this (year) Act takes effect July 1, (year).

In a bill of limited duration, a saving clause to save rights and liabilities that accrue while the law is in effect may be necessary. See chapter 10.1 "Clauses relating to bill's application (saving clauses)."

9. REFERENDUM.

An Act may be referred to the people for their approval or rejection, if the Legislative Assembly wishes, under Article IV, section 1, Oregon Constitution.

If an Act is referred, the referred question is voted on at the next regular general election, unless the Legislative Assembly orders a special election. Article IV, section 1 (4)(c). Therefore, if a bill is prepared that is to be referred to the people, it must include a referendum clause. This must also be noted in the bill title with the special clause <spm refertitle> "providing that this Act shall be referred to the people for their approval or rejection." When a bill is referred to the people, the Legislative Assembly may prepare a ballot title for the bill under ORS 250.075. (See paragraph (g) below.) If a ballot title is not provided by the Legislative Assembly, a ballot title must be provided by the Attorney General. See ORS 250.075. ORS 251.185 to 251.295 provide for space in the voters' pamphlet for the printing of arguments for and against Acts referred by the Legislative Assembly. ORS 251.245 provides for the appointment of a joint legislative committee to prepare and file a voters' pamphlet argument advocating for a referred Act. It is usually a good idea to remind members of the opportunity to file this free argument.

The effect of an effective date or operative date provision in an Act referred by the Legislative Assembly to the people is explained in Portland Pendleton Motor Transp. Co. v. Heltzel, 197 Or. 644 (1953); 29 Op. Att'y Gen. 287 (1959).

a. Referendum Clause at Statewide General or Primary Election.

The following form is standard for submission of an Act at a general election: <spm general-act>

> **SECTION ___. This (year) Act shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.**

The following form is standard for submission of an Act at a primary election: <spm primary-act>

> **SECTION ___. This (year) Act shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election.**

b. Referral at Special Election.

A drafter may be asked to refer an Act to the people at an election date that is different from that of the primary election or the general election. Since the primary and general elections are the only two regularly scheduled statewide elections, an Act that is referred to some other "special election" must usually be accompanied by a separate special election bill. The special election bill calls the election, appropriates moneys to conduct the election and sets the election procedures. (Special procedures are needed because the existing law for statewide elections applies only to primary and general elections.) While there are several ways to refer an Act to a special election, in each case the drafter must be careful to ensure that a separate special election bill takes care of the election process. See section 10 of this chapter for details and examples of special election bills. For other examples, see chapter 17, Oregon Laws 1995, chapter 5, Oregon Laws 1997, chapter 570, Oregon Laws 1997, chapter 911, Oregon Laws 1999, chapter 12, Oregon Laws 2002 (first special

session), chapter 3, Oregon Laws 2002 (second special session), chapter 1, Oregon Laws 2002 (third special session), chapter 592, Oregon Laws 2003, and chapter 730, Oregon Laws 2003.

If requested to allow submission of an Act at a special election, or at the primary or general election if the special election bill does not pass, the drafter should insert the appropriate language in the referendum clause of the Act being referred: <spm special-act-op>

SECTION ___. This (year) Act shall be submitted to the people for their approval or rejection at a special election held throughout this state on the date specified in section ___, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___). If a special election is not held throughout this state on the date specified in section ___, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___), this (year) Act shall be submitted to the people for their approval or rejection at [insert either "**a special election held throughout this state on the same date as the next primary election**" *or* "**the next regular general election held throughout this state**"]**.**

If requested to submit an Act at a special election **only,** the following language should be used (note that the Act will not be referred if the special election bill does not pass): <spm special-act>

SECTION ___. This (year) Act shall be submitted to the people for their approval or rejection at a special election held throughout this state as provided in chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___).

c. Provision for Special Election if Act Referred.

When referring an Act to the people is not directed by the Legislative Assembly, but the possibility of the measure's being referred via a statewide referendum petition exists (see Article IV, section 1 (3)(a), Oregon Constitution), the Legislative Assembly may direct that the bill be voted on at a special election if it is referred. This is best accomplished in a separate bill. The drafter should consider whether an emergency clause is necessary, especially if the bill that is the subject of a statewide referendum petition is to be voted on at a special election.

If the Legislative Assembly directs a bill that is the subject of a statewide referendum petition to a special election held on the same date as the next primary election, use:

SECTION ___. If _____ Bill ___ is referred to the people by petition under Article IV, section 1 (3)(b), of the Oregon Constitution, it shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election.

If the Legislative Assembly directs a bill that is the subject of a statewide referendum petition to a special election that is being ordered by a special election bill as described above, use:

SECTION ___. If _____ Bill ___ is referred to the people by petition under Article IV, section 1 (3)(b), of the Oregon Constitution, it shall be submitted to the people for their approval or rejection at:

(1) A special election held throughout this state on the date specified in section ___, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___); or

(2) If a special election is not held throughout this state on the date specified in section ___, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___), at [insert either "**a special election held throughout this state on the same date as the next primary election after the referendum is ordered**" *or* "**the next regular general election held throughout this state after the referendum is ordered**"]**.**

For an example, see section 10 of this chapter, "Setting Special Elections," and chapter 730, Oregon Laws 2003.

d. Conditional Referral.

Here is an example of conditional referral:

SECTION ___. This (year) Act does not take effect (become operative) unless the amendment to the Oregon Constitution proposed by _____ Joint Resolution ___ (year) is approved by the people at the regular general election held in November (year). This (year) Act takes effect (becomes operative) on the effective date of that amendment.

e. Referendum Clause to Refer Act to Voters of One County.

Referral of a "local" Act to the voters of only one county was accomplished in chapter 774, Oregon Laws 1955, by sections substantially similar to the following:

SECTION ___. (1) This (year) Act shall be submitted to the people of Marion County for their approval or rejection at the next regular general election held throughout this state.

(2) The Secretary of State shall set aside one page in the voters' pamphlet being mailed to Marion County electors and containing measures referred to the people to be voted on at the next regular general election held throughout this state in which arguments in support of this (year) Act may be printed, and shall set aside one page in which arguments against this (year) Act may be printed, which arguments in support and against may be furnished by any person. In case more material is offered than can be printed in the space allotted, the Secretary of State shall select the part of the material to be printed.

SECTION ___. This (year) Act takes effect upon its approval by a majority of the registered electors of Marion County voting on the ballot measure presented under section ___ of this (year) Act.

The provisions of subsection (2) of the first section are now covered by ORS 251.185 to 251.295; they are included here only to illustrate a different procedure. Chapter 665, Oregon Laws 1977, is an example of a bill that was referred to the electors of three counties. Chapter 565, Oregon Laws 1987, is an example of a bill that was referred to the electors of a port district.

f. Referral by Local Government.

Occasionally, the Legislative Assembly may wish to require a local referendum:

SECTION ___. Any ordinance adopted by a county governing body imposing a new motor vehicle fuel tax or an increase in the rate of an existing motor vehicle fuel tax shall be submitted to the electors of the county for their approval or rejection.

SECTION ___. Any ordinance adopted by a city governing body imposing a new motor vehicle fuel tax or an increase in the rate of an existing motor vehicle fuel tax shall be submitted to the electors of the city for their approval or rejection.

g. Ballot Titles

When a bill is referred to the people, the Legislative Assembly may prepare a ballot title for the bill under ORS 250.075. ORS 250.035 specifies the form for a ballot title, including limits on the number of words that may be used, although these provisions may be modified or suspended in the bill. If your ballot title alters the statutory framework described in ORS 250.035, include the phrase "Notwithstanding ORS 250.035…." For example:

SECTION 1. (1) Notwithstanding ORS 250.035, the ballot title for House Bill 4079 ((year)) shall be:

If you want to preclude judicial review of the ballot title under ORS 250.085, perhaps to save time to accommodate a special election, include the following:

(2) ORS 250.085 does not apply to the ballot title contained in subsection (1) of this section. The ballot title contained in subsection (1) of this section shall be printed in the voters' pamphlet and printed on, or included with, the ballot.

For examples of ballot title bills, see chapter 5, Oregon Laws 2002 (second special session), chapter 1, Oregon Laws 2002 (third special session), chapter 592, Oregon Laws 2003, and chapter 648, Oregon Laws 2003.

10. SETTING SPECIAL ELECTIONS.

A separate special election bill is needed if a measure is referred to the people at a date other than the date of the biennial primary or general elections or if existing statutory election procedures need to be modified. The special election bill typically orders the election, appropriates money to pay for the election and sets the specific procedures. The drafter can determine whether to include ballot titles, financial estimates, explanatory statements, etc., in the special election bill. Chapter 592, Oregon Laws 2003, is another example of a special election bill that contains the ballot title, financial estimate and explanatory statement for the referred measure.

AN ACT

Relating to a special election; and declaring an emergency.

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

SECTION 1. Except as otherwise provided in this 2003 Act, ORS chapters 250, 251 and 254 apply to the special election held on the measure submitted under House Joint Resolution 18 (2003).

SECTION 2. A special election shall be held throughout this state on September 16, 2003. The measure referred to in section 1 of this 2003 Act and that is otherwise

referred to the people by the Legislative Assembly shall be submitted to the electors for their approval or rejection at the special election.

SECTION 3. (1) Notwithstanding ORS 250.035, the ballot title for House Joint Resolution 18 (2003) shall be:

AMENDS CONSTITUTION: AUTHORIZES STATE OF OREGON TO INCUR GENERAL OBLIGATION DEBT FOR SAVINGS ON PENSION LIABILITIES.

RESULT OF "YES" VOTE: "Yes" vote authorizes state to incur general obligation debt for savings on pension liabilities.

RESULT OF "NO" VOTE: "No" vote does not authorize state to incur general obligation debt for savings on pension liabilities.

SUMMARY: This measure amends the Oregon Constitution to authorize the State of Oregon to incur debt to finance pension liabilities of the state at a lower cost to the state and to pay costs of issuing and incurring indebtedness. The measure authorizes the Legislative Assembly to enact implementing legislation.

The measure specifies that indebtedness authorized by the measure is a general obligation of the state, backed by the full faith and credit and taxing power of the state, except ad valorem taxing power. The measure limits the amount of indebtedness outstanding at any time to one percent of the real market value of property in the state.

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(2) ORS 250.085 does not apply to the ballot title contained in this section. The ballot title prepared under this section shall be in the voters' pamphlet and as provided in section 8 of this 2003 Act.

SECTION 4. (1) Notwithstanding ORS 250.125, 250.127 and 250.131, the estimate of financial impact for House Joint Resolution 18 (2003) to be printed in the voters' pamphlet and as provided in section 8 of this 2003 Act shall be:

This measure has no direct financial effect to state or local government expenditures or revenues. However, general obligation indebtedness provides the lowest cost alternative among financing mechanisms. To the extent that the State of Oregon uses the authority to issue general obligation indebtedness rather than using more costly financing mechanisms, the State of Oregon should experience lower financing costs.

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(2) ORS 250.131 does not apply to the financial estimate contained in this section. The financial estimate contained in this section shall be printed in the voters' pamphlet and as provided in section 8 of this 2003 Act.

SECTION 5. (1) Notwithstanding ORS 251.205, 251.215, 251.225, 251.230 and 251.235, the explanatory statement to be printed in the voters' pamphlet for House

Joint Resolution 18 (2003) shall be:

This measure amends the Oregon Constitution to authorize the State of Oregon to incur debt to finance the pension liabilities of the state at a lower cost to the state and to pay costs of issuing and incurring indebtedness. The measure authorizes the Legislative Assembly to enact implementing legislation.

The measure specifies that indebtedness authorized by the measure is a general obligation of the state, backed by the full faith and credit and taxing power of the state, except ad valorem taxing power. The measure limits the amount of indebtedness outstanding at any time to one percent of the real market value of property in the state.

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(2) ORS 251.235 does not apply to the explanatory statement contained in this section. The explanatory statement contained in this section shall be printed in the voters' pamphlet.

SECTION 6. (1) Arguments relating to the measure referred to in section 1 of this 2003 Act may be filed with the Secretary of State under ORS 251.245 and 251.255, except that an argument shall be filed not later than the date set by the Secretary of State by rule.

(2) Notwithstanding ORS 192.410 to 192.505 relating to public records, an argument filed under this section is exempt from public inspection until the fourth business day after the deadline for filing the argument.

SECTION 7. (1) The Secretary of State shall cause to be printed in the voters' pamphlet the number, ballot title and text of the measure referred to in section 1 of this 2003 Act and the financial estimate, explanatory statement and arguments relating to the measure. The Secretary of State shall also cause to be printed in the voters' pamphlet any other material required by law. Notwithstanding ORS 251.026, the Secretary of State shall include in the voters' pamphlet the information or statements described in ORS 251.026 that the Secretary of State considers applicable to the election on the measure referred to in section 1 of this 2003 Act. Notwithstanding ORS 251.285 and subject to ORS 251.008, the measure referred to in section 1 of this 2003 Act shall be the only measure included in the voters' pamphlet prepared under this section.

(2) Not later than the 10th day before the election, the Secretary of State shall cause the voters' pamphlet to be mailed to each post-office mailing address in Oregon and may use any additional means of distribution necessary to make the pamphlet available to electors.

(3) In preparing the voters' pamphlet under this section, the Secretary of State is not required to comply with ORS chapter 279B relating to competitive bidding.

SECTION 8. (1) Notwithstanding the deadline in ORS 254.085, the Secretary of State shall prepare and deliver to each county clerk by the most expeditious means practicable a certified statement of the measure referred to in section 1 of this 2003 Act. The Secretary of State shall include with the statement the number, financial estimate and full ballot title of the measure, and any other information required by law. The Secretary of State shall keep a copy of the statement.

(2) The county clerks shall print on the ballot the number, financial estimate and full ballot title of the measure, along with any other material required by law. In

lieu of printing the financial estimate, the summary portion of the ballot title or other material required by law on the ballot, a county clerk may include with the ballot the complete text of the ballot title, the financial estimate and any other material required by law.

SECTION 9. (1) The Secretary of State may adopt rules governing the procedures for conducting the election on the measure referred to in section 1 of this 2003 Act as may be necessary to implement sections 1 to 9 of this 2003 Act.

(2) Notwithstanding ORS 254.465, the election on the measure referred to in section 1 of this 2003 Act shall be conducted by mail in all counties in this state as provided under ORS 254.470. [Note: This subsection is now obsolete due to amendments to ORS 254.465.]

SECTION 10. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

CHAPTER THIRTEEN

CREATING NEW LAW; AMENDMENTS; CONFLICTING AMENDMENTS; ALTERNATIVES TO AMENDMENTS; REPEALS

_____

A bill may do any one or more of the following:

Create new law.
Amend existing law.
Repeal existing law.

This chapter gives detailed information on the techniques of drafting sections that create, change or repeal law. The discussion applies generally to any new section or any amendment or repeal.

This chapter also explains the need for finding whether a bill amends or repeals an ORS section that is amended or repealed by a bill introduced earlier during the same session, and explains how to amend or repeal session law sections that are not compiled in *Oregon Revised Statutes*.

1. DRAFTING NEW SECTIONS.

a. Creating New Law.

A clause creating or introducing a new section is not necessary so long as the bill itself has an enacting clause. The form of a section creating new law is as follows:

> **SECTION _____. A district boundary board may not assign to any school district a number previously assigned to another school district that became nonexistent after January 1, 1979, because of dissolution, abandonment, consolidation or any other reason.**

THE DRAFTER DOES NOT ASSIGN ORS NUMBERS TO NEW SECTIONS!

The ORS editors assign ORS section numbers when compiling new Acts in *Oregon Revised Statutes*, following the end of the session.

b. Adding New Section to Existing ORS Series, Chapters or Codes.

When drafting a new section, the drafter should consider where the section will be located in *Oregon Revised Statutes*. Even though a drafter cannot assign a specific ORS section number to a new section, the drafter may want to make a penalty, definition or other existing provision apply to a new section. This can be done by adding the new section to an **existing** ORS series of sections, chapter or code.

A new section might be added to and made a part of an existing series, chapter or code for the following reasons:

A. Definitions. The existing series, chapter or code contains definitions that the drafter intends to apply to the new section. See for example, ORS 742.500. "As used in ORS 742.500 to 742.506: (1) 'Uninsured motorist coverage' means . . . ." If the new section being drafted uses the term "uninsured motorist coverage" and the definition in ORS 742.500 is adequate for purposes of the draft, the new section can be "added to and made a part of ORS 742.500 to 742.506."

B. Penalties. The existing series, chapter or code contains penalties that the drafter intends to apply to the new section. See ORS 731.988. "(1) Any person who violates any provision of the Insurance Code . . . shall forfeit and pay to the General Fund of the State Treasury a civil penalty . . . ." If the drafter has a new section that imposes a duty on an insurer, for example, and the drafter wants violation of the section to subject the insurer to a civil penalty, the drafter should provide in the draft that the new section is "added to and made a part of the Insurance Code."

C. Rulemaking authority. The existing series, chapter or code gives someone rulemaking authority and the drafter wants that person to be able to make rules to implement the new section being drafted. See, for example, ORS 731.244. "In accordance with the applicable provisions of ORS chapter 183, the Director of the Department of Consumer and Business Services may make reasonable rules necessary for or as an aid to the effectuation of the Insurance Code." If the new section is added to and made a part of the Insurance Code, the director may adopt rules to implement it without further authority.

D. Miscellaneous. There may be other reasons for adding to and making a part of. The situations in which it is appropriate will be like those mentioned above. There will be an existing series, chapter or code; there will be general provisions (usually definitional, penal or administrative) that apply to the individual statutes within the existing series, chapter or code; the new section will contain something to which the drafter wants the general provisions to apply.

c. How a Series, Chapter or Code Is Created.

A basic requirement for adding a new section to an existing series is that the series, chapter or code must exist as more than an editorial convenience. A series is created by an enacted bill that has a provision that says, "sections ___ to ___ of this (year) Act." For example, "As used in sections 2 to 6 of this (year) Act . . ."; "Violation of sections 1 to 8 of this (year) Act . . ."; "The director shall adopt rules to carry out the provisions of sections 3 to 5 of this (year) Act." When the provision is put into ORS during editing, the words "sections ___ to ___" will be replaced by "ORS aaa.bbb to aaa.ccc" and a series will have been created.

The divisions in an ORS chapter outline do **not** create or constitute a series. If ORS 726.040 to 726.255 is in fact a series, it is because it was created as a series in an enactment of the legislature and not because the sections were placed together in ORS chapter 726 under the heading "Licensing."

Just as there are provisions that apply to a series, so, too, are there provisions that apply to an ORS chapter. ORS 734.014 begins "As used in this chapter:" and goes on to define several terms. If the drafter has a new section dealing with rehabilitation of insurers and the terms used in ORS 734.014 are used in the new section, the drafter can add the new section to and make it a part of ORS chapter 734. Like series references, chapter references are found in the series cards file.

ORS 731.056 et seq. are definitions that apply to the "Insurance Code." "Insurance Code" is the short title given to ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750. See ORS 731.004. When a new section of law is added to and made a part of the Insurance Code, there are preexisting definitions that apply, there is a requirement that people transacting insurance comply with the new section (ORS 731.022), there is authority for rulemaking regarding the new section (ORS 731.244) and there are provisions for penalties for violation of the section (ORS 731.988).

d. Determining the Appropriate Series, Chapter or Code.

The drafter should perform a computer search or examine the series cards to determine series references that may include the proposed location of a new section. The office of Legislative Counsel maintains a card file containing what are known as the series cards. The file contains at least one card for each series in ORS. The card shows the series numbers in the upper left-hand corner and the sections of ORS that refer to the series along the right side of the card. The designation in parentheses following each number indicates the type of reference. For example, "19.230 (B)" indicates that the reference to the series is in the text (or "body") of ORS 19.230. For purposes of identifying an appropriate series to which a new section may be legislatively added, the drafter must rely only on those references in the text or body of an ORS section that cites the series.

When the drafter drafts what would be a new section of ORS, and if the drafter has some idea of the ORS chapter that might be the most appropriate place for the section, the drafter should check the series cards for that chapter, if any. The drafter can look at the

series and determine if there is some substantive reason that the new section should be added to one of the series. If there is, add it; if not, do not.

A section should never be added to a series simply because the drafter wants to tell the ORS editor where to compile the section. An ORS editor can ignore a drafter's ill-advised command, but to do so often requires many technical adjustments.

For example, consider the placement of a new section prohibiting the driving of a vehicle on a highway while the passengers are not wearing crash helmets. On examination, it is found that the only place the section logically could be compiled in *Oregon Revised Statutes* is somewhere between ORS aaa.bbb and aaa.ppp. Another section imposes a penalty for violation of ORS aaa.hhh to aaa.ppp so that if the new section is added to that series, the penalty provision will apply. Still another section defines a term for purposes of ORS aaa.bbb to aaa.ppp. If it is decided that both the definition and the penalty should apply to the new section, what should be done? There are two different series.

The drafter must visualize two buckets, one larger than the other, the smaller inside the larger. If a pebble is targeted to drop only into the larger bucket, it will fall outside the smaller bucket; if a pebble is dropped into the smaller bucket, it will fall inside both. Similarly, if a smaller series is contained within a larger series, when a new section is added to the larger series the new section is not added to the smaller series. However, if the new section is added to the smaller series, the new section also is added to the larger series. In the example, since the new section is to be a part of **both** ORS aaa.hhh to aaa.ppp **and** ORS aaa.bbb to aaa.ppp, it should be added to and made a part of the smaller series. The "adding" provision will be in a separate section and the sections usually appear in the following form in this order: first the "add," second the substance: <spm added>

SECTION 1. Section 2 of this (year) Act is added to and made a part of ORS 483.430 to 483.444.

SECTION 2. It is unlawful to operate a vehicle on a highway at any time unless the operator and all passengers in the vehicle are wearing crash helmets of a type approved by the Department of ____.

Naturally, if the definition or penalty is not to apply to the new section, the new section should not be added to and made a part of either series. It should be simply drafted as any other new section. After the session, the ORS editors probably will compile the new section in the same location the drafter aimed for, but will write an appropriate note or adjust the series references in the definition and penalty provisions so that the new section is excluded from these references.

If the new section should be incorporated within the smaller series but not the larger, the drafter should use some technique other than "adding." The drafter may consider amending the definition or penalty section itself to include or exclude the new section from the series reference in question.

To add **one new section to an ORS chapter**, rather than an ORS series, use the following form: <spm added>

SECTION 1. **Section 2 of this (year) Act is added to and made a part of ORS chapter 483.**

SECTION 2. **If the _____ Department finds . . . .**

To add **one new section to an ORS code**, rather than an ORS series or chapter, use the following form:

SECTION 1. **Section 2 of this (year) Act is added to and made a part of the Oregon Vehicle Code.**

SECTION 2. **If the _____ Department finds . . . .**

If adding **more than one new section to an ORS series, chapter or code**, only one "adding" section is needed to do the job. This is true whether the section adds a consecutive group of sections or adds sections found throughout the bill. <spm adds>

SECTION 1. **Sections 2 to 4 of this (year) Act are added to and made a part of ORS 480.315 to 480.385.**

OR

SECTION 1. **Sections 2 to 4, 9, 11 and 14 of this (year) Act are added to and made a part of ORS 480.315 to 480.385.**

The drafter should always check the series cards or do a computer search when adding one or more new sections to an ORS chapter or series. The effect of adding the section to the chapter or series must be determined.

An ORS code, chapter or series is not being "amended" when a new section is added to it. Article IV, section 22, Oregon Constitution, provides that an Act revised or sections amended must be set forth at length; but this provision does not apply if a bill merely adds new sections to an existing ORS chapter or series, even though that chapter or series originally was created as an Act. Brown v. City of Silverton, 97 Or. 441 (1920); Martin v. Gilliam County, 89 Or. 394 (1918); Ebbert v. First Nat'l Bank, 131 Or. 57 (1929).

If adding a new section to an ORS code, chapter or series, the drafter should take care in using the phrase "this Act" in the new section. Such a reference may be construed as directed to the original Act that created the chapter or series; State v. Davis, 207 Or. 525 (1956). The drafter should indicate specifically whether the reference is to:

(a) The Act that added the new section to the ORS chapter or series (for example, "this (year) Act"); **or**

(b) The Act that created the ORS chapter or series to which the new section is added (for example "this chapter" or specific ORS section numbers, not the session law Act).

References to "this Act" should be avoided when the measure contains amended sections. Legislative Counsel must translate the reference to "this Act" to include all sections in the bill, including the ORS numbers in the measure, a practice roundly criticized by the Court of Appeals in State v. Rothman, 69 Or. App. 614 (1984).

2. DRAFTING AMENDMENTS TO EXISTING LAW.

a. Setting Forth Amended Sections at Length.

Article IV, section 22, Oregon Constitution, provides in part that any section amended "shall be set forth, and published at full length." This means that the section must be set out in full as amended, with all changes. City of Portland v. Stock, 2 Or. 69 (1863); Dolan v. Barnard, 5 Or. 390 (1875). This is done by the drafter by bracketing deleted material and bolding new material. The typed version and the printed bill show the same instructions by using boldfaced and italicized type.

In setting forth an amended section at length, anything omitted on purpose or inadvertently is automatically deleted. For example, if a draft changes only one paragraph of a statute section and only that one paragraph in amended form is set out, the remainder of the section is deleted. The result of this, inconvenient as it appears, is that a subsection, paragraph or other subordinate part of a section cannot be separately amended. No matter how small the change being made and no matter how lengthy the unchanged part of the section being amended, the whole section must be set forth at length. **This is one of the few rules in bill drafting to which there are no exceptions.**

Neither the title nor an amending clause in the body of a bill should recite that less than an entire section is being amended. In other words, the title cannot provide "amending ORS 316.010 (2)," even though the only change being made to ORS 316.010 happens to be in subsection (2).

b. Cases Interpreting Article IV, Section 22, Oregon Constitution.

Article IV, section 22, Oregon Constitution, reads as follows:

> No Act shall ever be revised, or amended by mere reference to its title, but the Act revised, or section amended shall be set forth, and published at full length. . . .

In Northern Counties Investment Trust Co. v. Sears, 30 Or. 388 (1895), the Oregon Supreme Court said that the constitutional provision prevents the amendment or revision of an existing statute by a method that conveys no meaning standing alone, but depends for its operation and effect on a proper interpolation, substitution or elimination in comparison with the original statute.

In Warren v. Crosby, 24 Or. 558 (1893), quoted in the Northern Counties case, the rule stated was that statutes not amendatory or revisionary in character, but original in form, and complete within themselves, exhibiting on their face their purpose and scope, do not come within the scope of Article IV, section 22, even though they may amend or modify existing laws on the same subject by implication. To the same effect is Gilbertson v. Culinary Alliance and Bartenders Union, Local No. 643, A.F. of L., 204 Or. 326 (1955). Also, the constitutional provision does not apply when new sections are merely being added to an existing Act without modifying or altering the provisions of the original Act. Brown v. City

of Silverton, 97 Or. 441 (1920). However, an Act "subjecting all tax levying districts . . . to the budget laws provided for counties" (quoted from title) was declared invalid as the Act was construed to be an amendment of the county budget law that required the setting forth in full of the affected section of the county budget law as amended. Martin v. Gilliam County, 89 Or. 394 (1918). The application of this ruling should be considered in connection with cases holding, in similar situations, that a supplemental Act or Act amending by implication does not come within the scope of Article IV, section 22. Ebbert v. First Nat'l Bank, 131 Or. 57 (1929).

An Act that does not revise a previous Act, but simply amends a section of that Act, need only set forth the amended section. Delay v. Chapman, 2 Or. 242 (1867).

For an example of one section increasing a fee specified by another section that is questionable because it resembles an amendment not set forth at length, see ORS 583.004 (2). Because of Article IV, section 22, a drafter should avoid any language that **even might appear** to be amendatory of other sections if such other sections are not set out in full in the bill. However, a distinction can more easily be made where the new material is temporary.

c. Indicating Inserted or Deleted Matter.

When amending an existing statute, the draft must show every difference, **except capitalization**, between the original version and the amended version. This practice is required by the rules of the Oregon House and Senate. Even changes in punctuation must be indicated. Deleted matter must be set forth in brackets and italicized type. If deleting two or more successive subsections or paragraphs, **each** of them must be enclosed entirely in brackets and italicized. All new matter in an amended section must be in boldface type.

In a draft, printed bill and in the session law volumes, deleted matter is bracketed and set in italics, while new matter in an amended section is set in boldface type.

Some judgment is necessary in determining how much of existing law can be saved. Sometimes there are so many deletions and insertions in part of an existing ORS section that it is better to put that entire part in brackets and set out the new matter in its entirety.

However, a drafter should consider whether a provision really needs to be changed to accomplish the requester's purpose or is being rewritten because the drafter thinks that the section could stand improvement. The latter is not a good enough reason and may even jeopardize the requester's purpose if changes are so extensive as to appear to do **more** than the requester wants. The title may limit some such changes. The important thing is to write the bill so that the effect of an amendment is intelligible.

d. Amendments Directed to Oregon Revised Statutes.

In amending a statute that is published in *Oregon Revised Statutes*, the amendment should be directed to the ORS section and not to the original session law section. Since a reference to an ORS section means the section as most recently amended (ORS 174.060), there is no need generally to refer to any session laws that have amended a particular ORS

section when drafting an amendment to that ORS section. An exception is made if the amended version has not yet been published in ORS, such as during a special session or later in the same session when the amendment is made.

SECTION 1. ORS 112.449 is amended to read:

OR

(Special Session)

SECTION 1. ORS 112.449, as amended by section 7, chapter 9, Oregon Laws 2010, is amended to read:

OR

SECTION 1. ORS 112.449, as amended by section 7, chapter _____, Oregon Laws 2010 (Enrolled Senate Bill 7), is amended to read:

e. Form of Amendment.

There must be a separate amending clause for each statute section that is amended by a bill. The amending clause immediately follows the section number of the section in the bill that provides for the amendment. For example, the amending clauses of a bill amending two ORS sections should be in the following form:

SECTION 1. ORS 171.030 is amended to read:
171.030. . . .

SECTION 2. ORS 171.040 is amended to read:
171.040. . . .

f. Use of "this (year) Act" in Amended Section.

The term "this Act," as used in an amended section, has been held to mean the Act by which the section first was enacted, and not the amendatory Act. State v. Davis, 207 Or. 525 (1956). Therefore, in an amendatory section when referring to a new section created by the same new bill, the drafter should **not** refer to "section 2 of this Act"; the reference should be to "section 2 of this 2011 Act," or whatever may be the current year. Conversely, if a new section refers to an ORS section amended by the same bill, the drafter does not refer to "section 1 of this (year) Act," but to "ORS such-and-such."

g. Bill Already Introduced Amending Same Section.

A bill already introduced at the same session may amend the ORS section that is to be amended in the draft. If that bill has passed, then in a later bill the text should set forth at length the latest version of the ORS section, which means the ORS section as amended by the earlier bill. However, if time does not permit that step, the drafter should verify that the subsequent amendment does not conflict in purpose with the earlier amendment. If it does, the earlier amendment needs to be repealed. If the other bill has not yet been passed, and

there is any conflict, it may have to be dealt with in a conflict amendment as described later in this chapter.

h. Order of Amended Sections.

Sections in a bill that amend existing sections usually are arranged in the order of their ORS numbers, with the lowest section number first. However, departing from this practice to present the subject matter in a logical sequence is preferable. The title always presents the amended sections in numerical order, then the repealed sections in numerical order.

i. Effect of Amendment.

ORS 161.035 (4) prescribes the effect of amendment of a criminal statute as affecting prosecution or punishment for violation. Article IV, section 22, of the Oregon Constitution, relates to conflicts between two or more Acts amending the same section at the same session and is discussed in detail later in this chapter. The effect of amendment of a statute adopted by reference is covered by ORS 174.060, which is discussed in chapter 14 of this manual.

3. CONFLICTING AMENDMENTS.

Article IV, section 22, of the Oregon Constitution, provides in part:

> However, if, at any session of the Legislative Assembly, there are enacted two or more acts amending the same section, each of the acts shall be given effect to the extent that the amendments do not conflict in purpose. If the amendments conflict in purpose, the act last signed by the Governor shall control.

The same ORS section may be amended by two or more bills at the same session, or may be amended by one bill and repealed by another. The 1976 amendment to Article IV, section 22, authorizes giving full effect to two or more amendments to the same code section at the same session so long as the amendments do not conflict in purpose. If there is no conflict in purpose and if one bill already has been enacted into law, the later bill amending or repealing the same ORS section need not be adjusted to the amendment made by the earlier law. However, it should be so adjusted whenever possible. When the two are inconsistent, the draft must make plain that one is intended to supersede the other.

Simply put, there are two types of conflicts: those easily tracked and those not so easily tracked. In the first type of conflict, two bills amend the same ORS section in a textually inconsistent fashion (e.g., the first bill amends a section to indicate that a person **shall** perform a certain act; the second bill amends the same language in the section to indicate that a person **may** perform the act). This is the clearest type of conflict, and will be detected by the conflicts team in Publication Services. When a bill is in the second house and has emerged from committee to be filed at the desk, committee staff "check off" on the bill by requesting that the conflicts team review the ORS sections amended and repealed in that bill in light of other bills amending or repealing the same sections. If a true conflict is discovered, the conflicts team notifies the committee and the drafter so that a conflict

amendment can be prepared. See "CONFLICT AMENDMENTS," chapter 18 of this manual.

The second type of conflict is less discernible, and its detection depends heavily on the attentiveness of the drafter or the committee. Sometimes referred to as a "conflict in purpose," this type of conflict does not reveal itself within the amended section as a textual inconsistency resulting from nonparallel language. Instead, two or more bills include provisions that, if enacted, would result in laws that are mutually inconsistent. This may occur when the bills amend the same section but not the same language, or when the creation of a new section conflicts with the provisions of a previously passed bill.

Because a conflict in purpose cannot be tracked by Publication Services, the only way that this type of conflict can be corrected is upon the fortuitous discovery of the problem by the drafter or by the committee. If a drafter is aware of a potential problem, the drafter may request that the Publication Services conflicts team track bills that conflict in purpose and alert the drafter if the second bill is reported out of committee in the second house.

The Legislative Counsel's staff makes a compilation during each session of all amendments and repeals of ORS sections, and publishes this compilation as a "Table of ORS Sections Amended, Repealed or 'Added To'" in the Weekly Cumulative Index to Legislative Measures. Conflicts appear in this table somewhat as follows:

ORS §	Amend Repeal	Section#	Bill#
8.020	A	§1	SB 104
	A	§1	HB 2394
8.030	R	§8	HB 2138
	A	§2	HB 2486

From left to right, the columns show the number of the ORS section affected; an "A" or "R" indicating amendment or repeal of the section; and the citation to the bill by which the section is amended or repealed. In the preceding example, ORS 8.020 is amended by section 1 of Senate Bill 104 and by section 1 of House Bill 2394; ORS 8.030 is repealed by section 8 of House Bill 2138 and amended by section 2 of House Bill 2486.

Before the 1976 amendments to Article IV, section 22, when two or more Acts were enacted amending the same section of the statutes at the same session of the Legislative Assembly, the Attorney General was of the opinion that the Act last filed in the office of the Secretary of State controlled (26 Op. Att'y Gen. 161 (1953)). Others were of the view that the Act last signed by the Governor controlled, basing their view on Skinner v. Davis, 156 Or. 174 (1937), which holds that the amendment of a statute operates as the entire obliteration of the former version, and on the assumption that signature by the Governor is the last action required to give effect to a legislative enactment. Whatever the answer may have been, the Legislative Counsel now relies on Article IV, section 22, and will compile both bills if no conflict is found. It is still better to amend the section each time to reflect legislative intent and to avoid any controversy as to when amendments conflict in purpose.

A drafter who is contacted about a conflict amendment should consult with the conflicts team in Publication Services.

4. AMENDMENT OR REPEAL OF UNCODIFIED SECTION.

Only statutes of a general, public and permanent nature are compiled in *Oregon Revised Statutes*. Special, private, temporary, appropriation or similar Acts are not compiled. Sometimes one of the session law sections not compiled in ORS will need to be amended or repealed. The proper form for such an amendment is as follows:

> **SECTION _____.** Section 100, chapter 1000, Oregon Laws 2003, is amended to read:
>
> **Sec. 100.** [*This 2003 Act*] **Chapter 1000, Oregon Laws 2003,** takes effect on July 1, [2006] **2010**.

In setting forth in full section 100, chapter 1000, Oregon Laws 2003, the word "Section" is abbreviated to "**Sec.**" This is to avoid confusion between the designation of the section being amended and the amendatory section.

When amending a session law section not compiled in ORS, the drafter should check for later amendments or repeals of the session law section. This is done by referring to the table of "Amendments and Repeals of Session Laws" found in the back of each edition of session laws. The table in the edition in which the session law section itself is contained must be checked and also all subsequent editions. During a legislative session, the table in the current Weekly Cumulative Index to Legislative Measures will show any amendments.

If the section being amended or repealed was amended previously, the previous amendment is indicated in the amendatory or repealing clause of the bill. For example, the section is referred to as "section 100, chapter 1000, Oregon Laws 2003, as amended by section 1, chapter 1001, Oregon Laws 2003." It is not necessary, however, to identify these additional amendments in the **title** or **text** of the bill; a reference to "section 100, chapter 1000, Oregon Laws 2003" is sufficient.

The amendment should be directed to the text of the section **as most recently amended**.

In preparing an amendment or repeal of a session law section, the drafter should check for incorporations by reference of the session law section in *Oregon Revised Statutes* and also for references to the session law section in ORS cross-references. A computer search will produce a list of the internal references and cross-references.

If *Oregon Revised Statutes* is affected by the session law section amendment or repeal, an appropriate "Note to ORS Editor" should be made on the form provided so that the ORS editor will be reminded of the need for adjustment to any note or cross-references based on the section if the bill is enacted.

To add a new section to an Act not compiled in *Oregon Revised Statutes*, the following form is used:

SECTION 1. Section 2 of this (year) Act is added to and made a part of sections ___ to ___, chapter 67, Oregon Laws 1987.

SECTION 2. . . .

If the session laws sections are in an early Oregon Act that does not have a session law chapter number, use the following forms:

SECTION _____. Section 8 of the (year) Act entitled "An Act to establish an Institution of Learning in Washington County" passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, is amended to read:

Sec. 8. . . .

To add a new section, the drafter may consider this form:

SECTION 1. A new section is added to and made a part of the (year) Act entitled "An Act to establish an Institution of Learning in Washington County" passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, as amended, to read:

SECTION 2. On the effective date of this (year) Act, the name of the corporation and of the institution of learning is changed to "The University of Humanities."

For a repeal:

SECTION 3. Section 15 of the (year) Act entitled "An Act to establish an Institution of Learning in Washington County" passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, is repealed.

5. ALTERNATIVES TO AMENDMENTS.

a. Repeal and Enactment in Lieu.

Sometimes, in amending a statute, the changes are so numerous that it is impracticable to indicate deletions and insertions. However, if the new legislation is to have the same continuing effect as an amendment to the section would have, or to occupy the same status with respect to other statutes and court interpretations as was occupied by the original section, the original statute is repealed and the new legislation is enacted "in lieu thereof." Inland Navigation Co. v. Chambers, 202 Or. 339 (1954).

If drafting a bill to enact only **one new section**, the following form is used:

SECTION 1. ORS 483.214 is repealed and section 2 of this (year) Act is enacted in lieu thereof.

SECTION 2. . . . .

If the bill proposes to enact **more than one new section** in lieu of **one repealed section**, the following form is used:

SECTION 1. **ORS 483.210 is repealed and sections 2 and 3 of this (year) Act are enacted in lieu thereof.**

SECTION 2. . . . .

SECTION 3. . . . .

More than one new section should never be enacted in lieu of more than one repealed section. Uncertainty can be created when references are made in unaffected statute sections to only one of the repealed sections. For example, if "ORS 168.010, 168.020 and 168.030 are repealed and sections 2 to 4 of this (year) Act are enacted in lieu thereof," which, if any, of the new sections is intended to be substituted for a reference to "ORS 168.020" found in another, unaffected section?

When enacting a new section in lieu of a repealed section, the phrase "this Act" must not be used in the new section. As in the case of an amended section, confusion will result as to whether "this Act" means the Act that created the repealed section or the Act creating the new section. Reference to the Act creating the new section must be "this (year) Act."

When a new section is enacted in lieu of a repealed section, the ORS editors are authorized to substitute the ORS number assigned to the new section for the ORS number of the repealed section in any other statute sections that make reference to the repealed section. Under ordinary circumstances, therefore, it is not necessary to amend sections that make reference to the repealed section when a new section is enacted in lieu thereof merely to adjust references to the repealed section. However, ORS 174.060 provides:

> 174.060. When one statute refers to another, either by general or by specific references or designation, the reference shall extend to and include, in addition to the statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted.

When repealing a section and enacting a new section in lieu thereof, if there is a possibility that the new section might be considered "substantially different in the nature of its essential provision" from the repealed section, the drafter must adjust any references made in other statute sections to the section that is to be repealed to a more appropriate current reference. The ORS editors cannot substitute the ORS number of the new section for the number of the repealed section in unaffected statute sections if there is real uncertainty as to whether the new section is "substantially different in the nature of its essential provisions."

b. Editorial Substitutions.

Authorizing Legislative Counsel to substitute words in sections compiled in *Oregon Revised Statutes* is merely a means of avoiding numerous amendments to adjust sections affected by a transfer of functions or a change in terminology. **It is not a means of avoiding a section-by-section check of all parts of the statutes affected by a bill.** In each case, the drafter must determine whether Legislative Counsel will be able to make the substitution.

The note under ORS 184.140 (1965 Replacement Part) provides an example of poor drafting that resulted in Legislative Counsel's being unable to make a substitution that was authorized. If there is any doubt at all in this respect, the section should be amended.

When using a section directing the Legislative Counsel to make a substitution, the drafter should try to be specific. For example, enumerating the sections involved, if possible, limits the authority to the ORS chapter or series enumerated.

A complete list of authorized editorial substitutions is contained in the Preface in Volume 1 of ORS. Examples can be found in the sections listed there of the form of sections authorizing the Legislative Counsel to make editorial substitutions.

If transferring a function from one agency to another and a great number of statutes would have to be amended to redesignate the agency to which the function is transferred, sometimes one general section transferring the function from one agency to the other can be drafted. Then a provision authorizing Legislative Counsel to substitute words designating the new agency for words designating the old agency in other statute sections can be added.

However, the provision authorizing the substitution does not **accomplish** the transfer. A provision that "the duties, functions and powers of Old Agency under ORS chapter 500 with respect to the regulation of framistans are transferred to New Agency" will accomplish the transfer. The substitution authorization may be inserted to clean up existing statutes.

Appendix A of this manual discusses the form of provisions transferring a function from one agency to another. Assuming that appropriate provisions have been drafted accomplishing the transfer in a constitutional manner, a provision somewhat as follows may be used for the "cleanup":

SECTION _____. (1) Any reference in ORS chapter 500 to the (Old Agency) _____ shall be considered a reference to the (New Agency) _____, with respect to regulation of framistans.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the (Old Agency) _____ in ORS chapter 500, words designating the (New Agency) _____.

OR

SECTION _____. (1) The amendment to ORS ____ by section ____ of this (year) Act is intended to change the name of the _____ Account to the _____ Account.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the _____ Account, wherever they occur in statutory law, words designating the _____ Account.

Note that the above examples are variations on standard phrases provided in DW370.

<spm name-change> says:

SECTION __. (1) The amendments to ORS _____ by section ___ of this (year) Act are intended to change the name of the <<Old Agency>> to the <<New Agency.>>

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Old Agency,>> wherever they occur in statutory law, other words designating the <<New Agency.>>

<spm name-change2> says:

SECTION __. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Transferring Agency>> or its officers, wherever they occur in [insert ORS chapter or series], other words designating the <<Receiving Agency>> or its officers.

It is the drafter's job to ensure that the language accomplishes the purpose of the draft. Boilerplate or suggested language gives a drafter a starting place, but not always a stopping place.

6. REPEALS.

If a bill is intended to repeal an existing statute section, the body of the bill must so provide. A careful search for inconsistent provisions is required. If a bill conflicts with or supersedes existing statutes, the drafter must expressly repeal the inconsistent statutes. This prevents confusion and difficulty that might arise later in construing and applying the bill.

Ordinarily a single section is sufficient to repeal a number of statutes, as follows:

SECTION ____. ORS 171.031, 171.032 and 171.033 are repealed.

The text or subject matter of the law being repealed does not need to be stated, but the section numbers should be rechecked carefully for accuracy. The repeal is directed to the ORS number if the statute is compiled in ORS. A statute is not repealed by reference to its session law section number unless it is a section that is not compiled in ORS.

A repeal cannot be directed to an ORS chapter or series of sections. Each section in the chapter or series must be enumerated individually.

A draft should **never** include a "general repeal clause" for the reasons indicated in the discussion of general repeal clauses in chapter 10 of this manual. The problem of repeal by implication is considered in that chapter, as well as a specific provision to protect existing law from possible implied repeal.

Several statutes relate to the effect of a repeal. ORS 161.035 prescribes the effect of repeal of a criminal statute as affecting prosecutions or punishment for violation of criminal statutes. ORS 174.080 provides that prior law is not revived when the law that expressly or impliedly repealed it is itself repealed, unless expressly so provided. ORS 174.070 provides that the repeal of a validating or curative Act does not affect any validation or cure theretofore accomplished. ORS 182.080 relates to the effect of repeal of a statute authorizing a state agency to collect, receive and expend money. The effect of repeal of a repealing constitutional provision is covered by ORS 174.090.

If a section being repealed is referred to in another statute section, the latter section may have to be amended to adjust the reference. Such an amendment is not necessary if the adjustment can be made by the ORS editors. They can delete a repealed section if it is the first or last number in a series. However, if the reference to the repealed section is in a string cite, the reference must be removed by amendment. So: ORS xxx.yyy is repealed. ORS aaa.bbb refers to ORS xxx.yyy to xxx.zzz. You may leave ORS aaa.bbb alone. ORS bbb.ccc has a string cite: ORS xxx.hhh, xxx.kkk and xxx.yyy. Amend ORS bbb.ccc to delete "xxx.yyy."

7. SERIES CARD PROCEDURES.

References to the series cards and to computer searches have been made in this manual. These tools are particularly important in amending ORS sections and their use is imperative in repealing sections or adding to existing series and chapters.

It is much easier to demonstrate the use of the series card file, which includes current references only to ORS series and chapters, than to describe it, but the following paragraphs should be useful for reference purposes.

For example, the card appears as follows:

_____

34.010 to 34.100 19.230 (B)

_____

The number on the left-hand corner of the card is the ORS series **referred to**; the numbers on the right-hand side of the card indicate ORS sections that contain references to ORS 34.010 to 34.100. There may be a B in parentheses following each number on the right-hand side of the card indicating that the reference is in the body of the text. Use of the (B) has been discontinued. In this example, "ORS 19.230 (B)" means that there is a reference to ORS 34.010 to 34.100 in the text, or body, of ORS 19.230.

The series card file is useful in determining whether to add a section to and make it a part of an ORS series or chapter. When creating a new section, the drafter should check for any series references that would require adding the new section to and making it a part of such a series.

If reference is made in an ORS section to an entire ORS chapter, a series card is made; in this case, a number such as "Ch. 138" would appear in the left-hand corner of the card. Chapter reference cards for each ORS chapter are filed in front of the series reference cards for that chapter and are particularly helpful in locating references to "this chapter."

It sometimes happens that one finds a series card for a reference but, upon checking the place where the reference should be, none can be found. The drafter should consult the Chief Editor.

Another source of information for series references is the computer system. By keying the section number in STAIRS, a list of all ORS sections where that number appears can be generated. The list can be printed if the drafter so desires. See also "NUMBERS-REFERRED-TO SEARCH" in chapter 2 of this manual.

CHAPTER FOURTEEN

ADOPTION BY REFERENCE; LEGISLATIVE CLASSIFICATIONS

_____

This chapter discusses two special problems the drafter encounters when drafting bills. The first of these problems is the adoption of statutes by reference. When should a bill **adopt** another statute **by reference**? What is the best way to do this?

The second of the problems involves finding a classification that includes only the group of persons, cities, counties, activities, etc., that are to be covered in a bill without violating federal or state constitutional provisions.

1. ADOPTION BY REFERENCE.

A bill can adopt by reference all or a part of an existing law.

a. Adopting by Reference.

There are a number of reasons for adopting another statute by reference. One reason is to reduce the length of the bill. For example, by adopting the Administrative Procedures Act by reference and making it apply to the bill being drafted, it becomes unnecessary to provide a similar, detailed procedure in the bill.

Another reason for adopting a statute by reference is to provide a uniform procedure for many similar cases. When a general procedure is adopted by reference in many different statutes, changes in the procedure for all those statutes may be made by amending only the statute setting forth the general procedure. For example, if each new bill that authorizes a vote adopts the same election procedure, elections become more uniform and the election laws become easier to administer.

On the other hand, adoption by reference has its disadvantages. When a law is adopted by reference in a new bill, the reader is forced to look to the adopted law to find out what the new bill provides. The reader thus must look at two or more different places in ORS to find out what the law is. This inconvenience is not the only disadvantage. Sometimes the adopted provision does not exactly apply to the new provision. If the adopted provisions are adjusted, the reader must apply the modifications to the adopted provisions and then apply both to the new provision. If the adopted provisions are not adjusted, a question is presented as to what extent the adopted provisions are incorporated into the bill.

There is still another difficulty with adoption by reference. Amendments may be made later to the provisions adopted (but not set forth) in the new bill without regard to the effect of those amendments on the new bill. Through the use of a numbers-referred-to search (on STAIRS or other appropriate computer program or through the series cards) those sections

can be identified. Too often drafters fail to take into consideration the effect of an amendment to the provisions adopted by reference.

Whether another statute should be adopted by reference in a new bill is a question of judgment. The drafter must weigh the advantages and disadvantages in each case. Within certain limits, legislation by reference is desirable; carried beyond those limits, it can have unfortunate consequences.

b. Effect of Adopting by Reference.

Generally speaking, the effect of an adoption of another statute by reference in a new bill is the same as though the provisions adopted had been incorporated bodily into the bill. To adopt by reference, reference is made to a particular statute (such as a provision that something be done "in the manner provided in ORS chapter 183").

In Oregon, both general and particular references may accomplish the incorporation not only of the provisions of the law in force on the date the adopting bill becomes law but also subsequent amendments to the adopted statute. ORS 174.060 provides:

> 174.060. When one statute refers to another, either by general or by specific reference or designation, the reference shall extend to and include, in addition to the statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted.

Because of ORS 174.060, if the bill is **not** to incorporate future amendments to the adopted statute, words should be added to the bill that disclose this intent. A reference to the ORS section followed by reference to the edition of ORS in which the version being voted upon is found may suffice; e.g., ORS 184.730 (1993 Edition). This procedure is so cumbersome, however, that it should be used sparingly. The reader not only has two places to seek the law, the places are in different editions of ORS.

The repeal of a statute adopted by a general or particular reference may create problems concerning the operation of that statute as a part of the adopting statute. In Oregon, in the case of an adoption by reference, a repeal of the adopted provisions probably would not delete those provisions from the adopting statute. As the court said in State v. Dobson, 169 Or. 546 (1942):

> The general rule is that where an act adopts the whole or a portion of another statute, "the subsequent amendment or repeal of the adopted statute has no effect upon the adopting statute unless it is also repealed expressly or by necessary implication."

ORS 174.060, indicating an intent to include subsequent amendments, changes the rule stated above by the court **only** to the extent of including subsequent **amendments**, not a repeal.

c. Adopting a Federal Law or Statute of Another State.

A distinction must be made between adoption by reference of Oregon statutes and adoption of a statute of another state or a federal statute. In adopting by reference an Oregon statute, under ORS 174.060 the adoption generally will include future amendments to the adopted statute. However, in adopting the statute of another jurisdiction (state or federal) by reference, there is a question as to whether the reference constitutionally can adopt the statute of the other jurisdiction including **future amendments**. The cases are not clear on this point. There are a number of cases holding that the attempt to adopt future amendments to a statute of another jurisdiction is an unconstitutional delegation of legislative authority. In adopting by reference a statute of another jurisdiction, the drafter must give serious consideration to this problem. Hillman v. Northern Wasco County PUD, 213 Or. 264 (1958) (overruled on other grounds, Maulding v. Clackamas County, 278 Or. 359 (1977)). The drafter should be cautious about phrases like "as amended from time to time."

The federal Internal Revenue Code, or a specific section of the federal Internal Revenue Code, may be adopted by reference. However, unless the statute pertains to taxable income or the measurement of taxable income, the adoption will not include future amendments to the Internal Revenue Code section adopted. Article IV, section 32, Oregon Constitution, contains an exception to the rule that the Legislative Assembly cannot divest itself of its legislative power by conferring it upon someone else. The exception, however, applies only to taxable income for income tax purposes. Seymour v. Dept. of Revenue, 311 Or. 254 (1991).

Conformity with federal regulations can be accomplished constitutionally by the method used in ORS 632.516. Seale v. McKennon, 215 Or. 562 (1959); *Suggested State Legislation* (1959), page 188, Alternate 2.

Examples of statutory provisions adopting by reference federal regulations or regulations formulated by some private national organization, such as the National Board of Fire Underwriters, are as follows:

> **SECTION _____. The rules adopted from time to time by the Department of _____ after it has considered changes in the federal regulations are the state rules. In no event may the state rules as adopted by the Department of _____ be more restrictive than the federal regulations.**

OR

> **SECTION _____. The Department of _____ shall adopt the substantive provisions of the applicable code or rule issued by an appropriate agency of the federal government, together with any amendments or alterations therein that are made from time to time by the federal agency. However:**
>
> **(1) Nothing in this section requires the adoption or continuance in force of a code or rule, or amendment or addition thereto, that the Department of _____ finds to be impracticable in the light of local conditions; and**
>
> **(2) Nothing in this section prevents the Department of _____ from adopting any substitute or additional code or rule that it finds to be desirable in the light of local conditions to promote safety or the public welfare.**

OR

SECTION _____. The Department of _____ shall adopt and enforce rules for heating installations. Rules establishing minimum safety standards and specifications may conform to standards and specifications of the Society of Automotive Engineers that are current at the time the rules are adopted.

d. Making References Specific.

When possible, references should be definite rather than indefinite. In rare cases the adoption of a statute by reference to the general area of subject matter without reference to such statute in terms of a specific section number may be desired but generally it is a practice to be avoided. Certainly, such references as "hereinbefore," "hereinafter," "preceding" or "following" should never be used in making references to sections. Phrases like "except where otherwise specifically provided" and "as provided in this (year) Act" and "Notwithstanding any other provision of law," should be omitted entirely. The drafter should use a specific reference. Vague references raise constant questions as to the application of the section and cause difficulties in compiling the statute in ORS.

2. LEGISLATIVE CLASSIFICATIONS.

Class legislation is constitutional only if the class is identifiable, reasonable and natural, and the legislation treats all within the class on the basis of equality. State v. Hunter, 208 Or. 282 (1956). When class legislation is attacked, it is usually on the ground that the legislation violates the privileges and immunities clause and equal protection clause of the U.S. Constitution and the privileges and immunities clause of the Oregon Constitution. Special or local legislation is prohibited in certain cases specified in Article IV, section 23, Oregon Constitution.

a. Legislation Affecting Cities and Counties.

Cities are granted home rule by Article XI, section 2, Oregon Constitution.

City charters adopted by the voters are subject to the Constitution and criminal laws of the state. Article XI, section 2, Oregon Constitution. The limitation implies that a city ordinance may not prescribe for particular conduct a penalty more severe than that prescribed by a state statute for the same conduct. City of Portland v. Dollarhide, 300 Or. 490, 502 (1986).

State laws of general applicability also supersede powers of a city. The Oregon Supreme Court has held, in a line of cases characterized by considerable internal conflict, that any general law applying to all in a valid class of cities prevails over a city charter or ordinance in conflict with that law, Burton v. Gibbons, 148 Or. 370 (1934); that a general law prevails only as to matters of predominantly statewide concern, State ex rel. Heinig v. Milwaukie, 231 Or. 473 (1962); and that the determination as to whether a statute prevails depends on the following:

> When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities. Such a state concern must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government.
>
> Conversely, a general law addressed primarily to substantive social, economic or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. In that case, such a state law must yield those particulars necessary to preserve that freedom of local organization. La Grande/Astoria v. PERB, 281 Or. 137, 156, 576 P.2d 1204, aff'd on reh'g, 284 Or. 173 (1978).

The decisions in La Grande/Astoria v. PERB, supra, Medford Firefighters Assn. v. City of Medford, 40 Or. App. 519 (1979), City of Roseburg v. Roseburg City Firefighters, 292 Or. 266 (1981), and Denton Plastics, Inc. v. City of Portland, 105 Or. App. 302 (1991), all reflect a judicial disposition to enlarge the role of the Legislative Assembly and to diminish the role of the courts in determining what the role of city governments shall be in their relationship to the state.

Counties are granted optional home rule by Article VI, section 10, Oregon Constitution. The charter of a home rule county is required to "prescribe the organization of county government." Article VI, section 10, Oregon Constitution.

As counties adopt home rule charters, consideration must be given to the effect of state statutes on counties having charters and county ordinances adopted under such charters. Fischer v. Miller, 228 Or. 54 (1961); 30 Op. Att'y Gen. 388 (1962); Etter, "County Home Rule in Oregon Reaches Majority," 61 Or. L. Rev. 5 (1982).

Constitutional county home rule was originally envisioned as a way for counties to avoid having to go to the Legislative Assembly to change general laws affecting county operations. While counties without charters obtain a grant of legislative power under ORS 203.035 and operate under the general laws of the state, charter counties obtain their powers from, and operate under, their charters. The Oregon courts have nevertheless treated general law counties and home rule counties the same. Caffey v. Lane County, 298 Or. 183, (1984); Multnomah Kennel Club v. Dept. of Revenue, 295 Or. 279, 284 (1983).

As a result, the primary difference at this time between a home rule county and a general law county is that a home rule county may alter its structural organization and may eliminate or change the status of county elected officers. Organizationally, a general law county may only change the number of county commissioners and change the county surveyor to an appointed position. ORS 203.035 and 204.005.

One final issue relating to county home rule is the extent to which county charters and ordinances are subject to the judicial doctrines arising out of city home rule cases. See Multnomah Kennel Club v. Dept. of Revenue, supra, in which, although the issue before the court involved county powers based on a statute and the constitutional section pertaining only to counties, the court relied on certain home rule cases involving only cities. See also Att'y Gen. Letter of Advice (OP-5849), dated July 10, 1985, in which the opinions regarding county home rule similarly relied on home rule cases involving only cities.

b. Privileges and Immunities of Citizens; Equal Protection.

It has been stated that the controlling principles that guide the courts in determining questions of alleged unconstitutional discrimination or class legislation are the same whether one invokes the equal protection clause of the Fourteenth Amendment to the Constitution of the United States or the privileges and immunities provision (Article I, section 20) of the Oregon Constitution. Plummer v. Donald M. Drake Co., 212 Or. 430 (1958); School Dist. 12 v. Wasco County, 270 Or. 622 (1974).

Although the controlling principles may be identical, it is clear that the Oregon Supreme Court in its recent decisions has adopted a different method of analyzing challenges to class legislation under Article I, section 20, Oregon Constitution, than the method used by federal courts when considering challenges to laws or regulations under the Equal Protection Clause of the Fourteenth Amendment. State v. Clark, 291 Or. 231 (1981); Hewitt v. SAIF, 294 Or. 33 (1982); Hunter v. State of Oregon, 306 Or. 529 (1988). One consequence of this change in Oregon jurisprudence may be to limit to some degree the discretion that the Legislative Assembly previously exercised when enacting legislation that provided for classification of things or persons. When drafting a bill creating classifications, the drafter must consider this recent development in Oregon law.

The privileges and immunities clauses prohibit the granting to a citizen, or class of citizens, of privileges or immunities which upon the same terms do not belong equally to all citizens. The equal protection clause of the Fourteenth Amendment to the United States Constitution prohibits as discriminatory legislation in favor of particular persons and against others in like condition. These provisions mean that not only must an Act treat all persons covered by it alike, under the same conditions, but also the **classification** of persons must be identifiable, reasonable and natural. For example, an employers' liability law that applies to employees of private corporations but not to employees of individuals and copartnerships might be held void on the ground that there is no reasonable basis for exempting employees of individuals and copartnerships. On the other hand, the same law applied only to railroads probably would be upheld because this classification is not based on the **difference of employers**, but upon a difference in the **nature of employment**.

A good summary of cases interpreting the federal equal protection clause is found in the Legislative Reference Service analysis and interpretation of the United States Constitution entitled *The Constitution of the United States of America* (1982 ed.).

The legislature is allowed wide discretion in classification. Classification will not render a state statute exercising the police power unconstitutional so long as it has a reasonable basis; its validity does not depend on scientific or marked differences in things or persons or in their relations. The classification suffices if it is practical. While a state legislature may not arbitrarily select certain individuals for the operation of its statutes, a selection is obnoxious to the equal protection clause only if it is clearly and actually arbitrary and not merely possibly so. A substantial difference, in point of harmful results, between two methods of operations, justifies a classification and the burden is on the attacking party to prove it unreasonable. There is a strong presumption that distinctions made in state

legislation are based on adequate grounds. Facts sufficient to sustain a classification that can reasonably be conceived of as having existed when the law was adopted will be assumed.

There is no doctrinaire requirement that legislation should be couched in all embracing terms. A statute exercising the police power may be confined to the occasion for its existence. The equal protection clause does not mean that all occupations that are called by the same name must be treated in the same way. The legislature is free to recognize degrees of harm; a law that hits the evil where it is most felt will not be overthrown because there are other instances to which it might have been applied. A state may do what it can to prevent what it considers an evil and stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rules laid down were made mathematically exact. Exceptions of specified classes will not render the law unconstitutional unless there is no fair reason for the law that would not equally require its extension to the excepted classes. Incidental individual inequality does not violate the Fourteenth Amendment. One who is not discriminated against cannot attack a statute because it does not go further; and if what it commands of one it commands of all others in the same class, that person cannot complain of matter that the statute does not cover.

c. Cases Where Special or Local Laws Are Prohibited.

Article IV, section 23, of the Oregon Constitution, enumerates several types of special or local laws that are prohibited. The drafter should become familiar with this section because, contrary to popular belief, not all local and special laws are invalid. The section describes 14 subjects concerning which the Legislative Assembly may not enact special or local laws. It should be noted that the Oregon Supreme Court has declared that subdivision 7 of the section, relating to "laying, opening and working on highways," has been impliedly repealed, at least as a basis for defeating legislative appropriations for the construction of public roads. Stoppenback v. Multnomah County, 71 Or. 493, 507 (1914).

A "local law" is a law that applies to and operates exclusively upon a portion of the territory of the state and the people living therein and upon no other persons and property. A "special law" is one that is applicable only to particular individuals or things. State v. Malheur County, 185 Or. 392 (1949).

In cases where local laws are prohibited, it is possible to resort to classification. For example, notwithstanding the ban on certain regulation of courts, it is possible to divide the counties, with respect to the procedure for summoning and impaneling grand and petit juries, into three classes and make some laws apply to one class only. The selection of a standard of classification is exclusively a legislative power, the exercise of which is not subject to control by the courts. However, any classification must be natural and reasonable, not arbitrary, and must be founded upon real and substantial differences in the local situation and necessities of the class of counties to which it applies. If a classification excludes from its operation counties differing in no material particular from those included in a class, the classification cannot be upheld. Counties may be classified upon the basis of differences in population; and, if such classifications are natural and reasonable, laws applicable to a single class will be regarded as general in their character and not local or

special. Mere convenience of local communities, the financial necessities of particular counties and the conflicting views of citizens on the subject of the necessity of some particular procedure relating to summoning and impaneling jurors, would not be sufficient. An arbitrary selection cannot be justified by calling it a classification. The marks of distinction on which a classification is founded must be such as in some reasonable degree will account for or justify the restriction of the legislation.

Examples of both reasonable and arbitrary classifications can be found. A bill is general and constitutional if it applies to all counties having a population of more than 500,000, even if there is only one such county in Oregon, as long as the bill is drafted in such a way that it will apply to all other counties as rapidly as they acquire that population. A law applicable to all cities of fewer than 100,000 population was upheld in Southern Pacific v. Consolidated Freightways, 203 Or. 657 (1955).

On the other hand, in a case where special or local laws are prohibited, a great risk is run in attempting to make the bill apply to a county having a population of "not less than 64,540 and not more than 64,545," for example. The county might as well be named, for the bill in all likelihood never could apply to any other county. In other states where special or local laws are prohibited generally, Acts providing for the government of cities having a population of "from 23,000 to 35,000" and "from 50,000 to 100,000" have been upheld. But a classification based upon a difference in population of 1,000 has been declared unconstitutional. When resorting to classification on the basis of population, the classification should be flexible. For example, the following could be used: "in every judicial district comprising but one county and having a population of more than 90,000 but less than 125,000, according to the latest federal decennial census." To classify according to the census of 1990 or any **particular** census will make the bill local, because no other judicial district ever could come within the class even though it increased or decreased according to a later census so as to have approximately the same population. Classifications also may be made to depend upon population "according to the latest federal decennial census or an estimate or count under ORS 190.510 to 190.610, whichever is more recent."

With all the warnings on local law, the drafter must always be aware of Article IV, section 23. When that section does not apply, a county or city may be named but such naming seems to make legislators uncomfortable because of the popular belief that all local laws are unconstitutional.

CHAPTER FIFTEEN

SPECIAL TYPES OF BILLS

1. REVENUE BILLS
2. VALIDATING BILLS
3. INTERSTATE COMPACTS
4. UNIFORM AND MODEL ACTS
5. CONTINGENT MEASURES REFERRED TO VOTERS
6. INITIATIVES

_____

1. REVENUE BILLS.

The Oregon Constitution contains two provisions applicable to bills for raising revenue.

First, bills for raising revenue must originate in the House of Representatives (Article IV, section 18). This requirement is similar, but not identical, to the requirement set forth in Article I, section 7, of the United States Constitution, that federal bills for raising revenue originate in the U.S. House of Representatives.

Second, the Oregon Constitution requires bills for raising revenue to receive a three-fifths majority in each house of the Legislative Assembly for passage (Article IV, section 25). In Dale v. Kulongoski, 322 Or. 240 (1995), the court, in reviewing the ballot title for the measure proposing the three-fifths vote requirement, cited cases interpreting both state and federal origination clauses in concluding that the phrase "bills for raising revenue" was sufficiently understood so as not to need further explanation in the ballot title. The Dale case thus implies that the standards for determining when a bill is a bill for raising revenue should be the same for purposes of both the origination clause and the three-fifths vote requirement. No court has ruled directly on the meaning of the phrase "bills for raising revenue" for three-fifths vote purposes.

For drafting purposes, then, a bill for raising revenue should always be treated as requiring origination in the House of Representatives and a three-fifths vote in favor in each legislative chamber for passage.

The principal Oregon case interpreting the origination clause is Northern Counties Trust Co. v. Sears, 30 Or. 388, 401-403 (1895). That case concludes that a bill is a bill for raising revenue if the bill's primary and direct purpose is to raise revenue for general governmental use. By contrast, a bill that merely incidentally raises revenue in furtherance of another government objective is not a bill for raising revenue. Courts interpreting the phrase "bills for raising revenue" have narrowly applied the term to those bills levying taxes for general governmental purposes "in the strict sense of the words." Id. at 402.

A drafter is frequently requested to draft a bill that increases fees or creates new fees. A bill establishing or increasing fees is not a bill for raising revenue. State v. Wright, 14 Or. 365 (1887) (overruled on other grounds, Warren v. Crosby, 24 Or 558 (1893)). The

distinction between a fee and a tax is that a fee is a charge for which the feepayer receives a benefit in exchange for payment. By contrast, a tax exists when the taxpayer receives no benefit, other than the benefits of good government in general, in exchange for paying the charge.

Bills that impose assessments for local improvements or other special assessments are also not treated as bills for raising revenue, for the same reasons that fee bills are not treated as bills for raising revenue. See United States v. Munoz-Flores, 495 U.S. 385 (1990).

Often, a practical way to distinguish between charges that are fees or special assessments and charges that are taxes is to look at the breadth of the population paying the charge and the extent to which revenues raised by the charge exceed the cost of the benefit being provided. The greater the number of people subject to the charge or the more the revenues exceed the cost, the more likely it is that the charge is a tax. A bill imposing a charge that greatly exceeds the cost of the service being provided was found to be a bill for raising revenue in 15 Op. Atty. Gen. 113 (1931) (bill requiring local government to impose a privilege tax on gross earnings of utilities) and in 25 Op. Atty. Gen. 100 (1951) (bill imposing fees on race licenses and percentage charge on gross receipts from mutual wagering).

A bill that repeals a tax credit, exemption or other tax benefit may be a bill for raising revenue if the primary purpose of the bill is to raise revenue for general government use.[1] If the repeal is for another purpose, to eliminate an unused credit for example, the bill is not a bill for raising revenue.

A bill that extends the sunset of a temporary tax is a bill for raising revenue if the bill that originally created the temporary tax would have been considered a bill for raising revenue.

A bill that merely authorizes local government to impose a tax if the local government decides to do so is not a bill for raising revenue; the bill would not directly raise any revenue absent subsequent local government action.

A drafter may be asked to prepare a Senate amendment to a non-revenue raising House bill that would make the bill a bill for raising revenue. Whether the Oregon origination clause permits a Senate revenue raising amendment to a non-revenue raising bill is a question that has not been answered by Oregon courts. Among other jurisdictions with origination clause provisions, there is a split of authority; the courts of a majority of states do not look beyond the bill number in determining the origination of the revenue raising provision, but a minority of other jurisdictions do consider the source of the revenue raising

[1] In Mumford v. Sewall, 11 Or. 67 (1883), and Dundee Mortgage Co. v. Parish, 24 F. 197 (D. Or. 1885), the courts concluded that the repeal of a property tax exemption was not a bill for raising revenue. At the time Mumford and Dundee were decided, Oregon had a pure levy-based property tax system. Under a levy-based system, the repeal of an exemption would not raise any more revenue. Instead, the repeal would reduce the amount of property taxes paid by all property owners other than the owners of the formerly exempt property. Oregon's current property tax system is a rate-based system. See Article XI, section 11, Oregon Constitution. The repeal of an exemption in a rate-based system would raise more revenue.

provision. Accordingly, the drafter should, at a minimum, advise the amendment requester of the potential origination clause problem. A House bill that is a bill for raising revenue at the time it passes out of the House may be amended in any manner on the Senate side. A Senate bill may not be amended on the House side so as to be a bill for raising revenue.

If a Senator requests a bill for raising revenue, the drafter should inform the Senator that the draft is a bill for raising revenue and that the Oregon Constitution requires bills for raising revenue to be introduced in the House. The Senator may still request preparation of the draft. A brief written letter explaining origination and three-fifths vote requirements should accompany any draft bill for raising revenue prepared for a Senator.

Article IX, section 1a, Oregon Constitution, prohibits the use of an emergency clause on "any act regulating taxation or exemption." An "act regulating taxation or exemption" is not the same as a bill for raising revenue. See page 12.2 of this manual for further discussion.

The rules of the Legislative Assembly require the title of a bill for raising revenue to include "and providing for revenue raising that requires approval by a three-fifths majority."

2. VALIDATING BILLS.

a. Constitutionality of Validating Bills.

Validating bills are used to cure or validate irregularities in actions, proceedings or transactions consummated in good faith under authority of an existing law. A validating bill will be upheld if it is in accord with justice, equity and sound public policy and does not materially interfere with or overthrow vested rights, impose new burdens or infringe upon the judicial department. The Legislative Assembly may pass a retroactive law to validate any Act that it could have authorized in the first instance subject to the restriction that the proposal cannot impair the obligation of contracts or adversely affect a vested right. People's Utility Dist. v. Wasco County, 210 Or. 1 (1957).

A challenge to the validity of a validating Act is usually made under the due process clause of the Fourteenth Amendment to the United States Constitution. See Jackson County v. Jackson Ed. Serv. Dist., 90 Or. App. 299 (1988); Hughes v. Aetna Cas. & Sur. Co., 234 Or. 426 (1963).

Examples. A list of validating Acts applicable to estates in property, conveyancing and recording, is found in ORS 93.810. ORS 273.900 to 273.920 validate numerous transactions relating to state lands. The following are additional examples of validating Acts:

> **SECTION _____. The use before the effective date of this (year) Act of a resolution rather than an ordinance to submit a municipal measure to electors at a special election under ORS 221.210 is validated. An otherwise valid municipal measure that was adopted at a special election under ORS 221.210 that was ordered before the effective date of this (year) Act by means of a resolution rather than an ordinance is validated.**

OR

SECTION _____. The approval of any subdivision or partition plat, during the period beginning January 1, 1980, and ending on the effective date of this (year) Act, that would have satisfied the requirements of ORS 92.090, as amended by section _____ of this (year) Act, is validated.

OR

SECTION _____. The apportionments and distributions of liquor revenues for the calendar quarter ending June 30, 2000, and of highway revenues for the period of six months ending June 30, 2000, to the City of Manzanita and the City of Gold Beach, the amounts of which were based on a special census of each city taken after June 30, 1997, under ORS 190.510 to 190.610, are validated. An apportionment or distribution described in this section may not be invalidated or set aside because the State Board of Higher Education lacked authority to conduct a special census after June 30, 1997.

OR

SECTION _____. Any special election of a domestic water supply district that was called and held under ORS 264.340 or 264.350 before the effective date of this (year) Act, at which a majority of the votes cast by district electors authorized the district to take any action under ORS 264.340 or 264.350, is validated and constitutes valid authorization to the district to take any action authorized by the majority vote.

OR

SECTION _____. All actions before the effective date of this (year) Act under ORS 440.315 to 440.410, that would have been valid but for the requirement that electors of a hospital district reside in the district for a period of not less than 90 days before an election, are validated.

OR

SECTION _____. Any proceeding or election under ORS 450.005 to 450.245 for the creation of a sanitary district or for the election of sanitary district officers that was held before January 1, 1981, is validated, notwithstanding any defect or irregularity in the proceeding or election. A sanitary district created or attempted to be created by an election described in this section is declared to be created. Officers of a sanitary district elected, or attempted to be elected, by an election described in this section, or by an election affected by a proceeding described in this section, are declared to be elected.

OR

SECTION _____. The use prior to the effective date of this (year) Act of any moneys from the Capitol Properties Account for the purposes specified in ORS 276.064 (2)(b) is validated.

OR

SECTION _____. Notwithstanding any provision of law, payments of compensation to an officer or employee of the State of Oregon made before the effective date of this (year) Act in good faith by a state officer or agency, at the rate and in the amount shown in the official budget of the state officer or agency for the 1979-1981 biennium, and provided by legislative appropriation based on that budget, are validated as made in conformance with the intent of the Legislative Assembly.

OR

SECTION _____. If the notice of the referendum provided for in sections 3 and 4 of this (year) Act is given before the effective date of this (year) Act, or the referendum is held before the effective date of this (year) Act, then the notice or referendum is valid for the purposes of sections ___ to ___ of this (year) Act.

b. Effect of Repeal of Validating Act.

The repeal of a validating Act does not affect any validation accomplished before the effective date of the repeal. ORS 174.070.

3. INTERSTATE COMPACTS.

An interstate compact is a voluntary agreement between two or more states that is designed to meet common problems of the states concerned. Compacts must receive congressional consent. Article I, section 10, of the United States Constitution. Congressional consent is usually granted before a state adopts a compact. See Virginia v. West Virginia, 78 U.S. 39, 59-60 (1870), on how congressional consent may be given. An interstate compact adopted by a state is considered federal law, not state law, and therefore is subject to federal standards of statutory interpretation. New York v. Hill, 528 U.S. 110 (2000).

ORS chapters 417 and 507 contain examples of interstate compacts. Interstate compacts are rarely presented in our form and style. According to an informal survey conducted in 2004, some states routinely make form and style changes to conform to their state's conventions, some states never make such changes and some states take a middle position.[2] To the extent possible, try to put interstate compacts in Oregon form and style.

4. UNIFORM AND MODEL ACTS.

Uniform Acts are prepared by the National Conference of Commissioners on Uniform State Laws and generally are intended to be followed exactly. Model or "suggested" Acts are prepared by the Drafting Committee of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. Recently promulgated Uniform Acts and the suggested Acts of the Council of State Governments for each year are published in an annual booklet of the Council of State Governments titled *Suggested State Legislation*.

Model Acts can be required to conform to Oregon form and style. Uniform Acts, however, are probably best left alone in order to ensure the sought-after uniformity. Do not make substantive changes to Uniform Acts unless the changes are clearly requested by the draft or amendment requester. Minimize style changes to Uniform Acts.

[2] Survey of NCSL Legal Services Staff Section e-mail list members, conducted by Virginia Vanderbilt. The nonscientific methodology involved sending a question to the list.

5. CONTINGENT MEASURES REFERRED TO VOTERS.

A drafter may be requested to prepare a measure to be referred to electors that is also made contingent on the occurrence of something else. The drafter should consider the following constitutional provisions when making a measure referred to electors contingent on some other event:

- Article I, section 21, of the Oregon Constitution, provides that no law shall "be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution[.]" See Marr v. Fisher, 182 Or. 383, 388-392 (1947) (discussed in chapter 12 under "Operative Dates"); Foeller v. Housing Authority of Portland, 198 Or. 205 (1953).

- Article III, section 1, of the Oregon Constitution, establishes the separation of powers among three branches of government and prohibits one branch from exercising the functions of another. See Rooney v. Kulongoski, 322 Or. 15 (1995).

- Article IV, section 1, of the Oregon Constitution, limits the power of the Legislative Assembly to enact laws to inhibit the exercise of the referendum power reserved to the people. See State ex rel. McPherson v. Snell, 168 Or. 153 (1942); Bernstein Bros., Inc. v. Department of Revenue, 294 Or. 614 (1983).

- Article XVII, section 1, of the Oregon Constitution, requires a separate vote by electors for each constitutional amendment submitted to electors. See Armatta v. Kitzhaber, 327 Or. 250 (1998) (discussed in chapter 17 of this manual). Article XVII, section 1, also prohibits local government or other entity ratification of a measure referred to electors. Hart v. Paulus, 296 Or. 352 (1984).

- Article IV, section 1 (4)(d), of the Oregon Constitution, provides that an initiated or referred measure becomes effective 30 days after the date on which it is enacted or approved by a majority of the votes cast.

6. INITIATIVES.

Initiatives enable the people of the State of Oregon to create new laws, amend or repeal existing laws or amend the Oregon Constitution through ballot measures voted on at the general election.

Initiative measures generally follow the forms used for legislative measures with these exceptions:

- Initiative measures **do not** include a measure summary or a referendum clause.

- The heading for an initiative measure reads "An Act" except that an initiative proposing a constitutional amendment is headed "Proposed Constitutional Amendment."

a. Statutory Initiatives.

The form for initiative measures that create new statutory law or amend or repeal existing statutory law generally follows the form used for bills. Use "this (year of next general election) Act" in internal references; the year of the general election is used because that is the year in which electors will enact the measure.

The formal parts of initiative measures that create new statutory law or amend or repeal existing statutory law are:

(1) **Heading.** The heading reads "An Act".

(2) **Title.** The title is similar to the title of a bill and gives a general indication of the subject to which the measure relates. The title should be expressed as a single subject. See chapter 5 of this manual for single subject requirements. Existing statutes that are amended or repealed by the measure also should be designated in the title. Special title clauses declaring emergencies, prescribing effective dates, referring the measure to electors or stating supermajority voting requirements do not apply to initiatives and therefore are not included in initiative measure titles.

(3) **Enacting Clause.** The enacting clause reads "Be It Enacted by the People of the State of Oregon:".

(4) **Body.** The body is where the text of new law is set forth, amended sections are set forth in amended form or existing statutes are repealed.

EXAMPLE:

AN ACT

Relating to public utilities.

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

SECTION 1. (1) As used in this section and section 2 of this (year) Act, "measured service" means charging for local exchange telephone service based upon number of calls, length of calls, distance, time of day or any combination of these factors.

(2) The Public Utility Commission may not require any telephone customer or class of customers to pay for local exchange telephone service, or any portion of local exchange telephone service, on a mandatory measured service basis.

SECTION 2. **Nothing in section 1 of this (year) Act prohibits the Public Utility Commission from requiring telephone customers to pay on a mandatory measured service basis for:**

(a) Land, marine or air mobile service.

(b) Local exchange telephone service resold at a profit.

SECTION 3. **The Public Utility Commission may not change boundaries of local exchange service areas nor take any other action if the change or action has the effect of circumventing section 1 of this (year) Act.**

b. Initiatives That Amend the Oregon Constitution.

Initiative measures that amend the Oregon Constitution generally follow the form for joint resolutions that amend the Constitution; however, these initiative measures **do not** include a referendum clause. The formal parts of initiative measures that amend the Oregon Constitution are:

(1) **Heading.** The heading reads "Proposed Constitutional Amendment."

(2) **Enacting Clause.** The enacting clause reads "Be It Enacted by the People of the State of Oregon:".

(3) **Body.** The body consists of **one** amending clause.

EXAMPLE:

PROPOSED CONSTITUTIONAL AMENDMENT

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

PARAGRAPH 1. Section 2, Article II of the Constitution of the State of Oregon, is amended to read:

Sec. 2. (1) Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen:

(a) Is 18 years of age or older;

(b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and

(c) Is registered [*prior to the*] **not less than 20 calendar days immediately preceding any** election in the manner provided by law.

(2) [*Except as otherwise provided in section 6, Article VIII of this Constitution with respect to the qualifications of voters in all school district elections, provision*] **Provision** may be made by law to require that persons who vote upon questions of levying special taxes or issuing public bonds shall be taxpayers.

CHAPTER SIXTEEN

MEASURES OTHER THAN BILLS

1. JOINT RESOLUTIONS
2. CONCURRENT RESOLUTIONS
3. JOINT MEMORIALS
4. RESOLUTIONS
5. MEMORIALS

In addition to bills, the Legislative Assembly as a whole may take action through the following kinds of measures:

- **Joint Resolution**.
- **Concurrent Resolution**.
- **Joint Memorial**.

Any of these three types of measures may be introduced in either house.

A single house of the Legislative Assembly may take action through the following kinds of measures:

- **Resolution**.
- **Memorial**.
- **Commemoration** (used only by the Senate during the legislative interim to express congratulations, commendation or sympathy — see Appendix F of this manual).

The power to "legislate" by resolution or memorial is confined within narrow limits. A resolution or memorial is not a law and is not submitted to the Governor for approval or disapproval. If adopted, resolutions and memorials are filed with the Secretary of State. Of the resolutions and memorials that are adopted only those considered to be of public significance and general interest are published in *Oregon Laws*.

1. JOINT RESOLUTIONS.

The Legislative Assembly uses joint resolutions to:

- Propose a constitutional amendment or revision (see chapter 17 of this manual).
- Create an interim committee under ORS 171.610 or a legislative task force.
- Give directions to a state agency or officer.
- Authorize some kind of temporary action.

While ORS 171.640 makes it unnecessary to use any measure to create interim committees, ORS 171.610 seems to indicate that if a measure is used, a joint resolution is the preferred type of measure. See chapter 19 of this manual for interim committee boilerplate and an in-depth discussion of interim committees.

A joint resolution cannot be used to legislate on matters involving property or other rights. Rowley v. Medford, 132 Or. 405 (1930). As to such matters, a resolution has only the effect of an expression of opinion and no more.

An appropriation cannot be made by resolution; however, expenditures may be authorized in a resolution from money that is already appropriated. For example, the limit on expenses for an interim committee may be set in the resolution that creates it, but the moneys to be used must be appropriated by an Act.

The parts of a joint resolution are the heading, preamble (optional), resolving clause and body.

Heading. The heading identifies the type of measure. It does not include the name of the house of origin.

Preamble. A preamble ("whereas" clauses) may be used to express reasons for the proposed action, but may be omitted because it is not essential to the use or validity of the joint resolution. If used, the preamble follows the heading and precedes the resolving clause. Preambles often provide the drafter with an opportunity to exercise an eloquence not otherwise found in bills. When writing a preamble:

- Do not use a comma after the word "Whereas" in each clause.
- End each paragraph except the last with a semicolon and the word "and".
- End the last paragraph with a semicolon and the phrase "now, therefore,". (This phrase connects the preamble to the resolving clause.)
- Keep text lightface.

Resolving Clause. While the preamble may be omitted, the resolving clause and body are indispensable parts of a joint resolution. The resolving clause is always flush with the left-hand margin. The resolving clause for a joint resolution is:

Be It Resolved by the Legislative Assembly of the State of Oregon:

Body. The measure text.

The following is an example of a joint resolution to create a single-purpose interim committee, including the heading, preamble, resolving clause and body (see chapter 19 for interim committee boilerplate and further discussion):

JOINT RESOLUTION

Whereas there are numbers of problems of a social nature that require the study and attention of a legislative interim committee; and

Whereas a particularly urgent social problem is that of divorce and the conditions giving rise to divorce and the evils resulting from divorce; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) There is created an Interim Committee on Social Problems consisting of nine members. The President of the Senate shall appoint four members from among members of the Senate, and the Speaker of the House of Representatives shall appoint five members from among the members of the House of Representatives.

(2) The interim committee shall:

(a) Study the divorce laws of this state and the need for their modification.

(b) Study the divorce codes of any states that have recently completed a thorough revision of the divorce laws, and determine whether any of their provisions are desirable for the State of Oregon.

(c) Study the causes of the high rate of divorce and determine which, if any, of the causes can be reduced by legislative action.

(d) Study the results, in terms of divorce, of marriages entered into at extremely youthful ages.

(e) Study the administration of alimony, custody and property rights by the courts under present law in divorce or separation proceedings.

(3) Except as provided in this resolution, the interim committee is subject to the provisions of ORS 171.605 to 171.635 and has the authority contained in ORS 171.505 and 171.510. The interim committee may file its written report at any time within 30 days after its final meeting, or at such later time as the appointing authority or, in the case of a joint committee, as the appointing authorities may designate.

(4) The appointing authorities, in consultation with the interim committee chairpersons, shall develop a work plan consisting of a list of subjects for study by the interim committee and the duration of the study. The work plan developed for the interim committee shall be filed with the Legislative Administrator.

(5) Interim committee work plans may be modified only by the appointing authorities after consultation with the interim committee chairperson. The interim committee, by official action, may request such a modification.

(6) The Legislative Administrator may employ persons necessary for the performance of the functions of the interim committee. The Legislative Administrator shall fix the duties and amounts of compensation of these employees. The interim committee shall use the services of continuing legislative staff, without employing additional persons, to the greatest extent practicable.

(7) Members of the Legislative Assembly who serve on the interim committee shall be entitled to an allowance as authorized by ORS 171.072. Claims for expenses incurred in performing functions of the interim committee shall be paid out of funds appropriated for that purpose.

(8) All agencies of state government, as defined in ORS 174.111, are directed to assist the interim committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the interim committee consider necessary to perform their duties.

(9) Subject to the approval of the Emergency Board, the interim committee may accept contributions of funds and assistance from the United States Government or its agencies, or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the interim committee. All such funds are to aid in financing the functions of the interim committee and shall be deposited in the General Fund of the State Treasury to the credit of separate accounts for the interim committee and shall be disbursed for the purpose for which contributed in the same manner as funds appropriated for the interim committee.

(10) Official action by the interim committee requires the approval of a majority of the quorum of the members of the interim committee. All legislation recommended by official action of the interim committee must indicate that it is introduced at the request of the interim committee and shall be prepared in time for presession filing pursuant to ORS 171.130.

2. CONCURRENT RESOLUTIONS.

A concurrent resolution is used when both houses of the Legislative Assembly join to:

- Address matters affecting the internal operations and procedures of the Legislative Assembly, such as joint sessions, appointments of joint committees, recesses and adjournments.

- Express legislative congratulations, commendation or sympathy.
- Express an opinion or sentiment on a matter of public interest.
- Express legislative approval of action taken by someone else.
- Designate a state emblem.
- Make a certain day a single day of state recognition. (Use a bill for a statutory holiday, as in ORS 187.010 and 187.020, or a day of annual recognition.)

The parts of a concurrent resolution are the heading, preamble (optional), resolving clause and body.

Heading. The heading identifies the type of measure. It does not include the name of the house of origin.

Preamble. The preamble for a concurrent resolution follows the same form as a preamble for a joint resolution and may be omitted.

Resolving Clause. The resolving clause is always flush with the left-hand margin. The resolving clause for a concurrent resolution is:

Be It Resolved by the Legislative Assembly of the State of Oregon:

Body. The text, which is lightface and which may take the form of numbered paragraphs or may take the following formal form:

- Begin the first paragraph with the word "That".
- Begin the second paragraph and subsequent paragraphs with the words "Resolved, That".
- End each paragraph except the last with a semicolon and the words "and be it further".
- End the last paragraph with a period.

When a concurrent resolution expresses legislative congratulations, commendation or sympathy, do not use numbered paragraphs because of the resulting impersonal appearance.

The following is an example of a concurrent resolution providing for the appointment of a joint committee and the convening of a joint session:

CONCURRENT RESOLUTION

Whereas February 12 is the 170th anniversary of the birth of Abraham Lincoln, the great emancipator; and

Whereas it is fitting that a suitable observance be made by the Senate and by the House of Representatives in honor of this day; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) A committee of four shall be appointed to arrange an appropriate program commemorating this anniversary. The President of the Senate shall appoint two members from among members of the Senate, and the Speaker of the House of Representatives shall appoint two members from among the members of the House of Representatives.

(2) For this purpose, the Senate and the House of Representatives shall convene in joint session at 2:05 p.m. on Tuesday, February 12, 1979.

3. JOINT MEMORIALS.

A joint memorial is used when both houses of the Legislative Assembly join to address or petition Congress, the President of the United States or the officials or agencies of another governmental body. Do **not** use a joint memorial to commemorate the dead.

The parts of a joint memorial are the heading, address clause, introductory clause, preamble (optional), resolving clause and body.

Heading. The heading identifies the type of measure. It does not include the name of the house of origin.

Address Clause. The address clause follows the heading and precedes the introductory clause. Note that the first line of the address clause is flush with the left-hand margin and the second line is indented: <spm address>

To the President of the United States and the Senate and House of Representatives of the United States of America, in Congress assembled:

Here is a special address clause used to memorialize the Senate of the United States of America when it goes into executive session:

To the Senate of the United States of America, in executive session assembled:

Here are other examples of address clauses:

- To the President of the United States:
- To the President of the United States, the Senate Majority Leader and the Speaker of the House of Representatives:
- To the President of the United States, the Senate and the House of Representatives of the United States of America, in Congress assembled, and the Secretary of the Department of Commerce:
- To the members of the Oregon Congressional Delegation:
- To the Director of the United States Fish and Wildlife Service:
- To the Governors of Alaska, Idaho, Montana and Washington and to the Premiers of Alberta and British Columbia:

Introductory Clause. The introductory clause follows the address clause and precedes the preamble, if used. The introductory clause for a joint memorial reads: <spm intro-jmem>

We, your memorialists, the Seventy-seventh Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Preamble. The preamble for a joint memorial follows the same form as a preamble for a joint resolution.

Resolving Clause. The resolving clause is always flush with the left-hand margin. The resolving clause for a joint memorial is:

Be It Resolved by the Legislative Assembly of the State of Oregon:

Body. The text, which is lightface and which may take the form of numbered paragraphs or may take the following formal form:

- Begin the first paragraph with the word "That".
- Begin the second paragraph and subsequent paragraphs with the words "Resolved, That".
- End each paragraph except the last with a semicolon and the words "and be it further".
- End the last paragraph with a period.

Provision for Sending Copies. It is customary to include at the end of the body of a joint memorial a provision for sending "a copy of this memorial" to members of the Oregon Congressional Delegation. (Note that the type of memorial is not specified.) Copies also may be sent to other specific officers and agencies of the federal government or other states or provinces, depending upon the subject of the joint memorial.

Never state in this provision that copies be sent to "each member of Congress" unless specifically directed to do so by the person requesting the joint memorial. Inclusion of such a provision will require the preparation of hundreds of copies of the joint memorial and transmittal of these copies to **each** member of Congress.

If copies of the joint memorial are to be sent to Congressional leadership, direct them to the "Senate Majority Leader and the Speaker of the House of Representatives" and **not** to the "Vice President of the United States and the Speaker of the House of Representatives." Although the Vice President serves as the presiding officer of the United States Senate, the Senate Majority Leader, like the Speaker of the House of Representatives, has been elected by the majority of the members of the leader's political party in that house to be responsible for the design and achievement of a legislative program.

The provision for sending copies may take the form of a numbered paragraph at the end of the joint memorial and should read substantially as follows:

(2) A copy of this memorial shall be sent to the President of the United States, to the members of the Federal Energy Regulatory Commission and to each member of the Oregon Congressional Delegation.

The provision for sending copies of a joint memorial may also take the following form:

That we, the members of the Seventy-seventh Legislative Assembly, respectfully request . . .; and be it further

Resolved, That a copy of this memorial shall be sent to the President of the United States, to the members of the Federal Energy Regulatory Commission and to each member of the Oregon Congressional Delegation.

The following is an example of a joint memorial:

JOINT MEMORIAL

To the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the Seventieth Legislative Assembly of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas the historic Celilo Village has twice been moved or altered by projects of the United States Government; and

Whereas Celilo Village is one of the most visible Indian communities in the nation with thousands of visitors per day; and

Whereas the once prosperous center of fishing and trade has been lost to neglect, deterioration and poverty; and

Whereas the Confederated Tribes of the Umatilla Indian Reservation have committed to assist the "River People" and have prepared a detailed inventory of existing buildings and a preliminary plan for replacement and refurbishing; and

Whereas the land, infrastructure and five of the remaining houses from 1947 are held in trust by the Bureau of Indian Affairs for use by the Umatilla, Warm Springs, Yakima and other Columbia River Indians; now, therefore,

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Congress of the United States is urged to appropriate the necessary funds to restore and redevelop Celilo Village.

(2) A copy of this resolution shall be sent to each member of the Oregon Congressional Delegation.

4. RESOLUTIONS.

A resolution, also known as a "simple resolution," is adopted by a single house of the Legislative Assembly to:

- Take action affecting its own concerns or procedures, such as appointing a committee of its members.
- Express an opinion or sentiment on a matter of public interest.

The parts of a resolution are the heading, preamble (optional), resolving clause and body.

Heading. The heading identifies the type of measure **and includes** the name of the house of origin, e.g., "House Resolution" or "Senate Resolution."

Preamble. The preamble for a resolution follows the same form as a preamble for a joint resolution.

Resolving Clause. The resolving clause for a resolution identifies the single house taking the action or expressing the opinion or sentiment.

The resolving clause for a **House Resolution** is:

Be It Resolved by the House of Representatives of the State of Oregon:

The resolving clause for a **Senate Resolution** is:

Be It Resolved by the Senate of the State of Oregon:

Body. The text, which is lightface and which may take the form of numbered paragraphs or may take the following formal form:

- Begin the first paragraph with the word "That".
- Begin the second paragraph and subsequent paragraphs with the words "Resolved, That".

- End each paragraph except the last with a semicolon and the words "and be it further".
- End the last paragraph with a period.

The following is an example of a resolution adopted by a single house:

SENATE RESOLUTION

Whereas history has been marred by racial discrimination, exclusion, bigotry and great injustice toward people of color, including Native Americans, African Americans, Latinos, Chinese Americans, Japanese Americans and Pacific Islanders; and

Whereas such mistreatment based on race has been allowed and enforced through our laws and legal system; and

Whereas an example of a law was an Act passed by the Oregon Territorial Assembly in 1849 (and later repealed) that expressly excluded African Americans from the Territory; and

Whereas the legislative session that convened in January 1999 is the 150th anniversary of this exclusionary Act; and

Whereas one lingering effect of this history causes harm and pain to people of color and limits the quality and dignity of all of our lives; and

Whereas we believe that an honest acknowledgment of our racial history and open dialogue can lead to racial healing and reconciliation and free us to move constructively into a better future for all if we take personal responsibility for change by examining and changing our personal attitudes that perpetuate structural, economic and racial separation; now, therefore,

Be It Resolved by the Senate of the State of Oregon:

That we, the members of the Senate of the Seventieth Legislative Assembly, recognize Oregon's discriminatory history, acknowledge people of all races and ethnic backgrounds who have worked for positive change and celebrate the progress made and encourage participation in honest interracial dialogue essential to positive social change; and be it further

Resolved, That we, the members of the Senate of the Seventieth Legislative Assembly, resolve to increase public awareness of racial discrimination and work toward the full participation of racial minorities in all aspects of Oregon life, and that this Day of Acknowledgment provide focus for planning constructive dialogues and actions as we work toward a future of racial equality.

5. MEMORIALS.

A memorial, also known as a "simple memorial," is a measure by which a single house of the Legislative Assembly takes action of a character for which the Legislative Assembly as a whole would use a joint memorial.

The parts of a memorial are the heading, address clause, introductory clause, preamble (optional), resolving clause and body.

Heading. The heading identifies the type of measure **and includes** the name of the house of origin, e.g., "House Memorial" or "Senate Memorial."

Address clause. The address clause used for a memorial follows the form as that used for a joint memorial.

Introductory Clause. The introductory clause follows the address clause and precedes the preamble, if used. The introductory clause for a memorial identifies which house is addressing or petitioning the officials or agencies of another governmental body.

The introductory clause for a **House Memorial** reads: <spm intro-hmem>

We, your memorialists, the House of Representatives of the State of Oregon, in legislative session assembled, respectfully represent as follows:

The introductory clause for a **Senate Memorial** reads: <spm intro-smem>

We, your memorialists, the Senate of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Preamble. If used, the preamble for a memorial follows the same form as a preamble for a joint resolution.

Resolving Clause. The resolving clause for a memorial also identifies which house is addressing or petitioning another governmental body. The resolving clause is always flush with the left-hand margin.

The resolving clause for a **House Memorial** is:

Be It Resolved by the House of Representatives of the State of Oregon:

The resolving clause for a **Senate Memorial** is:

Be It Resolved by the Senate of the State of Oregon:

When the Senate desires to express its views during an executive appointment session, the resolving clause is:

Be It Resolved by the Senate in Session Assembled under Section 4, Article III of the Oregon Constitution:

Body. The text is lightface and may take the form of numbered paragraphs or may take the following formal form:

- Begin the first paragraph with the word "That".
- Begin the second paragraph and subsequent paragraphs with the words "Resolved, That".
- End each paragraph except the last with a semicolon and the words "and be it further".
- End the last paragraph with a period.

Provision for Sending Copies. As for a joint memorial, it is customary to include at the end of the body of a memorial a provision for sending "a copy of this memorial" to members of the Oregon Congressional Delegation or, depending on the subject of the memorial, to other specific officers and agencies of the federal government or other states or provinces. The caveats about sending a copy of the memorial to "each member of Congress" or to Congressional leadership also apply.

The following is an example of a memorial adopted by a single house:

HOUSE MEMORIAL

To the President of the United States and the Senate and House of Representatives of the United States of America, in Congress assembled:

We, your memorialists, the House of Representatives of the State of Oregon, in legislative session assembled, respectfully represent as follows:

Whereas children are a precious gift and responsibility, and preserving the spiritual, physical and mental well-being of children is our sacred duty as citizens; and

Whereas no segment of our society is more critical to the future of human survival and society than our children, and it is the obligation of all public policymakers not only to support but also to defend the health and rights of parents, families and children; and

Whereas information endangering children is being made public and, in some instances, may be given unwarranted or unintended credibility through release under professional titles or through professional organizations; and

Whereas elected officials have a duty to inform and to counteract actions they consider damaging to children, parents, families and society; and

Whereas Oregon has made sexual molestation of a child a crime, and parents who sexually molest their children should be declared to be unfit; and

Whereas virtually all studies in this area, including those published by the American Psychological Association, condemn child sexual abuse as criminal and harmful to children; and

Whereas the American Psychological Association has recently published, but did not endorse, a study that suggests that sexual relationships between adults and "willing" children are less harmful than believed and might even be positive for "willing" children; now, therefore,

Be It Resolved by the House of Representatives of the State of Oregon:

(1) The House of Representatives of the Seventieth Legislative Assembly of the State of Oregon condemns and denounces all suggestions in the recently published study by the American Psychological Association that indicate that sexual relationships between adults and "willing" children are less harmful than believed and might even be positive for "willing" children.

(2) The House of Representatives of the Seventieth Legislative Assembly of the State of Oregon urges the President and the Congress of the United States of America to likewise reject and condemn, in the strongest honorable written and vocal terms possible, any suggestions that sexual relationships between children and adults are anything but abusive, destructive, exploitive, reprehensible and punishable by law.

(3) The House of Representatives of the Seventieth Legislative Assembly of the State of Oregon encourages competent investigations to continue to research the effects of child sexual abuse using the best methodology so that the public and public policymakers may act upon accurate information.

(4) A copy of this memorial shall be sent to:

(a) The Honorable Bill Clinton, President of the United States;

(b) The Honorable Al Gore, Jr., Vice President of the United States and President of the United States Senate;

(c) The Honorable Trent Lott, Majority Leader of the United States Senate;

(d) The Honorable J. Dennis Hastert, Speaker of the United States House of Representatives;

(e) The Honorable David Satcher, M.D., Ph.D., Surgeon General of the United States; and

(f) The members of the Oregon Congressional Delegation, including Senators Ron Wyden and Gordon Smith and Representatives David Wu, Greg Walden, Earl Blumenauer, Peter DeFazio and Darlene Hooley.

CHAPTER SEVENTEEN

CONSTITUTIONAL AMENDMENTS AND REVISIONS

_____

1. BACKGROUND.

Adequate background research is required in preparing a constitutional amendment or revision, just as in drafting a bill. Since any change in the Oregon Constitution must be approved by the people, correcting an error made in drafting a constitutional amendment or revision is much more difficult than correcting an error made in drafting a bill.

In drafting a constitutional amendment or revision, the drafter must check the annotations to the Constitution. Reference to the report and files of the Oregon legislative interim committees on constitutional revision may be useful to pick up background information relating to the proposed amendment or revision and to find any notes concerning obsolete related parts of the Constitution. Comparative constitutional provisions of other states may be helpful in preparing a constitutional amendment. States having a particular type of constitutional provision can be located by referring to the *Index Digest of State Constitutions*, a copy of which is in the Legislative Counsel library. The library also has a set of volumes containing the text of all state Constitutions. For the source of original sections of the Oregon Constitution, *A History of the Oregon Constitution* by Carey is often useful. For background on amendments to the Constitution, the voters' pamphlet for the election at which the amendment was adopted may provide the arguments pro and con.

A STAIRS search should be conducted when amending or repealing a section of the Constitution.

There are significant differences between **amendment** and **revision** of which the drafter must be aware. The terms are not interchangeable.

2. CONSTITUTIONAL AMENDMENT.

The people may amend the Constitution through use of the initiative procedure (see Article IV, section 1, Oregon Constitution). The amendments proposed by the people by petition do not require the referendum clause.

The method for legislatively adopting amendments to the Oregon Constitution is prescribed in Article XVII, section 1, Oregon Constitution. That section provides that:

- An amendment may be proposed in either house of the Legislative Assembly.

- The amendment must be agreed to by a **majority** of all the members elected to each of the two houses.

- The amendment must be referred to the people for their approval or rejection at the next **regular general election**, except when the Legislative Assembly orders a special election for that purpose.

- The amendment must be approved by a majority of the votes cast on the amendment.

- If the majority of votes cast on the amendment is in favor of the amendment, the Governor by proclamation declares the amendment adopted, and the amendment takes effect 30 days after the day on which it is approved by a majority of the votes cast. Or. Const. Art. IV, §1 (4)(d).

- When "two or more amendments shall be submitted" at the same election, they shall be so submitted that each amendment shall be voted upon separately.

Drafters should pay special attention to the separate-vote requirement. This requirement applies to constitutional amendments proposed by initiative petition and to constitutional amendments referred by the Legislative Assembly. See Armatta v. Kitzhaber, 327 Or. 250 (1998). If a court determines that a measure was not adopted in compliance with the separate-vote requirement of Article XVII, section 1, the measure is void in its entirety.

The separate-vote requirement does not prohibit an amendment that affects more than one article or section. "At most it prohibits the submission of two amendments on two different subjects in such a manner as to make it impossible for the voters to express their will as to each." Baum v. Newbry, 200 Or. 576 (1954). The test for determining whether a measure contains more than one constitutional amendment that must be voted on separately is described in Armatta v. Kitzhaber, 327 Or. 250 (1998), Lehman v. Bradbury, 333 Or. 231 (2002), and Swett v. Bradbury 333 Or. 597 (2002).

In Armatta, the court said:

> We conclude that the proper inquiry is to determine whether, if adopted, the proposal would make two or more changes to the constitution that are substantive and that are not closely related. If the proposal would effect two or more changes that are substantive and not closely related, the proposal violates the separate-vote requirement. Armatta at 277.

In Lehman, the court said that to determine whether changes are closely related the court will examine (1) whether the constitutional provisions affected by the measure are related, and (2) whether the changes made to those constitutional provisions are closely related. The court said:

> First, we examine the relationship among the constitutional provisions that the measure affects . . . . If the affected provisions of the existing constitution themselves are not related, then it is likely that changes to those provisions will offend the separate-vote requirement. . . . [T]he fact that a proposed amendment asks the people, in one vote, substantively to change multiple provisions of the Oregon Constitution that are not themselves related is one indication that the proposed amendment might violate the separate-vote requirement.
>
> Next, we must consider the constitutional changes themselves. That is, . . . we must determine whether the changes made to those . . . constitutional provisions are closely related. If they are closely related, the measure under consideration survives scrutiny under Article XVII, section 1. If they are not, it does not. Lehman at 246.

Finally, in Swett v. Bradbury, 333 Or. 597, 607 (2002), the court said that "it is equally valid analytically to start the inquiry by focusing on the changes themselves."

See also Carey v. Lincoln Loan Co., 342 Or. 530 (2007); Meyer v. Bradbury, 341 Or. 288 (2006); Lincoln Interagency Narcotics Team v. Kitzhaber, 341 Or. 496 (2006); League of Oregon Cities v. State of Oregon, 334 Or. 645 (2002).

a. Form of Constitutional Amendments.

A constitutional amendment is proposed by a joint resolution.

The following are examples of the parts of a joint resolution proposing a constitutional amendment:

Preamble:

Although a preamble ("whereas" clauses) is rarely used in a joint resolution proposing a constitutional amendment, one can be included if the requester wishes. House Joint Resolution 7 (1967) is an example.

Resolving Clause:

Be It Resolved by the Legislative Assembly of the State of Oregon:

Amending Clause:

In a joint resolution proposing a constitutional amendment, only **one** amending clause is used. The amending clause immediately follows the resolving clause.

b. Amendment of Existing Section.

Probably the most common type of constitutional amendment is an amendment of an existing section of the Constitution. Brackets and boldfaced type are used to mark the changes to be made by the amendment, the same as in a bill. The following example illustrates the form used for amending a section or sections of the Constitution:

> **PARAGRAPH 1.** Sections 3 and 7, Article IV of the Constitution of the State of Oregon, are amended to read:
>
> **Sec. 3.** The Senators and Representatives shall be chosen. . . .
>
> **Sec. 7.** A senatorial district, when. . . .

c. Adding New Section.

The Oregon Constitution also may be amended by adding a new section or sections. In a joint resolution proposing such an amendment, the following is suggested: <spm addc>

> **PARAGRAPH 1.** The Constitution of the State of Oregon is amended by creating new sections 2 and 3 to be added to and made a part of Article III, such sections to read:
>
> **SECTION 2. The Legislative Assembly shall. . . .**
>
> **SECTION 3. The Legislative Assembly may. . . .**

The numbers assigned to the new sections in the proposed amendment should be the numbers that they will have when placed in the Constitution. This is an exception to the general rule that a drafter does not assign permanent identifying numbers to new enactments. Note, too, that the section designation is not underlined, as it would be in a bill.

d. Repeal.

In a joint resolution proposing the repeal of a section of the Oregon Constitution, the following form should be used:

> **PARAGRAPH 1. Sections 37 and 38, Article I of the Constitution of the State of Oregon, are repealed.**

e. Repeal and Adoption in Lieu.

In a joint resolution proposing the repeal of a section of the Oregon Constitution and the adoption in lieu thereof of a new section, the following should immediately follow the resolving clause:

> **PARAGRAPH 1.** The Constitution of the State of Oregon is amended by repealing section 6, Article IV, and by adopting the following new section 6 in lieu thereof, such section to read:
>
> **Sec. 6. (1) The number of Senators shall be. . . .**

No separate statement is required to repeal the former section 6.

f. Repeal of Existing Section and Amendment of Existing Section in Same Proposed Amendment.

In a joint resolution proposing the repeal of a section or sections of the Oregon Constitution and also proposing the amendment of existing sections, the following should immediately follow the resolving clause:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by repealing section 18, Article VII (Original), and by amending section 5, Article VII (Amended), such section to read:

Sec. 5. In civil cases. . . .

g. Repeal of Existing Section and Creation of New Sections in Same Proposed Amendment.

In a joint resolution proposing the repeal of a section or sections of the Oregon Constitution and also proposing the enactment of new sections, the following should immediately follow the resolving clause:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by repealing sections 2, 3, 4, 5, 6, 7 and 8, Article IV, and section 17, Article V, and by creating new sections 2 and 3 to be added to and made a part of Article IV, such sections to read:

SECTION 2. The Senate shall be. . . and the House of Representatives shall be. . . .

SECTION 3. (1) The Senators and Representatives shall be. . . .

h. Amendment of Existing Sections and Creation of New Sections in Same Proposed Amendment.

The form for an amendment of an existing section and the creation of a new section in the same proposed amendment depends on the circumstances. Usually, in a joint resolution proposing the amendment of an existing section and the creation of a new section, the following should immediately follow the resolving clause:

PARAGRAPH 1. The Constitution of the State of Oregon is amended by creating a new section 5 to be added to and made a part of Article III, and by amending section 2, Article IV, such sections to read:

SECTION 5. The Legislative Assembly. . . .

In some cases when it is necessary to create new sections, the amendment may be easier to understand if existing sections are repealed (rather than amended) and reenacted in the form of new sections.

An example of an amendment changing the title of an Article of the Constitution may be found in House Joint Resolution 5 (1959).

i. Adding a New Article.

Subject to the separate-vote requirement discussed above, a joint resolution may propose a new Article to the Oregon Constitution. To propose a new Article, use the following form after the resolving clause:

> **PARAGRAPH 1.** The Constitution of the State of Oregon is amended by creating a new Article to be known as Article XI-K, such Article to read:
>
> **ARTICLE XI-K**
>
> **SECTION 1. (Insert text)**
> **SECTION 2. (Insert text)**
> **SECTION 3. (Insert text)**

j. Referendum Clause.

Constitutional amendments proposed by the Legislative Assembly must be referred to the people for their approval or rejection. The referred amendment is to be voted on at the next regular general election, unless the Legislative Assembly orders a special election. Therefore, in a joint resolution proposing a constitutional amendment, a referendum clause must be included.

The following (to follow the text of the proposed amendment) is prescribed for submission by the Legislative Assembly of a proposed constitutional amendment at a **regular general election**: <spm general>

> **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.**

At the primary election: <spm primary>

> **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election.**

At a special election:

A drafter may be asked to refer a constitutional amendment to the people at an election date that is different from the primary election or regular general election. If so, the resolution may require a bill to provide for a special election. For a discussion of special election bills, see "Referral at Special Election" under "Referendum" in chapter 12 of this manual.

If requested to submit an amendment at a special election, or at the primary election or regular general election if the bill calling the special election does not pass, the drafter should insert the following language in the referral paragraph: <spm special-option>

> **PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state on the date specified in section __, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___). If a special**

election is not held throughout this state on the date specified in section __, chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___), the amendment proposed by this resolution shall be submitted to the people for their approval or rejection at [insert either "**a special election held throughout this state on the same date as the next primary election**" *or* "**the next regular general election held throughout this state**"]**.**

If requested to submit an amendment at a special election only, the drafter should insert the following language in the referral clause (note that the amendment will not be referred if the special election bill does not pass): <spm special>

PARAGRAPH 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held throughout this state as provided in chapter ___, Oregon Laws (year) (Enrolled _____ Bill ___).

Note that any referral to a special election will require a separate special election bill as described above.

An initiative petition does not require any referendum clause. The election date (regular general election) is fixed by the Oregon Constitution, unless a different election date is ordered by the Legislative Assembly in a separate bill. (Article IV, section 1 (4)(c), Oregon Constitution.) For an example of a bill ordering a different election date on a referendum petition, see chapter 1050, Oregon Laws 1999.

k. Ballot Title.

If directed to prepare a ballot title, the drafter should consult ORS 250.035 and 250.075. The ballot title may be included in the bill providing for the special election or may be drafted as a separate bill. Political circumstances may dictate the approach. The bill may alter or suspend the ballot title provisions of ORS 250.035, including provisions allowing judicial review of the ballot title. See discussion of ballot titles under "Referendum" and "Setting Special Elections" in chapter 12 of this manual.

L. Rescission of a Proposed Amendment.

In the 2002 second special session, the Legislative Assembly adopted Senate Joint Resolution 76, which rescinded Senate Joint Resolution 50 adopted in the 2002 first special session. See also House Joint Resolution 8 (1963 special session) and House Joint Resolution 2 (1967 special session). The authority of the Legislative Assembly to rescind a proposed amendment to the Oregon Constitution and to refer a different proposed amendment to the voters was upheld by the Marion County Circuit Court. See State ex rel. Simmons v. Bradbury, No. 02C11917 (March 12, 2002). See also Legislative Counsel opinions 73-27 and 2002-34.

Note that the 2002 rescission occurred prior to printing of ballots or of the voters' pamphlet. An attempt to rescind a proposed amendment after ballots have been printed might or might not be upheld by a court.

3. CONSTITUTIONAL REVISION.

Article XVII, section 1, Oregon Constitution, provides that a convention to amend or propose amendments to the Constitution or to propose a new Constitution can be called only if the law providing for such convention first is approved by the people at a regular general election. An example of a bill calling a constitutional convention is House Bill 351 (1959).

The method for adopting a constitutional revision is prescribed in Article XVII, section 2, Oregon Constitution. Subsection (1) of that section provides that:

- A revision of all or part of the Constitution may be proposed in either house of the Legislative Assembly.

- The revision must be agreed to by **two-thirds** of all the members of each house.

- The revision must be referred to the people for their approval or rejection at the next regular statewide primary election, except when the Legislative Assembly orders a special election for that purpose.

- The revision must be approved by a majority of the votes cast on the revision.

- If the majority of votes cast on the revision is in favor of the revision, the Governor by proclamation declares the revision adopted, and the revision is in effect as the Constitution or as a part thereof from the date of the proclamation.

- The scope of a revision is not as limited as that of an amendment. A revision "may deal with more than one subject and shall be voted upon as one question."

Subsections (2) and (3) of Article XVII, section 2, Oregon Constitution, provide for a method of submitting an amendment in the form of alternative provisions so as to achieve consistency with a revision. Senate Joint Resolution 19 (1963) and House Joint Resolution 20 (1963) are examples.

The people may not initiate a constitutional revision. Holmes v. Appling, 237 Or. 546 (1964).

a. Joint Resolution.

A constitutional revision, like a constitutional amendment, is proposed by a joint resolution. However, revision proposals differ in several respects. The resolving clause of a joint resolution proposing a constitutional revision reflects this difference, as follows:

Be It Resolved by the Legislative Assembly of the State of Oregon, two-thirds of all the members of each house concurring:

b. Revision of Sections.

Since a proposed constitutional revision may deal with more than one subject and is voted on as one question, a resolution may propose the revision of any number of existing sections of the Constitution. These sections should be arranged in the same order in which they appear in the Constitution, unless some other arrangement is clearer or more logical. Bracketing and boldfacing the changes are the same in a revision as in a bill.

As in the case of a proposed constitutional amendment, one revising clause for several existing sections of the Constitution revised in the resolution may be used. However, it is preferable to use a separate revising clause for each existing section revised. For example:

PARAGRAPH 1. Section 3, Article IV of the Constitution of the State of Oregon, is revised to read:

Sec. 3. (Insert text)

PARAGRAPH 2. Section 7, Article IV of the Constitution of the State of Oregon, is revised to read:

Sec. 7. (Insert text)

c. Adding New Sections.

The Constitution may be revised by adding a new Article, section or sections. In a joint resolution proposing such a constitutional revision, all of the new sections may be grouped under a single revising clause. For example:

PARAGRAPH 1. The Constitution of the State of Oregon is revised by creating new sections 5, 6, 7 and 8 to be added to and made a part of Article III, (or, "to be added to and made a part thereof and to be designated Article XIX,") such sections to read:

The numbers assigned to the new sections in the proposed revision should be the numbers that they will have when placed in the Constitution. To avoid confusion, a separate numbered paragraph and revising clause in the resolution should be used for each Article of the Constitution that is affected by the proposed revision.

d. Repeal of Sections and Other Revisions.

Existing sections of the Constitution may be repealed in the same manner as in a joint resolution proposing a constitutional amendment. For example:

PARAGRAPH 1. Sections 37 and 38, Article I of the Constitution of the State of Oregon, are repealed.

Normally, all sections of the Constitution to be repealed by the proposed revision would be placed under one revising clause, except in those instances of repeal of an existing section and adoption of a new section in lieu thereof.

Revising clauses that approximate amending clauses used in proposed constitutional amendments should be used for instances of repeal and adoption in lieu, repeal of existing sections and amendment of existing sections in the same proposed amendment, repeal of existing sections and creation of new sections in the same proposed amendment and amendment of existing sections and creation of new sections in the same proposed amendment. However, it may be preferable to use a separate numbered paragraph and revising clause for each category of revision proposed in the resolution. House Joint Resolution 30 (1961) is an example.

e. Renumbering Existing Sections of Constitution.

Some existing sections of the Constitution are not located in the most appropriate place, and transferring an existing section from one place to another in the Constitution in order to carry out the scheme of the proposed revision may be desired. This **may** be done by repealing a section to be relocated and adopting a new section in lieu thereof, adding the new section to the proper Article and giving it the proper section number. However, the revision may be more intelligible if the existing section is redesignated in the following manner:

> **PARAGRAPH 3. Section 8, Article XV of the Constitution of the State of Oregon, is redesignated section 32, Article IV.**

f. Referendum Clause.

Constitutional revisions proposed by the Legislative Assembly must be referred to the people for their approval or rejection. The referred revision is to be voted upon at the next **primary** election, unless the Legislative Assembly orders a special election. A referendum clause must be included in the joint resolution proposing a constitutional revision.

The following form (to follow the text of the proposed revision) is prescribed for submission of a proposed constitutional revision at a statewide primary election:

> **PARAGRAPH 4. The revision proposed by this resolution shall be submitted to the people for their approval or rejection at the next primary election.**

If a special election to vote on the proposed constitutional revision is desired, the referendum clause must be adjusted, as in the case of a proposed constitutional amendment under the same circumstances. For example, the following form is prescribed for submission of a proposed constitutional revision at a regular general election:

> **PARAGRAPH 4. The revision proposed by the resolution shall be submitted to the people for their approval or rejection at a special election held on the same date as the next general election.**

If requested to refer a constitutional revision to the people at an election date that is different from the primary or regular general election, adjust the special election referral language described in section 2.j. of this chapter, "Referendum Clause." Be sure to change the word "amendment" to "revision" and remember that any referral to a special election

will require a separate special election bill. For a discussion of special election bills, see "Referral at Special Election" under "Referendum" in chapter 12 of this manual.

4. ENABLING LEGISLATION; SELF-EXECUTING AMENDMENTS OR REVISIONS.

A requester who wants an amendment or revision of the Constitution often also wants enabling legislation to be operative if the constitutional amendment or revision is approved by the people. An Act may be made to take effect upon the adoption by the people of a constitutional amendment authorizing the Act. State v. Rathie, 101 Or. 339 (1921); (overruled on other grounds, State v. Brewton, 238 Or. 590 (1964).

Enabling legislation prepared at the same time as a constitutional amendment or revision must include a provision in the enabling Act to the effect that if the constitutional amendment or revision is not approved by the people at the election at which it is to be submitted, the enabling Act is not effective. If the enabling legislation is to be adopted by initiative, the provision should indicate that the enabling legislation does not become "operative" unless the accompanying constitutional amendment or revision is approved by the people (because Article IV, section 1 (4)(d), Oregon Constitution, says that an initiative law becomes effective 30 days after the election at which it is approved). For example:

SECTION ___. This (year) Act does not become effective (operative) unless the Oregon Constitution is revised by vote of the people at the primary election in (year) to provide that . . . . This (year) Act becomes effective (operative) on the effective date of that revision.

OR

SECTION ___. This (year) Act does not become effective (operative) unless the Oregon Constitution is amended by vote of the people at the regular general election in (year) to repeal section 18, Article II of the Oregon Constitution. This (year) Act becomes effective (operative) on the effective date of that amendment.

OR

SECTION___. This (year) Act does not become effective (operative) unless the amendment to the Oregon Constitution proposed by House Joint Resolution 79 ((year)) is approved by the people at the regular general election held in November (year). This (year) Act becomes effective (operative) on the effective date of that amendment.

An additional example may be found in section 6, chapter 625, Oregon Laws 1963. If this type of provision is included in the enabling Act, it is unnecessary to repeal the enabling Act if the proposed constitutional amendment or revision is rejected by the voters. Section 6, chapter 625, Oregon Laws 1963, reads as follows:

Sec. 6. This Act shall not become effective (operative) unless the Constitution of the State of Oregon is amended by vote of the people at the regular general election held in 1964, so as to repeal sections 37 and 38, Article I thereof. If that amendment is so approved by vote of the people, this Act shall become effective (operative) on the effective date of the amendment.

It may be desirable that the constitutional amendment or revision specifically recognize as enabling legislation an Act passed before its adoption. Boyd v. Olcott, 102 Or. 327 (1921). The following may serve as a guide for drafting such a constitutional provision:

(3) Any Act passed prior to the effective date of this constitutional amendment that purports to execute this section is considered to have been passed pursuant to this section and is ratified, adopted and confirmed as if passed after the adoption of this section.

Instead of relying on enabling legislation to implement a constitutional amendment or revision, it may be necessary to draft an amendment or revision that will be self-executing. Such an amendment or revision probably will contain matters ordinarily covered by statute. If this is the case, it should be made plain that at least some of these matters are controlled by provisions of the amendment or revision only so long as later enacted statutes do not otherwise provide. Examples of self-executing constitutional amendments may be found in LC Request No. 92 (1969).

SECTION ___. The State of Oregon acting through its appropriate administrative agency shall proceed with all reasonable speed to define, establish and quiet its title to all ocean beach lands and easements and other means of public access thereto owned or claimed by it.

SECTION ___. Fee title to ocean beach lands now owned or hereafter acquired by the State of Oregon shall not be sold or conveyed, and all the lands shall be forever preserved and maintained for public use. No interest less than fee title and no rights or privileges in the lands now owned or hereafter acquired by the state shall be conveyed or granted by deed, lease, license, permit or otherwise, except as provided by law.

5. OREGON RATIFICATION OF PROPOSED AMENDMENT TO FEDERAL CONSTITUTION.

HJR 2 (1967), HJR 13 (1973) and SJR 4 (1973) are joint resolutions ratifying proposed amendments to the United States Constitution. HJR 62 (1977) proposed the reaffirmation of the ratification of a proposed amendment to the United States Constitution. HJM 15 (1985) is a joint memorial requesting Congress to propose an amendment to the United States Constitution that requires a balanced federal budget and the withdrawal of previous memorials on the same subject.

The drafter should be aware that Article V of the U.S. Constitution specifies the procedures for proposing and ratifying amendments to the U.S. Constitution. If two-thirds of both houses of Congress agree and propose an amendment, Congress may direct how states may ratify the amendment, either by three-quarters of the state legislatures or by convention in three-quarters of the states.

If Congress directs ratification by state legislatures or by conventions, the ratification is not subject to a popular vote because the ratification is not an Act, a constitutional amendment or a constitutional revision under Article IV, section 1, or Article XVII, of the Oregon Constitution. Further, Article V of the U.S. Constitution specifically directs that the ratification be done by either state legislatures or by convention.

In the past, the Oregon Legislative Assembly has ratified and attempted to rescind ratification by use of a joint resolution.

Finally, the Legislative Assembly could pass an Act that submits an advisory question to the people regarding the merits of ratifying a proposed amendment to the United States Constitution. The "referral" of the advisory question would not qualify as a referral of an Act under Article IV, section 1, of the Oregon Constitution, would not constitute a vote on ratification and would not have the force of law.

CHAPTER EIGHTEEN

AMENDMENTS TO BILLS AND OTHER MEASURES

_____

1. DRAFTING AMENDMENTS TO A PRINTED OR ENGROSSED BILL.

The drafting of amendments to bills and other legislative measures is an important activity requiring the same or, given time constraints, a greater degree of care than is used in drafting a bill. Many of the defects in our laws came about through failure to exercise care in writing amendments to an otherwise properly drafted bill. In drafting an amendment to a bill, **the entire bill must be checked** to make sure that the amendment is consistent with the remainder of the bill, including its title. The amendment must be consistent with existing law, even law not contained in the bill. If an inconsistency is discovered, the drafter must make the necessary adjustments. If an amendment to a bill is directed to an ORS section in the bill, **STAIRS** should be rechecked to determine whether the amendment affects more than that section. Adding a new section to a bill by amendment requires the same care as adding it to the original draft.

The drafter must always be sure that an amendment is directed to the most recent printed version of the bill.

The drafter must draft amendments that are addressed to a particular printed bill in order to give proper consideration to issues regarding the bill title for purposes of Article IV, section 20, of the Oregon Constitution. That is, the relating clause of the bill title must be broad enough to describe the subject matter of the proposed amendment, unless the relating clause is to be changed to accommodate the new material in order to comply with the constitutional requirement. The practice of the Senate and House Desks changes from time to time as to whether amendments that include a change to the relating clause will be accepted at the desk. Reluctance to accept amendments with relating clause changes prevents material unrelated to the thrust of the original printed measure from being loaded on by amendment, i.e., "logrolling."

"Generic" amendments, i.e., amendments not addressed to a particular printed measure but drafted in anticipation of an as yet unidentified "vehicle," do not meet the preceding requirement and should not be drafted. See chapter 6 of *Form and Style Manual for Legislative Measures*.

After a bill has been printed, any action taken thereon is taken with respect to the printed bill in its latest version, and amendments are directed to the printed bill. If the bill has been ordered printed engrossed, amendments are directed to the printed engrossed bill since it is the latest version.

In writing amendments to a bill, the objective is to make clear the change to be made in the printed bill. Contrary to office typographical practice, punctuation marks, including commas and periods, are placed inside the quotation marks **only if they are a part of the matter quoted**.

New sections inserted in a bill by way of amendment may require renumbering of other sections in the bill. In the case of a very long bill, extensive additional amendments to renumber the sections may be avoided by giving new sections added to the bill by amendment numbers like "**Section 70a.**" and "**Section 70b.**"

Deletion of a section of a bill by way of amendment may require renumbering of other sections in the bill. In the case of a very long bill, extensive additional amendments to renumber the sections may be avoided by inserting a note in place of the deleted section:

> **NOTE:** Sections 4 through 12 were deleted by amendment. Subsequent sections were not renumbered.

When sections of a bill are added, deleted or renumbered in any way, the rest of the bill must be checked to ensure that internal references conform to the new numbering. If the bill being amended is an especially long one, a cross-reference list or card file may help in keeping track of internal references or a computer search may be done.

When an amendment to a bill deletes all the changes the bill originally made in an ORS section, the entire section of the bill is deleted; the ORS section will then remain the same as it appears in the latest edition of *Oregon Revised Statutes*. The ORS section number should also be deleted from the title.

2. FORM AND STYLE.

⇒ **Clarity and conciseness.** There is more than one way to write an amendment correctly. The way that makes the wanted changes most clearly and uses the fewest words should be used.

For example, **while the following way is correct:**

> In line 11, after "(3)" delete the rest of the line and lines 12 and 13 and insert "The rules of each house. . .".

the following way is more concise:

> Delete lines 11 through 13 and insert:
> "(3) The rules of each house. . .".

Or, for example, **instead of this:**

In line 12, delete ", 'adoption expenses' means expenses paid by the taxpayer during the year".

use this:

In line 12, after "Act" delete the rest of the line.

If there are many changes to be made to material, it is often easier to delete and then reinsert the material.

For example, **instead of this:**

In line 11, delete "revoked" and insert "suspended".
Delete lines 12 and 13.
In line 14, after the comma delete the rest of the line and insert "install building. . .".
In line 16, delete "the name and address of".
Delete line 18.

use this:

Delete lines 11 through 18 and insert:
"SECTION 2. Unless suspended . . . of issuance.".

As another example, **instead of this:**

In line 23, delete "greater" and insert "less" and delete "$5" and insert "$3".

use this:

In line 23, delete "greater than $5" and insert "less than $3".

Sometimes there are several ways to write an amendment that are equally clear and concise. For example:

In line 23, after "Lands" insert ", who shall . . .".

OR

In line 23, before the period insert ", who shall . . .".

Another example:

In line 16, restore the bracketed material.

OR

In line 16, restore "or related activity".

⇒ **Wording.** Always use clear and simple wording in amendments. The following words and phrases are preferred:

Use:	Do not use:
lines 3 through 7	lines 3 through 7, inclusive
rest of the line	remainder of the line
insert "county"	insert the word "county"
after "(7)"	after the number "(7)" after the figure "(7)"
delete "173.170" and insert "173.171"	delete "ORS 173.170" and in lieu thereof insert "ORS 173.171"
insert	insert the following

⇒ **Punctuation.** When writing an amendment to a bill, punctuation marks (including commas and periods) are placed inside the quotation marks **only if** these punctuation marks are a part of the text of the amendment. End each line-by-line instruction with a period. Do not use any unnecessary punctuation when writing amendments. For example:

> In line 21, after "standards" insert "and shall adopt by rule,".

Quotation marks within quoted material are shown by single quotes. For example:

> After line 17, insert:
> "(4) 'Cost' as applied . . .".

When referring to a punctuation mark in the text of the line-by-line instructions, the drafter should spell out the word instead of using the symbol. The symbol is used when the punctuation mark appears in text. For example:

> On page 2 of the printed bill, line 3, before the period insert "; and declaring an emergency".
> On page 3, line 6, delete the comma.

When amending a bill by inserting a series of consecutive paragraphs, quotes are used **at the beginning of** each paragraph and **only at the end of** the last paragraph. For example:

> On page 7 of the printed bill, delete lines 3 through 15 and insert:
> **"SECTION 3.** (Insert text).
> **"SECTION 4.** (Insert text). . . .".

⇒ **Identify correct version of bill.** The first line of the amendments must identify accurately the version of the bill that is being amended. The phrase "of the printed bill" should be used **only once** in the amendment. For example:

On page 2 of the printed bill, line 2, . . .
OR
Delete lines 18 through 20 of the printed B-engrossed bill.
OR
On page 3 of the printed corrected B-engrossed bill, line 12, . . .

⇒ **Order of amendments.** Amendments must be written in the same order as the page and line numbers to which they are addressed appear in the bill, starting at the beginning of the bill and progressing to its end. For example:

On page 2, line 5 . . . .
In line 7, ...
On page 4, line 20, ...

⇒ **Page and line numbers.** First cite and underline the page number; then list the line number, the reference point within the line where the change is to occur, and the change to be made. It is not necessary to repeat the page number when writing amendments for changes made in subsequent lines on the same page. For example:

On page 2 of the printed bill, line 17, after "of" insert "the".
On page 3, line 3, after "state" insert a period and delete the rest of the line.
In line 12, delete "of" and insert "or".

When amending a one-page bill, it is not necessary to give the page number in the amendment. For example:

In line 3 of the printed bill, delete "17" and insert "15".
OR
Delete lines 15 through 18 of the printed A-engrossed bill.

⇒ **Inserting new material.** It is the usual practice to insert material **after** a word or punctuation mark, but insert the material **before** a word or punctuation mark if this would make the change more easily understood. Examples:

In line 2, before the period insert "; and declaring an emergency".
In line 4, before "building" insert " . . . (rather than: after the fourth "the" insert . . .).
In line 21, after "cause" insert "immediately".

If the new material begins with a new paragraph, use a colon after the word "insert" and make a paragraph of the new material. For example:

After line 12, insert:
"SECTION 5. . . .".

⇒ **Deleting material.** When deleting material, the following form is used:

In line 14, delete ", law library fee".
In line 17, delete the boldfaced material.
In lines 35 to 42, delete the boldfaced material.

When replacing material with new material, the original material is deleted first and then the new material is inserted. For example:

> On page 3 of the printed bill, line 17, delete "without" and insert "after".
> In line 3, after "county" delete the rest of the line and insert "and city".
> Delete lines 4 through 6 and insert "and . . .".

An exception to this rule is as follows:

> In line 26 of the printed bill, after "membership" insert a period and delete the rest of the line.

When possible, one amendment should combine deletions of material that include the "rest of the line," and subsequent lines and pages. Always use "delete" before a deleted page. For example:

> On page 6, line 19, after the period delete the rest of the line and lines 20 through 34 and delete pages 7 and 8 and insert:
> "**SECTION 7.** (1) At any time. . . .".

The deletion of quoted material in one line and the deletion of a following line or lines should not be combined in the same amendment. For example:

> In line 12, delete "and lottery funds".
> Delete lines 13 through 32 and delete pages 3 and 4.

⇒ **Restoring material.** Material is restored as shown in the following examples:

> On page 2 of the printed bill, line 18, restore "(3)" and delete "(2)".
> Restore lines 20 through 23.
> On page 3, line 7, restore "notwithstanding".
> In line 8, restore the bracketed material.
> In lines 32 through 35, restore the bracketed material.
> On page 4, line 10, delete "any" and restore "Marion County".
> In line 12, restore the bracketed material and after "county" insert "and city".
> In line 14, restore the bracketed material.
> In line 15, restore the bracketed material and delete "30 days after".

When restoring material and then inserting new material directly after the restored material, it is necessary to include a point of reference. For example, **use**:

> In line 12, after the comma restore the rest of the line and after "election" insert a period.

Do not use:

> In line 12, after the comma restore the rest of the line and insert a period.

⇒ **Miscellaneous.** If the same word appears more than once within the line, use the following form:

> On page 2 of the printed bill, line 17, after the second "of" insert "the".

However, sometimes it is clearer to insert **before** a word, rather than after a repetition of word.

If the same change needs to be made more than once in the same line, the drafter should use:

> In line 14, delete "director" and insert "administrator" in both places.
> In line 28, delete "the" and insert "an" in all places.

There are several ways to begin a new paragraph in the middle of a line, depending on the circumstances. For example:

> In line 24, delete the comma and insert a semicolon and begin a new paragraph and insert "(c)".
>
> In line 21, after the period insert "However, in lieu of the . . .
> "(5) . . .".
>
> On page 5, line 3, delete the period and insert "; or
> "(c) The holder of the . . .".

To insert new material that begins a paragraph, the drafter should use:

> After line 22, insert:
> "**SECTION 2.** 'Legend drug' means . . .".

When two or more changes are made in the same line, the drafter should use the following form:

> On page 1 of the printed bill, line 3, after "ORS" insert "619.652," and after the semicolon insert "repealing ORS 620.751;".
> In line 6, after "of" insert "foreign government" and delete "age, handicap," and after "marital" insert "or sex".

To fill in a blank by amendment, the drafter should use:

> In line 6, delete the blank and insert "10".

When amending a sum of money, the deletion or insertion should always include the dollar sign. For example:

> In line 6, delete "$_____" and insert "$1,000".
> In line 8, delete "$1,000" and insert "$500".

A misspelled word in a printed bill may be corrected without an amendment, and an amendment should not be prepared **solely** to correct a misspelling. If a line to correct a misspelling is included with other amendments, it follows the following form:

> In line 21, delete "cmmmittee" and insert "committee".

When amending numbers, the drafter should always use the complete number. For example:

> In line 2, delete "672.050" and insert "673.050".
> In line 5, delete "$15,000" and insert "$16,000" and delete "$5.25" and insert "$5.50".

⇒ **Deletion of bill.** When all of the text of a bill is to be deleted, the line-by-line instructions begin with the line number of the first section of the text. Neither the title nor the enacting clause is deleted. However, the drafter should make sure that the title still applies to the new matter. For example:

> On page 1 of the printed bill, delete lines 4 through 30.
> Delete pages 2 through 5 and insert:
> "**SECTION 1.** The county governing . . .".

3. AMENDMENTS TO A PRINTED BILL THAT HAS NOT BEEN PRINTED ENGROSSED.

Since 1991 the Senate and House Desks have printed all amended measures engrossed. If this rule should change, they might return to the previous practice of sometimes voting on a printed bill with separate printed amendments. In that case, a drafter may need to amend either the printed amendments or the printed bill or both, depending on the amendments requested.

If you are requested to delete all of the text of a bill that has been previously amended but **not printed engrossed**, first delete all previous amendments. For example:

> Delete the printed House amendments dated February 20.
> On page 1 of the printed bill, delete lines 4 through 28.
> Delete pages 2 through 5 and insert:
> "**SECTION 1.** The director shall . . .".

⇒ **Amending printed amendments.** When any new amendments will affect lines of the printed bill that have been amended in prior printed amendments, the new amendments must be directed to the printed amendments. In other words, amendments cannot be directed to a line of a printed bill if that line has previously been amended.

If the new amendments do not affect any previously amended lines, the practice is to amend the last version of the printed bill and proceed as for any other amendments.

Changes in prior printed amendments to the bill when no printed engrossed bill intervenes use the following form:

> In line 6 of the printed House amendments dated April 6, delete "of" and insert "or".
>
> **OR**
>
> On page 1 of the printed House amendments dated April 4, delete lines 5 through 7.

When both the previous amendments and the printed bill must be amended, it is necessary to amend the previous amendments **first** and then amend the bill.

> In line 10 of the printed House amendments dated February 20, delete "a" and insert "the".
> On page 2 of the printed bill, line 13, restore the bracketed material.

Sometimes when amending a bill, all previous amendments are to be deleted. Only one amendment statement is necessary to delete all previous amendments. For example:

> Delete the printed House amendments dated April 15.
>
> **OR**
>
> Delete the printed House amendments dated February 10 and February 20.

If previous amendments are to be amended very extensively, it may be simplest to delete those amendments and to incorporate into the new amendments those portions of the previous amendments that would have been unchanged. For example:

> Delete the printed House amendments dated March 15.
> On page 2 of the printed bill, line 4, after "the" insert "sanitation district and".

If, in amending an amendment, an effective date, emergency clause or other special provision is being added to a bill, the title of the bill must be amended to reflect that provision. For example:

> After line 3 of the printed House amendments dated April 22, insert:
> "**SECTION 2.** This (year) Act takes effect March 1, 2004.".
> In line 2 of the printed bill, after "459.850" insert "; and prescribing an effective date".

4. AMENDMENTS TO RESOLUTIONS AND MEMORIALS.

Amendments to resolutions and memorials follow the same form as amendments to bills. The first line of the amendment must accurately identify the correct version of the resolution or memorial that is being amended:

> On page 2 of the printed concurrent resolution, line 23, after "city" insert "or".
>
> On page 2 of the printed A-engrossed joint memorial, line 2, . . .".

5. CONFERENCE COMMITTEE REPORTS.

Conference Committee reports often assume a slightly different form because of the need to reconcile prior and differing House and Senate amendments in order to produce the same text for both houses regardless of the particular text of the prior versions. These changes are shown in the report but may not affect the text of the amendments.

For example, the *Congressional Record* reports the following:

> Mr. Gray of Pennsylvania. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (HR 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, with the Senate amendment

to the House amendment to the Senate amendment to the House amendment to the Senate amendment thereto, to recede from disagreement to the Senate amendment, and to concur therein with an amendment.

Four examples of the most common conference committee situations are as follows:

(1) Concur and repass: <spm ccspeaker> + <spm hconcura>; *or* <spm ccpres> + <spm sconcura>

Speaker _____:
Your Conference Committee to whom was referred A-engrossed House Bill 2925, having had the same under consideration, respectfully reports it back with the recommendation that the House concur in the Senate amendments dated June 3 and that the bill be repassed.

(2) Concur and amend: <spm ccspeaker> + <spm hconcurb>; *or* <spm ccpres> + <spm sconcurb>

Speaker _____:
Your Conference Committee to whom was referred B-engrossed House Bill 2906, having had the same under consideration, respectfully reports it back with the recommendation that the House concur in the Senate amendments dated June 15 and that the bill be amended as follows and repassed.

(3) Recede and repass: <spm ccspeaker> + <spm hrecedec>; *or* <spm ccpres> + <spm srecedec>

Speaker _____:
Your Conference Committee to whom was referred B-engrossed House Bill 3023, having had the same under consideration, respectfully reports it back with the recommendation that the Senate recede from the Senate amendments dated June 15 and that the A-engrossed bill be repassed.

(4) Recede and amend: <spm ccspeaker> + <spm hreceded>; *or* <spm ccpres> + <spm sreceded>

Speaker _____:
Your Conference Committee to whom was referred B-engrossed House Bill 2309, having had the same under consideration, respectfully reports it back with the recommendation that the Senate recede from the Senate amendments dated May 30 and that the A-engrossed bill be amended as follows and repassed.

Publication Services keeps a notebook with examples for more unusual situations.

6. CONFLICT AMENDMENTS.

An "if" amendment can be used when two bills amend the same section and neither has been enacted or when one of the bills has been enacted but has not yet been assigned a chapter number for Oregon Laws. An "if" amendment is put in **only one bill**, usually the later or least advanced bill. For example: <spm cona>

SECTION 48. ORS 342.601 is amended to read:
342.601. (1) (Insert text)

SECTION 48a. If House Bill 2533 becomes law, section 48 of this (year) Act (amending ORS 342.601) is repealed and ORS 342.601, as amended by section 8, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2533), is amended to read:
342.601. (1) (Insert text)

Any bracketed material is deleted and any inserted material is included (not in bold) from the first bill (in the example, House Bill 2533). Only material that is deleted or inserted by the later bill (in the example the bill in which "**SECTION 48.**" appears) will be bracketed or appear in boldfaced type.

An "as amended by" amendment can be used when two bills amend the same section and one bill has been assigned a session law chapter number. For example: <spm conamend>

SECTION 2. ORS 1.360, as amended by section 3, chapter 125, Oregon Laws 1993 (Enrolled Senate Bill 5555), is amended to read:

Any bracketed material is deleted and any inserted material is included (not in bold) from the first bill (in this example, Senate Bill 5555). Only material that is deleted or inserted by the later bill (in the example, the bill in which "**SECTION 2.**" appears) will be bracketed or appear in boldfaced type.

There are many ways to resolve conflicts. If problems arise with conflict amendments, contact the conflicts team in Publication Services. See also "CONFLICTING AMENDMENTS" in chapter 13 of this manual.

7. AMENDMENTS TO PROPOSED AMENDMENTS.

Legislative committees may request amendments addressing proposed amendments (LC draft amendments). This is extremely rare; it happens only when the proposed amendments are particularly voluminous. Proposed amendments are referred to as "typed amendments."

Amendments to typed amendments must identify the typed amendments with the date they were prepared (March 4) and their assigned Legislative Counsel docket number (HB 2509-1), for example:

On page 1 of the typed amendments to House Bill 2509 dated March 4 (HB 2509-1), after line 17, insert:
"(c) Specify circumstances under which the Department of Transportation may cease to issue distinctive indicia of registration for any particular group.".
In line 18, delete "(c)" and insert "(d)".

CHAPTER NINETEEN

INTERIM COMMITTEES AND TASK FORCES

1. INTRODUCTION.

a. Definitions.

"Interim committee" means a legislative committee that functions during one legislative interim and that may be established by the Speaker of the House of Representatives and the President of the Senate (ORS 171.640), by joint resolution (ORS 171.610) or by a bill. The interim in this case runs from the date of adjournment of an odd-year regular session until the next odd-year regular session convenes. Interim committees are suspended during even-year regular sessions. See ORS 171.615.

"Legislative task force" means a task force that functions for at least one legislative interim, that consists solely of legislators and that may be established by the Speaker of the House of Representatives and the President of the Senate (ORS 171.640), by joint resolution or by bill.

"Mixed task force" means a task force that consists of legislators and nonlegislators.

"Nonlegislative task force" means a task force with no legislators on it.

b. Generally.

The drafter may be asked to create a temporary body that will study an issue and make recommendations for legislation. Creating this body can, to a certain degree, be an exercise in creative writing. However, that creativity does not extend to naming the body. Do not call it a "Blue Ribbon Panel," a "Five Star Commission" or even a "work study group." Although in past sessions these bodies have been given a variety of names, it is now strongly suggested that the body be either an interim committee or a task force. [1]

Note that there is no need for any legislation to establish interim committees (or interim legislative task forces). ORS 171.640 gives the Speaker and the President

[1] The drafter must be certain that the requester wants an interim committee or a task force and not a board or commission. There are major differences. Chapter 8 of this manual discusses creation of a board or commission.

authority to appoint any interim committees they want to. Nevertheless, we are frequently asked to create such entities. Interim committees may be (and at one time mostly were) created by joint resolution. ORS 171.605 to 171.635 set out basic provisions related to interim committees created by joint resolution. An interim committee or a task force may also be created by a bill.

As already noted, both interim committees and task forces are temporary bodies. An interim committee can last only one interim. The various types of task forces should usually last only one interim, as well. However, the drafter is occasionally asked to create a temporary body that will last more than an interim. In this situation, the drafter must create the appropriate type of task force. Keep in mind that if the duration of the body is very long, it might not really be temporary at all and should be treated as a permanent body, the creation of which is covered in other chapters of this manual.

For basic boilerplate language to set up an interim committee or a task force and a drafter checklist, see sections 9 and 10 of this chapter.

c. Choosing an Interim Committee or a Task Force.

There are two primary considerations in determining whether to call a temporary body an interim committee or a task force: its function and its composition.

Function. As a general rule, an interim committee studies a variety of problems or a broad range of topics; a task force studies one problem or one topic. While "transportation" may seem like one topic, compare it to "studded tires." Revenue, Judiciary, General Government are some of the interim committees usually created by the Speaker and the President under the authority given them by ORS 171.640.

Composition. As a general rule, an interim committee consists solely of legislators.[2] A legislative task force consists solely of legislators.[3] If the drafter is asked to create a temporary body that has no legislators, or has some legislators and some non-legislators, call it a task force.

d. Comparison Between an Interim Committee and a Task Force.

ORS 171.130 authorizes an interim committee to presession file proposed legislative measures. A task force needs specific authority in the measure creating it to presession file. This is a policy decision that must be discussed with the requester. As a general rule, if the drafter is creating a legislative task force, it makes sense to allow it to presession file in the manner provided for interim committees. If the drafter creates a task force that is essentially an executive or judicial branch entity, and the requester wants to

[2] ORS 171.635 says that a joint resolution creating an interim committee may provide for appointment of nonlegislators to the committee. ORS 171.640 allows the Speaker and President to appoint members of the public to interim committees. And, of course, a bill creating an interim committee could provide for appointment of nonlegislators to an interim committee. Nevertheless, it is not often done.

[3] A legislative task force is a body usually created instead of an interim committee to study a single issue. See ORS 171.640 for a statement that certain bodies created by the Speaker and President are interim committees even if called task forces.

allow presession filing, read ORS 171.130 to determine who is allowed to do so and how it must be done.

ORS 171.072 applies to interim committees and task forces. It allows members of the Legislative Assembly who serve on an interim committee or a task force to receive compensation for their services. (See the discussion in section 4c of this chapter.)

e. Using Joint Resolution or Bill.

ORS 171.640 authorizes the President of the Senate or the Speaker of the House of Representatives to appoint an interim committee without a joint resolution or bill. However, the drafter might be asked to create an interim committee or a task force by a joint resolution or bill. There are important differences between a joint resolution and a bill. For example, a joint resolution requires only a majority vote of both houses while a bill is subject to several constitutional requirements as to origination, reading, subject matter, content and effective date. A joint resolution is not a law. Rowley v. City of Medford, 132 Or. 405 (1930). A bill, unlike a joint resolution, is subject to the Governor's veto under Article V, section 15b, of the Oregon Constitution, and is subject to the referendum under Article IV, section 1, of the Oregon Constitution. 37 Op. Att'y Gen. 147, 154 (1974). Therefore, the drafter must make an initial decision whether to use a joint resolution or a bill for the request.

i. Joint Resolution.

A joint resolution may be used to create an interim committee or a legislative task force unless it is necessary to appropriate money to or for the interim committee or legislative task force.

A joint resolution may not be used to create a task force that: (1) has nonlegislators appointed by persons other than the Speaker and President; (2) requires an appropriation to or for the task force; (3) requires someone outside of the legislative branch to provide staff support; **or** (4) lasts more than one interim.

ii. Bill.

Use a bill to create an interim committee or a legislative task force when: (1) it is not possible to introduce or find an appropriate joint resolution; **or** (2) it is necessary to appropriate money to or for the interim committee or legislative task force.

Use a bill to create a task force when: (1) an appropriation to or for the task force is necessary; (2) the request directs someone outside of the legislative branch (such as the Governor or executive agency staff) to do something (such as appoint members or provide staff support)[4]; **or** (3) the work of the body will continue beyond the interim.

ORS 171.605 to 171.635 authorize the Legislative Assembly by joint resolution to create an interim committee to make studies, report information to the legislature and

[4] A joint resolution does not become law and thus cannot (legally) require someone outside the legislative branch to do something.

propose legislative measures. These sections establish the interim committee's functions, powers and duration and the procedures for filling vacancies and for appointing nonlegislators to the interim committee. By its terms, this series applies only when using a joint resolution to create an interim committee. A bill that creates an interim committee can, of course, have a provision subjecting the interim committee to the provisions of the series. If the provisions are appropriate, referring to them will save time and paper.[5]

ORS 171.605 (1) provides that ORS 171.605 to 171.635 supplement and do not limit other powers possessed by interim committees and their members. See, for example, ORS 171.505 (administering oaths to witnesses) and 171.510 (compelling attendance of witnesses and production of papers). ORS 171.605 (2) provides that provisions of a joint resolution may supersede the provisions of ORS 171.605 to 171.635 if the joint resolution specifically so provides.

f. Summary.

All legislators, one general subject or several subjects, one interim = interim committee.

All legislators, one specific topic, one interim = legislative task force.

Some legislators, some nonlegislators, one topic, one interim or longer = mixed task force.

No legislators, one topic, one interim or longer = nonlegislative task force.

2. FINDINGS; PREAMBLE; DEFINITIONS.

A requester may want legislative findings in a bill creating an interim committee or a task force. Ask the requester to supply the text, and explain to the requester the limited effectiveness of findings. As an alternative, the drafter might suggest a preamble instead of findings. However, if the requester insists on a findings section, make it the first section of the bill.

A preamble in a joint resolution is similar to findings in a bill. (For a general discussion of the format of a joint resolution, see chapter 16 of this manual.) A preamble may be used to state reasons for creation of an interim committee or a task force, but it may be omitted because it is not essential to the validity of the joint resolution. If the requester wants to include a preamble, the drafter should explain its limited effectiveness. A resourceful drafter may be able to incorporate the subject matter of the requested preamble into the provisions creating functions or duties, therefore avoiding the problem of a preamble altogether.

[5] Note that some of the provisions of 171.605 to 171.635 will never be appropriate for a task force that lasts longer than one interim. If the provisions are to be referred to in a bill creating a legislative task force, it is best to say something like "The provisions of ORS 171.605 to 171.635 apply to the Task Force on Blah as though it were an interim committee created by joint resolution."

If the bill needs a definitions section, it should be section 1 (or section 2, if section 1 is a findings section). If the bill creates an interim committee or a task force in one main section, then definitions should be in subsection (1) of section 1.

3. APPOINTING AUTHORITY.

Typically, members of an interim committee or a legislative task force are appointed by the President of the Senate and the Speaker of the House of Representatives.

Members of a nonlegislative task force are usually appointed by the Governor, the head of an executive agency or the Chief Justice of the Oregon Supreme Court.

Members of a mixed task force are usually appointed by the Speaker and the President, who appoint the legislators, and the Governor, the head of an executive agency or the Chief Justice, who appoints the nonlegislators.

4. MEMBERS.

When gathering information about a proposal for an interim committee or a task force, the drafter needs to find out the number of members, their qualifications, the process for filling vacancies, and so on.

a. Term of Office (for task forces that last longer than one interim).

Include a term of office provision when the task force functions for more than one interim. In addition, the drafter may want to specify the terms of members first appointed to the task force. (See section 4a of chapter 8 of this manual for examples.)

b. Legislators as Nonvoting, Advisory Members.

Article III, section 1, of the Oregon Constitution (separation of powers provision), prohibits a person charged with official duties in one branch of the government from exercising those duties and the duties of another branch. 43 Op. Att'y Gen. 205 (1983). A separation of powers problem ("dual exercise" problem) can arise when members of the legislature serve on a task force that has executive branch duties or is established within an agency. The drafter should give careful consideration to potential separation of powers issues. If a separation of powers problem exists, making the legislative members nonvoting and advisory members solves the problem. (See boilerplate for examples.)

c. Compensation of Members (Salary, Per Diem and Expenses); Volunteers.

ORS 171.072 (4) governs compensation for members of the Legislative Assembly in the performance of official duties when the legislature is not in session. Therefore, the drafter should not include these provisions in the draft.

ORS 171.072 (4) states that a member of the Legislative Assembly "shall" be compensated for service on an interim committee or a task force. Because a resolution is

not a law, a resolution cannot "notwithstand" provisions of statutes unless the particular statute authorizes it. Therefore, legislator members of an interim committee or a task force created by a joint resolution will always be entitled to compensation. See 37 Op. Att'y Gen. 147 (1974) (stating that a joint resolution cannot authorize payment to legislator members of an interim committee an amount greater than the amounts authorized by ORS 171.072).

Members of a task force who are not legislators may receive per diem and other expenses. ORS 292.495 (which applies to members of state boards and commissions) provides for a per diem of $30 and actual and necessary travel and other expenses. (See boilerplate for examples of how to make ORS 292.495 applicable.)

If a task force is created by a bill, the drafter may provide that all members of the task force serve as volunteers. (See boilerplate for examples.)

d. Miscellaneous Provisions.

The drafter should consider including provisions that govern the routine functions of the interim committee or the task force, such as filling a vacancy, selecting a chairperson and vice chairperson, establishing the times and places of meetings and the number of times that the interim committee or the task force will meet, and fixing the number of members that constitute a quorum or that are required to approve official action. Examples of provisions for these routine functions are found in the boilerplate at the end of this chapter.

5. DUTIES.

a. Generally.

The drafter may provide for specific functions and powers that an interim committee or a task force will exercise. Or the drafter can include a provision that allows the appointing authorities to develop a work plan for the interim committee or the task force.

The drafter should use care when creating the powers and describing the functions because it is in this area that separation of powers issues frequently arise. See 43 Op. Att'y Gen. 205 (1983) (discussing governmental functions and the distinctions between executive and legislative branch functions).

b. Staff Support.

Unless the drafter is creating an interim committee by joint resolution, the drafter must provide for staff support for an interim committee or a task force. The drafter may provide that an interim committee or a legislative task force use the services of existing legislative staff to the extent practicable. The drafter should, however, provide that a mixed task force or a nonlegislative task force use the services of the appropriate executive or judicial branch agency.

If the task force is allowed to hire staff support (as opposed to using legislative or other branch staff), the drafter must include a source of funds to pay the staff.

An interim committee or a task force may require the assistance of state agencies to complete assigned tasks.[6] The drafter should consider potential separation of powers and delegation of legislative authority issues when giving an executive or judicial branch agency or private persons authority to assist the interim committee or task force.

c. Reports and Recommendations.

An interim committee or a legislative task force may be required to submit a report to the Legislative Assembly. A mixed task force or a nonlegislative task force may be required to submit a report to the Legislative Assembly or to an appropriate interim committee. A mixed task force or a nonlegislative task force may also be given authority to make recommendations for legislation. If the task force provides legislative recommendations to an appropriate interim committee, it is unnecessary to also give the task force authority to introduce legislation. That is the function of the appropriate interim committee. See ORS 171.130.

The drafter should consider providing specific due dates for reports. The report due date needs to be before the sunset date. (See section 7 of this chapter for a brief discussion of sunset clauses.) If a mixed task force or a nonlegislative task force is going to submit a report to an appropriate interim committee, require the task force to submit the report to the interim committee on or before September 15 so that the interim committee has time to take whatever action it decides to take.

Examples of provisions that address these issues are found in the boilerplate at the end of this chapter.

6. FUNDING.

A joint resolution is not a law. Rowley v. City of Medford, supra. Therefore, appropriations to pay expenses of an interim committee or a task force may not be made by a joint resolution. See Article IX, section 4, of the Oregon Constitution, which prohibits drawing money from the state treasury "but in pursuance of appropriations made by law," and 24 Op. Att'y Gen. 201 (1949). See also section 1g of chapter 9 of this manual.

An appropriation is enacted each session for the payment of expenses of the Legislative Assembly. A joint resolution creating an interim committee or legislative task force may authorize the interim committee or legislative task force to expend a certain amount of the money already appropriated for legislative expenses.

If the drafter must appropriate funds to an interim committee or a task force, then create the interim committee or the task force in a bill.

[6] This is true only for an interim committee or a task force created by a bill because a state agency cannot be ordered to act by a joint resolution.

In a Letter of Advice (OP-6373) dated April 9, 1991, the Attorney General opined that certain legislative interim committees or studies cannot be funded from lottery funds. Specific authorization probably is necessary for a task force to accept and use moneys offered by other public or private sources. 29 Op. Att'y Gen. 284 (1959). Note that a continuing appropriation is needed to allow the interim committee or the task force to use these contributed funds.

7. SUNSET CLAUSE.

In any bill creating an interim committee or a task force that lasts only one interim, the drafter must include a sunset clause.[7] This will ensure that the interim committee or the task force does not remain in limbo after it completes its work.[8] The sunset date for an interim committee or for a task force that lasts only one interim should be the date of the convening of the next odd-year regular legislative session.

If a task force will last longer than one interim, the bill must have a sunset clause. The sunset date in this case should be a normal sunset date (January 2 of any year or June 30 of an even-numbered year).

8. EMERGENCY CLAUSE.

If an interim committee or a task force is created by a bill without an emergency clause, the interim committee or the task force cannot begin to work until the effective date of the act (i.e., January 1 of the year after passage of the bill; see ORS 171.022). An emergency clause will ensure that the interim committee or the task force can begin its work as quickly as possible.

9. BOILERPLATE.

a. Boilerplate for an Interim Committee Created by a Joint Resolution. Use and modify as needed: <boiler INCTJR>

Be It Resolved by the Legislative Assembly of the State of Oregon:

(1) The Interim Committee on [subject] is established, consisting of [number] members appointed as follows:

(a) The President of the Senate shall appoint [number] members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint [number] members from among members of the House of Representatives.

(2) The interim committee shall [describe functions; see ORS 171.610].

(3) The interim committee may [describe authority or power; there is no need to duplicate language from ORS 171.505, 171.510 and 171.620].

(4) A majority of members of the interim committee constitutes a quorum for the transaction of business.

[7] However, if the interim committee or the task force is made subject to the provisions of ORS 171.605 to 171.635 as though the interim committee or task force were an interim committee created by joint resolution, a sunset clause is unnecessary. See ORS 171.615.

[8] A sunset clause is unnecessary for an interim committee created by a joint resolution (see ORS 171.615).

(5) Official action by the interim committee requires the approval of a majority of the members of the interim committee.

(6) The interim committee shall report to the Legislative Assembly in the manner provided in ORS 192.245 at any time within 30 days after its final meeting or at such later time as the President and Speaker may designate.

(7) The Legislative Administrator may employ persons necessary for the performance of the functions of the interim committee. The Legislative Administrator shall fix the duties and amounts of compensation of these employees. The interim committee shall use the services of continuing legislative staff, without employing additional persons, to the greatest extent practicable.

Optional provisions for a joint resolution that creates an interim committee:

As an alternative to subsections (2) and (3) of the basic boilerplate, a drafter may use: <spm ic-workplan>

(2) The President and Speaker, in consultation with the interim committee chairperson, shall develop a work plan consisting of a list of subjects for study by the interim committee. The interim committee, by official action, may request a modification of the work plan. Only the President and Speaker, after consultation with the chairperson, may modify the work plan.

If the interim committee needs to begin working quickly, the drafter may use either: <spm icjr-laterof>

(x) All appointments to the interim committee made under subsection (1) of this resolution must be completed by the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

OR

(x) The interim committee shall have its first meeting on or before the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

b. Basic Boilerplate for an Interim Committee Created by a Bill. Use and modify as needed: <boiler INCTBILL>

SECTION 1. (1) The Interim Committee on [subject] is established, consisting of [number] members appointed as follows:

(a) The President of the Senate shall appoint [number] members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint [number] members from among members of the House of Representatives.

(2) The interim committee shall [describe function; see ORS 171.610].

(3) The interim committee may [describe authority or power; there is no need to duplicate language from ORS 171.505 and 171.510].

(4) A majority of the members of the interim committee constitutes a quorum for the transaction of business.

(5) Official action by the interim committee requires the approval of a majority of the members of the interim committee.

(6) The interim committee shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The interim committee shall meet at times and places specified by the call of the chairperson or of a majority of the members of the interim committee.

(9) The interim committee may adopt rules necessary for the operation of the interim committee.

(10) The interim committee shall report to the Legislative Assembly in the manner provided in ORS 192.245 at any time within 30 days after its final meeting or at such later time as the President and Speaker may designate.

(11) The Legislative Administrator may employ persons necessary for the performance of the functions of the interim committee. The Legislative Administrator shall fix the duties and amounts of compensation of these employees. The interim committee shall use the services of continuing legislative staff, without employing additional persons, to the greatest extent practicable.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the interim committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the interim committee consider necessary to perform their duties.

SECTION 2. Section 1 of this [year] Act is repealed on the date of the convening of the [year] regular session of the Legislative Assembly as specified in ORS 171.010.

SECTION 3. This [year] Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this [year] Act takes effect on its passage.

Optional provisions for a bill that creates an interim committee:

As an alternative to section 1 (2) and (3) of the basic boilerplate, a drafter may use: <spm ic-workplan>

(2) The President and Speaker, in consultation with the interim committee chairperson, shall develop a work plan consisting of a list of subjects for study by the interim committee. The interim committee, by official action, may request a modification of the work plan. Only the President and Speaker, after consultation with the chairperson, may modify the work plan.

As an alternative to section 1 (6) of the basic boilerplate, a drafter may use: <spm icbill-chair>

(6) The President of the Senate and the Speaker of the House of Representatives shall select one member of the interim committee to serve as chairperson and another to serve as vice chairperson, with the duties and powers necessary for the performance of the functions of the offices as the President and the Speaker determine.

If the interim committee needs to begin working quickly, the drafter may use either: <spm icbill-laterof>

(x) All appointments to the interim committee made under subsection (1) of this [year] Act must be completed by the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

OR

(x) The interim committee shall have its first meeting on or before the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

In addition to the basic boilerplate, a drafter may also include: <spm icbill-moneys>

(x) The Legislative Administrator may accept, on behalf of the interim committee, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the interim committee.

(y) All moneys received by the Legislative Administrator under subsection (x) of this section shall be deposited into the _____ Account established by ORS XXX.XXX to be used for the purposes of carrying out the duties of the interim committee [this assumes the moneys in the already existing account are already continuously appropriated to the Legislative Administrator or the Legislative Assembly. If not, use the next option to add a continuous appropriation].

OR

(x) The Legislative Administrator may accept, on behalf of the interim committee, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the interim committee. All moneys received by the Legislative Administrator under this subsection shall be deposited into the _____ Fund established under section X of this (year) Act to be used for the purposes of carrying out the duties of the interim committee.

SECTION X. The _____ Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the _____ Fund shall be credited to the fund. All moneys in the _____ Fund are continuously appropriated to the Legislative Administrator for the purposes of carrying out the duties of the interim committee established under section ____ of this (year) Act.

SECTION Y. (1) Section X of this (year) Act is repealed on January 2, (year).

(2) Any moneys remaining in the _____ Fund on January 2, (year), that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund.

c. Basic Boilerplate for a Legislative Task Force. Use and modify as needed: <boiler LEGTASK>

SECTION 1. (1) The Task Force on [subject] is established, consisting of [number] members appointed as follows:

(a) The President of the Senate shall appoint [number] members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint [number] members from among members of the House of Representatives.

(2) The task force shall [describe function].

(3) The task force may [describe authority or powers].

(4) A majority of the members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force may presession file legislation in the manner provided in ORS 171.130 for interim committees. All legislation recommended by official action of the task force must indicate that it is introduced at the request of the task force.

(11) The task force shall report to the Legislative Assembly in the manner provided in ORS 192.245 at any time within 30 days after its final meeting or at such later time as the President and Speaker may designate.

(12) The Legislative Administrator may employ persons necessary for the performance of the functions of the task force. The Legislative Administrator shall fix the duties and amounts of compensation of these employees. The task force shall use the services of continuing legislative staff, without employing additional persons, to the greatest extent practicable.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 2. Section 1 of this [year] Act is repealed on the date of the convening of the [year] regular session of the Legislative Assembly as specified in ORS 171.010.

SECTION 3. This [year] Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this [year] Act takes effect on its passage.

Optional provisions for a bill that creates a legislative task force:

As an alternative to section 1 (2) and (3) of the basic boilerplate, a drafter may use: <spm tfleg-workplan>

(2) The President and Speaker, in consultation with the task force chairperson, shall develop a work plan consisting of a list of subjects for study by the task force. The task force, by official action, may request a modification of the work plan. Only the President and Speaker, after consultation with the chairperson, may modify the work plan.

As an alternative to section 1 (6) of the basic boilerplate, a drafter may use: <spm tfleg-chair>

(6) The President of the Senate and the Speaker of the House of Representatives shall select one member of the task force to serve as chairperson and another to serve as vice chairperson, with the duties and powers necessary for the performance of the functions of the offices as the President and the Speaker determine.

In addition to the basic boilerplate, the drafter also may include: <spm tf-authority>

(x) The chairperson or vice chairperson of the task force has the authority given to the chairperson or vice chairperson of a legislative committee by ORS 171.505 and 171.510.

If the task force needs to begin working quickly, the drafter may use either: <spm tf-laterof>

(x) All appointments to the task force made under subsection (1) of this section must be completed by the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

OR

(x) The task force shall have its first meeting on or before the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

In addition to the basic boilerplate, the drafter may insert: <spm tfleg-moneys>

(x) The Legislative Administrator may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force.

(y) All moneys received by the Legislative Administrator under subsection (x) of this section shall be deposited into the _____ Account established by ORS XXX.XXX to be used for the purposes of carrying out the duties of the task force [this assumes the moneys in the already existing account are already continuously appropriated to the Legislative Administrator or the Legislative Assembly. If not, use the next option to add a continuous appropriation].

OR

(x) The Legislative Administrator may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force. All moneys received by the Legislative Administrator under this subsection shall be deposited into the _____ Fund established under section X of this (year) Act to be used for the purposes of carrying out the duties of the task force.

SECTION X. The _____ Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the _____ Fund shall be credited to the fund. All moneys in the _____ Fund are continuously appropriated to the Legislative Administrator for the purposes of carrying out the duties of the task force established under section _____ of this (year) Act.

SECTION Y. (1) Section X of this (year) Act is repealed on January 2, (year).

(2) Any moneys remaining in the _____ Fund on January 2, (year), that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund.

d. Basic Boilerplate for a Mixed Task Force. Use and modify as needed: <boiler MIXTASK>

SECTION 1. (1) The Task Force on [subject] is established, consisting of [number] members appointed as follows:

(a) The President of the Senate shall appoint:

(A) [Number] members from among members of the Senate.

(B) [Number] members who are [set out qualifications of nonlegislators].

(b) The Speaker of the House of Representatives shall appoint:

(A) [Number] members from among members of the House of Representatives.

(B) [Number] members who are [set out qualifications of nonlegislators].

(c) The [Governor, Director of (agency), Chief Justice of Oregon Supreme Court] shall appoint [number] representatives from ____.

(2) The task force shall [describe function].

(3) The task force may [describe authority or powers].

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force shall submit a report in the manner provided in ORS 192.245, and may include recommendations for legislation, to the joint legislative committee established under ORS [section] or an interim committee of the Legislative Assembly related to [subject of task force] as appropriate no later than September 15, [year].

(11) The [agency] shall provide staff support to the task force.

(12) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to [agency that staffs the task force] for purposes of the task force.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 2. Section 1 of this [year] Act is repealed on the date of the convening of the [year] regular session of the Legislative Assembly as specified in ORS 171.010.

SECTION 3. This [year] Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this [year] Act takes effect on its passage.

Optional provisions for a bill that creates a mixed task force:

As an alternative to section 1 (2) and (3) of the basic boilerplate, a drafter may use: <spm tf-workplan>

(2) The appointing authorities, in consultation with the task force chairperson, shall develop a work plan consisting of a list of subjects for study by the task force. The task force, by official action, may request a modification of the work plan. Only the appointing authorities, after consultation with the chairperson, may modify the work plan.

As an alternative to section 1 (6) of the basic boilerplate, a drafter may use: <spm tf-chair>

(6) The [Governor, President, Speaker, Director of (agency), Chief Justice] shall select one member of the task force to serve as chairperson and another to

serve as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the [Governor, President, Speaker, Director of (agency), Chief Justice] determines.

As an alternative to section 1 (10) of the basic boilerplate, a drafter may use either: <spm tf-report>

(10) The task force shall report its findings and recommendations on [subject] to the [number] Legislative Assembly in the manner provided by ORS 192.245 no later than September 15, [year].

OR

(10) The task force shall report its findings and recommendations to the [number] Legislative Assembly in the manner provided by ORS 192.245 and to the [Governor, Director of (agency), Chief Justice] no later than September 15, [year].

As an alternative to section 1 (12) of the basic boilerplate, a drafter may use either: <spm tfmix-expense>

(12) Members of the task force who are not members of the Legislative Assembly are entitled to compensation and expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for compensation and expenses shall be paid out of funds appropriated to [agency that staffs the task force] for purposes of the task force.

OR

(12) Notwithstanding ORS 171.072, members of the task force who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the task force. Other members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

In addition to the basic boilerplate, the drafter may insert: <spm tfmix-advisory>

(x) Members of the Legislative Assembly appointed to the task force are nonvoting members of the task force and may act in an advisory capacity only.

In addition to the basic boilerplate, the drafter may also insert: <spm tf-authority>

(x) The chairperson or vice chairperson of the task force has the authority given to the chairperson or vice chairperson of a legislative committee by ORS 171.505 and 171.510.

If the task force needs to begin working quickly, the drafter may use either: <spm tf-laterof>

(x) All appointments to the task force made under subsection (1) of this section must be completed by the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

OR

(x) The task force shall have its first meeting on or before the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

In addition to the basic boilerplate, the drafter may insert either of the following options if a state agency does not receive a General Fund appropriation to pay for the costs of the task force: <spm tf-moneys>

(x) The [agency that staffs the task force] may accept contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force.

(y) All moneys received by the [agency that staffs the task force] under subsection (x) of this section shall be deposited into the _____ Account established by ORS XXX.XXX to be used for the purposes of carrying out the duties of the task force [this assumes the moneys in the already existing account are already continuously appropriated to the agency. If not, use the next option to add a continuous appropriation].

OR

(x) The [agency that staffs the task force] may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force. All moneys received by the [agency that staffs the task force] under this subsection shall be deposited into the _____ Fund established under section X of this (year) Act to be used for the purposes of carrying out the duties of the task force.

SECTION X. The _____ Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the _____ Fund shall be credited to the fund. All moneys in the _____ Fund are continuously appropriated to the [agency that staffs the task force] for the purposes of carrying out the duties of the task force established under section _____ of this (year) Act.

SECTION Y. (1) Section X of this (year) Act is repealed on January 2, (year).

(2) Any moneys remaining in the _____ Fund on January 2, (year), that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund.

In addition to the basic boilerplate, the drafter may also insert: <spm tf-approp>

SECTION X. There is appropriated to the [agency that staffs the task force], for the biennium beginning July 1, [year], out of the General Fund, the amount of $_____ for the purpose of carrying out the duties of the [name] Task Force.

As an alternative to section 2 of the basic boilerplate, the drafter may use: <spm tf-repeal>

SECTION 2. Section 1 of this [year] Act is repealed on [a regular sunset date].

e. Basic Boilerplate for a Nonlegislative Task Force. Use and modify as needed: <boiler NONTASK>

SECTION 1. (1) The Task Force on [subject] is established, consisting of [number] members appointed as follows:

(a) The President of the Senate shall appoint [number] members who are [set out qualifications].

(b) The Speaker of the House of Representatives shall appoint [number] members who are [set out qualifications].

(c) The [Governor, Director of (agency), Chief Justice of Oregon Supreme Court] shall appoint [number] representatives from ____.

(2) The task force shall [describe function].

(3) The task force may [describe authority or powers].

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force shall submit a report in the manner provided in ORS 192.245, and may include recommendations for legislation, to the joint legislative committee established under ORS [section] or an interim committee of the Legislative Assembly related to [subject of task force] as appropriate no later than September 15, [year].

(11) The [agency] shall provide staff support to the task force.

(12) Members of the task force are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to [agency that staffs the task force] for purposes of the task force.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

SECTION 2. Section 1 of this [year] Act is repealed on the date of the convening of the [year] regular session of the Legislative Assembly as specified in ORS 171.010.

SECTION 3. This [year] Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this [year] Act takes effect on its passage.

Optional provisions for a bill that creates a nonlegislative task force:

As an alternative to section 1 (2) and (3) of the basic boilerplate, the drafter may use: <spm tf-workplan>

(2) The appointing authorities, in consultation with the task force chairperson, shall develop a work plan consisting of a list of subjects for study by the task force. The task force, by official action, may request a modification of the work plan. Only the appointing authorities, after consultation with the chairperson, may modify the work plan.

As an alternative to section 1 (6) of the basic boilerplate, the drafter may use: <spm tf-chair>

(6) The [Governor, President, Speaker, Director of (agency), Chief Justice] shall select one member of the task force to serve as chairperson and another to serve as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the [Governor, President, Speaker, Director of (agency), Chief Justice] determines.

As an alternative to section 1 (10) of the basic boilerplate, the drafter may use either: <spm tf-report>

(10) The task force shall report its findings and recommendations on [subject] to the [number] Legislative Assembly in the manner provided by ORS 192.245 no later than September 15, [year].

OR

(10) The task force shall report its findings and recommendations to the [number] Legislative Assembly in the manner provided by ORS 192.245 and to the [Governor, Director of (agency), Chief Justice] no later than September 15, [year].

As an alternative to section 1 (12) of the basic boilerplate, the drafter may use either: <spm tfnon-expense>

(12) Members of the task force are entitled to compensation and expenses in the manner and amounts provided for in ORS 292.495. Claims for compensation and expenses incurred in performing functions of the task force shall be paid out of funds appropriated to [agency that staffs the task force] for purposes of the task force.

OR

(12) Members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

In addition to the basic boilerplate, the drafter may insert: <spm tf-authority>

(x) The chairperson or vice chairperson of the task force has the authority given to the chairperson or vice chairperson of a legislative committee by ORS 171.505 and 171.510.

If the task force needs to begin working quickly, the drafter may use either: <spm tf-laterof>

(x) All appointments to the task force made under subsection (1) of this section must be completed by the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

OR

(x) The task force shall have its first meeting on or before the later of ___ days after adjournment sine die of the [year] session of the [number of the current] Legislative Assembly or [date].

In addition to the basic boilerplate, the drafter may insert either of the following options if the state agency does not receive a General Fund appropriation to pay for the costs of the task force: <spm tf-moneys>

(x) The [agency that staffs the task force] may accept contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force.

(y) All moneys received by the [agency that staffs the task force] under subsection (x) of this section shall be deposited into the _____ Account established by ORS XXX.XXX to be used for the purposes of carrying out the duties of the task force [this assumes the moneys in the already existing account are already continuously appropriated to the agency. If not, use the next option to add a continuous appropriation].

OR

(x) The [agency that staffs the task force] may accept, on behalf of the task force, contributions of moneys and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the moneys not inconsistent with the duties of the task force. All moneys received by the [agency that staffs the task force] under this subsection shall be deposited into the _____ Fund established under section X of this (year) Act to be used for the purposes of carrying out the duties of the task force.

SECTION X. The _____ Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the _____ Fund shall be credited to the fund. All moneys in the _____ Fund are continuously appropriated to the [agency that staffs the task force] for the purposes of carrying out the duties of the task force established under section _____ of this (year) Act.

SECTION Y. (1) Section X of this (year) Act is repealed on January 2, (year).
(2) Any moneys remaining in the _____ Fund on January 2, (year), that are unexpended, unobligated and not subject to any conditions shall revert to the General Fund.

In addition to the basic boilerplate, the drafter may also insert: <spm tf-approp>

SECTION X. There is appropriated to the [agency that staffs the task force], for the biennium beginning July 1, [year], out of the General Fund, the amount of $_____ for the purpose of carrying out the duties of the [name] Task Force.

As an alternative to section 2 of the basic boilerplate, the drafter may use: <spm tf-repeal>

SECTION 2. Section 1 of this [year] Act is repealed on [a regular sunset date].

10. DRAFTER CHECKLIST FOR INFORMATION FOR INTERIM COMMITTEE OR TASK FORCE.

I. NECESSARY INFORMATION

1. **Name** of the interim committee or task force (e.g., Interim Committee on Adolescents or Task Force to Study What's the Matter with Kids Today).

2. **Purpose**.

3. **Duties**.
   A. Specifically listed; or
   B. Work plan. If so, who develops the work plan (appointing authorities)?

4 **Duration** (sunset date).

5. **Members**.
   A. Legislators, nonlegislators.
   B. Number.
   C. Appointing authorities.
   D. Qualification, areas of expertise.
   E. Compensation (for all or some members) or voluntary service (remember that if a joint resolution is used, legislator members automatically receive compensation under ORS 171.072 because a joint resolution cannot "notwithstand" a statute).
   F. Terms of service (if service will last longer than an interim. Not necessary for interim committee or a legislative task force).
   G. Vacancy (how filled, who appoints).
   H. Eligibility for reappointment.
   I. Chairperson (if so, appointing authority).

6. **Staff** (if so, agency staff or continuing legislative staff).

7. **Legislative recommendations** (if so, remember that a task force needs specific authorization to presession file; this is a policy decision for the requester).

8. **Report** (if so, when due? to whom submitted? be more specific than "report shall be submitted to the [number] Legislative Assembly").

9. **Subject to ORS 171.605 to 171.635** (appropriate only for an interim committee or a legislative task force created by a bill.) An interim committee or a legislative task force is a committee of legislators appointed to function in the interim. The Joint Interim Judiciary Committee is a legislative interim committee, as is the interim Senate Revenue Committee. The Task Force on Doing Good, with a few legislators and a few members appointed by the Governor, is not an interim committee or a legislative task force.

10. **Emergency clause** (if so, effective on passage or specific date).

II. ADDITIONAL INFORMATION

1. **Appropriations**. If yes, use a bill. Specify how much money or just leave figure blank. Is money to be appropriated to an agency for use by the task force or is money appropriated directly to the task force? If necessary, name or create an account in which to put the money.

2. **Authority to accept contributions** of funds from federal government or other public or private sources. If yes, specify account and make continuous appropriation to the task force or to the agency staffing the task force.

CHAPTER TWENTY

RULES FOR CONSTRUCTION OF STATUTES

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1. IN GENERAL.

a. Function of Court in Construing Statute.

In the construction of a statute, the role of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted or to omit what has been inserted. ORS 174.010; Appling v. Chase, 224 Or. 112 (1960); Fullerton v. Lamm, 177 Or. 655 (1945); 2A Sutherland, *Statutory Construction* §4501 (4th ed. Sands 1972).

1. Rules apply only where statute ambiguous. Rules of construction of statutes may be invoked only where the language is ambiguous. If the language used in a statute is plain and understandable, legislative intent must be gathered from it and there is no need to resort to rules of statutory construction. Whipple v. Howser, 291 Or. 475 (1981); Appling v.

Chase, 224 Or. 112 (1960); Ohm v. Fireman's Indem. Co., 211 Or. 596 (1957); but see Peters v. McKay, 195 Or. 412 (1951).

In order to justify interpretation of a statute on the ground of ambiguity, it is not necessary that the ambiguity appear in the particular phrase or clause under examination. State Highway Comm. v. Rawson, 210 Or. 593 (1957).

2. Legislative intent.

In interpreting a statute, the court's task is to discern the intent of the legislature. PGE v. Bureau of Labor and Industries, 317 Or. 606, 610 (1993). The best evidence of the legislature's intent is the text of the statute. Id. at 610-611. In reading the text, the court uses relevant rules of construction, such as the rule that words of common usage typically should be given their ordinary meaning. Id. at 611. Also at the first level of analysis, the court considers the context of the statutory provision at issue, including other provisions of the same statute and other statutes relating to the same subject. Ibid. Parties are entitled to proffer legislative history to court regardless of whether statute is ambiguous; evaluative worth of legislative history is for the court to decide. State v. Gaines, 346 OR 160, 171-172 (2009). If the intent of the legislature remains unclear after the completion of the foregoing inquiries, the court may resort to general maxims of statutory construction for assistance in resolving the remaining uncertainty. PGE at 612. See also State v. Gaines at 172; Gaston v. Parsons, 318 Or. 247 (1994); Mathel v. Josephine County, 319 Or. 235 (1994); Weidner v. OSP, 319 Or. 295 (1994).

However, as one court observed:

Per Curiam: Two admittedly conflicting statutes compete in litigious depth for jurisdiction over the process of collective bargaining. . . . As two courts already have come to know in **painful and dissentient succession** . . ., the competition presents that most difficult of all appellate problems; the ascertainment of legislative intent when there is no evidentiary or other reasonably authoritative guide to pertinent meaning or purpose of the legislators. For such difficulty, Cardozo has provided our first and most dependable range light (*The Nature of the Judicial Process*, pp. 14, 15, published 1921):

> Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. "The fact is," says Gray in his lectures on the Nature and Sources of the Law, "that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, **but to guess what it would have intended on a point not present to its mind, if the point had been present."** (Emphasis added.)

In a long and sharply worded dissent to Edwards v. Aguillard, 482 U.S. 578 (1987), Justice Scalia argued that it is virtually impossible to determine the intentions of legislators. Although it is possible to discern the objective purpose of a statute and even its formal motivation, the Justice noted that "discerning the subjective motivation of those enacting

the statute, is to be honest, almost always an impossible task." He notes that "the number of possible motivations . . . is not binary, or indeed even finite."

Because there are no good answers to the questions of intent, the U.S. Supreme Court has recognized from Chief Justice Marshall in Fletcher v. Peck, 10 U.S. 87, 130 (1810), to Chief Justice Warren in United States v. O'Brien, 391 U.S. 367, 383-384 (1968), that determining the subjective intent of legislators is a perilous enterprise. ORS 174.020; Whipple v. Howser, 291 Or. 475 (1981).

When the legislative intent in enacting a statute is determined, it should be given effect although the literal meaning of the words is not followed. Easton v. Hurita, 290 Or. 689 (1981); Peters v. McKay, 195 Or. 412 (1951); Swift & Co. v. Peterson, 192 Or. 97 (1951); Simon v. Brown, 5 Or. 285 (1874).

In Whipple v. Howser, 291 Or. 475 (1981), the intent of the legislature regarding retroactivity is difficult to detect:

> Sometimes, however, it is impossible to **discern** the intent of the legislature regarding retroactivity or other matters from the language of the statute itself. For that reason, a number of **rules** or **maxims** of statutory construction have been developed to aid the courts in such cases in determining probable legislative intent as to whether a statute should be applied retroactively. We have held, however, that such **rules** or **maxims** of statutory construction are not to be resorted to if the language of the statute itself expresses the intent of the legislature. (Emphasis added.)

For a discussion of legislative silence as evidence of intent, see State v. Miller, 309 Or. 362 (1990).

3. Reasonable construction. "Where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail." ORS 174.030; James v. Carnation Co., 278 Or. 65 (1977).

Where the language of a statute admits of two constructions, one absurd and the other reasonable, the court will apply the latter construction even if such is at variance with the clear and literal language of the statute. Hollinger v. Blair, 270 Or. 46 (1974); Wright v. Blue Mt. Hosp. Dist., 214 Or. 141 (1958); Pendleton v. Umatilla County, 117 Or. 140 (1926); State v. Gates, 104 Or. 112 (1921); but see Young v. State, 161 Or. App. 32 (1999) (PGE v. BOLI step-by-step method for statutory construction places the absurd-result maxim at the third level of analysis; if intent is clear from text, context or legislative history, then court does not apply absurd-result maxim).

b. Strict or Liberal Construction.

1. In general. A strict or liberal construction will depend upon a combination of many factors. Broadly speaking, a strict or liberal interpretation will be made with reference to former law, persons and rights affected, the language of the statute and the purposes and objects of the statute. Reading of statute should not foreclose reasonable construction in order to ascertain legislative intent, nor thwart legislative purposes. Oregon Stamp Society

v. State Tax Commission, 1 OTR 190 (1963); Multnomah School of the Bible v. Multnomah Co., 218 Or. 19 (1959).

2. Criminal statutes. Traditionally, penal statutes have been construed in favor of the defendant. The rule that criminal statutes are to be strictly construed has no application to the criminal and criminal procedure statutes of Oregon. Their provisions are to be construed according to the fair import of their terms with a view to their object to promote justice. ORS 161.025 (2); State v. Collis, 243 Or. 222 (1966); Merrill v. Gladden, 216 Or. 460 (1959); State v. Dunn, 53 Or. 304 (1909).

3. Acts in derogation of common law. Statutes that impose a duty or burden, or establish a right or benefit that was not recognized by common law will be construed strictly. The courts are wary of at law generalizations. Be sure right existed at common law. Naber v. Thompson, 274 Or. 309 (1976); Marsh v. McLaughlin, 210 Or. 84 (1957); Smith v. Meier & Frank Inv. Co., 87 Or. 683 (1918); but see Wash. Pub. Power Supply System v. Pac. Northwest Power Co., 217 F. Supp. 481 (D.C. Or. 1963).

The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of Oregon. ORS 109.305; Hughes v. Aetna Casualty and Surety Co., 234 Or. 426(1963); 43 Or. L. Rev. 92 (1963); State v. Jones, 4 Or. App. 447 (1971).

4. Statutes affecting rights or liabilities. Statutes that infringe on the personal or property rights of individuals are strictly construed. Lane County v. Heintz Constr. Co., 228 Or. 152 (1961); Morton v. Wessinger, 58 Or. 80 (1911).

Statutes imposing a liability where none would otherwise exist are to be strictly construed. Clary v. Polk Co., 231 Or. 148 (1962); Hillman v. North Wasco Co. PUD, 213 Or. 264 (1958) (overruled on other grounds, Maulding v. Clackamas County, 278 Or. 359 (1977)); Jones v. Union County, 63 Or. 566 (1912).

5. Remedial statutes. Remedial statutes are to be given a liberal interpretation and construction to remedy the defects in the law for which purpose the statute was enacted. "Remedial" is used to mean either the converse of penal or procedural rather than substantive rights. Remedial statutes are normally applied retroactively. Perkins v. Willamette Industries, Inc., 273 Or. 566 (1975); Myers v. Directors of Tualatin Rural Fire Dist., 5 Or. App. 142 (1971); Columbia River Salmon & Tuna Packers Ass'n v. Appling, 232 Or. 230 (1962); Sunshine Dairy v. Peterson, 183 Or. 305 (1948).

6. State agency authority. An administrative agency is not at liberty to limit or restrict the terms of a statute. Cook v. Workers' Compensation Department, 306 Or. 134 (1988).

7. Miscellaneous. Statutes in derogation of sovereignty are to be strictly construed. Schrader v. Veatch, 216 Or. 105 (1959); Peters v. McKay, 195 Or. 412 (1951).

Statutes creating tax exemptions are to be construed strictly in favor of the state and a taxpayer must clearly show that the taxpayer comes within the legislative intent of the

exemption statute. Houck & Sons v. State Tax Comm., 229 Or. 21 (1961); Unander v. U.S. Nat'l Bank, 224 Or. 144 (1960).

Doubt or ambiguity in taxing statute must be strictly construed **against** government. Willamette Val. Lumber Co. v. United States, 252 F. Supp. 199 (1966); but see Parr v. Dept. of Revenue, 276 Or. 113 (1976), overruling Crook v. Curry County, 206 Or. 350 (1956).

Election laws are to be liberally construed. Othus v. Kozer, 119 Or. 101 (1926); State ex rel. Davis v. Wolf, 17 Or. 119 (1888).

Clear, unambiguous statutes are to be construed according to their plain meaning. ORS 174.010; Satterfield v. Satterfield, 292 Or. 780 (1982); Johnson v. Star Machinery, 270 Or. 694 (1974).

2. THE ACT.

a. In General.

1. Purpose of statute. A statute is to be interpreted with reference to its purpose. Every word, clause and provision is to be liberally construed to carry out the purpose for which the statute was enacted. It is assumed that every enactment has a definite purpose and that the subsidiary provisions are in harmony with that purpose. McCabe v. State, 314 Or. 605 (1992); Fitzgerald v. Neal, 113 Or. 103 (1924).

2. Title and preamble. Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title. Article IV, section 20, Oregon Constitution.

The title may not be used to contradict clear provisions in the body of the Act, but where it is necessary to construe ambiguous language, the title of the Act, being a part of the statute, can be considered to ascertain the meaning of the statute. State v. Zook, 27 Or. App. 543 (1976); Portland v. Duntley, 185 Or. 365 (1949).

The preamble of a statute is not an essential part thereof and neither enlarges nor confers powers, but in a doubtful case, the preamble may be considered in construction. Curly's Dairy, Inc. v. State Dept. of Agriculture, 244 Or. 15 (1966); Sunshine Dairy v. Peterson, 183 Or. 305.

3. Policy statements. Statements of general policy can serve as contextual guides to the meaning of particular provisions of statutes as long as they have genuine bearing on the meaning of the provision being construed. Policy statements cannot be used to delineate specific policies not articulated in statute. Warburton v. Harney County, 174 Or. App. 322 (2001); Department of Land Conservation and Development v. Jackson Co., 151 Or. App. 210 (1997).

4. Leadline. Title heads, chapter heads, division heads, section and subsection heads or titles, explanatory notes and cross-references in ORS do not constitute a part of the law. An exception is made for unit and section captions of statutes created by approved initiative petition, if the text approved by the voters included the unit and section captions. For an example, see ORS 127.800 et seq. ORS 174.540; Upham v. Bramwell, 105 Or. 597; but see Earle v. Holman, 154 Or. 578 (1936) (stating that subtitles and subheads constituting part of an enrolled bill are part of the act and may be resorted to in resolving ambiguity or doubt as to legislative intent).

5. Conflict between provisions. Where apparently inconsistent provisions occur in the same Act, it is the duty of the courts to harmonize them. Todd v. Bigham, 238 Or. 374 (1964).

The rule that, where there is an irreconcilable conflict between the provisions of the same Act, the last provision in order of position prevails, does not apply where the earlier provision conforms to the obvious policy and intent of the legislature. Gilbertson v. Culinary Alliance, 204 Or. 326 (1955).

6. Punctuation. Punctuation is a part of the Act, and it may be considered in the interpretation of the Act but may not be used to create doubt or to distort or defeat the intention of the legislature. Punctuation may be disregarded or rearranged to achieve the purpose of a statute. Fleischhauer v. Bilstad, 233 Or. 578 (1963); Pape v. Hollopeter, 125 Or. 34 (1928); State v. Banfield, 43 Or. 287 (1903).

7. Grammar. In construing a statute, a court is not bound to accept and apply literally rules of grammatical construction. The doctrine of the last antecedent is not inflexible and is never applied when a further extension is clearly required by the intent and meaning of the context or when to apply a grammatical rule literally would lead to an absurd or unreasonable result, defeating the legislative purpose. Doctrine will be applied at first level of statutory analysis. Johnson v. Craddock, 228 Or. 308 (1961); State v. Webb, 324 Or. 380 (1996).

8. Clerical errors. When clerical errors would defeat the purpose of the Act, the court will correct them when the true meaning is obvious. Zidell Marine Corp. v. West Painting, Inc., 133 Or. App. 726 (1995).

b. Specific Phrases.

1. *Noscitur a sociis*. The meaning of doubtful words may be determined by reference to their relation to associated words and phrases. Thus, when two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word. State v. Fuller, 164 Or. 383 (1940); Eugene Theatre Co. v. City of Eugene, 194 Or. 603 (1952).

2. *Ejusdem generis*. Where general words follow the enumeration of particular classes of persons or things, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Skinner v. Keeley, 47

Or. App. 751 (1980); State v. Brantley, 201 Or. 637 (1954); but see Bellikka v. Green, 306 Or. 630 (1988).

3. *Expressio unius*. The inclusion of specific matter in a statute tends to imply a legislative intent to exclude related matters not mentioned. If a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature. Smith v. Clackamas County, 252 Or. 230 (1968), overruled on other grounds, Whipple v. Howser, 291 Or. 475 (1981); Anderson v. Gladden, 188 F. Supp. 666 (D.C. Or. 1960); State v. Standard Oil Co., 61 Or. 438 (1912); but see Matheson v. Armbrust, 284 F.2d 670 (9th Cir. C. A. 1960) cert. den. 365 U.S. 870 (1961), and Miller v. Employment Division, 45 Or. App. 1117 (1980).

4. Passage of this Act. "Passage of this Act" means when the Act is signed by the Governor rather than the otherwise effective date of the Act. Brassfield v. Brassfield, 183 Or. 217 (1948); State v. Hecker, 109 Or. 520 (1923).

5. This Act. A statute contained the words "contrary to this Act." An amendment repeated the words without change. "This Act" refers to the original Act, as amended. State v. Davis, 207 Or. 525 (1956).

6. Provisos. Provisos are strictly construed since they are intended to restrain or limit that which would otherwise be within the scope of general language. Holman Transfer Co. v. Portland, 196 Or. 551 (1952).

c. Specific Words.

1. Popular meaning. Words of common use in a statute are to be taken in their natural, plain and obvious meaning, as they are popularly used. Portland v. Meyer, 32 Or. 368 (1898); Fishburn v. Londershausen, 50 Or. 363 (1907).

2. Technical words. Every Act and joint resolution shall be plainly worded, avoiding as far as possible the use of technical terms. Technical words, legal terms and other words of art are presumed to have been used with their technical or legal meaning. Commercial terms, when used in statutes relating to trade or commerce, are presumed to have been used in their ordinary trade or commercial meaning. Article IV, section 21, Oregon Constitution; Multnomah Co. v. Dept. of Revenue, 7 OTR 315 (1978); Anthony v. Veatch, 189 Or. 462 (1950).

3. Same words have same meaning. In the absence of anything in the Act indicating a contrary intent, where the same word or phrase is used in different parts of the Act, it will be presumed to be used in the same sense. Where the meaning of a word is clear in one instance, the same meaning will be attached to the word elsewhere in the Act. Dalles Cherry Growers v. Employment Division, 25 Or. App. 645 (1976); Pense v. McCall, 243 Or. 383 (1966).

When the legislature uses different language for similar statutory provisions, courts assume that it intended different meanings. Lindsey v. Farmers Insurance Co. of Oregon, 170 Or. App. 458 (2000). See Emerald PUD v. PP&L, 76 Or. App. 583 (1985), aff'd 302 Or. 256 (1986).

4. Number and gender. The singular number may include the plural and the plural number, the singular. Words used in the masculine gender may include the feminine and neuter. ORS 174.127. However, the 1979 legislature enacted ORS 174.129, which states: ". . . that all statutes . . . be written in sex-neutral terms unless it is necessary for the purpose of the statute . . . that it be expressed in terms of a particular gender."

5. Includes. A definition clause that declares that a particular word "includes" a variety of things not generally within its meaning extends rather than limits the natural or usual meaning. "Including" within an Act is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. Premier Products Co. v. Cameron, 240 Or. 123 (1965); American Building Maintenance v. McLees, 296 Or. 772 (1984).

6. Shall, Must and May. ORS 174.100 defines "shall not" and "may not" as equivalent expressions of an absolute prohibition. Sections 3 and 4 of chapter 4 of this manual contain a discussion of the correct uses of "must," "shall," "shall not," "may" and "may not."

7. And and Or. If two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive "and" should be used. If the failure to comply with any requirement imposes liability, the disjunctive "or" should be used. In order to avoid an unreasonable or absurd result, "and" may be construed to mean "or," and "or" construed to mean "and" where there is cogent proof of legislative error. Lommasson v. School Dist. No. 1, 201 Or. 71 (1953); Persons Adm'r. v. Raven et al., 187 Or. 1 (1949); 1A Sutherland Stat. Const. §21.14 (5th Ed.).

d. Severability.

ORS 174.040 provides that it is the legislative intent, in the enactment of any statute, that if any part of the statute is held unconstitutional, the remaining parts shall remain in force unless:

1. The statute provides otherwise;

2. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the remaining parts would not have been enacted without the unconstitutional part; or

3. The remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

Dilger v. School Dist. 24CJ, 222 Or. 108 (1960); Gilliam County v. Department of Environmental Quality, 114 Or. App. 369 (1992) (rev'd on other grounds, sub nom Oregon Waste Systems v. Dept. Envt'l Quality, 511 U.S. 93 (1994).

The same principle of severability applies to local ordinances. D.S. Parklane Development, Inc. v. Metro, 165 Or. App. 1 (2000).

e. Prospective or Retroactive Operation.

Generally a statute expressed in general terms and words of present or future tense will be applied, not only to situations existing and known at the time of enactment, but also prospectively to things and conditions that come into existence thereafter. Statutes that affect substantive rights are applied prospectively, but statutes that affect procedures and remedies may be applied to existing rights as well as to those that accrue in the future. Statutes will not be interpreted to be retroactive unless an intent to the contrary clearly appears. Fish and Wildlife v. L.C.D.C., 288 Or. 203 (1979); Joseph v. Lowery, 261 Or. 545 (1972).

However, in Whipple v. Howser, 291 Or. 475, 480 (1981), the court held that:

> Barring constitutional limitations, the legislature may impose any special conditions it desires upon its enactments. Moreover, this court has recently held that, with the exception of ex post facto laws, there is no constitutional bar to the legislature providing that its laws be applied retroactively. See Hall v. Northwest Outward Bound School, 280 Or. 655, 572 P.2d 1007 (1977). Thus, in determining whether to give retroactive effect to a legislative provision, it is not the proper function of this court to make its own policy judgments, but its duty instead is to attempt to **discern** and **declare** the intent of the legislature.
>
> This duty of the court to **discern** and **declare** the intention of the legislature has also been recognized by this court in the retroactive application of statutes on a number of occasions. It is the legislature's intent that governs. Legal rules relating to retroactive and prospective application of statutes are merely rules of construction by which the court attempts to ascertain **the probable legislative intent.** See Joseph v. Lowery, 261 Or. 545, 495 P.2d 273 at 552 (1972). (Emphasis added.)

In State ex rel Juvenile Department of Multnomah County v. Nicholls, 192 Or. App. 604 (2004), the court set forth a methodology for discerning the intention of the legislature regarding retroactive application of an amendment in the absence of an applicability clause. At the text and context level of analysis, the court noted that "textual cues [such] as verb tense and other grammatical choices" might indicate what the legislature intended. Id. at 609. The court noted that lack of an express retroactivity clause is important because those clauses are common and easy to draft. "[S]ilence . . ." the court said, "strongly suggests that the legislature either did not intend the statute to be retroactive or did not consider the matter." Id. at 611. Similarly, if an express retroactivity clause is drafted for one provision of the bill, the absence of a retroactivity clause for another provision of the bill suggests that the legislature intended the other provision to apply prospectively only. Id. at 611. The court's decision also examined the issue of whether the amendment was substantive or procedural and remedial. The court concluded that because the amendment had the effect of changing legal obligations and burdens based on past actions the amendment was

substantive and, in such cases, the court presumes that the legislature intended the amendment to apply prospectively only. Id. at 614.

f. Effective Date of Act.

1. Generally. Article IV, section 28, of the Oregon Constitution, provides that "[n]o act shall take effect, until ninety days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law." However, unless otherwise provided, ORS 171.022 provides that the effective date of an Act is "January 1 of the year after passage of the Act."

2. Emergency Act. An Act to which an emergency clause is attached takes effect at once on the Governor's approval, or on the date specified in the Act if that date is after the date of the Governor's approval. An Act containing an emergency clause "effective on passage" becomes effective on the date the Governor files the bill with the Secretary of State. Simpson v. Winegar, 122 Or. 297 (1927).

3. Referendum measure. A measure referred to the people becomes law 30 days after approval by a majority of the votes cast thereon. Generally no more force is attached to an express effective date provision in a legislative Act than to an implied 90-day provision unless the expressed date is one that follows the referendum election. Article IV, section 1 (4)(d), Oregon Constitution; Portland Pendleton Motor Transp. Co. v. Heltzel, 197 Or. 644 (1953); Salem Hospital v. Olcott, 67 Or. 448 (1913).

3. THE EFFECT OF OTHER ACTS.

a. Former Version of Statute.

Where a statute has been amended, the original Act may be used to explain any ambiguity that might exist in the language of the amended Act, but not to supply omissions. Holman Transfer Co. v. Portland, 196 Or. 551 (1952); State v. Simon, 20 Or. 365 (1891).

See ORS 174.530 for construction of statutes enacted as part of 1953 revision. State v. Lermeny, 213 Or. 574 (1958); State v. Davis, 207 Or. 525 (1956).

b. *In Pari Materia*.

Where there are several provisions or particulars, a construction is, if possible, to be adopted that will give effect to all. All statutes on the same subject must be taken *in pari materia*, and read together as one law. ORS 174.010.

c. Conflicts.

1. Special prevails over general. Where a general and particular provision are inconsistent, the latter prevails over the former. A specific intent controls over a general one that is inconsistent with it. ORS 174.020; Colby v. Larson, 208 Or. 121 (1956);

Steamboaters v. Winchester Water Control Dist., 69 Or. App. 596, 599 (1984); Smith v. Mult. Co. Bd. of Commissioners, 318 Or. 302 (1994).

A later general statute that does not expressly repeal a prior special statute does not affect the special provisions of the earlier statute. Davis v. Wasco I.E.D., 286 Or. 261 (1979); Hill v. Hartzell, 121 Or. 4 (1927).

2. Acts passed at same session. Where statutes relating to the same subject are enacted at the same session of the legislature, all the clauses of the several enactments should be construed together, so as to permit each to remain intact. However, if some provisions are so repugnant to succeeding sections that both cannot exist at the same time as substantive law, the latter one necessarily controls. Salahub v. Montgomery Ward & Co., 41 Or. App. 775 (1979); Benson v. Withycombe, 84 Or. 652 (1917).

Where two Acts are passed by the legislature at the same session and are approved by the Governor on the same day, the Act containing an emergency clause prevails if there is a conflict or inconsistency. Daly v. Horsefly Irr. Dist., 143 Or. 441 (1933); 28 Op. Att'y Gen. 12 (1956).

3. Same law amended by separate Acts at same session. If at any session of the legislature, there are enacted two or more Acts amending the same section of the statutes, each of the Acts shall be given effect to the extent that the amendments do not conflict in purpose. Otherwise, the Act last signed by the Governor shall control. Article IV, section 22, Oregon Constitution.

4. Measures voted on by people at same election. If two or more conflicting laws are approved at the same election, the law receiving the greatest number of affirmative votes is paramount in all matters on which there is conflict, even though such law may not have received the greatest majority of affirmative votes. If two or more conflicting amendments to the Constitution are approved at the same election, according to statute, the amendment receiving the greatest number of affirmative votes is paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes. The statute has not been judicially construed. ORS 254.065 (2); 30 Op. Att'y Gen. 252 (1961).

d. Operation and Effect of Amendments.

1. When amendment operates as repeal of original statute. When all or a part of a criminal statute is amended, the criminal statute or part thereof so amended remains in force for the purpose of authorizing the prosecution, indictment, trial, conviction and punishment of all persons who violated such statute prior to the effective date of the amending Act. ORS 161.035; State v. Holland, 202 Or. 656 (1954); Ibach v. Jackson, 148 Or. 92 (1934).

Amendment of a statute by setting it out in full so as to read in a particular way operates as entire obliteration of the former statute after new statute goes into effect. Skinner v. Davis, 156 Or. 174 (1937); State v. Smith, 56 Or. 21 (1910).

2. Amendment presumed to change law. Because an amendment is defined as an Act that changes an existing section, the mere fact that the legislature enacts an amendment indicates that it intended to change the original Act and a change in legal rights is presumed. Fifth Ave. Corp. v. Washington Co., 282 Or. 591 (1978); Houck & Sons v. State Tax Comm., 229 Or. 21 (1961).

3. Substituted statute deemed continuation of former law. The provisions of the ORS as enacted in 1953 shall be considered as substituted in a continuing way for the provisions of the prior statute laws of a general, public and permanent nature repealed in 1953 when *Oregon Revised Statutes* was enacted as the law. ORS 174.550; Holbrook v. Holbrook, 240 Or. 567 (1965).

Presumption that revision did not change the law and is substituted in a continuing way for the previous law does not control if the revision as adopted by the legislature clearly changes preexisting law. State v. Davis, 207 Or. 525 (1956).

Repeal and simultaneous reenactment of same statutory provisions are not to be considered as repeal, but are considered to be a continuation of the language repealed. Smith v. Patterson, 130 Or. 73 (1929); Sisters of Mercy v. Lane County, 123 Or. 144 (1927).

e. Implied Repeal or Amendment.

1. Statutes can be repealed or amended by implication as well as expressly. If there are two Acts on the same subject, which are repugnant in some of their provisions, the later Act repeals the earlier to the extent of such repugnancy, even without express repealing words. State v. McIntire, 22 Or. App. 161 (1975); Lilly v. Gladden, 220 Or. 84 (1959).

Amendment of statutes by implication is recognized when the matter is clear. State v. Scott, 237 Or. 390 (1964).

Repeals by implication are not favored and before a repeal will be implied there must be an irreconcilable conflict between such statute and the subsequent statute. State v. Shumway, 291 Or. 153 (1981); United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir.1970).

2. Implied repeal operates as repeal and not mere suspension. Constitutional amendment abolishing capital punishment did not merely suspend statutes providing for execution of death sentence; it repealed them. State v. Hecker, 109 Or. 520 (1923).

3. Specific repeal of statute operates to impliedly repeal dependent statutes. Repeal of an Act repeals the penalty, and such penalty cannot be made to apply to the violation of subsequent law on subject, unless expressly or impliedly provided. State v. Gaunt, 13 Or. 115 (1885).

4. Effect of subsequent reference to abolished office. Reference to an abolished office does not indicate a legislative intent to perpetuate the office and, if necessary, may be construed to apply to a current office. Reed v. Dunbar, 41 Or. 509 (1902).

5. Amendment of statute for another purpose does not give new life to impliedly repealed parts. If a section of an Act is amended "so as to read as follows" and the amended law sets forth the changes contemplated, the parts of the old section that are incorporated in the new are not treated as having been repealed and reenacted, but are considered as portions of the original statute; only the new parts of the amended law are considered as enacted at that time. Renshaw v. Lane County, 49 Or. 526 (1907); Allison v. Hatton, 46 Or. 370 (1905).

If an Act has been repealed by implication, a subsequent statute purporting to amend it does not reenact the provisions of the original law that are copied without change. Stingle v. Nevel, 9 Or. 62 (1880).

6. Specific repeal clause negates repeal by implication. If a statute expressly repeals specific Acts, there is a presumption that it was not intended to repeal others not specified, but there is an implied approval of statutes not specified. Erickson v. Erickson, 167 Or. 1 (1941).

f. Unconstitutionality of Amending or Repealing Act; Effect on Original Statute.

ORS 174.520 provides that after an amendatory section of a statute is declared unconstitutional, the section sought to be amended thereby remains in effect if that appears to have been the intent of the Legislative Assembly or the people. State ex rel. Musa v. Minear, 240 Or. 315 (1965); Skinner v. Davis, 156 Or. 174 (1937).

g. Effect of Repeal of a Repealing, Validation or Curative Statute, or One That Has Accomplished Its Purpose.

Whenever a statute that repealed a former statute, either expressly or by implication, is repealed, the former statute is not thereby revived unless it is expressly so provided. ORS 174.080.

The repeal of a validating or curative Act does not affect any validation or cure theretofore accomplished. ORS 174.070.

Whenever a constitutional provision that repeals or suspends in whole or in part a former constitutional provision, either expressly or by implication, is repealed, the former constitutional provision repealed or suspended thereby is not revived unless it is expressly so provided. ORS 174.090.

h. Adoption by Reference; Effect of Amendment of Adopted Section.

ORS 174.060 provides that "[w]hen one statute refers to another, either by general or by specific reference or designation, the reference shall extend to and include, in addition to the

statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted." Seale v. McKennon, 215 Or. 562 (1959); 37 Or. L. Rev. 274 (1958); 31 Op. Att'y Gen. 482 (1964).

In providing for a state income tax, the legislature has merely incorporated certain provisions of the Internal Revenue Code into Oregon's income tax law and made them applicable state law for various determinations regarding the state income tax. The legislature's incorporation by reference is equivalent to its having republished the specified federal provisions in the state statutes. Okorn v. Dept. of Rev., 312 Or. 152 (1991).

4. OTHER AIDS TO CONSTRUCTION.

Johnstone, "The Use of Extrinsic Aids to Statutory Construction in Oregon," 29 Or. L. Rev. 1 (1949), is generally useful.

a. Journals and Bill History.

Courts may consider legislative journals, committee reports, committee minutes and other bill history in determining the legislative intent where an Act is ambiguous, but comments of legislators following enactment are probably not very useful.

While the courts may consult the legislative history for "invaluable insight" into the process, the history remains supplemental to the wording of the statute. Northwest Natural Gas Co. v. Frank, 293 Or. 374 (1982). Thompson v. IDS Life Ins. Co., 274 Or. 649 (1976); Appling v. Chase, 224 Or. 112 (1960).

b. Official Voters' Pamphlet.

Arguments appearing in the official voters' pamphlet will be considered in construing a statute. Chapman v. Appling, 220 Or. 41 (1960); Allen v. Multnomah County, 179 Or. 548 (1946).

c. Bar Committee Reports.

Oregon State Bar committee reports may be considered by a court in construing a statute. Lilly v. Gladden, 220 Or. 84 (1959); Western Amusement Co., Inc. v. City of Springfield, 274 Or. 37 (1976).

d. Statute Adopted From Another State or Federal Government.

Interpretation placed upon the law of another state by courts of that state prior to adoption of such statute by Oregon governs the construction to be placed on it in Oregon or is highly persuasive. State v. Cooper, 319 Or. 162 (1994); Meyer v. Ford Industries, Inc., 272 Or. 531 (1975); School Dist. No. 1 v. Rushlight & Co., 232 Or. 341 (1962).

e. Legislative Approval of Judicial Interpretation.

Legislative inaction for many years after judicial interpretation of statute may indicate legislative approval of that interpretation, but inaction may be a "weak reed." Berry v. Branner, 245 Or. 307, 311 (1966). Drake Lumber Co. v. Paget Mortgage Co., 203 Or. 66 (1954).

f. Contemporaneous Construction.

The interpretation of an ambiguous statute by an agency charged with its administration, although not binding upon the courts, is entitled to their careful consideration, but sponsor's later view is entitled to little weight; drafter's reservations are not binding on court. Zollinger v. Warner, 286 Or. 19 (1979); Gunther v. Washington County, 623 F.2d 1303 (9th Cir. 1979), aff'd 452 U.S. 161 (1981); State v. Forrester, 29 Or. App. 409 (1977).

CHAPTER TWENTY-ONE

BONDING

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1. CONSTITUTIONAL DEBT LIMITATION AND BONDING.

With certain exceptions,[1] the Oregon Constitution generally prohibits the State of Oregon from lending its credit or "in any manner" creating debt or liabilities in an amount larger than $50,000. Article XI, section 7, of the Oregon Constitution, provides:

> **Sec. 7. Credit of State Not to Be Loaned; Limitation Upon Power of Contracting Debts.** The Legislative Assembly shall not lend the credit of the state nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war or to repel invasion or suppress insurrection or to build and maintain permanent roads; and the Legislative Assembly shall not lend the credit of the state nor in any manner create any debts or liabilities to build and maintain permanent roads which shall singly or in the aggregate with previous debts or liabilities incurred for that purpose exceed one percent of the true cash value of all the property of the state taxed on an ad valorem basis; and every contract of indebtedness entered into or assumed by or on behalf of the state in violation of the provisions of this section shall be void and of no effect. This section does not apply to any agreement entered into pursuant to law by the state or any agency thereof for the lease of real property to the state or agency for any period not exceeding 20 years and for a public purpose.

The Oregon Supreme Court modernly finds that the "term 'debt' as used in Article XI, section 7, means an unconditional and legal obligation of the state to pay, when at the time the obligations initially are created there are insufficient unappropriated and not otherwise obligated funds in the state treasury to meet those obligations."[2] In State ex rel.

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[1] Exceptions specified within Article XI, section 7, allow (1) for uncapped debt incurred in case of war, invasion or insurrection, (2) for debt, not to exceed one percent of the true cash value of property taxed on an ad valorem basis, incurred to build and maintain permanent roads and (3) for costs associated with the lease of real property for a public purpose for a period of 20 years or less. However, the concept of a prohibition against indebtedness has been limited (1) by subsequent constitutional provisions denominated Articles XI-A to XI-P that authorize indebtedness for various purposes and (2) by narrow judicial construction of the concept of creating debt in any manner, thus creating the possibility of long-term, revenue-based financial obligations.

[2] State ex rel. Kane v. Goldschmidt, 308 Or. 573, 583 (1989).

Kane v. Goldschmidt, the court concluded: "The drafters of the constitution intended that the state pay as it goes. An unconditional promise to pay is invalid if payment is to be made, in whole or in part, from future appropriations out of the general tax fund."[3] The decision in Kane reflects an evolution in the jurisprudence concerning public debt.

One of the earliest decisions defining the term "debt or liabilities" is Salem Water Co. v. City of Salem, in which the Oregon Supreme Court stated: "The words 'any debt or liabilities,'. . . are general and may include any kind of debt or liability, either absolute or contingent, express or implied."[4] More recently, in Kane, the Supreme Court approved the use of certificates of participation, a form of revenue-based borrowing. The court stated:

> Over the last century, as public bodies have devised various methods of avoiding constitutional or charter prohibitions, the definition of "debt or liabilities" has gained precision beyond that stated in *Salem Water Co.* This court has looked at not less than two basic characteristics in deciding whether action violates Article XI, section 7: (1) the fund from which payments on the obligation are made; and (2) the degree to which the public body is liable for repayment of the loan.
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> If the revenues generated from a particular project being financed are pledged for repayment, rather than revenues from general taxation, no "debt" or "indebtedness" is thereby created. Often referred to as the "special fund" cases, this line of decisions upholds the plan if the promise by the state is to make installment payments only from a "special [revenue] fund." (Alteration in original.) Such a promise does not create a "debt" or "liabilities," within the meaning of Article XI, section 7, because general tax revenues have not been pledged.
>
> A second line of cases classifies debt based on the degree to which the public body is liable for the repayment of the obligation. *Rorick v. Dalles City* involved the issuance and sale of Columbia River bridge bonds by Dalles City [The Dalles]. The authorizing statute contained a debt limitation provision similar to Article XI, section 7. Although principal on the bonds was payable only from the tolls and revenues of the bridge, the city was absolutely liable for the interest on future installments if the "special fund" was insufficient to meet the obligation. (Citations omitted.)[5]

With that holding, the court in Kane essentially parsed public borrowing into two broad categories. **General obligation borrowing** is a full faith and credit obligation for which the taxing power of government is pledged to secure payment.[6] If existing funds are insufficient to pay the obligation, the lender can compel the government through legal process to levy additional taxes sufficient to pay the obligation. According to the holding in Kane, debt is incurred in the constitutional sense of the term when the state borrows money by pledging its full faith and credit and taxing power.[7] The Legislative Assembly may authorize general obligation borrowing only if a provision of the Oregon

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[3] Id.
[4] Salem Water Co. v. City of Salem, 5 Or. 29, 32 (1873).
[5] Kane at 581-582.
[6] Kane at 583.
[7] Kane at 581-582. Despite the generality of the concept of taxing power often associated with general obligation borrowing, Oregon's constitutional authorizations for general obligation borrowing typically except the ad valorem taxing power.

Constitution specifically allows the state to lend its credit. **Revenue-based borrowing** is an obligation for which only specific revenue, income or property is pledged to secure payment.[8] If the pledged revenue, income or property is insufficient to pay the obligation, the lender has no legal recourse to compel the government to pay the obligation from any other source. The court in Kane concluded that debt is not incurred in the constitutional sense when the state borrows money by pledging only a particular stream of revenue to repayment.

2. GENERAL TIPS FOR DRAFTING BOND BILLS.

a. General Procedural Requirements (ORS Chapter 286A).

The Seventy-fourth Legislative Assembly, based on interim work performed by the Oregon Law Commission, revised state laws related to public borrowing in chapter 783, Oregon Laws 2007 (Enrolled House Bill 3265). As a result, ORS chapter 286A establishes procedural requirements for the issuance and administration of debt instruments by the State Treasurer on behalf of state agencies. ORS chapter 287A, in combination with applicable provisions of city and county home rule charters and local ordinances, governs local government borrowing; however, drafters are not typically called upon to draft local ordinances or resolutions authorizing local government borrowing.

Chapter 783, Oregon Laws 2007, reflects a modern trend to grant the State Treasurer broad procedural authority to issue and administer bonds authorized by law. Older authorizing statutes tend to include more specific and sometimes outdated or conflicting procedural requirements. The modern trend likely reflects both the increasingly sophisticated marketplace for public borrowing and deference to the discretion of the State Treasurer.

The law commission focused the bond statute revision on the common chapters containing procedural authority for the issuance and administration of bonds. Though conforming amendments were made throughout the statutes, the emphasis was on cross-references and not all statutory sections were amended to address textual conflicts.[9] As a result, several agencies, including the Department of Transportation, the State Department of Energy, the Oregon Business Development Department and the Housing and Community Services Department, have statutes authorizing ongoing bond programs that still describe procedural authority.

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[8] Kane at 581.

[9] An example is ORS 470.220 to 470.290 (see 2009 Edition), which establish a bond program for the issuance of general obligation bonds under Article XI-J of the Oregon Constitution. ORS 470.225 accurately directs the State Treasurer to issue the general obligation bonds in accordance with ORS chapter 286A. ORS 470.270, however, contradicts ORS 470.225 by directing the Director of the State Department of Energy to issue refunding bonds after consultation with the State Treasurer. Though subsequent references to the director or the State Department of Energy within ORS 470.270 are probably correct, the State Treasurer should be authorized to issue the refunding bonds after consultation with the director. Also, clarity of ORS 470.220 to 470.290 can be improved with changes from passive to active voice in several provisions within the series.

Because ORS chapter 286A gives the State Treasurer full procedural authority to issue and administer bonds otherwise authorized by law, a drafter who encounters bond procedures in a different ORS chapter should eliminate provisions of law outside ORS chapter 286A that describe standard procedures for issuing and administering state bonds. These changes should be handled with precision. The drafter should not eliminate provisions that authorize an ongoing bond program. Likewise, the drafter should not eliminate provisions describing procedural limitations specific to the bond program unless the requester intends to change the limitations. But with the approval of the requester, the drafter should aggressively seek to eliminate duplicative provisions that describe standard procedures within the range of authority provided by ORS chapter 286A.

Under ORS 286A.005, the State Treasurer issues all state bonds. This is statutory policy, not a constitutional requirement. However, if a drafter finds contradictory language in statute that suggests an agency is "authorized to issue" bonds or that certain bonds are "issued by" the agency, the drafter should aggressively seek to conform the language to the stated policy and practice in ORS chapter 286A. That is: "At the request/on behalf of a related agency, the State Treasurer is authorized to issue. . . ."

b. Ongoing Bond Program or One-Time Biennial Authorization.

A bill authorizing the issuance of bonds generally takes the form of either an ongoing bond program or a one-time biennial authorization. An ongoing bond program is usually codified and assigned an ORS number or numbers. A bill creating an ongoing bond program should establish a statutory cap on the amount of bonds that may be outstanding at any one time or should clearly charge the Governor and the Legislative Assembly with establishing the amount of bonds to be issued in a biennium pursuant to ORS 286A.035.[10] A one-time bond authorization will generally be compiled in ORS as a note section for the appropriate biennia. The draft of a one-time authorization should specify both the amount of bonds to be issued and the biennium or biennia[11] for which the bonds can be issued.

c. Provisions Not Specifically Required by State Law.

Some common bonding practices not explicitly required by state law are driven by issues of federal law, particularly the Internal Revenue Code. For example, the cost of public borrowing is lower because government is a low-risk borrower and because the interest from municipal bonds used for capital construction is generally excluded from

[10] ORS 285B.530 to 285B.548 describe a revenue bond program with a statutory cap on the amount of bonds to be issued. See ORS 285B.551 (3)(a). ORS 470.220 to 470.290 describe a general obligation bond program for which the Legislative Assembly is expected to specify the amount of bonds to be issued in each biennium. The language is not nearly as clear as it should be. The series appears to be an open-ended authorization to bond up to the limit stated in Article XI-J of the Oregon Constitution; however, the second sentence of ORS 470.290 seems to anticipate that the Legislative Assembly will establish an amount of bonds to be issued under the series.

[11] A bill can authorize bond issuance in one or more future biennia. The bill does not unconstitutionally bind future legislatures because a subsequent Legislative Assembly can amend or repeal the forward-looking bond authorizations.

taxable income under the Internal Revenue Code. However, the interest from municipal bonds is recognized as income under certain circumstances, including arbitrage in which the state invests borrowed money for the purpose of making a profit. Drafters need not focus on the arbitrage issue, but the State Treasurer and bond counsel will alert the requester and drafter if adjustments are needed to avoid an arbitrage concern.

d. Separate Funds in General Obligation or Revenue Bond Bills.

Other common practices are driven by custom. For example, when drafting a general obligation or revenue bond bill other than a lottery-backed revenue bond, the State Treasurer prefers that the drafter establish three funds in the bill. Though ORS 286A.025 grants the State Treasurer authority to establish funds and accounts related to the issuance and sale of bonds, a bill authorizing bonds usually includes (1) a project fund, (2) a bond fund and (3) a bond administration fund—all established in the State Treasury, separate and distinct from the General Fund. Bond-related funds and accounts are not established in the General Fund because placing moneys in the General Fund affects the amount of revenue available for "kicker" calculations. The net proceeds of a bond are placed in a project fund that is used primarily for the purpose for which the bonds are issued. Authority for the project fund should include a provision allowing for moneys remaining in the fund at the end of the project to be used for bond-related costs. The term "bond-related costs" should be defined in the bill in a form substantially like the examples included in this chapter. The bond fund is used to pay principal, interest and premium, if any. The bond administration fund is used to pay any bond-related costs. The overlap drafted into the purposes of each fund is deliberate and intended to avoid stranding moneys in one of these funds when the primary purpose is accomplished.

3. BIENNIAL BONDING PROCESS.

ORS 286A.035 establishes a process within which bond authorizations for a biennium are decided. In preparation for the Governor's recommended budget, state agencies request bonding authority based on plans for the biennium. The State Treasurer also recommends to the Governor the prudent maximum amount for each bond program. The Governor's recommended budget proposes an amount for each bond program and an amount for each one-time authorization to issue bonds. Finally, through the legislative process, an amount is authorized for each bond program and for each approved one-time authorization to issue bonds. In each session, the biennial bond bill is one of the last bills finalized and passed. The Governor's recommendations for bonding are reflected in the introduced version of the biennial bond bill. By the time this bill is enrolled, most, if not all, approved bonding for the biennium will be engrossed into the biennial bond bill. In both cases, the provisions of the biennial bond bill reflect the process described in ORS 286A.035. As an example, see chapter 903, Oregon Laws 2009 (Enrolled Senate Bill 5505).

Bonding bills prepared for members of the Legislative Assembly are not part of the Governor's budget and are not yet part of the process described in ORS 286A.035. Therefore, in a bond bill not currently included in the biennial bond bill, a drafter should include the phrase: "In addition to and not in lieu of bonds authorized pursuant to ORS

286A.035. . . .” During final budget deliberations, drafters usually are asked to prepare amendments that roll the language of individual bond authorizations into the biennial bond bill. When a bond authorization is rolled into the biennial bond bill, it becomes part of the ORS 286A.035 process; that is, it is no longer “in addition to.”

4. CONSTITUTIONAL AUTHORIZATION FOR GENERAL OBLIGATION BORROWING.

When asked to draft a new authorization for general obligation borrowing, the drafter should draft a joint resolution proposing an amendment to the Oregon Constitution. The drafter will find previous authorizations for general obligation borrowing after Article XI in provisions currently denominated Articles XI-A to XI-P. Before drafting the joint resolution, the drafter should determine whether the items to be financed already fit within one of the existing exceptions in Article XI, section 7, or within one of the authorizations set forth in Articles XI-A to XI-P. There is no guarantee that a requester will not want a specific authorization for the requester’s intended purpose, but many requesters will be pleased to learn that they can achieve their purpose without a constitutional amendment.

Drafters should focus on more recent constitutional authorizations as models for drafting. See Enrolled Senate Joint Resolution 21 (2001) below. Please note a difference between the example included in this chapter and the more recent amendment authorizing pension bonds in Article XI-O. Article XI-O explicitly authorizes the use of bond proceeds to pay costs of bond issuance. The language does not appear in older authorizations; bond counsel has long relied on generally accepted accounting principles to justify that use of bond proceeds under Articles XI-A to XI-N. This illustrates the conflict between drafting direct, unambiguous language and the desire to avoid calling into question the meaning of existing, similar authority that does not include the new and improved language. Neither approach is wrong; however, the preferred approach is to avoid referring to the use of bond proceeds to pay costs of bond issuance.

Enrolled Senate Joint Resolution 21 (2001)—Constitutional authorization for seismic retrofit bonds:

> **SECTION 1. (1) In the manner provided by law and notwithstanding the limitations contained in section 7, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred, in an aggregate outstanding principal amount not to exceed, at any one time, one-fifth of one percent of the real market value of all property in the state, to provide funds for the planning and implementation of seismic rehabilitation of public education buildings, including surveying and conducting engineering evaluations of the need for seismic rehabilitation.**
>
> **(2) Any indebtedness incurred under this section must be in the form of general obligation bonds of the State of Oregon containing a direct promise on behalf of the State of Oregon to pay the principal, premium, if any, interest and other amounts payable with respect to the bonds, in an aggregate outstanding principal amount not to exceed the amount authorized in subsection (1) of this section. The bonds are the direct obligation of the State of Oregon and must be in a form, run for a period of time, have terms and bear rates of interest as may be provided by statute. The full faith and credit and taxing power of the State of**

Oregon must be pledged to the payment of the principal, premium, if any, and interest on the general obligation bonds; however, the ad valorem taxing power of the State of Oregon may not be pledged to the payment of the bonds issued under this section.

(3) As used in this section, "public education building" means a building owned by the State Board of Higher Education, a school district, an education service district, a community college district or a community college service district.

SECTION 2. The principal, premium, if any, interest and other amounts payable with respect to the general obligation bonds issued under section 1 of this Article must be repaid as determined by the Legislative Assembly from the following sources:

(1) Amounts appropriated for the purpose by the Legislative Assembly from the General Fund, including taxes, other than ad valorem property taxes, levied to pay the bonds;

(2) Amounts allocated for the purpose by the Legislative Assembly from the proceeds of the State Lottery or from the Master Settlement Agreement entered into on November 23, 1998, by the State of Oregon and leading United States tobacco product manufacturers; and

(3) Amounts appropriated or allocated for the purpose by the Legislative Assembly from other sources of revenue.

SECTION 3. General obligation bonds issued under section 1 of this Article may be refunded with bonds of like[12] obligation.

SECTION 4. The Legislative Assembly may enact legislation to carry out the provisions of this Article.

SECTION 5. This Article supersedes conflicting provisions of this Constitution.

5. GENERAL OBLIGATION BORROWING BILL.

When asked to draft a bill authorizing issuance of a specific amount of general obligation indebtedness, the drafter should draft a bill authorizing issuance and administration of general obligation bonds pursuant to existing constitutional authority under Articles XI-A to XI-P. Though included in the constitutional authority, the drafter should repeat in the bill the requirement that the State of Oregon pledge its full faith and credit and taxing power. The State Treasurer and bond counsel will notice the absence of this language.

The example below authorizes an ongoing bond program to finance the seismic retrofit of certain public buildings. The example does not establish a statutory cap on the total amount of bonds to be issued, but section 3 of the example refers to the biennial bonding process formerly codified in ORS 286.505 to 286.545 (now codified in ORS 286A.035).

[12] Notice how much weight the single word "like" is carrying. Apparently, "like" is a one-word substitution for the substantive provisions of section 1. Refunding bonds are issued notwithstanding Article XI, section 7, and the bonds are full faith and credit extensions of the state's credit. For an alternative, see Enrolled Senate Joint Resolution 48 (2010), which sets forth the refunding authority in section 1 (2) of the resolution.

Based on chapter 814, Oregon Laws 2005 (Enrolled Senate Bill 4)—Seismic retrofit bond program:[13]

SECTION 1. Sections 2 to 8 of this 2___ Act are added to and made a part of ORS chapter _____.

SECTION 2. As used in sections 2 to 8 of this 2___ Act, unless the context requires otherwise:

(1) "Article XI-M bonds" means general obligation bonds issued, or other general obligation indebtedness incurred, under the authority of Article XI-M of the Oregon Constitution.

(2) "Bond administration fund" means the Article XI-M Bond Administration Fund established under section 5 of this 2___ Act.

(3) "Bond fund" means the Article XI-M Bond Fund established under section 4 of this 2___ Act.

(4) "Bond-related costs" means:

(a) The costs of paying the principal of, the interest on and the premium, if any, on Article XI-M bonds;

(b) The costs and expenses of issuing, administering and maintaining Article XI-M bonds including, but not limited to, redeeming Article XI-M bonds and paying amounts due in connection with credit enhancement devices or the administrative costs and expenses of the State Treasurer and the Oregon Department of Administrative Services, including costs of consultants or advisers retained by the State Treasurer or the department for the purpose of issuing, administering or maintaining Article XI-M bonds;

(c) Capitalized interest on Article XI-M bonds;

(d) Costs of funding reserves for Article XI-M bonds, including costs of surety bonds and similar instruments;

(e) Rebates or penalties due the United States Government in connection with Article XI-M bonds; and

(f) Other costs or expenses that the Director of the Oregon Department of Administrative Services determines are necessary or desirable in connection with issuing, administering or maintaining Article XI-M bonds.

(5) "Seismic fund" means the Education Seismic Fund established under section 6 of this 2___ Act.

(6) "State share of costs" means the total costs and related expenses of the seismic rehabilitation of public education buildings, minus contributions for seismic rehabilitation from the applicants as required by the Office of Emergency Management.

SECTION 3. (1) Article XI-M bonds are a general obligation of the State of Oregon and must contain a direct promise on behalf of the State of Oregon to pay the principal of, the interest on and the premium, if any, on the Article XI-M bonds. The State of Oregon shall pledge its full faith and credit and taxing power to pay Article XI-M bonds, except that the ad valorem taxing power of the State of Oregon may not be pledged to pay Article XI-M bonds.

(2) The State Treasurer, with the concurrence of the Director of the Oregon Department of Administrative Services, may issue Article XI-M bonds:

(a) Subject to the limit on bond issuance established for the particular biennium in ORS 286A.035 and at the request of the Director of the Office of Emergency Management, for the purpose of financing all or a portion of the state share of costs to plan and implement seismic rehabilitation of public education buildings in the amount of the state share of costs, plus an amount determined by the State Treasurer to pay estimated bond-related costs.

[13] This example is a revised version of enrolled Senate Bill 4 (2005). The text of the bill has been modified to best serve as a drafting model.

(b) To refund Article XI-M bonds. The amount of Article XI-M bonds issued under this paragraph may not exceed the estimated costs of paying, redeeming or defeasing the refunded bonds, plus an amount determined by the State Treasurer to pay estimated bond-related costs.

(3) The State Treasurer shall transfer the net proceeds of Article XI-M bonds issued for the purpose described in subsection (2)(a) of this section to the Office of Emergency Management for deposit in the Education Seismic Fund established under section 6 of this 2___ Act.

SECTION 4. (1) The Article XI-M Bond Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the bond fund may be invested as provided in ORS 293.701 to 293.820, and interest earned on the bond fund must be credited to the bond fund. Amounts credited to the bond fund are continuously appropriated to the Oregon Department of Administrative Services for the purpose of paying, when due, the principal of, the interest on and the premium, if any, on outstanding Article XI-M bonds. The department shall deposit in the bond fund:

(a) Capitalized or accrued interest on Article XI-M bonds;

(b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the bond fund; and

(c) Reserves established for the payment of Article XI-M bonds.

(2) The department may create separate accounts in the bond fund for reserves and debt service for each series of Article XI-M bonds.

SECTION 5. (1) The Article XI-M Bond Administration Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the bond administration fund may be invested as provided in ORS 293.701 to 293.820, and interest earned on the bond administration fund must be credited to the bond administration fund. Amounts credited to the bond administration fund are continuously appropriated to the Oregon Department of Administrative Services for payment of bond-related costs. The department shall credit to the bond administration fund:

(a) Proceeds of Article XI-M bonds that were issued to pay bond-related costs;

(b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the bond administration fund; and

(c) Amounts transferred from the Education Seismic Fund by the Office of Emergency Management as provided in section 6 of this 2___ Act.

(2) The department may create separate accounts in the bond administration fund.

SECTION 6. (1) The Education Seismic Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the seismic fund may be invested as provided in ORS 293.701 to 293.820, and interest earned on the seismic fund must be credited to the seismic fund. Amounts credited to the seismic fund are continuously appropriated to the Office of Emergency Management for the purpose described in section 3 (2)(a) of this 2___ Act and for the purpose of paying bond-related costs. The office shall deposit in the seismic fund:

(a) The net proceeds of Article XI-M bonds transferred pursuant to section 3 (3) of this 2___ Act;

(b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the seismic fund;

(c) Gifts, grants or contributions received by the office for the purpose described in section 3 (2)(a) of this 2___ Act; and

(d) Moneys received as repayment of, as a return on or in exchange for the grant or loan of net proceeds of Article XI-M bonds.

(2) The office may create separate accounts in the seismic fund as appropriate for the management of moneys in the seismic fund.

(3) The office and any other state agency or other entity receiving or holding net proceeds of Article XI-M bonds shall, at the direction of the Oregon Department of Administrative Services, take action necessary to maintain the excludability of interest on Article XI-M bonds from gross income under the Internal Revenue Code.

(4) The office shall transfer to the Article XI-M Bond Administration Fund the unexpended and uncommitted amounts remaining in the seismic fund if:

(a) Unexpended funds that are not contractually committed to a particular purpose remain in the seismic fund on the last day of the biennium; and

(b) Article XI-M bonds will be outstanding in the next biennium.

(5) The office may adopt rules to carry out this section including, but not limited to, establishing:

(a) Required contributions from applicants;

(b) Fees;

(c) Standards, terms and conditions under which moneys in the seismic fund may be granted, loaned or otherwise made available; and

(d) Procedures for distributing and monitoring the use of moneys from the seismic fund.

SECTION 7. (1) In accordance with the applicable provisions of this chapter and ORS chapter 286A, Article XI-M bonds may:

(a) Be sold at a competitive or negotiated sale;

(b) Bear interest that is includable or excludable from gross income under the Internal Revenue Code; and

(c) Be sold on terms approved by the State Treasurer, including terms related to the time of sale, the issuance of Article XI-M bonds in series, the maturity of each series and the interest borne by each series of Article XI-M bonds.

(2) Subject to the approval of the State Treasurer, the Director of the Oregon Department of Administrative Services may:

(a) Acquire one or more credit enhancement devices for Article XI-M bonds; and

(b) Enter into related agreements.

SECTION 8. For each biennium in which Article XI-M bonds will be outstanding, the Oregon Department of Administrative Services shall include in the Governor's budget request to the Legislative Assembly an amount that, when added to the amount on deposit in the Article XI-M Bond Fund and the Article XI-M Bond Administration Fund, is sufficient to pay the bond-related costs that are scheduled to come due in the biennium.

6. REVENUE-BASED BORROWING BILL.

As noted above, revenue-based borrowing is an obligation for which only specific revenue, income or property is pledged to secure payment. A draft authorizing issuance of revenue bonds must not include the full faith and credit pledge. Rather, the draft must direct the State of Oregon, acting through the State Treasurer, to pledge the specific revenue, income or property from which a holder of the revenue bonds may collect the obligation. Revenue, income or property as a pledged source of repayment may include a new fund or account. The drafter should establish the new fund or account separate and distinct from the General Fund, and the moneys in the new fund or account should be continuously appropriated for the express purpose of bond repayment.

The example below is based on Introduced Senate Bill 7 (2007):[14]

SECTION 1. As used in sections 1 to 5 of this 2___ Act, "bond-related costs" means:

(1) The costs and expenses of issuing and administering bonds under sections 1 to 5 of this 2___ Act, including but not limited to:

(a) Paying or redeeming the bonds;

(b) Paying amounts due in connection with credit enhancement devices or reserve instruments;

(c) Paying the administrative costs and expenses of the State Treasurer and the Legislative Assembly, including the cost of consultants, attorneys and advisers retained by the State Treasurer or the Legislative Assembly for the bonds; and

(d) Any other costs or expenses that the State Treasurer or the Legislative Administration Committee determines are necessary or desirable in connection with issuing and administering the bonds;

(2) The cost of funding bond reserves;

(3) Capitalized interest for the bonds; and

(4) Rebates or penalties due to the United States in connection with the bonds.

SECTION 2. (1) For the biennium beginning July 1, 2___, at the request of the Legislative Administration Committee, the State Treasurer may issue revenue bonds in an amount not to exceed net proceeds of $50 million for the purpose of financing the remodel of the Senate and House wings of the Oregon Capitol, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs.

(2) Net proceeds of the bonds issued pursuant to this section must be deposited in the Wing Remodel Bond Fund, established under section 3 of this 2___ Act, in an amount sufficient to provide $50 million in net proceeds and interest earnings for disbursement to the Legislative Administration Committee to finance the remodel of the Senate and House wings of the Oregon Capitol.

(3) Bond-related costs must be paid from the gross proceeds of the revenue bonds issued under this section and from moneys deposited in the Oregon State Capitol Foundation Fund.

(4) The State Treasurer, with the approval of the Legislative Administration Committee, may irrevocably pledge and assign all or a portion of the moneys deposited in the Oregon State Capitol Foundation Fund to secure revenue bonds or credit enhancements. Revenue bonds issued under this section:

(a) Are payable from the moneys deposited in the Oregon State Capitol Foundation Fund.

(b) Do not constitute a debt or general obligation of this state, the Legislative Assembly or a political subdivision of this state but are secured solely by the moneys deposited in the Oregon State Capitol Foundation Fund, by amounts in a debt service reserve account established with respect to revenue bonds issued under this section or by a credit enhancement obtained for the revenue bonds issued under this section.

(5) The State Treasurer and the Legislative Assembly have no obligation to pay bond-related costs except as provided in this section. A holder of revenue bonds or other similar obligations issued under this section does not have the right to compel the exercise of the taxing power of the state to pay bond-related costs.

(6) The holders of revenue bonds issued under this section, upon the issuance of the revenue bonds, have a perfected lien on the moneys deposited in the Oregon State Capitol Foundation Fund that are pledged and assigned to the payment of the revenue bonds. The lien and pledge are valid and binding from the

[14] This example is a revised version of introduced Senate Bill 7 (2007). The text of the bill has been modified to best serve as a drafting model.

date of issuance of the revenue bonds and are automatically perfected without physical delivery, filing or other act. The lien and pledge are superior to subsequent claims or liens on the moneys deposited in the Oregon State Capitol Foundation Fund.

(7) As long as any revenue bonds issued under this section are outstanding, the provisions of this section and the provisions of a security document related to the revenue bonds are deemed to be contracts between the state and holders of the revenue bonds. The state:

(a) May not create a lien, encumbrance or any other obligation that is superior to the liens authorized by subsection (6) of this section on the moneys in the Oregon State Capitol Foundation Fund that are pledged and assigned to the payment of the revenue bonds; and

(b) May not give force or effect to a statute or initiative or referendum measure approved by the electors of this state, if doing so would unconstitutionally impair existing covenants made with the holders of existing revenue bonds or would unconstitutionally impair other obligations or agreements regarding the security of revenue bonds to which the moneys deposited in the Oregon State Capitol Foundation Fund are pledged and assigned.

SECTION 3. (1) The Wing Remodel Bond Fund is established in the State Treasury, separate and distinct from the General Fund. The net proceeds from the sale of revenue bonds issued under section 2 of this 2___ Act must be credited to the Wing Remodel Bond Fund. Investment earnings received on moneys in the Wing Remodel Bond Fund must be credited to the fund.

(2) Moneys in the Wing Remodel Bond Fund are continuously appropriated to the Legislative Administration Committee for the purpose of paying for the remodel of the Senate and House wings of the Oregon State Capitol.

SECTION 4. (1) The Wing Remodel Bond Debt Service Fund is established in the State Treasury, separate and distinct from the General Fund. The Wing Remodel Bond Debt Service Fund consists of:

(a) An amount from the moneys deposited in the Oregon State Capitol Foundation Fund credited by the State Treasurer that is necessary in a fiscal year, as determined by the Legislative Administration Committee in consultation with the State Treasurer, to pay the bond-related costs scheduled to be paid in that fiscal year on the revenue bonds issued under section 2 of this 2___ Act;

(b) Any funds appropriated or allocated to the Wing Remodel Bond Debt Service Fund; and

(c) Investment earnings received on moneys in the Wing Remodel Bond Debt Service Fund.

(2) Moneys in the Wing Remodel Bond Debt Service Fund are continuously appropriated to the Legislative Administration Committee to pay, when due, the bond-related costs on outstanding revenue bonds, to fund revenue bond reserves and to pay amounts due in connection with credit enhancements.

(3) The Legislative Administration Committee, in consultation with the State Treasurer, shall use amounts in the Wing Remodel Bond Debt Service Fund to pay, when due, the bond-related costs on outstanding revenue bonds, to fund revenue bond reserves and to pay amounts due in connection with credit enhancements.

(4) If the moneys deposited in the Oregon State Capitol Foundation Fund are not sufficient to pay the bond-related costs due to be paid in a fiscal year, the Legislative Administration Committee, in consultation with the State Treasurer, shall make payments in that fiscal year according to the relative priority of revenue bonds secured by the moneys deposited in the Oregon State Capitol Foundation Fund.

SECTION 5. **(1) The Wing Remodel Bond Administration Fund is established in the State Treasury, separate and distinct from the General Fund. The Wing Remodel Bond Administration Fund consists of:**

(a) The amount of revenue bond proceeds remaining after depositing the net proceeds in the Wing Remodel Bond Fund;

(b) The proceeds of revenue bonds issued to pay bond-related costs;

(c) Any funds appropriated or allocated to the Wing Remodel Bond Administration Fund; and

(d) Investment earnings received on moneys in the Wing Remodel Bond Administration Fund.

(2) Moneys in the Wing Remodel Bond Administration Fund are continuously appropriated to the Legislative Assembly for paying bond-related costs during the term of revenue bonds issued under section 2 of this 2___ Act.

(3) The Legislative Assembly, in consultation with the State Treasurer, may use amounts in the Wing Remodel Bond Administration Fund to pay bond-related costs during the term of revenue bonds issued under section 2 of this 2___ Act. Amounts in the fund must be disbursed upon the written request of the Legislative Administrator on behalf of the Legislative Administration Committee.

SECTION 6. **Notwithstanding any other law limiting expenditures, the amount of $1 is established for the biennium beginning July 1, 2___, as the maximum limit for the purpose of paying for the remodel of the Senate and House wings of the Oregon State Capitol by the Legislative Administration Committee from the Wing Remodel Bond Fund established in section 3 of this 2___ Act.**[15]

SECTION 7. **Notwithstanding any other law limiting expenditures, the amount of $1 is established for the biennium beginning July 1, 2___, as the maximum limit for payment of expenses by the Legislative Administration Committee from the Wing Remodel Bond Debt Service Fund established under section 4 of this 2___ Act, to pay, when due, the bond-related costs on outstanding revenue bonds, to fund revenue bond reserves and to pay amounts due in connection with credit enhancements.**

SECTION 8. **Notwithstanding any other law limiting expenditures, the amount of $1 is established for the biennium beginning July 1, 2___, as the maximum limit for payment of expenses by the Legislative Administration Committee from the Wing Remodel Bond Administration Fund established under section 5 of this 2___ Act, which expenses are bond-related costs associated with revenue bonds issued under section 2 of this 2___ Act.**

7. LOTTERY-BACKED REVENUE-BASED BORROWING BILL.

Lottery-backed revenue bonds are a specific subset of revenue bonds for which lottery income is pledged to repayment of the obligation. The issuance of lottery bonds must be authorized pursuant to ORS 286A.560 to 286A.585. By doing so, a drafter is not required to specify the source of funds pledged for a repayment plan; those details are addressed in the statutes. Article XV of the Oregon Constitution, the constitutional authorization for the State Lottery, requires that lottery income be used for specific purposes, including creating jobs, furthering economic development, financing public education and restoring and protecting parks, beaches, watersheds and habitats. For this

[15] Introduced bills authorizing issuance of bonds do not always include expenditure limits for the new funds or accounts created. If a bill receives favorable consideration in the ways and means process, expenditure limits will be added unless the timing of the planned bond issuance will result in no bond-related costs (other than capitalized costs) in the biennium.

reason, ORS 286A.566 (1) requires a bill authorizing issuance of lottery bonds to include findings that the project to be financed with lottery bonds meets the constitutional purposes. Typically, this means findings for why the expenditure of lottery income "furthers economic development and creates jobs."

A-engrossed House Bill 2396 (2009) is an example of a lottery bond bill:

SECTION 1. As used in sections 1 to 5 of this 2009 Act, "West Eugene EmX Extension" means the acquisition, construction and procurement of the components of an extension of the bus rapid transit system in west Eugene by the Lane Transit District.

SECTION 2. (1) At the request of the Oregon Department of Administrative Services, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286A.560 to 286A.585:

(a) For the biennium beginning July 1, 2009, in an amount not to exceed net proceeds of $1.6 million for the purpose described in subsection (2) of this section, plus an additional amount, to be estimated by the State Treasurer, for payment of bond-related costs;

(b) For the biennium beginning July 1, 2011, in an amount not to exceed net proceeds of $8.4 million for the purpose described in subsection (2) of this section, plus an additional amount, to be estimated by the State Treasurer, for payment of bond-related costs; and

(c) For the biennium beginning July 1, 2013, in an amount not to exceed net proceeds of $20 million for the purpose described in subsection (2) of this section, plus an additional amount, to be estimated by the State Treasurer, for payment of bond-related costs.

(2) Net proceeds of bonds issued pursuant to this section must be deposited in the West Eugene EmX Extension Fund established in section 4 of this 2009 Act in an amount sufficient to provide $30 million in net proceeds and interest earnings for disbursement to the Lane Transit District to establish the West Eugene EmX Extension.

(3) Bond-related costs for the lottery bonds authorized by this section must be paid from the gross proceeds of the lottery bonds and from allocations for the purposes of ORS 286A.576 (1)(c).

SECTION 3. The Legislative Assembly finds that:

(1) Establishment of the West Eugene EmX Extension will:

(a) Enhance transportation options for employees in a portion of the urban growth boundary that contains large, undeveloped tracts of land available for development.

(b) Provide public transportation facilities necessary to support and promote capital investment and job growth within the undeveloped portion of the urban growth boundary.

(c) Create jobs in the construction industry.

(2) Approval of lottery bonds for the West Eugene EmX Extension will increase the likelihood that federal funds will be made available for construction of the project.

(3) The factors described in subsections (1) and (2) of this section will encourage and promote economic development within the State of Oregon, and issuance of lottery bonds to finance the agreement is therefore an appropriate use of state lottery funds under section 4, Article XV of the Oregon Constitution, and ORS 461.510.

SECTION 4. (1) The West Eugene EmX Extension Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned on

moneys in the West Eugene EmX Extension Fund shall be credited to the fund. The fund consists of moneys deposited in the fund under section 2 of this 2009 Act, and may include fees, revenues or other income deposited in the fund by the Legislative Assembly for payment of costs incurred to establish the West Eugene EmX Extension. Moneys in the fund are continuously appropriated to the Oregon Department of Administrative Services for the purposes described in subsection (2) of this section.

(2) Subject to section 5 of this 2009 Act, moneys in the fund are available for:

(a) Disbursement to the Lane Transit District to pay $30 million of the costs incurred to establish the West Eugene EmX Extension.

(b) Payment of bond-related costs, as defined in ORS 286A.560.

SECTION 5. (1) The Oregon Department of Administrative Services, in consultation with the Department of Transportation, shall enter into a grant agreement with the Lane Transit District that requires:

(a) The district to:

(A) Indemnify the state government, as defined in ORS 174.111, to the fullest extent permitted by law for any liability the state government might incur in connection with borrowing by the district for the West Eugene EmX Extension.

(B) Refrain from requesting or accepting moneys from the General Fund for the West Eugene EmX Extension.

(C) Refund to the Oregon Department of Administrative Services for deposit in the West Eugene EmX Extension Fund, upon completion of the West Eugene EmX Extension, the amount by which the aggregate expenditure for the extension is less than $75 million.

(b) The Oregon Department of Administrative Services to disburse, over the course of the development of the West Eugene EmX Extension, an aggregate amount of $30 million to the district from the West Eugene EmX Extension Fund when:

(A) Moneys are available;

(B) The department determines that the district has entered into one or more contracts that have an aggregate value of at least $75 million for the acquisition, construction and procurement of the components of the West Eugene EmX Extension; and

(C) The department determines that the district has provided documentation showing that the district will have sufficient financing to complete the West Eugene EmX Extension.

(2) The State of Oregon is not liable to the lenders, vendors or contractors of the Lane Transit District for any action or omission under sections 1 to 5 of this 2009 Act or the grant agreement authorized by this section.

APPENDIX A

ESTABLISHING NEW AGENCY; TRANSFERRING FUNCTIONS BETWEEN AGENCIES; ABOLISHING AGENCY; "PRIVATIZING" AGENCY

_____

1. ESTABLISHING NEW AGENCY.

Use this boilerplate language and modify as appropriate: <boiler newagncy>

ESTABLISHING NEW STATE AGENCY

SECTION 1. (1) The Department of _____ is established.
(2) The department shall _____.
(3) The department may _____.

DIRECTOR

SECTION 2. (1) The Department of _____ is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the department.

(2) The Governor shall appoint the Director of the Department of _____, who holds office at the pleasure of the Governor.

(3) The director shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) For purposes of administration, subject to the approval of the Governor, the director may organize and reorganize the department as the director considers necessary to properly conduct the work of the department.

(5) The director may divide the functions of the department into administrative divisions. Subject to the approval of the Governor, the director may appoint an individual to administer each division. The administrator of each division serves at the pleasure of the director and is not subject to the provisions of ORS chapter 240. Each individual appointed under this subsection must be well qualified by technical training and experience in the functions to be performed by the individual.

CONFIRMATION BY SENATE

SECTION 3. The appointment of the Director of the Department of _____ is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

EMPLOYEES

SECTION 4. (1) The Director of the Department of _____ shall, by written order filed with the Secretary of State, appoint a deputy director. The deputy director serves at the pleasure of the director, has authority to act for the director in the absence of the director and is subject to the control of the director at all times.

(2) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all subordinate officers and employees of the Department of _____, prescribe their duties and fix their compensation.

GENERAL AUTHORITY TO ADOPT RULES

SECTION 5. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules necessary for the administration of the laws that the Department of _____ is charged with administering.

CIVIL PENALTIES

SECTION 6. (1) In addition to any other liability or penalty provided by law, the Director of the Department of _____ may impose a civil penalty not to exceed $____ on a person for any of the following:

(a) Violation of section _____ of this (year) Act.

(b) Violation of any rule adopted by the director under section 5 of this (year) Act.

(2) Civil penalties under this section must be imposed in the manner provided by ORS 183.745.

(3) All civil penalties recovered under this section must be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

CAUTIONARY NOTE: The decision to include any of the following requires consulting the drafting manual and the requester.

TERM OF OFFICE ALTERNATE TO SECTION 2 (2)

SA NOTE: See drafting manual. Four years, the constitutional maximum, is the default term of office for the director. If the requester wants a term of office of less than four years, you should substitute this provision for section 2 (2). <spm agency-term>

ESTABLISHING DIVISIONS

SA NOTE: If the request necessitates creating divisions in statute, as opposed to letting the director create them pursuant to section 2 of the boilerplate, you might want to use this provision. <spm agency-division>

TRAVEL AND SUBSISTENCE EXPENSES

SA NOTE: See drafting manual. If the request necessitates something other than the statutory default language, you might want to use this provision. <spm agency-expenses>

FIDELITY BOND

SA NOTE: See drafting manual. If the request requires something other than the statutory default language, you might want to use this provision. <spm agency-bond>

SPECIAL REQUIREMENTS AND QUALIFICATIONS

SA NOTE: See drafting manual. <spm agency-require>

OATH OF OFFICE

SA NOTE: See drafting manual. <spm agency-oath>

AUTHORITY TO ADOPT SPECIFIC TYPES OF RULES

SA NOTE: See drafting manual. If the agency needs rulemaking authority that is more particular than that granted in section 5 of the boilerplate (for example, if the agency needs to be able to establish fees through rules), you might want to use some of the following provisions. <spm agency-rules>

CRIMINAL PENALTIES

SA NOTE: See drafting manual. <spm agency-penalty>

APPLICATION OF ADMINISTRATIVE PROCEDURES ACT

SA NOTE: See drafting manual. The APA applies to agencies unless specifically exempted. If the request necessitates alternative procedures, you might want to use the following provision. <spm agency-apa>

OATHS, DEPOSITIONS, SUBPOENAS

SA NOTE: See drafting manual. <spm agency-subpoena>

ADVISORY AND TECHNICAL COMMITTEES

SA NOTE: See drafting manual. <spm agency-comm>

UNIT AND SECTION CAPTIONS

SA NOTE: The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-sec> or <spm captions-unit>

The following standard phrases are available for use with new agency boilerplate, if appropriate in the circumstances of a particular draft:

<spm agency-term>

(2) The Governor shall appoint the Director of the Department of _____. The director holds office for a term of _____ years, but may be removed at any time during the term at the pleasure of the Governor.

<spm agency-division>

SECTION __. (1) The _____ Division is established within the Department of _____.

(2) The division shall _____.

<spm agency-expenses>

SECTION ___. In addition to being paid a salary, but subject to any applicable law regulating travel and other expenses of state officers and employees, the Director of the Department of _____ shall be reimbursed for actual and necessary travel and other expenses incurred by the director in the performance of official duties.

<spm agency-bond>

SECTION __. Before assuming the duties of the office, the Director of the Department of _____ shall give to the state a fidelity bond, with one or more corporate sureties authorized to do business in this state, in a penal sum prescribed by the Director of the Oregon Department of Administrative Services, but not less than $50,000.

<spm agency-require>

SECTION __. An individual is not eligible to hold the office of Director of the Department of _____, or to hold any office or employment in the Department of _____, if the individual has any connection with persons engaged in or conducting any _____ business of any kind, holds stock or bonds in any _____ business of any kind, or receives any commission or profit from or has any interest in the purchases or sales made by the department.

<spm agency-oath>

SECTION __. Before assuming the duties of the office, the Director of the Department of _____ shall subscribe to an oath that the director faithfully and impartially will discharge the duties of the office and that the director will support the Constitution of the United States and the Constitution of the State of Oregon. The director shall file a copy of the signed oath with the Secretary of State.

<spm agency-rules>

SECTION __. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules necessary for the administration of sections _____ to _____ of this (year) Act.

<spm agency-lic-rules>

SECTION __. In accordance with applicable provisions of ORS chapter 183, the Department of _____ may adopt rules:

(1) Establishing standards for _____;

(2) Relating to the professional methods and procedures used by persons licensed by the Department of _____;

(3) Governing the examination of applicants for licenses issued by the department and the renewal, suspension and revocation of the licenses; and

(4) Establishing fees for _____.

<spm agency-penalty>

SECTION __. Violation of section _____ of this (year) Act, or of any rule adopted under section _____ of this (year) Act, is a Class C misdemeanor.

<spm agency-apa>

SECTION __. Except as otherwise provided in section _____ of this (year) Act, ORS chapter 183 applies to the Department of _____.

<spm agency-subpoena>

SECTION __. The Director of the Department of _____, the deputy director and authorized representatives of the director may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the

production of documents or other written information necessary to carry out the provisions of sections _____ to _____ of this (year) Act. If any person fails to comply with a subpoena issued under this section or refuses to testify on matters on which the person lawfully may be interrogated, the director, deputy director or authorized representative may follow the procedure set out in ORS 183.440 to compel obedience.

<spm agency-comm>

SECTION __. (1) To aid and advise the Director of the Department of _____ in the performance of the functions of the Department of _____, the director may establish such advisory and technical committees as the director considers necessary. These committees may be continuing or temporary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director is an ex officio member of each committee.

(2) Members of the committees are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

2. TRANSFERRING FUNCTIONS BETWEEN AGENCIES.

These are samples of provisions that may be needed to transfer functions from one state agency to another. They should not be followed slavishly. Each line must be suitable in the particular situation covered by the bill being drafted.

To abolish an agency and transfer its functions, use this boilerplate language and modify as appropriate:

<boiler aboltran>

ABOLISH AND TRANSFER

SECTION 1. (1) The Old Agency is abolished. On the operative date of this section, the tenure of office of the members of the Old Agency Board and of the Director of the Old Agency ceases.

(2) All the duties, functions and powers of the Old Agency are imposed upon, transferred to and vested in the New Agency.

RECORDS, PROPERTY, EMPLOYEES

SECTION 2. (1) The Director of the Old Agency shall:

(a) Deliver to the New Agency all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this (year) Act; and

(b) Transfer to the New Agency those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The Director of the New Agency shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Old Agency and the New Agency relating to transfers of records, property and employees under this section, and the Governor's decision is final.

UNEXPENDED REVENUES

SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the Old Agency for the biennium beginning July 1, ____, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act are transferred to and are available for expenditure by the New Agency for the biennium beginning July 1, ____, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Old Agency remain applicable to expenditures by the New Agency under this section.

SA NOTE: This provision assumes that the effective date of the transfer will be sometime after the Legislative Assembly has completed a budget for the biennium. Thus, it is transferring moneys that were appropriated to the old agency to the new agency. If, for example, the effective date of the abolition and transfer is January 1, 2008, the blanks above would be filled in with "2007." If the effective date of the abolition and transfer coincides with the beginning of a biennium, presumably there will be no need for this provision as the Legislative Assembly will have appropriated moneys only to the new agency.

ACTION, PROCEEDING, PROSECUTION

SECTION 4. The transfer of duties, functions and powers to the New Agency by section 1 of this (year) Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the New Agency is substituted for the Old Agency in the action, proceeding or prosecution.

LIABILITY, DUTY, OBLIGATION

SECTION 5. (1) Nothing in sections ____ to ____ of this (year) Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act. The New Agency may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Old Agency legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this (year) Act are transferred to the New Agency. For the purpose of succession to these rights and obligations, the New Agency is a continuation of the Old Agency and not a new authority.

RULES

SECTION 6. Notwithstanding the transfer of duties, functions and powers by section 1 of this (year) Act, the rules of the Old Agency in effect on the operative date of section 1 of this (year) Act continue in effect until superseded or repealed by rules of the New Agency. References in rules of the Old Agency to the Old Agency or an officer or employee of the Old Agency are considered to be references to the New Agency or an officer or employee of the New Agency.

SECTION 7. Whenever, in any statutory law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Old Agency or an officer or employee of the Old Agency, the reference is considered to be a reference to the New Agency or an officer or employee of the New Agency.

NEW DIRECTOR

SECTION 8. The Director of the New Agency may be appointed before the operative date of section 1 of this (year) Act and may take any action before that date that is necessary to enable the director to exercise, on and after the operative date of section 1 of this (year) Act, the duties, functions and powers of the director pursuant to section 1 of this (year) Act.

AGENCY NAME CHANGE

SECTION 9. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "Old Agency" or its officers, wherever they occur in statutory law, words designating the "New Agency" or its officers.

ACCOUNT NAME CHANGE

SECTION 10. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the "Old Agency Account," wherever they occur in statutory law, words designating the "New Agency Account."

OPERATIVE DATE

SECTION 11. Except as otherwise specifically provided in section 8 of this (year) Act, sections 1 to 10 of this (year) Act become operative on January 1, ____.

UNIT AND SECTION CAPTIONS

SA NOTE: The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-sec> or <spm captions-unit>

The following standard phrases are available for use with transfer boilerplate, if appropriate in the circumstances of a particular draft:

<spm agency-op>

SECTION __. The transfer of duties, functions, powers, records, property, employees and moneys by sections 1, 2 and 3 of this (year) Act does not become operative until the Director of the Receiving Agency has been appointed and has qualified. Until then, the Transferring Agency shall continue to perform the duties and functions, exercise the powers and have charge of the records, property, employees and moneys.

SECTION __. Except as otherwise specifically provided in section __ of this (year) Act, sections __ to __ of this (year) Act become operative on January 1, _____.

<spm name-change2>

SECTION __. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Transferring Agency>> or its officers, wherever they occur in ORS chapter ___, other words designating the <<Receiving Agency>> or its officers.

To transfer functions between existing agencies, use this boilerplate language and modify as appropriate:

<boiler transfer>

TRANSFER

SECTION 1. The duties, functions and powers of the Transferring Agency relating to _____ are imposed upon, transferred to and vested in the Receiving Agency.

RECORDS, PROPERTY, EMPLOYEES

SECTION 2. (1) The Director of the Transferring Agency shall:

(a) Deliver to the Receiving Agency all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this (year) Act; and

(b) Transfer to the Receiving Agency those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The Director of the Receiving Agency shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Transferring Agency and the Receiving Agency relating to transfers of records, property and employees under this section, and the Governor's decision is final.

UNEXPENDED REVENUES

SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the Transferring Agency for the biennium beginning July 1, ____, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act are transferred to and are available for expenditure by the Receiving Agency for the biennium beginning July 1, ____, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Transferring Agency remain applicable to expenditures by the Receiving Agency under this section.

ACTION, PROCEEDING, PROSECUTION

SECTION 4. The transfer of duties, functions and powers to the Receiving Agency by section 1 of this (year) Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun

before and pending at the time of the transfer, except that the Receiving Agency is substituted for the Transferring Agency in the action, proceeding or prosecution.

LIABILITY, DUTY, OBLIGATION

SECTION 5. (1) Nothing in sections ____ to ____ of this (year) Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act. The Receiving Agency may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Transferring Agency legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this (year) Act and accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act are transferred to the Receiving Agency. For the purpose of succession to these rights and obligations, the Receiving Agency is a continuation of the Transferring Agency and not a new authority.

RULES

SECTION 6. Notwithstanding the transfer of duties, functions and powers by section 1 of this (year) Act, the rules of the Transferring Agency with respect to such duties, functions or powers that are in effect on the operative date of section 1 of this (year) Act continue in effect until superseded or repealed by rules of the Receiving Agency. References in such rules of the Transferring Agency to the Transferring Agency or an officer or employee of the Transferring Agency are considered to be references to the Receiving Agency or an officer or employee of the Receiving Agency.

SECTION 7. Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 1 of this (year) Act, reference is made to the Transferring Agency, or an officer or employee of the Transferring Agency, whose duties, functions or powers are transferred by section 1 of this (year) Act, the reference is considered to be a reference to the Receiving Agency or an officer or employee of the Receiving Agency who by this (year) Act is charged with carrying out such duties, functions and powers.

AGENCY NAME CHANGE

SA NOTE: If there are discrete chapters of ORS in which ALL of the references to the Transferring Agency can be changed to the Receiving Agency, you might want to use this provision. In all other situations, you need to pull in each section and amend it to change the name. <spm name-change2>.

OPERATIVE DATE WHEN FUNCTIONS ARE BEING TRANSFERRED TO AN EXISTING AGENCY

SECTION . Sections 1 to 8 of this (year) Act become operative on January 1, ____.

POSSIBLE OPERATIVE DATE PROVISIONS WHEN FUNCTIONS ARE BEING TRANSFERRED TO A NEW AGENCY

SA NOTE: If transferring to a new agency, you should substitute this provision for section 9. <spm agency-op>

UNIT AND SECTION CAPTIONS

SA NOTE: The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-unit> or <spm captions-sec>

Chapter 839, Oregon Laws 1979, is an example of a bill dividing the functions of a single agency and assigning part of them to another officer. Chapter 419, Oregon Laws 1967, is an example of a bill abolishing an agency and dividing its functions between two new agencies. Chapter 616, Oregon Laws 1967, is an example of a bill that transferred certain functions of one agency to a new agency but left the old agency in charge of the new agency. Chapter 616, Oregon Laws 1965, is an example of a bill that grouped several officers and agencies under a single new agency.

3. ABOLISHING AGENCY.

When an agency is abolished, there may be some transitional requirements such as:

Relating to the Law Enforcement Council; creating new provisions; amending ORS 423.510; and repealing ORS 423.205, 423.210, 423.220, 423.230, 423.240 and 423.280.

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

SECTION 1. The Law Enforcement Council is abolished.

SECTION 2. ORS 423.205, 423.210, 423.220, 423.230, 423.240 and 423.280 are repealed.

SECTION 3. ORS 423.510 is amended to read:

423.510. (1) There is [*hereby*] established the Community Corrections Advisory Board consisting of 15 members appointed by the Governor. The board shall be composed of:

(a) Three persons representing community corrections agencies;

(b) Two persons representing state agencies;

(c) Two persons representing private agencies;

(d) Four lay citizens;

(e) A member of the judiciary;

(f) A law enforcement officer; [*and*]

(g) [*Two members of the Law Enforcement Council.*] **One district attorney; and**

(h) One member of a county governing body.

(2) Members of the board shall serve for a period of four years at the pleasure of the Governor provided they continue to hold the office, position or description required by subsection (1) of this section. The Governor may at any time remove any member for inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of the member, the Governor shall appoint a successor whose term begins on July 1 next following.

A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the board shall receive no compensation for service as a member, but all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or rule under ORS 292.220 to 292.250.

SECTION 4. (1) Notwithstanding the term of office specified by ORS 423.510, of the two Community Corrections Advisory Board members appointed pursuant to the amendments to ORS 423.510 by section 3 of this (year) Act to replace the two members formerly appointed from the Law Enforcement Council:

(a) One shall serve for a term ending June 30, (year+1); and

(b) One shall serve for a term ending June 30, (year+3).

(2) Notwithstanding the abolition of the Law Enforcement Council and the adjustment of categories by the amendments to ORS 423.510 by section 3 of this (year) Act, the two members of the council appointed before the effective date of this (year) Act to serve upon the Community Corrections Advisory Board shall continue their service until January 1, (year+1), or until the appointment of their successors, whichever occurs first.

(3) Nothing in this (year) Act prevents the Governor from appointing either or both of the two board members appointed from the Law Enforcement Council to a new position on the board created by the amendments to ORS 423.510 by section ___ of this (year) Act, so long as the candidate for appointment meets the category requirement of ORS 423.510 (1).

4. "PRIVATIZING" AGENCY.

To privatize means to alter the status of an entity, such as a business, industry or agency, so as to transform it from a publicly owned or controlled entity to one that is privately owned or controlled. However, the word is often used imprecisely and may encompass a wide range of meanings.

A request for a bill to privatize a state agency may therefore indicate any one of a number of intended objectives. Before beginning to prepare a "privatization" bill, the drafter must determine with some precision what the requester wants to accomplish.

If the requester wishes to abolish a state agency and have its functions assumed, if at all, by a private corporation, the drafter may use the provisions set out previously in this appendix for abolishing an agency. If the abolished agency collected, received or expended moneys, ORS 182.080 provides a procedure to be used in winding up the affairs of the abolished agency and also saves any rights or liabilities accruing prior to the abolition of the agency.

The requester may want a private corporation to assume the functions of a state agency and to manage the assets and property of the former agency under a contract with the State of Oregon. Senate Bill 1172 (1991) is an example of such an approach to "privatization."

When it becomes clear that a request for a bill to privatize a state agency is actually a request to transform the state agency into a public corporation, the drafter should try to determine why the requester wants the agency to become a public rather than a private

corporation. Some likely reasons are the retention of the Governor's power to appoint the governing body of the corporation, a desire to maintain the former agency's protection against tort liability under ORS 30.260 to 30.300 or preservation of various employment and retirement benefits for the corporation's employees. When fully informed concerning the requester's objectives, the drafter has a number of statutory examples that may be used as drafting guides. The State Accident Insurance Fund Corporation (ORS 656.751 to 656.776), the Oregon State Bar (ORS 9.005 to 9.755) and corporations for use and control of water (ORS chapter 554) are public corporations that may serve as models for proposed public corporations.

APPENDIX B

STATUTES AND CONSTITUTIONAL PROVISIONS OF GENERAL APPLICATION

This appendix consists of a list of statutes and constitutional provisions of general application. Most of these provisions are not mentioned elsewhere in this manual. This list is not intended as a substitute for adequate research, but may provide a convenient means of reference.

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1. STATUTES IN GENERAL.

General definitions.

Unless the context or a specially applicable definition requires otherwise:

"**Person with a disability**" is defined in ORS 174.107.

"**May not**" and "**shall not**" are equivalent expressions of absolute prohibition. ORS 174.100 (4).

"**Person**" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies. ORS 174.100 (5).

"**Violate**" includes failure to comply. ORS 174.100 (10).

Effective date of law.

Unless otherwise specified, an Act of the Legislative Assembly becomes effective on January 1 of the year following passage. ORS 171.022.

Enforcement of law.

Under ORS 8.650 to 8.680, it is the duty of the district attorney to enforce the law and prosecute violators. This may render unnecessary specific statutes as to the duty of the district attorney to enforce particular laws and prosecute violators. However, the statutes relating to the powers and duties of the Department of Justice must be considered in this connection.

Unless expressly provided otherwise, the repeal of a statute or part thereof that authorizes a state officer, board, commission, corporation, institution, department, agency or other state organization to collect, receive and expend moneys does not affect or impair any right, liability, or obligation accrued or act completed under the statute or a rule or order promulgated under the statute. ORS 182.080.

2. NOTICE; SERVICE; COMPUTATION OF TIME.

Legal notice, public notice.

ORS chapter 193 contains general provisions concerning the publication of legal notices. Unless the context or a specially applicable definition requires otherwise, "public notice" means any legal publication that requires an affidavit of publication described in ORS 193.070 or is required by law to be published. ORS 174.104.

Holidays.

State holidays are identified in ORS 187.010. ORS 187.010 (3) provides that any act authorized, required or permitted to be performed on a holiday may be performed on the next succeeding business day, and no liability or loss of rights of any kind shall result from the delay.

Computation of time.

Except as otherwise provided in ORCP 10, ORS 174.120 governs computation of the time within which an act is to be done. The time is computed by excluding the first day and including the last day unless the last day falls on a legal holiday or on Saturday. The “first day” excluded is the day on which the “precipitating event” occurs; the first day following the precipitating event is counted. Beardsley v. Hill, 219 Or. 440 (1959).

If a time period is prescribed for personal service of a document or notice on a public officer or for filing a document or notice with a public office, and on the last day the office closes before the end of the normal work day, the time for service or filing runs until the close of office hours on the next day that the office is open for business. ORS 174.125; ORCP 10.

Determining date of filing or receipt of reports, claims, tax returns or remittances.

ORS 293.660 provides that the date shown by a post office or private express carrier cancellation mark on the envelope, or the actual date of mailing, is deemed the date of receipt. The statute also provides for cases in which mail is lost in transmission.

Certified and registered mail.

ORS 174.160 and 174.170 provide that in most cases where a statute or rule of a state agency requires use of certified or registered mail, any mail form that provides a return

receipt is acceptable. Personal service that meets the requirements of service of a summons is also acceptable.

Appeals to Court of Appeals in special statutory proceeding.

ORS 19.205 (5) provides that an appeal may be taken from the circuit court to the Court of Appeals in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment or order entered in an action, unless appeal is expressly prohibited by the law authorizing the special statutory proceeding. Guidance for identifying proceedings that qualify as special statutory proceedings is found in State v. Branstetter, 332 Or. 389 (2001).

3. BONDS.

Bonds required in any action or matter.

ORS 22.020 provides that money, an irrevocable letter of credit (with certain exceptions), a certified check or federal or municipal obligations may be deposited in lieu of a security deposit or bond required or permitted by law. This should be considered in amending any statute providing for a bond.

Bonds by public corporation.

ORS 22.010 provides that the state, a county or a city is not required to furnish any bond in any action.

Omitted provisions in bonds required by statute.

A bond required by statute is to be construed as including as a condition any omitted statutory provisions. ORS 742.370.

4. FINANCE.

Taxes.

State income tax laws may refer to federal tax law provisions as those federal laws may from time to time be amended. Article IV, section 32, Oregon Constitution.

State financial administration.

ORS chapters 291, 292, 293 and 295 relate to state financial administration, including budgets, expenditures and handling of state moneys, accounting, investing, depositories, etc.

County and municipal finance.

ORS chapters 294 and 295 relate to county and municipal financial administration.

Public contracts and purchasing.

ORS chapters 279 to 279C have general provisions relating to public contracts and purchasing.

5. GOVERNMENT UNITS.

General definitions.

Unless the context or a specially applicable definition requires otherwise:

"**Any other state**" includes any state and the District of Columbia. ORS 174.100 (1).

"**City**" includes any incorporated village or town. ORS 174.100 (2).

"**County court**" includes a board of county commissioners. ORS 174.100 (3).

"**United States**" includes territories, outlying possessions and the District of Columbia. ORS 174.100 (9).

Definitions for "**public body**," "**state government**," "**executive department**," "**judicial department**," "**legislative department**," "**local government**," "**local service district**" and "**special government body**" are provided by ORS 174.108 to 174.118. These definitions do not apply unless specific reference is made to the appropriate statute and the intention that the definition be applicable is expressed. ORS 174.108.

Public records.

ORS 192.001 to 192.505 cover retention, inspection and destruction of public records. ORS 192.105 requires notice to the State Archivist in connection with any statute authorizing destruction of public records. ORS 192.501, 192.502 and 192.505 state exceptions to public inspection rights.

Administrative Procedures Act.

ORS chapter 183 governs the administrative procedures of most state agencies.

Rules.

ORS 183.310 to 183.410 and 183.710 to 183.725 provide a general procedure for filing copies of rules with the Secretary of State and the Legislative Counsel and must be considered in connection with any provisions relating to agency rulemaking.

Civil penalties.

ORS 183.745 establishes a standardized procedure for imposition of civil penalties.

Attorneys for state agencies.

ORS 180.220 (2) and 180.230 provide that a state officer or agency may not employ or be represented by any attorney other than the Attorney General.

Costs in action or proceeding.

ORS 20.140 provides that the state or a county or city need not make advance payment of costs in any action in which it is a party.

Condemnation.

In connection with any statute dealing with condemnation, the general condemnation provisions in ORS chapter 35 should be considered.

Public lands.

ORS 271.300 to 271.360 relate to the general power of the state and its political subdivisions to transfer public real property.

Assignment or lease of office quarters for state agencies.

ORS 276.385 to 276.440 are general provisions relating to the assignment or lease of office quarters for state agencies.

Department of Corrections, Oregon Health Authority and Department of Human Services institutions.

ORS chapter 179 has a number of provisions applicable to institutions operated by the Department of Corrections, the Oregon Health Authority and the Department of Human Services.

Cooperation of governmental units and agencies.

ORS chapter 190 deals with cooperation of governmental units and agencies.

Qualifications of electors in election to form district.

A requirement that a person must own land in order to vote in an election to form a district may be unconstitutional under Article II, section 2, Oregon Constitution. Peterkort v. East Washington County Zoning District, 211 Or. 188 (1957).

Boards regulating professions.

ORS chapter 670 has a number of provisions applicable to boards regulating professions. Some boards regulating professions have semi-independent state agency status as described in ORS 182.454 to 182.472.

Meetings of state boards or commissions.

ORS 192.610 to 192.710 relate to public meetings.

Majority can exercise authority given jointly.

Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law. ORS 174.130. This section does not make a quorum provision unnecessary.

Boards and commissions to pay counties for services.

State boards and commissions are required by ORS 182.040 to 182.060 to pay counties for services.

Reports to legislature.

ORS 192.230 to 192.250 set forth general provisions concerning reports to the Legislative Assembly. See ORS 192.245 for the form of written reports.

6. PUBLIC OFFICERS AND PUBLIC EMPLOYEES.

Elections.

ORS 246.021 provides that all election documents and fees must be received by the election officer not later than 5 p.m. of the last day permitted by law for such filing.

Eligibility, benefits and ethics.

ORS chapter 236 contains general provisions concerning eligibility for office, resignations, removals and vacancies, with reference to public officers. ORS chapter 243 contains general provisions concerning rights and benefits of public employees. ORS chapter 244 contains material on ethics and conflicts of interest.

Term of office.

Article XV, section 1, Oregon Constitution, provides that "all officers," except members of the Legislative Assembly, shall hold their offices until their successors are elected and qualified. This may render unnecessary a specific statutory provision to the same effect as to a particular office.

Article XV, section 2, Oregon Constitution, provides that the Legislative Assembly shall not create any "office" with a term longer than four years. A statute providing for a longer term may violate this section. (See the Annotations for this section.) Article VII (Amended), section 1, Oregon Constitution, establishes six-year terms for judges.

Vacancies in office.

Article V, section 16, and Article VI, section 9, Oregon Constitution, provide for the filling of vacancies in office. These sections should be considered in connection with any statute providing for filling a particular vacancy.

Forfeiture of office.

ORS 182.010 provides that failure to attend meetings may result in forfeiture of office.

Recall.

Article II, section 18, Oregon Constitution, and ORS 249.865 to 249.877 provide generally for the recall of a public officer and must be considered in connection with any statute providing for recall for a particular public officer.

Bonds of public officers.

Any state, county or municipal officer or officer of any school district, public board or public commission, etc., who is required to give a bond for the faithful performance of duties shall be allowed a reasonable sum paid a surety company for becoming surety on a bond. Such premium shall be paid out of the proper state, county, municipal, district, board or commission funds. ORS 742.354.

In any statute requiring a public official to furnish a fidelity bond or bond conditioned upon the faithful performance of the duties of the official, whenever the words "a surety" or "a corporate insurance company" or words of similar import are used in referring to execution of the bond, the bond may be executed by one or more sureties, or one or more corporate insurance companies, unless the particular statute specifically provides otherwise. ORS 174.140.

State employees.

ORS chapter 240 contains the State Personnel Relations Law, which should be kept in mind in connection with statutes relating to the appointment, removal and fixing of compensation of state employees.

ORS 182.030 prohibits employment of persons advocating violent overthrow of the government.

Salaries of state officers and employees.

ORS chapter 292 contains general provisions for the payment of salaries and expenses of state officers and employees.

Subsistence and mileage allowances for travel by state officers and employees.

ORS 292.210 to 292.288 prescribe the rate of compensation for use of privately owned vehicles and authorize the Oregon Department of Administrative Services to regulate and prescribe applicable limits.

Public Employees Retirement System.

ORS chapters 238 and 238A provide a Public Employees Retirement System covering the state, its agencies and its political subdivisions. ORS chapter 237 relates to public employee retirement generally. Most state agencies are covered by the definition of "public employer" in ORS 238.005. Other state agencies, such as semi-independent agencies, may be statutorily included in PERS.

APPENDIX C

SPECIAL FORMS AND STYLES FOR USE DURING A SPECIAL SESSION

_____

Unusual circumstances during a special session require some slight additions to certain procedures described in this manual. Among these are adjustments that are necessary to meet problems arising if a new edition of *Oregon Revised Statutes* has not yet appeared following a regular session. Other changes are needed to distinguish enactments of a special session from those of a regular session. The drafter must check the table of sections amended and repealed by the Acts of the regular session, as published online or in *Oregon Laws* for the regular session.

1. CITATION OF SPECIAL SESSION MEASURES.

"This (year) special session Act." To cite "this Act" in the body of a special session enactment, use:

- "… this (year) special session Act" for a first special session in any year.
- "… this (year) second special session Act" for a second special session in any year.

References to session. In a special session measure, use these examples as models and adjust as appropriate for number of special session and Legislative Assembly:

> **SECTION 7. This 2___ special session Act takes effect on the 91st day after the date on which the special session of the (Number) Legislative Assembly adjourns sine die.** [first special session]
>
> **OR**
>
> That the special session of the Senate and the House of Representatives of the (Number) Legislative Assembly is adjourned sine die. [first special session]
>
> **OR**
>
> We, the (Number) Legislative Assembly of the State of Oregon, in second special legislative session assembled, respectfully represent as follows:
>
> **OR**
>
> That the (Number) Legislative Assembly in third special session, commenced _____, 2___, stand recessed until the call of the presiding officers or _____, 2___, whichever comes first.

Prior Special Session Measures. Use "Oregon Laws 20xx (special session)" to distinguish the first special session laws from the laws of a regular session in the same year.

To cite special session measures from an even year through 2010, use "Oregon Laws 20xx." The even-numbered year identifies the law as a special session enactment. The parenthetical "(special session)" is unnecessary, because regular sessions of the Legislative Assembly were not held in even years before 2012.

For second or subsequent special sessions in any year, specify which special session is meant in parentheses, as in "Oregon Laws 2002 (third special session)." For example:

- ". . . chapter 6, Oregon Laws 2011 (special session), . . ."
- ". . . section 2, chapter 105, Oregon Laws 2010, . . ."
- ". . . section 2a, chapter 1, Oregon Laws 2002 (fourth special session), . . ."
- ". . . House Joint Resolution 101 (2015 special session) . . . ."
- ". . . Senate Joint Memorial 3 (2010) . . . ."
- ". . . Senate Concurrent Resolution 16 (2002 second special session) . . . ."

Current Special Session Measures. If the current session is a first special session, add "(special session)" to citations to current measures:

- "section 10, chapter ___, Oregon Laws 2___ (special session) (Enrolled ____ Bill ___) (LC 3988),"

Delete the LC parenthetical once the bill number is assigned:

- "section 10, chapter ___, Oregon Laws 2___ (special session) (Enrolled Senate Bill 666),"

When more than one special session is held in any year, the parenthetical must specify which special session is meant:

- "section 12, chapter ___, Oregon Laws 2___ (third special session) (Enrolled House Bill 4032),"
- "section 15, chapter ___, Oregon Laws 2___ (second special session) (Enrolled House Bill 3959),"

2. ADJUSTMENTS FOR SPECIAL SESSION PRIOR TO ORS PUBLICATION.

Certain adjustments are required when a special session precedes publication of ORS:

If the bill amends an ORS section, determine whether that ORS section was amended or repealed during the regular session by checking the table of sections amended and repealed by legislative action during the regular session. The table is published online and in the *Oregon Laws*. If the section was amended by an Act of the regular session, the amending clause in a special session bill reads:

> **SECTION 1.** ORS 92.100, as amended by section _____, chapter ___, Oregon Laws 2___, is amended to read:
>
> 92.100. (Insert adjusted text)

Adjust the text by deleting all material that appears in [*brackets and italic*] type and changing all **boldfaced** text to lightface. Use [*brackets and italic*] type and **boldfaced** type to indicate only the material to be deleted or inserted by the special session bill.

If the bill amends a new section enacted by an Act of the regular session, the amending clause uses the regular session *Oregon Laws* citation. Set forth all section text in lightface for amending. Use [*brackets and italic*] type and **boldfaced** type to indicate only the material to be deleted or inserted by the special session bill. The amending clause reads:

> **SECTION 1.** Section _____, chapter _____, Oregon Laws 2___, is amended to read:
>
> **Sec. __.** (Insert text)

If the bill repeals a section enacted or an ORS section amended by an Act of the regular session, the repealing clause reads, respectively:

> **SECTION 1. Section ___, chapter ___, Oregon Laws 2__, is repealed.**
>
> **OR**
>
> **SECTION 1. ORS 92.100, as amended by section ____, chapter ____, Oregon Laws 2___, is repealed.**

If the bill repeals a section enacted or an ORS section amended by a regular session Act and enacts a new section in lieu thereof, the enacting clause reads:

> **SECTION 1. Section ____, chapter ____, Oregon Laws 2___, is repealed and section 2 of this (year) special session Act is enacted in lieu thereof.**
>
> **SECTION 2. (Insert text)**
>
> **OR**

SECTION 1. **ORS 92.100, as amended by section ____, chapter ____, Oregon Laws 2___, is repealed and section 2 of this (year) special session Act is enacted in lieu thereof.**

SECTION 2. **(Insert text)**

3. ADJUSTMENTS FOR MULTIPLE SPECIAL SESSIONS IN ONE YEAR.

For second or subsequent special sessions in a year, additional adjustments are required because these special sessions will usually precede publication of *Oregon Laws* for the earlier special session(s).

Citing Earlier Special Session Laws. Bills drafted for second and subsequent special sessions often cite Acts or resolutions of an earlier special session. Cite session laws of an earlier special session as for current special session law and include the enrolled bill parenthetical for clarity. Use the standard form for citing resolutions, including, when necessary, the special session designation in the date parenthetical.

For example, when chapter 1, Oregon Laws 2002 (second special session), repealed two sections of chapter 11, Oregon Laws 2002, the relating clause looked like this:

A BILL FOR AN ACT

Relating to stores operated by Oregon Liquor Control Commission; creating new provisions; amending ORS 471.750; repealing sections 1 and 2, chapter 11, Oregon Laws 2002 (Enrolled House Bill 4013); and declaring an emergency.

Note the parentheticals used in chapter 11, Oregon Laws 2002 (second special session), including the insertion of "first" in the first parenthetical for ex post facto clarity:

SECTION 1. **If Enrolled House Bill 4013 (2002 first special session) becomes law, sections 1 (amending ORS 471.750) and 2, chapter 11, Oregon Laws 2002 (Enrolled House Bill 4013), are repealed.**

If the bill amends an ORS, ORCP or session law section, check the amend and repeal tables for the earlier sessions. If the section was amended by an earlier special session Act, the amending clause addresses the section as it appears in the earlier special session Act. Here are some examples:

SECTION 1. ORS 327.095, as amended by section 1, chapter 4, Oregon Laws 2002 (Enrolled House Bill 4011), is amended to read:
327.095. (1) (Insert text)

SECTION 1. ORS 273.384, as amended by section 1, chapter 4, Oregon Laws 2002 (second special session) (Enrolled House Bill 4035), is amended to read:
273.384. (Insert text)

SECTION 1. Section 28, chapter 954, Oregon Laws 2001, as amended by section 2, chapter 4, Oregon Laws 2002 (second special session) (Enrolled House Bill 4035), is amended to read:
Sec. 28. (Insert text)

Remember to adjust the text from the earlier Act by deleting all material that appears in [*brackets and italic*] type and changing all **boldfaced** text to lightface. Then use [*brackets and italic*] type and **boldfaced** type to indicate only the material to be deleted or inserted by the current special session Act.

If the bill amends a section that was enacted by the earlier special session, the amending clause addresses the session law from the earlier special session:

> **SECTION 10.** Section 4, chapter 5, Oregon Laws 2002 (Enrolled House Bill 4019), is amended to read:
>
> **Sec 4.** (Insert text)

The text set forth for amending is lightface. Use [*brackets and italic*] type for deletions and **boldfaced** type for insertions by the current special session bill.

Converting References in Amended Session Law Sections. Use brackets and boldface when converting references in session law sections to "section __ of this (year) Act" or "section __ of this (year) second special session Act" to Oregon Laws references; include the session parenthetical when necessary. Also use brackets and boldface to substitute actual effective or operative dates in phrases such as "effective date of this (year) second special session Act."

Adjusting as Needed for Clarity. Adjust the citation format if necessary for absolute clarity, as in this excerpt from a 2002 second special session joint resolution:

> **PARAGRAPH 1. Senate Joint Resolution 50, Seventy-first Legislative Assembly, 2002 First Special Session, is rescinded. The Secretary of State may not refer Senate Joint Resolution 50, Seventy-first Legislative Assembly, 2002 First Special Session, to the people for their approval or rejection at a special election held throughout this state on the same date as the next primary election.**

Note the placement of the "(LC __)" reference in this example:

> **SECTION 1. Except as otherwise provided in this 2002 fifth special session Act, ORS chapters 250, 251 and 254 apply to the election on the measure submitted as House Bill ___ (LC 17) (2002 fifth special session), if House Bill ___ (LC 17) (2002 fifth special session) is referred to the people at the 2002 general election.**

APPENDIX D

OFFICIAL TITLES

The following list is intended to ***assist*** in verifying "official titles." Refer to the section, note or session law cited to confirm the name or title.

AGENCIES, BOARDS, COMMISSIONS, ETC.

Names of Acts, laws and Uniform Acts and Laws are listed under "Popular Name Laws" in the ORS General Index. Names of interstate compacts are listed under "Interstate Agreements or Compacts" in the ORS General Index.

A

Access and Habitat Board (State Department of Fish and Wildlife), 496.228
Access Management Dispute Review Board (Department of Transportation), 374.360
Access Management Oversight Task Force, 2011 c.330 §27 (*sunsets* January 2, 2016; *see* note at 374.335)
Access to Student Assistance Programs in Reach of Everyone (ASPIRE), 348.500
Accountancy, Oregon Board of, 673.410
Accreditation of Hospitals, Joint Commission on, 743A.168 (ref.)
Accreditation of Rehabilitation Facilities, Commission on, 743A.168 (ref.)
Acupuncture Advisory Committee, 677.780
Address Confidentiality Program (Department of Justice), 192.822
Adjutant General, Const. Art. X, §3; 396.150
    Assistant Adjutants General, 396.165
Administrative Hearings, Office of, 183.605
    chief administrative law judge, 183.610
Administrative Hearings Oversight Committee, Office of, 183.690
administrative law judge (lowercase in references outside workers' comp.)
Administrative Law Judge(s) (uppercase only in reference to workers' comp.), 656.724
Administrative Services, Oregon Department of, 184.305
    Director of the Oregon Department of Administrative Services, 184.325 (ref.)
Adopt-a-Highway Program, Oregon, 366.158
Adopt-a-Park Program, Oregon, 390.139
Adopt-a-River Program, Oregon, 830.055
Advisory Committee, 406.210
Advocacy Commissions Office, Oregon, 185.005
    Administrator of the Oregon Advocacy Commissions Office, 185.010
Affirmative Action, Director of, 243.315
Agricultural Development Division (State Department of Agriculture), 576.009
Agriculture
    Agriculture Workforce Housing Facilitation Team, 456.585
    State Board of Agriculture, 561.372
    State Department of Agriculture, 561.010
        Director of Agriculture, 561.010
Air National Guard, Oregon, 396.105 (ref.)

B

C

Certified Court Interpreter program (Judicial Department), 413.554 (ref.)
Certified Shorthand Reporters Advisory Committee, 8.455
Charitable Checkoff Commission, Oregon, 305.695
Charitable Prescription Drug Program (State Board of Pharmacy), 689.772
Chief Education Officer (Oregon Education Investment Board), 2011 c.519 §2 (*see* note before 326.011)
chief engineer (transportation), 184.628
Child
    Advisory Council on Child Abuse Assessment, 418.784
    Child Abuse Multidisciplinary Intervention Program (Department of Justice), 418.783
    Child Support Program, 180.345 (ref.)
        Child Support Program Director, 180.345 (ref.)
    Division of Child Support (Department of Justice), 180.340
    Office of Child Care (Early Learning Division), 329A.010
Children's
    Children's Advocate, 417.810
    Children's Wraparound Initiative Advisory Committee, 418.985
    Office of Children's Advocate (Department of Human Services), 417.810
    Oregon Foster Children's Bill of Rights, 418.202
Chiropractic Education, Council on, 684.040 (ref.)
Chiropractic Examiners, State Board of, 684.130
    executive director of the State Board of Chiropractic Examiners, 684.190 (ref.)
Christmas Tree Advisory Committee, State, 571.515
Citizen Involvement Advisory Committee, State (land use), 197.160
Citizens' Initiative Review Commission (semi-independent), 250.137
Citizens' Utility Board, 774.030
Citizens' Utility Board of Governors, 774.060
Civil Rights Division of the Bureau of Labor and Industries, 240.321 (ref.)
clean energy deployment program (State Department of Energy), 470.810
Climate
    Oregon Climate Change Research Institute (Oregon University System), 352.247
    Oregon Climate Corps, 468A.290
    Oregon Climate Service (Oregon State University), 352.245
Clover Seed Commission, Oregon, 576.062
Coalition Brownfields Cleanup Program, Oregon, 285A.190
Coastal Management Agency, State (Department of Land Conservation and Development), 196.435
Coastal Management Program, Oregon, 196.425 (ref.)
Collections Unit (Department of Revenue), 293.250
Columbia
    Columbia River Basin Fish and Wildlife Program, 543.017 (ref.)
    Columbia River fisheries transition program, 2013 c.672 §4 (*sunsets* January 2, 2019; *see* note at 508.796)
    Columbia River Gorge Commission, 196.150
    Columbia River Light Rail Transit Authority, 391.306
    Historic Columbia River Highway, 366.550
    Historic Columbia River Highway Advisory Committee, 366.552 (ref.)
Commercial Fishery Permit Board, 508.755

Criminal Justice
    Criminal Justice Division of the Department of Justice, 133.005 (ref.)
    Criminal Justice Information Standards Advisory Board, 181.725
    Criminal Justice Research and Policy Institute (Mark O. Hatfield School of Government), 352.196
    Oregon Criminal Justice Commission, 137.654
        executive director of the Oregon Criminal Justice Commission, 181.725 (ref.)
    Oregon Criminal Justice Scientific Advisory Committee, 352.202
Critical Incident Response Team (Department of Human Services), 419B.024
Cultural Development Grant Program, 359.431

D

Dairy Products Commission, Oregon, 576.062
Deaf
    Oregon Deaf and Hard-of-Hearing Services Program, 410.740
    Oregon School for the Deaf, 346.010 (ref.)
        Board of Directors of the Oregon School for the Deaf, 346.085
Debt Policy Advisory Commission, State, 286A.250
Deer Enhancement and Restoration program(s), 496.242 (ref.)
Defense Force, Oregon State, 396.105
Deferred Compensation Advisory Committee, 243.505
Demonstrator of Anatomy (Oregon Health and Science University), 97.170
Dentistry, Oregon Board of, 679.230
Denture Technology, State Board of (Health Licensing Office), 680.556
Deputy State Forester, 526.031
Deputy State Treasurer, 178.060
Developmental Disabilities, Oregon Council on, 292.500 (ref.)
Developmental Disabilities and Mental Health Committee (Home Care Commission), 410.603
Developmental Fisheries Board, 506.465
Developmental Fisheries Program, 508.945 (ref.)
Direct Entry Midwifery, State Board of (Health Licensing Office), 687.470
Disabilities Commission, Oregon, 185.130
Disability Issues Advisory Committee, 430.050
Dislocated Worker Training Program (Oregon Business Development Department), 2014 c.70 §1 (*sunsets* June 30, 2016; *see* 2014 c.70 §2)
Drinking Water Advisory Committee, State, 448.153
Dungeness Crab Commission, Oregon, 576.062

E

Early Intervention Council, 329.190 (ref.)
Early Learning Council, 326.425
Early Learning Division, 326.430
Early Learning Hub Demonstration Projects, 2013 c.728 §16 (*see* note at 417.827)
Early Learning Kindergarten Readiness Partnership and Innovation Program, 336.101
Early Learning System, Oregon, 417.727

F

G

H

I

J

Justice
Chief Justice of the Supreme Court, 2.045
Department of Justice, 180.210
Department of Justice Portland Legal Office, 180.190 (ref.)
chief financial officer of the Department of Justice Portland Legal Office, 180.190 (ref.)
Justice Reinvestment Grant Review Committee, 2013 c.649 §53 (*sunsets* July 1, 2023; *see* note at 137.680)
Juvenile Compact Administrator, 417.040
Deputy Juvenile Compact Administrator, 417.040
Juvenile Department Directors' Association, Oregon, 420A.012 (ref.)
Juvenile Detention Education Program, 326.695 (def.)

K

Keep Oregon's Rivers Clean program (State Department of Fish and Wildlife), 496.490
Klamath River Compact Commission, 542.620
Korean American Day Commission, 2007 c.68 §2 (*sunsets* January 2, 2016; *see* note at 187.215)

L

Labor and Industries, Bureau of, 651.020
Commissioner of the Bureau of Labor and Industries, 651.030
Lakes and Reservoirs, Center for, 352.207
Land
Department of Land Conservation and Development, 197.075
Director of the Department of Land Conservation and Development, 197.085
Land Conservation and Development Commission, 197.030
Land Trust Accreditation Commission, 2009 c.636 §9 (ref.) (*see* note at 197.430)
Land Use Board of Appeals, 197.810
Oregon Land Information System Advisory Committee, 306.135
State Land Board, 273.031
Landowner Damage Program, Oregon, 2013 c. 363 §3 (*sunsets* January 2, 2020; *see* note at 496.146)
Lands, Department of State, 273.041
Director of the Department of State Lands, 273.161
Landscape Architect Board, State (semi-independent), 671.459
Landscape Contractors Board, State (semi-independent), 671.630
Lane Regional Air Protection Agency, 468.501 (ref.)
Law Commission, Oregon, 173.315
Law Enforcement Contacts Policy and Data Review Committee, 131.906
Law Enforcement Data System, 181.730
Law Enforcement Medal of Ultimate Sacrifice, 176.267
League of Oregon Cities, 169.090 (ref.)
Legal Services Program (Oregon State Bar), 9.572
Legislative
Legislative Administration Committee, 173.710
Legislative Administrator, 173.710

M

N

O

P

Q

Quality Education Commission, 327.500
Quality Teaching and Learning, Network of, 342.950

R

Racing Commission, Oregon, 462.210
Radiation Advisory Committee, 453.645
Radiation Control Agency, State (Oregon Health Authority), 453.635
Radiation Protection Services Section (Oregon Health Authority), 688.595 (ref.)
    section manager of the Radiation Protection Services Section, 688.595
Radio Project, State (Department of Transportation), 2014 c.87 §9 (ref.) (**NOTE:** formerly known as the Oregon Wireless Interoperability Network, the State Radio Project did **not** transfer to the Oregon Department of Administrative Services with other interoperability components in 2014.)
Raspberry and Blackberry Commission, Oregon, 576.062
Reach Code (Director of the Department of Consumer and Business Services), 455.500
Real estate
    Real Estate Agency, 696.375
    Real Estate Board, 696.405
    Real Estate Commissioner, 696.375
Records Center, State, 192.105
Recreation Trails Advisory Council, Oregon, 390.977
Reemployment Assistance Program, 656.622
Refugee Child Welfare Advisory Committee, 418.941
Regional Emergency Management Advisory Committee Terms of Reference, 402.250 (2)
Regional Solutions Program, 2014 c.82 §3
Register of Natural Areas, Oregon, 273.581
Registrar of the Center for Health Statistics, State, 432.020
Rehabilitation Council, Oregon State (Department of Human Services), 660.324 (ref.)
Reinsurance Program, Oregon, 2013 c.698 §1 (*sunsets* July 1, 2017; *see* note at 735.727)
Remedial Action Advisory Committee (Department of Environmental Quality), 465.420
remote hatchbox program (State Fish and Wildlife Commission), 496.458
Renewable Energy Center, Oregon (Oregon University System), 352.221
Reopened Claims Program, 656.625
Research Policy Recommendations, Council for (State Board of Higher Education), 351.880
Residential and Manufactured Structures Board, 446.280
Residential Facilities Advisory Committee, 441.137
Respiratory Therapist and Polysomnographic Technologist Licensing Board (Health Licensing Office), 688.820
Restoration and Enhancement Board, 496.286
Retroactive Program, 656.506
Revenue, Department of, 305.025
    Director of the Department of Revenue, 305.035
Revenue Officer, Legislative, 173.800
Roadmap to Language Excellence Scholarship, Oregon (Higher Education Coordinating Commission), 348.285

Road User Fee Task Force, 184.843
Rural Health Coordinating Council, 442.490
Rural Health, Office of, 442.475
Ryegrass Growers Seed Commission, Oregon, 576.062

S

SAE/SANE Certification Commission, Oregon (Attorney General), 147.403 (ref.)
Safe Employment Education and Training Advisory Committee, 654.189
Salmon and Trout Enhancement Program Advisory Committee, 496.460
Salmon Commission, Oregon, 576.062
Scholars for a Healthy Oregon Initiative, 348.303
School District Collaboration Grant Program, 329.838
School Safety, Center for (Oregon University System), 339.331
School Safety, Task Force on, 2014 c.93 §1 (*sunsets* on convening of 2017 regular session; *see* 2014 c.93 §2)
Sea Grant College (Oregon State University), 352.230
Search and Rescue Coordinator, 404.100
Secretary of State, Const. Art. VI, §1; 177.010
    Deputy Secretary of State, 177.040
Security, Assistant Director for, 461.190
Seed Council, Oregon, 468A.580 (ref.)
Seismic Safety Policy Advisory Commission, 401.915
Senior Farm Direct Nutrition Program, 411.813
Senior Force Judge Advocate, 398.012 (ref.)
Service Center for Geographic Information Systems, State, 196.575 (ref.)
Sex Offender Treatment Board (Health Licensing Office), 675.395
Share the Road registration plate(s) (Department of Transportation), 805.205
Sheep Commission, Oregon, 576.062
Sheriffs' Association, Oregon State, 181.637 (ref.)
Sheriff's Jail Command Council, Oregon, 181.637 (ref.)
Short Term Fund Board, Oregon, 294.885
Sister State Committee, 285A.143
Small Business Assistance, Office of, 56.203
Small Business Stationary Source Technical and Environmental Compliance Assistance Program, 468A.330
Small Scale Local Energy Project Advisory Committee, 470.070
Social Workers, State Board of Licensed, 675.590
Soil and Water Conservation Commission, 561.395
Solutions Network, Oregon, 284.751
South Slough National Estuarine Research Reserve, 273.553
South Slough National Estuarine Research Reserve Management Commission, 273.554
Southern Oregon University, 352.002 (ref.)
Special Agent in Charge of the Federal Bureau of Investigation for Oregon, 181.620 (ref.)
Special Education, State Advisory Council for, 343.287
Speech-Language Pathology and Audiology, State Board of Examiners for, 681.400
Spinal Cord Injury Research Board, 431.290
State Accident Insurance Fund Corporation, 656.752

T

U

V

W

Y

FUNDS AND ACCOUNTS

A

Accelerated College Credit Account, 340.330
Access and Habitat Board Subaccount (in Fish and Wildlife Account), 496.303
Accountancy Account, Oregon Board of, 673.170 (ref.)
Administration Account, Department of Revenue, 305.063
Administrative Services Economic Development Fund, 461.540
Administrative Services Federal Funds Account, Oregon Department of, 184.354
Administrative Services Operating Fund, Oregon Department of, 283.076
Advanced Technology Education and Training Fund, 351.764
Advocacy Commissions Office Account, Oregon, 185.025
Agricultural College Fund, 293.115 (ref.)
Agriculture Account, Department of, 561.150
Agriculture Service Fund, Department of, 561.144
All-Terrain Vehicle Account (in State Parks and Recreation Department Fund), 390.555
Alternative Fuel Vehicle Revolving Fund, 469.961
Alternative Student Loan Program Fund, 348.570
Alzheimer's Disease Research Fund, 431.855
Antelope Subaccount (in Fish and Wildlife Account), 496.303
Aquatic Invasive Species Prevention Fund, 830.585
A. R. Burbank Trust Fund, 418.675 (ref.) (*see also* Burbank Trust Fund)
Arrest and Return Account, 133.865
Article XI-D Bond Administration Fund, 286A.716
Article XI-D Bond Fund, 286A.714
Article XI-M Bond Administration Fund, 286A.766
Article XI-M Bond Fund, 286A.764
Article XI-N Bond Administration Fund, 286A.786
Article XI-N Bond Fund, 286A.784
Article XI-O Bond Administration Fund, 286A.745
Article XI-O Bond Fund, 286A.740
Article XI-P Bond Administration Fund, 286A.804
Article XI-P Bond Fund, 286A.802
Article XI-Q Bond Administration Fund, 286A.822
Article XI-Q Bond Fund, 286A.820
Arts Trust Account, 359.120
ASPIRE Program Fund, 348.570
Assessment and Taxation County Account, 306.125
Assessment Deferral Loan Program Revolving Fund, 454.436
Asset Forfeiture Oversight Account, 131A.460
Aviation Account, State, 835.060 (ref.)
Aviation Search and Rescue Account, 837.035

B

Ballast Water Fund, 783.638
Bancroft Bond Redemption Fund, 223.285
Beginning and Expanding Farmer Loan Program Fund, 285A.435

C

Citizen Review Board Operating Account, State, 419A.128
City and County Subaccount (in State Parks and Recreation Department Fund), 390.134
Clackamas Community College Deferred Maintenance Account, 2009 c.2 §12 (*see* note at 341.721)
Clackamas Community College Facilities Account, 341.757
Clatsop Community College Facilities Account, 341.759
Clean Diesel Engine Fund, 468A.801
Clean Energy Deployment Fund, 470.800
Clients' Trust Account, 86A.157
Climate Corps Fund, Oregon, 468A.292
Coalition Brownfields Cleanup Fund, Oregon, 285A.192
college savings network account (under 348.841 to 348.873), 316.699
Columbia Gorge Community College Facilities Account, 341.762
Columbia River Fisheries Enhancement Fund, 2013 c.672 §7 (*sunsets* January 2, 2022; *see* note at 508.980)
Columbia River Fisheries Transition Fund, 2013 c.672 §5 (*sunsets* January 2, 2019; *see* note at 508.796)
Commemorative Coin Account, 390.245
Commercial Fisheries Fund, 508.326
Commercialized Research Fund, Oregon, 284.725
Commission for the Blind Account, 346.290
Common School Forest Revolving Fund, 530.520
Common School Fund, 327.405
Community College Bond Building Fund, 341.728
Community College Bond Sinking Fund, 341.731
Community College Capital Construction Fund, 341.725
Community College Support Fund, 341.620
Community Colleges and Workforce Development Account, Department of, 351.758
Community Development Incentive Project Fund, 458.720
Community Housing Trust Account (in Community Mental Health Housing Fund), 426.506
Community Housing Trust Account (in Developmental Disabilities Community Housing Fund), 427.340
Community Mental Health Housing Fund, 426.506
Community Power Utility Acquisition Fund, Oregon, 757.857
Compensation and Conservation Fund, 195.336
Connecting Oregon Communities Fund, 759.445
Conservation Strategy Subaccount, Oregon (Fish and Wildlife Account), 496.303
Conservatorship Revolving Account, 406.085
Conservatorship Services Account, 406.120
Construction Contractors Board Lead-Based Paint Activities Fund, 701.520
Construction Fund (water control districts), 553.665
Consumer and Business Services Fund, 705.145
Consumer Protection Household Moves Account, 825.326
Corrections Account, Department of, 423.097
Council on Court Procedures Account, 1.755
County Assessment and Taxation Fund, 294.187
County Assessment Function Funding Assistance Account, 294.184
County Fair Account, 565.445

Court Appointed Special Advocate Fund, 458.584
Court Facilities and Security Account, State, 1.178
Court Forms Revolving Fund, 21.255
Court Interpreter and Shorthand Reporter Certification Account, 45.294
Court Publications Account, 2.165
Covered Electronic Devices Account, 459A.355
Credit Enhancement Fund, 285B.215
Criminal Fine Account, 137.300
Criminal Injuries Compensation Account, 147.225
Criminal Justice Commission Account, Oregon, 137.662
Criminal Justice Revolving Account, 180.640
Cultural Resources Economic Fund, 2013 c.786 §6 (*see* note at 285B.551)
Current Expense Account, Department of Justice, 180.190

D

Deferred Compensation Fund, 243.411
Degree Authorization Account, 348.601
Dental Pilot Projects Fund, 2011 c.716 §17 (*see* note at 680.210)
Dentistry Account, Oregon Board of, 679.260
Developmental Disabilities Community Housing Fund, 427.340
Direct Commitment Reserve Account (Oregon War Veterans' Fund), 407.505 (ref.)
Disabilities Trust Fund, 410.732
Disaster Response Fund, Oregon, 401.534
Dispute Resolution Account, 36.145
Distributable Income Account, 273.105
Division of Audits Account, 297.535
Dog License Fund, 609.110
Domestic and Sexual Violence Services Fund, Oregon, 147.453
Domestic Violence Fund, 409.300
DOT Economic Development Distributions Fund, 461.557
Driver and Motor Vehicle Services Administrative Account, Department of Transportation, 802.100
Driver and Motor Vehicle Suspense Account, Department of Transportation, 802.100
Drug Prevention and Education Fund, 430.422
Dry Cleaner Environmental Response Account, 465.510

E

Early Learning Division Fund, 326.435
Early Learning Kindergarten Readiness Partnership and Innovation Account, 336.104
Eastern Oregon Timber Severance Tax Fund, 321.754
Eastern Oregon Trade Center Fund, 2011 c.624 §9
Eastern Oregon University Regional Agricultural, Health and Life Sciences Building Account, 351.516
Eastern Oregon University Zabel Hall Deferred Maintenance Project Account, 2009 c.904 §16 (*see* note at 351.506)
Economic Infrastructure Project Fund, 285B.551
Economic Recovery Review Council Fund, 2011 c.564 §5 (*see* note at 197.728)

Education Account, Department of, 326.115
Education Cash Account, 327.485
Education Fund, Oregon, 348.716
Education Investment Fund, Oregon, 2011 c.519 §3 (*sunsets* March 15, 2016; *see* note at 326.011)
Education Seismic Fund, 286A.768
Education Stability Fund, 348.696
Education Training Revolving Account, 326.340
Educational Facilities Fund, 346.019
Educational Organizations Fund, 326.350
Educator Preparation Improvement Fund, 342.971
Educators Benefit Account, Oregon, 243.880
Educators Revolving Fund, Oregon, 243.884
Elderly and Disabled Housing Fund, 456.535
Elderly and Disabled Housing Sinking Fund, 456.543
Elderly and Disabled Special Transportation Fund, 391.800
Elections Fund, 246.185
Electronic Prescription Monitoring Fund, 431.974
Emergency Communications Account, 403.235
emergency fund (drainage and irrigation districts), 548.325
emergency fund (drainage districts), 547.680
emergency fund (irrigation districts), 545.599
Emergency Fund (workers' compensation), 656.642
Emergency Housing Account (in Oregon Housing Fund), 458.620
Emergency Medical Services Enhancement Account, 442.625
Emergency Services Seismic Fund, 286A.788
Emerging Small Business Account (in State Highway Fund), 200.180
Employer Workforce Training Fund, Oregon, 660.341
Employes' Bond Savings Account, 292.070 (one "e" is correct)
Employment Department Special Administrative Fund, 657.822
Employment Department Special Fraud Control Fund, 657.400
Employment Relations Board Administrative Account, 240.131
Employment Tax Guarantee Fund, 657.823
Energy Account, State Department of, 469.120
Energy Crisis Trust Fund, 458.510
Energy Efficient Construction Account, 455.595
Energy Project Bond Loan Fund, 470.580
Energy Project Supplemental Fund, 470.570
Energy Revenue Bond Repayment Fund, 470.585
Engineering and Technology Industry Fund, 2014 c.85 §8 (*becomes operative* March 15, 2016; *see* 2014 c.85 §10)
Enhanced 9-1-1 Subaccount (in Emergency Communications Account), 403.235
Entrepreneurial Development Loan Fund, Oregon, 285B.758
Executive Residence Account, 276.102

F

Facilities Authority Account, Oregon, 289.130
Facility Fund, 441.303

Fair Account, Oregon State (in State Parks and Recreation Department Fund), 565.107
Fair Capital Project Fund, State, 565.103 (*repealed on* earlier of December 31, 2015, or date established in fairground operating agreement described in 565.495 (1); *see* 2013 c. 492 §34)
Family Law Account, 3.440
Farmworker Housing Development Account (in Oregon Housing Fund), 458.620
Federal Advance Interest Repayment Fund, 657.840
Federal Flood Control Leases Fund, 293.570
Federal Locatable Mineral Royalties Subaccount, 516.070
Federal Mineral Leases Fund, 293.565
Federal Registry Fund, 674.340
Fire Marshal Fund, State, 476.055
Fire Protection District Subaccount (in State Parks and Recreation Department Fund), 390.134
Fire Protection Equipment Loan Fund, 476.925
Fiscally Distressed Counties Fund, 2012 c.76 §3 (*see* note at 203.095)
Fish and Wildlife Account, 496.303
Fish and Wildlife Deferred Maintenance Subaccount (in Fish and Wildlife Account), 496.303
Fish and Wildlife Hydroelectric Fund, Oregon, 496.835
Fish Endowment Subaccount (in Fish and Wildlife Account), 496.303
Fish Passage Fund, 497.139
Fish Passage Restoration Subaccount, 497.141
Fish Screening Subaccount (in Fish and Wildlife Account), 496.303
Five Percent United States Land Sales Fund, 272.085
Flexible Incentives Account (Oregon Watershed Enhancement Board), 541.937
Foreclosure Avoidance Fund, 86.744
Forest Acquisition County Reimbursement Fund, 530.175
Forest Acquisition Fund, State, 530.181
Forest Development Revenue Bond Fund, 530.147
Forest Enhancement Donation Subaccount, State, 526.060
Forest Land Protection Fund, Oregon, 477.750
Forest Nursery Subaccount, State (in State Forestry Department Account), 526.060
Forest Patrol Fund, 293.110 (ref.)
Forest Research and Experiment Account, 321.185
Forest Resource Trust Fund, 526.720
Forest Resources Institute Fund, Oregon, 526.675
Forest Smoke Management Account, Oregon, 477.560
Forest Tree Seed Bank Subaccount, State (in State Forestry Department Account), 526.060
Forest Tree Seed Orchard Subaccount, State (in State Forestry Department Account), 526.060
Forestry Department Account, State, 526.060
Forestry General Obligation Bond Fund, State, 530.280
Forests Protection Subaccount, State (in State Forestry Department Account), 530.110 (ref.)
Foster Youth Scholarship Fund, 348.570
Fuel Tank Compliance and Corrective Action Fund, 466.913
Funeral and Cemetery Consumer Protection Trust Fund, 97.945

G

Gaming Account, Oregon, 464.450
General Fund, 293.105

General Fund (water control districts), 553.665
General Housing Account (in Oregon Housing Fund), 458.620
Geology and Mineral Industries Account, 516.070
Government Ethics Commission Account, Oregon, 244.345
Governor's Office Operating Fund, 176.200
Grade Crossing Protection Account (in State Highway Fund), 824.018
Grade Crossing Safety Improvement Fund, 824.019
Greenlight Oregon Labor Rebate Fund, 2005 c.559 §2 (*see* note at 284.375)
Growth Fund, Oregon, 284.890
Guarantee Fund, 458.630

H

Halibut Research Subaccount (in Fish and Wildlife Account), 496.303
Hazardous Substance Remedial Action Fund, 465.381
Hazardous Waste Technical Assistance Fund, 466.069
Health Authority Fund, Oregon, 413.101
Health Authority Special Checking Account, Oregon, 413.121
Health Care Trust Fund, 293.540
Health Care Workforce Strategic Fund, 413.018
Health Licensing Office Account, 676.625
Health Plan Fund, Oregon, 414.109
High Cost Disabilities Account (in State School Fund), 327.348
Higher Education Academic Modernization Account, 351.628
Higher Education Donation Fund, 351.130
Highway Fund, State, 366.505
Highway Safety Trust Account, 802.331
Historic Preservation Revolving Loan Fund, 358.664
Historical Society Mortgage Relief Fund, Oregon, 2011 c.624 §15
Home Ownership Assistance Account (in Oregon Housing Fund), 458.620
Hospital Quality Assurance Fund, 2003 c.736 §9 (*sunsets* January 2, 2015; *see* note at 414.839)
(**NOTE:** Sunset date is subject to change. If our office receives notification of receipt of federal approval, fund sunsets January 2, 2017. Notification not received as of 4/10/14.)
Housing and Community Services Department Electricity Public Purpose Charge Fund, 456.587
Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund, 456.587
Housing and Community Services Department Revolving Account, 456.574
Housing and Community Services Department Self-Sufficiency Housing Fund, 456.576
Housing Choice Landlord Guarantee Program Fund, 456.385
Housing Development Account (in Housing Finance Fund), 456.720
Housing Development and Guarantee Account (in Oregon Housing Fund), 458.620
Housing Finance Fund, 456.720
Housing Fund, Oregon, 458.620
Housing of Inmates from Other Jurisdictions Account, 421.073
Human Services Account, Department of, 409.060
Hunger Relief Account, 458.535

I

Illegal Drug Cleanup Fund, 475.495
Industrial Accident Fund, 656.632
Industrial Development Revolving Fund(s) (counties), 275.318
Industrial Rail Spur Fund, 367.070
Industry Competitiveness Fund, 285B.290
Infrastructure Finance Fund, Oregon, 285A.103
Innovation Bond Administration Fund, Oregon, 284.749
Innovation Bond Fund, Oregon, 284.747
Innovation Debt Service Fund, Oregon, 284.748
Innovation Fund, Oregon, 284.720
Institute of Technology Center for Health Professions Account, Oregon, 2007 c.761 §16 (*see* note at 351.506)
Institute of Technology Geothermal Renewable Energy Demonstration Project Account, Oregon, 2009 c.904 §18 (*see* note at 351.506)
Institute of Technology Owens Hall Deferred Maintenance Account, Oregon, 2009 c.2 §7 (*see* note at 351.506)
Institutional Betterment Fund, State, 179.460
Insurance Fund, 278.425
Intercollegiate Athletic Fund, 461.535
Intoxicated Driver Program Fund, 813.270
Invasive Species Control Account, 570.810
Invasive Species Council Account, 570.800
Irrigation Fund, Oregon, 555.170

J

Jobs, Energy and Schools Fund, 470.575
JOBS Individual Education Account, Oregon, 411.894
Joint Payroll Account, 292.024
J. T. Apperson Agricultural College Educational Fund, 352.610
Judges' Retirement Fund, 238.535 (ref.)
Judicial Department Operating Account, 1.009
Judicial Department Revolving Account, 1.007
Justice Client Trust Account, Department of, 180.200
Justice Operating Account, Department of, 180.180
Justice Reinvestment Account, 2013 c.649 §52 (*sunsets* July 1, 2023; *see* note at 137.680)

K

Keep Kids Safe Registration Plate Account (in Early Learning Division Fund), 805.207
Klamath Community College Facilities Account, 341.764

L

Land Conservation and Development Account, 197.095
Land Information System Fund, Oregon, 306.132
Lane Community College Facilities Account, 341.766
Law Enforcement Medal of Honor Account, 176.264
Law Enforcement Medical Liability Account, 414.815

Legal Aid Account, 9.577
Legislative Publications Account, 171.245
Library Donation Fund, State, 357.195
Licensed Professional Counselors and Therapists Account, Oregon Board of, 675.805
Linn-Benton Community College Facilities Account, 341.768
Liquor Control Commission Account, Oregon, 471.805, 471.810 (refs.)
Local Disaster Assistance Loan and Grant Account, Oregon, 401.536
Local Economic Opportunity Fund, 285B.260
Local Government Employer Benefit Trust Fund, 294.730
Local Option Equalization Grants Account (Department of Education), 327.339
Long Term Care Facility Quality Assurance Fund, 2003 c.736 §24 (*sunsets* January 2, 2021; *see* 2003 c.736 §31; *see also* note at 409.750)
Long Term Care Ombudsman Account, 441.153
Long Term Enterprise Zone Fund, 317.127
Lottery Bond Administrative Fund, 286A.573
Lottery Bond Fund, 286A.570
Lottery Fund, Oregon State, 461.530
Lottery Fund, State, 461.510
Lounge Revolving Account, 171.117

M

Major League Stadium Grant Fund, 184.408
Marine Navigation Improvement Fund, 777.267
Marine Shellfish Subaccount (in Fish and Wildlife Account), 496.303
Mass Transit Assistance Account, 291.407
Medicaid Upper Payment Limit Account, 440.420
Medical Board Account, Oregon, 677.290
Medical Insurance Pool Account, Oregon, 735.612 (*abolished/repealed* July 1, 2017; *see* 2013 c.698 §§41,42)
Memorial Fund, 116th Engineers, 408.460 (ref.)
Mental Health Alcoholism and Drug Services Account, 430.380
Mental Health Services Fund, 430.197
Migratory Waterfowl Subaccount (in Fish and Wildlife Account), 496.303
Military Department Construction Account, 396.525
Military Emergency Financial Assistance Fund, Oregon, 396.364
Milton-Freewater Levee and Bridge Improvement Fund, 2011 c.624 §11
Mined Land Regulation and Reclamation Program Subaccount (in Geology and Mineral Industries Account), 516.070
miscellaneous receipts account (State Treasurer), 279A.290
Miscellaneous Receipts Account for the State Library, 357.200 (ref.)
Miscellaneous Receipts Account for the State Treasurer, 286A.016 (ref.)
Mobile Home Parks Account (Housing and Community Services Department), 446.533
Mobile Home Parks Purchase Account, 456.579
Mortuary and Cemetery Board Account, State, 692.375
Motor Carrier Account, 825.326
Motor Vehicle Accident Fund, 445.030
Motor Vehicle Fuel Inspection Program Account, 646.961

Motor Vehicle Fund, 293.110 (ref.)
Motor Vehicle Pollution Account, Department of Environmental Quality, 468A.400
Motor Vehicle Records Account, 802.150
Motorcycle Safety Subaccount (in Transportation Safety Account), 802.340
Mountain Goat Subaccount (in Fish and Wildlife Account), 496.303
Mountain Sheep Subaccount (in Fish and Wildlife Account), 496.303
Mt. Hood Community College Facilities Account, 341.771
Multimodal Transportation Fund, 367.080
Multistate Tax Commission Revolving Account, 305.685
Museum of Art Project Account, 351.538

N

National Board Certification Fund, 342.122
Natural Areas Program Account, 273.591
Natural Resources Subaccount (Parks and Natural Resources Fund), 541.942
Naturopathic Medicine Account, Oregon Board of, 685.201
Network of Quality Teaching and Learning Fund, 342.953
Nongame Wildlife Fund, 496.385
Northwest Regional Power and Conservation Account, 469.840
Nursing Account, Oregon State Board of, 678.170
Nursing Education Grant Fund, 353.612
Nursing Faculty Loan Repayment Fund, 348.570
Nursing Services Account, 348.570

O

Occupational Therapy Licensing Board Account, 675.330
ODAS Economic Development Distributions Fund, 461.553
Office of Administrative Hearings Operating Account, 183.660
Oil and Hazardous Material Emergency Response and Remedial Action Fund, 466.670
Oil Spill Prevention Fund, 468B.410
Oil Spillage Control Fund, 468B.455
Oil-Heated Dwellings Energy Audit Account, 469.683
Operating Account (Secretary of State), 56.041
Operating Fund, Department of Transportation, 184.642
Opportunity Grant(s), Oregon, 348.260
Oregon Coast Community College Facilities Account, 341.773
Oregon Department of Veterans' Affairs Veterans Suicide Prevention and Outreach Program Fund, 406.083
Oregon 529 College Savings Network Fund, 348.856
Oregon Growth Account (in Education Stability Fund), 348.702
Oregon Industrial Site Readiness Assessment Program Fund, 285B.640
Oregon Industrial Site Readiness Program Fund, 285B.632
Oregon Ocean Science Fund, 196.567
Oregon Stage Two Business Development and Economic Gardening Fund, 2010 c.90 §2 (all funds transferred to General Fund on January 2, 2016; *see* note at 284.749)
Oregon State Bar Professional Liability Fund, 65.957 (ref.)
Oregon State University Animal Sciences Pavilion Account, 351.507

Oregon State University Bates Hall/Hallie Ford Healthy Children and Families Center Project Account, 2009 c.904 §20 (*see* note at 351.506)
Oregon State University Biofuels Demonstration Project Account (2009 c.904 §15; *see* note at 351.506)
Oregon State University Engineering Capital Construction Remodel Account, 351.532
Oregon State University Pauling Research and Education Building Account, 2007 c.761 §12 (*see* note at 351.506)
Oregon State University Steam Plant Account, 351.508
Oregon State University Strand Agriculture Hall Deferred Maintenance Project Account, 2009 c.904 §19 (*see* note at 351.506)
Oregon State University Student Success Center Project Account, 2009 c.904 §21 (*see* note at 351.506)
Orphan Site Account, 465.381
ORS Revolving Account, 171.305
Outfitters and Guides Account, 704.510

P

Pain Management Fund (in Oregon Health Authority Fund), 413.580
Parks and Natural Resources Fund, 541.940
Parks and Recreation Department Fund, State, 390.134
Parks and Recreation Department Operating Fund, State, 390.137
Parks Donation Trust Fund, 390.153
Parks for the Future Fund, Oregon, 390.067
Parks Subaccount (in Parks and Natural Resources Fund), 390.135
Parole and Post-Prison Supervision Account, State Board of, 144.059
Passenger Rail Transportation Account, 802.100
Pay Equity Adjustment Fund, 292.961
Pediatric Nursing Facility Account (in State School Fund), 2014 c.81 §5
Persistent Pollutant Control Account, 468B.143
Pest Control Insurance Fund, 570.650
Pharmacy Account, State Board of, 689.139
Pilot Account, 776.365
Plan for Salmon and Watersheds Legal Fund, Oregon, 541.935
Plant Pest and Disease Emergency Response Fund, 571.038
Police Account, State, 181.175
Police Memorial Trust Fund, 181.714
Police Standards and Training Account, 181.690
Police Tobacco Law Enforcement Fund, State, 2012 c.50 §1
Political Party Fund, Oregon, 305.756
Pollution Control Fund, 468.215
Pollution Control Sinking Fund, 468.230
Port Planning and Marketing Fund, 285A.654
Port Revolving Fund, Oregon, 285A.708
Portland Community College Deferred Maintenance Account, 2009 c.2 §13 (*see* note at 341.721)
Portland Community College Facilities Account, 341.775
Portland Legal Office Petty Cash Account, Department of Justice, 180.190

Q

R

Racing Commission Account, Oregon, 462.260
Rail Rehabilitation Fund, State, 824.016
Railroad Fund, 824.014
Rainy Day Fund, Oregon, 293.144
Real Estate Account, 696.490
Real Estate Marketing Account, 696.621
Reemployment Assistance Reserve, 656.605 (ref.)
Regional Infrastructure Fund, 2013 c.786 §3 (*see* note at 285B.551)
Regional Light Rail Extension Bond Account, 391.125
Regional Light Rail Extension Construction Fund, 391.120
Removal-Fill Mitigation Fund, Oregon, 196.640
Renewable Energy Development Subaccount (in Clean Energy Deployment Fund), 470.805
Renewable Energy Fund, 286A.718
Reopened Claims Reserve, 656.605 (ref.)
Residential Service Protection Fund, 1987 c.290 §8 (*sunsets* January 1, 2020; *see* 1987 c.290 §16; *see also* note at 759.690)
Residential Solid Fuel Heating Air Quality Improvement Fund, 468A.490
Retiree Health Insurance Premium Account, 238.415
Retirement Health Insurance Account, 238.420
Retroactive Reserve, 656.605 (ref.)
Revolving Account for Emergency Cash Advances, 802.100
Roadside Memorial Fund, 366.932
Rogue Community College Medford Instructional Facility Account, 341.777
Roseburg Veterans' Home Construction Fund, 2011 c.624 §19
Rural Health Care Revolving Account, 442.480
Rural Medical Education Loan Fund, 348.390
Rural Medical Liability Subsidy Fund, 676.556

S

Safe Drinking Water Revolving Loan Fund, 285A.213
Safe Routes to Schools Fund, 184.740
Safety Education Fund, 802.155
Salmonberry Trail Trust Fund, 2014 c.68 §3
Salvaged Vessel Subaccount, 830.948
Sanitary District Sewer Bond Fund, State, 450.285
Sanitary District Sewerage System Revolving Fund, 450.303
Scholarship Account, Department of Human Services, 411.128
School Capital Construction, Maintenance and Technology Fund, 327.711
School Capital Matching Fund, 286A.806
school capital matching fund, Const. Art. XI-P, §4
School District Collaboration Grant Account, 329.839
School Facility Improvement Fund, 327.320
School Fund, State, 327.008
School Improvement Fund (Quality Education Commission), 327.294
School Lunch Revolving Account, 327.525
School Technology Account (in Connecting Oregon Communities Fund), 759.445

Secretary of State Administration Division Account, 177.140
Secretary of State Miscellaneous Receipts Account, 279A.290
Self-Insured Employer Adjustment Reserve, 656.614
Self-Insured Employer Group Adjustment Reserve, 656.614
Self-Sufficiency Trust Fund, 410.730
Senior and Disabled Services Account, 410.120
Senior Property Tax Deferral Revolving Account, 311.701
Services for Children with Special Health Needs Account, 444.040
Services to Children and Families Account, 409.260
Sewage Treatment Works Construction Account, 454.535
Sewer Bond Revolving Fund, State, 224.390
Sexual Assault Victims' Emergency Medical Response Fund, 147.399
Sexual Assault Victims Fund (in Services to Children and Families Account), 409.285
Shared Services Fund, 285C.639
Short Line Credit Premium Account (in Oregon Transportation Infrastructure Fund), 367.067
Short Term Fund, Oregon, 293.728
Short Term Investment Fund, Oregon, 184.733 (ref.)
Small Scale Local Energy Project Administration and Bond Sinking Fund, 470.300
Small Scale Local Energy Project Loan Fund, Const. Art. XI-J, §1
Small School District Supplement Fund, 2013 c.735 §3 (*sunsets* June 30, 2015; *see* note at 327.348)
Social Security Revolving Account, 237.490
Social Workers Account, State Board of Licensed, 675.597
South Slough National Estuarine Research Reserve Management Account, 273.556
South Waterfront Life Sciences Facility Project Account, 2009 c.904 §14 (*see* note at 351.506)
Southern Oregon University Theatre Arts Expansion and Remodel Project Account, 2009 c.904 §23 (*see* note at 351.506)
Southwestern Oregon Community College Curry County Facilities Account, 341.779
Special Checking Account, Department of Human Services, 409.070
Special Crime and Forfeiture Account, 131A.370
Special Education Account, 343.247
Special Education Transportation Revolving Account, 346.041
Special Liability Revolving Fund, 278.150
Special Public Works Fund, 285B.455
Speech-Language Pathologist Training Fund, 348.406
Speech-Language Pathology and Audiology Account, State Board of Examiners for, 681.480
Spinal Cord Injury Research Fund, 431.294
Sports Lottery Account, 461.543
Standard Retiree Health Insurance Account (in Public Employees Retirement Fund), 238.410
State Court Technology Fund, 1.012
State Library School Library Fund, 293.110 (ref.)
STEM Fund, 348.576
STEM Investment Grant Account, 327.385
Stewardship Agreement Grant Fund, 541.425
Stores Revolving Account, 173.790
Strategic Reserve Fund, 285B.266
Straub Hall Project Account, 351.539

Strengthening, Preserving and Reunifying Families Program Fund, 418.585
Student Assistance Fund, Oregon, 348.570
Student Driver Training Fund, 336.810
Subsurface Injection Fluids Account, 468B.197
Suction Dredge Study Fund, 2013 c.783 §13 (*see* note at 468B.052)
Supplemental Employment Department Administration Fund, 657.783
Sustainability Board Fund, 184.435

T

Talking Book and Braille Library Endowment Fund (in State Library Donation Fund), 357.195
Targeted Development Account, Oregon, 285B.093
tax supervising and conservation commission account(s) (counties), 294.630
Taylor Grazing Fund, 293.575
Teacher Standards and Practices Commission Account, 342.430
Telecommunications Infrastructure Account(s) [private accounts, ***not*** state moneys], 759.405
Tillamook Bay Community College Facilities Account, 341.782
Tillamook Forest Interpretive Center Fund, 526.125
Tillamook Forest Recreation Trust Account (in Parks Donation Trust Fund), 390.300
Title I Bank Fund, 285A.306
Tobacco Enforcement Fund, 180.205
Tobacco Settlement Funds Account, 293.537
Tobacco Use Reduction Account, 431.832
Tollway Account, State (in State Highway Fund), 383.009
Tourist Facility Account, 446.350
Transparency Oregon Advisory Commission Fund, 184.488
Transportation Administration Account, 184.640
Transportation Enterprise Fund, State, 367.810
Transportation Infrastructure Fund, Oregon, 367.015
Transportation Project Account (in State Highway Fund), 366.523
Transportation Safety Account, 802.340
Transportation Working Capital Account, Department of, 184.645
Travel Information Council account, 377.840
Treasure Valley Community College Facilities Account, 341.784
Trust for Cultural Development Account, 359.405
Tuition Protection Fund, 345.110
Tumalo Project Fund, 555.380
2-1-1 Account, 403.435

U

Umpqua Community College Facilities Account, 341.787
Unclaimed Back Pay Due Second Oregon Volunteers (fund), 408.460 (ref.)
Unclaimed Property Revolving Fund, 98.388
Unclaimed Winnings Account, 462.073
Underground Storage Tank Compliance and Corrective Action Fund, 466.791
Underground Storage Tank Insurance Fund, 466.795
Unemployment Compensation Administration Fund, 657.820
Unemployment Compensation Benefit Fund, 657.815

Unemployment Compensation Trust Fund, 657.805
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University of Oregon Education Building and Complex Account, 351.517
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University of Oregon Hayward Field Account, 2007 c.761 §15 (*see* note at 351.506)
University of Oregon Integrative Science Complex Account, 351.519
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University of Oregon Villard Endowment Interest Fund, 293.115 (ref.)
University System Fund, Oregon, 351.506
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Veterans' Home Account, Oregon, 408.368
Veterans' Services Account, 406.130
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Vocational Rehabilitation Account, State, 344.620
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APPENDIX E

REDRAFTS OF BILLS FROM PREVIOUS SESSIONS

Do not assume that a bill is ready for introduction merely because it was introduced in a prior legislative session. The fact that a bill was introduced and not passed could mean that it was rejected due to flaws in the draft. Or, the bill might have been drafted in a very short time right before a deadline and thus did not receive the drafting attention it deserved. Always do the following with a bill from a previous session that you are asked to "redraft":

1. Confirm that the bill did not become law.

   - Check the bill-to-chapter tables in the back of the session laws or in ORS volume 20.

   - Check key words on STAIRS (in case the bill failed, but the substance of it got stuffed into another bill that passed).

   - Check STAIRS for references to repealed, renumbered or relettered sections or references to terminology changed by the draft since new references may have been created during the previous sessions(s).

2. Look up each statute amended or repealed in the bill; look up statutes surrounding statutes amended or repealed in the bill.

   - Make sure the statute still exists.

   - Look at the source note and the even-year A&Rs, if applicable, to determine if the statute was amended in the previous session(s). If it was amended, look at the amendments in the session laws to see if those amendments affect the amendments in the draft. Do any of the sections require additional amending (because of new material or conflicting changes)? Are the sections still appropriate, or could they be deleted?

   - Look at statutes surrounding the statutes amended or repealed in the bill. Have changes to them affected the way the draft should be written?

   - Re-retrieve sections to be amended. (Never copy amended sections from the old bill, even if the section was not amended in the previous session or sessions. The section could contain editorial changes made during compilation or retrieval.)

3. Review citations, official titles, etc., in new material.

   - Some citations may no longer apply because of amendments, or the statutes cited may have been repealed, renumbered or codified.

   - Some official titles may be incorrect because the agency was abolished or renamed. See the preface in ORS volume 1 for official name changes.

4. Watch for dates that may need to be changed.

5. Watch for references to "this (year) Act."

APPENDIX F

SENATE COMMEMORATIONS

When the Senate assembles during the legislative interim to confirm the Governor's executive appointments under Article III, section 4, of the Oregon Constitution, the Senate occasionally requests the preparation of a Senate commemoration so that it can express its congratulations, commendation or sympathy. The form for a Senate commemoration is modeled on the form used for a concurrent resolution. The formal parts of a Senate commemoration are the *heading*, *preamble*, *resolving clause* and *body*.

Here is an example of a Senate commemoration:

Oregon State Senate

HEADING

IN COMMEMORATION

75TH ANNIVERSARY OF DEDICATION OF CURRENT STATE CAPITOL

PREAMBLE

Whereas on December 30, 1855, fire swept through a newly occupied Oregon Statehouse, completely destroying the structure; and

Whereas another Oregon Statehouse, patterned after the United States Capitol, was completed in 1876; and

Whereas on April 25, 1935, fire again destroyed the elegant Oregon Statehouse; and

Whereas after thorough discussions, the decision was made to rebuild the State Capitol on the original site; and

Whereas over 100 designs were submitted for the new building; and

Whereas the design by Francis Keally from the New York firm of Trowbridge & Livingston was chosen; and

Whereas the current State Capitol was dedicated on October 1, 1938; and

Whereas the building materials include marble from Vermont, polished rose travertine from Montana and Phoenix Napoleon gray marble from Missouri; and

Whereas the State Capitol houses the offices of the entire Legislative Branch and the ceremonial offices of the Governor, Secretary of State and State Treasurer; and

Whereas spacious hearing rooms provide Oregonians an opportunity to participate in legislative decision making and to view state government at work; and

Whereas the Oregon Pioneer statue, weighing eight and one-half tons, cast in bronze and finished in gold leaf, crowns the top of the building; and

Whereas in celebration of the 75th anniversary of the dedication of the State Capitol, an event is planned to commemorate this special milestone on October 1, 2013; now, therefore,

RESOLVING CLAUSE

Be It Resolved by the Senate in Session Assembled under Article III, Section 4, of the Oregon Constitution:

BODY

That we, the members of the Senate of the Seventy-seventh Legislative Assembly, honor and celebrate the 75th anniversary of the State Capitol; and be it further

Resolved, That a copy of this commemoration shall be sent to each member of the Oregon Congressional Delegation and to each state legislature of the United States.

Heading. The heading includes the words "Oregon State Senate," gives the reason for the commemoration (e.g., "IN COMMEMORATION" or "IN MEMORIAM") and identifies the person or organization being honored. Here is a sample "IN MEMORIAM" heading:

HEADING

Oregon State Senate

IN MEMORIAM

FORMER SENATE PRESIDENT JASON BOE, 1929-1990

Preamble. The preamble follows the heading and precedes the resolving clause. It follows the same form as a preamble used for joint resolutions. See Preamble on page 16.2 of this manual.

Resolving Clause. The resolving clause differs from the resolving clause used for resolutions and memorials considered during a regular session. The resolving clause for a Senate commemoration is always flush with the left margin and reads:

Be It Resolved by the Senate in Session Assembled under Article III, Section 4, of the Oregon Constitution:

Body. The text is lightface and may have numbered paragraphs or may take the following form:

- Begin the first paragraph with the word "That."
- Begin the second and subsequent paragraphs with the words "Resolved, That."
- End each paragraph except the last with a semicolon and the words "and be it further."
- End the last paragraph with a period.
- If the body includes a provision for sending copies, use the phrase ". . . that a copy of this commemoration. . . ." rather than ". . . this resolution. . . ."

Signature Block. A Senate commemoration is prepared in its final form and includes a signature block that reads:

Adopted by Senate (Month) (day), (year)

_____

Secretary of Senate

_____

President of Senate

Footer. The LC draft number appears in lightface type in the lower left corner of the last page.

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