



Oregon Soil and Water Conservation District Guidebook

A Guide to Operations
and Management
2016

Oregon Department of Agriculture

Soil and Water Conservation District Program

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Salem, Oregon 97301-2532

[www.oregon.gov/ODA/programs/NaturalResources/
SWCD/Pages/SWCD.aspx](http://www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCD.aspx)

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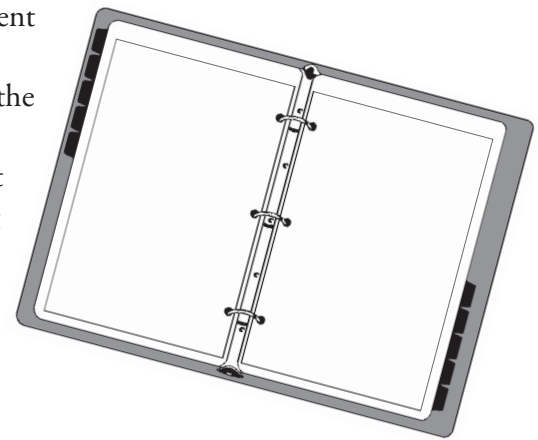
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Introduction

The Oregon Department of Agriculture (ODA), Natural Resource Program Area (NRPA) has various responsibilities in the management of natural resource programs within the state of Oregon. Among these are the responsibilities to provide administrative oversight of the soil and water conservation districts as outlined in Oregon Revised Statutes (ORS) 561.400. The Soil and Water Conservation District (SWCD) Program, in the NRPA at ODA, is tasked with providing this oversight and other assistance to the conservation districts (See Chapter 9 for more on this relationship).

The *Oregon Soil and Water Conservation District Guidebook*—*A Guide to Operations and Management* (Guidebook), provides information and directions to assist conservation district directors, associate directors, directors emeritus, and employees to carry out the conservation district's statutory responsibilities. Every conservation district director and employee should have a working knowledge of the Guidebook's contents. A suggested strategy for conservation districts is to review portions of the Guidebook at each monthly board meeting. This will establish a routine under which conservation districts can review and discuss information relating to conservation district operations and management.

The Guidebook is divided into chapters, each of which focuses on a different aspect of conservation district operations. Each chapter has a resource page at the end detailing where to find the agencies, web sites, and publications referenced in the chapter. The Appendix will contain additional resources, documents, and examples. Where "ODA" and "the Department" is used hereinafter means the Oregon Department of Agriculture.



Icons are used in the margins of this publication to draw your attention to key points that are important for legal and efficient management of your conservation district. The following is a list of the icons used in this publication and what they signify:

Legal Requirement

Instructions or information relating to a legal requirement.



Legal Requirement: This icon denotes that the paragraph contains information that is legally required of the conservation district.

Recommended Policy

Recommendation for policy or guideline.



Recommended Policy: This icon denotes that the paragraph contains information about a policy or guideline that ODA recommends the conservation district board develop and approve.

Best Management Practice

Recommended best management practices.



Best Management Practice: This icon denotes a best management practice that ODA recommends the conservation district develop and implement.

Resources

This 2016 edition of the Guidebook is available in hard copy and on the SWCD web site: www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCD.aspx. Questions, comments, and suggestions on the contents are welcome and should be sent to the SWCD Program. For additional copies, please contact the SWCD Program at (503) 986-4700.

1 History of Conservation Districts in Oregon

The “Dust Bowl” brought to the nation’s attention the need to conserve soil and other natural resources. In 1935, President Franklin D. Roosevelt addressed the problems of soil erosion in the nation by shepherding the passage of the Soil Conservation Act, which established the Soil Conservation Service (SCS) within the United States Department of Agriculture (USDA).

The SCS was charged with developing a program to conserve and enhance the nation’s soil and water resources. At first, it was assumed the federal government could manage the whole program. However, during the first two years, it became apparent local leadership was needed to coordinate efforts of conservation agencies and tie their programs to local conditions and priorities. The SCS needed the assistance of local farmers, ranchers, and other land managers to put together and operate an effective program. In 1937, President Roosevelt asked all state governors to promote legislation to allow the formation of soil conservation districts. During that same year, Congress developed model conservation district law for consideration by state governments. Thus began a partnership that exists today.

1935-Present

In 1939, the Oregon Legislature passed legislation to establish conservation districts in Oregon. Conservation districts were charged with directing programs to protect local renewable natural resources.

The following sequence of events traces the history of the partnership among the Soil and Water Conservation Districts, the Soil and Water Conservation Commission, the Oregon Department of Agriculture, the Oregon Association of Conservation Districts, and the USDA Natural Resources Conservation Service leading to the structure that exists today.

1935	The USDA Soil Conservation Service was created in the USDA by the federal Soil Conservation and Domestic Allotment Act.	sent to state governors in February 1937. President Roosevelt urged the states to pass laws based on this model, stating that "to supplement the federal programs and safeguard their results, state legislation is needed."	1939	The Oregon Legislature passed a Soil Conservation District Law that created a Soil Conservation Committee (SCC). The SCC was established on August 5, 1939, and began forming conservation districts that year.
1937	USDA officials drafted a standard State Soil Conservation Districts law which President Roosevelt			

- 1939 On September 14, 1939, the SCC received the first petition to form a Soil Conservation District from South Tillamook County. Oregon's first Soil Conservation District became official on February 10, 1940.
- 1940 On March 13, 1940, the USDA Soil Conservation Service met with the SCC for the first time, and the partnership between the SCS, the SCC, and conservation districts began. A partnership agreement was developed.
- 1946 The SCC hired its first Executive Secretary and became a policy-making agency.
- 1948 In November 1948, the SCC formed the Oregon Association of Soil Conservation Districts (OASCD).
- 1955 The Oregon Legislature changed conservation district law to require that soil conservation district directors be elected instead of appointed.
- 1955 The name of the Oregon Association of Soil Conservation Districts was changed to the Oregon Association of Conservation Districts (OACD).
- 1963 The Oregon Legislature added "and Water" to the name of Soil Conservation Districts and the Soil Conservation Committee.
- 1963 Congress authorized Resource Conservation and Development pilot projects.
- 1969 The Soil Conservation Committee's name was changed to the Soil and Water Conservation Commission (SWCC).
- 1980 Governor Atiyeh proposed that the SWCC be merged with the Oregon Department of Agriculture (ODA).
- 1981 On July 1, 1981, the Oregon Legislature merged the SWCC with the Oregon Department of Agriculture. The ODA formed a Soil and Water Conservation Division, which became the administrative oversight entity for Soil and Water Conservation Districts. The Soil and Water Conservation Commission was retained.
- 1981 Legislation was adopted authorizing conservation districts to secure a permanent tax rate with voter approval per Oregon Revised Statute (ORS) 568.806.
- 1989 The Oregon Legislature changed the name of the Soil and Water Conservation Division to the Natural Resources Division.
- 1993 The Oregon Legislature passed the Agricultural Water Quality Management Act and designated conservation districts as local management agencies for the implementation of agricultural water quality management area plans per ORS 568.900-568.933.
- 1994 The name of the USDA Soil Conservation Service was changed to the USDA Natural Resources Conservation Service (NRCS).
- 1994 The USDA Agricultural Stabilization and Conservation Service and the USDA Farmers Home Administration consolidated to become the USDA Farm Service Agency (FSA).
- 1994 In November, the Oregon Association of Conservation Districts changed its name to the Oregon Association of Natural Resources Conservation Districts.
- 1995 In November, the Oregon Association of Natural Resources Conservation Districts changed its name back to the Oregon Association of Conservation Districts (OACD).
- 2003 Legislation was adopted authorizing conservation districts to hold conservation easements per ORS 271.715-271.795.

2005 Legislation was adopted authorizing conservation districts to issue general obligation bonds with voter approval per ORS 565.550 and ORS 568.803.

2009 Legislation was adopted giving the powers listed in ORS 568.550 directly to conservation districts without the written consent of the State Department of Agriculture.

2012 The Oregon Department of Agriculture restructured the Natural Resources Division and the Pesticides Division by combining the two divisions under the new name of Natural Resource Program Area.

Chronological Listing of District Formation

Since February 10, 1940, when the first conservation district was established, many conservation districts have formed and others have consolidated or changed their names. A chronological listing of all of the conservation districts formed in Oregon, developed from records stored at ODA and at the Oregon State Archives is outlined below.

Date of Formation	Conservation District Name at the Time of Action	Action	County
February 10, 1940	South Tillamook SCD	District formation	Tillamook
November 22, 1940	Necanicum SCD	District formation	Clatsop
March 26, 1941	Warrenton Dunes SCD	District formation	Clatsop
May 8, 1941	Langell Valley SCD	District formation	Klamath
October 4, 1941	Heppner SCD	District formation	Morrow
May 10, 1941	Keating SCD	District formation	Baker
September 1, 1942	Monument SCD	District formation	Grant
November 20, 1942	Southern Wasco SCD	District formation	Wasco
February 15, 1944	Sauvie Island SCD	District formation	Multnomah
April 26, 1944	Eagle Valley SCD	District formation	Baker
March 13, 1945	Poe Valley SCD	District formation	Klamath
March 28, 1946	West Umatilla SCD	District formation	Umatilla
April 2, 1946	Union SCD	District formation	Union
August 9, 1946	Gilliam County SCD	District formation	Gilliam
October 18, 1946	Wallowa SCD	District formation	Wallowa
December 23, 1946	Clatskanie SCD	District formation	Columbia
December 23, 1946	Linn-Lane SCD	District formation	Linn and Lane
December 23, 1946	Siuslaw SCD	District formation	Lane
April 20, 1947	Scappoose-Rainier SCD	District formation	Columbia
May 12, 1947	Northern Wasco SCD	District formation	Wasco
May 13, 1947	Central Wasco SCD	District formation	Wasco
June 23, 1947	Midstate SCD	District formation	Deschutes
July 31, 1947	Lakeview SCD	District formation	Lake

Date of Formation	Conservation District Name at the Time of Action	Action	County
August 26, 1947	Boardman SCD	District formation	Morrow
October 22, 1947	Santiam SCD	District formation	Marion
November 12, 1947	Baker Valley SCD	District formation	Baker
February 24, 1948	North Tillamook SCD	District formation	Tillamook
July 6, 1949	Klamath SCD	District formation	Klamath
September 12, 1949	Silver Creek SCD	District formation	Marion
November 30, 1949	Burnt River SCD	District formation	Baker
December 13, 1949	Illinois Valley SCD	District formation	Josephine
December 30, 1949	Josephine SCD	District formation	Josephine
April 21, 1950	Sherman County SCD	District formation	Sherman
October 24, 1950	East Multnomah SCD	District formation	Multnomah
January 18, 1951	Sams Valley-Beagle SCD	District formation	Jackson
October 24, 1951	Elgin SCD	District formation	Union
March 19, 1953	Fort Rock/Silver Lake SCD	District formation	Lake
March 19, 1953	South Umatilla SCD	District formation	Umatilla
April 2, 1953	Yamhill SCD	District formation	Yamhill
April 30, 1953	Curry County SCD	District formation	Curry
April 30, 1953	Umpqua SCD	District formation	Douglas
June 9, 1953	Rogue SCD	District formation	Jackson
June 24, 1953	Mt. Angel SCD	District formation	Marion
June 30, 1953	West Central SCD	District formation	Lane
September 16, 1953	Malheur County SCD	District formation	Malheur
September 30, 1953	Hood River SCD	District formation	Hood River
July 21, 1954	East Linn SCD	District formation	Linn
October 18, 1954	North Douglas SCD	District formation	Douglas
December 22, 1954	Upper Willamette SCD	District formation	Lane
June 20, 1955	Washington County SCD	District formation	Washington
August 25, 1955	Lincoln SCD	District formation	Lincoln
July 30, 1956	Grant SCD	District formation	Grant
August 30, 1956	North Lane SCD	District formation	Lane
December 28, 1956	Benton SCD	District formation	Benton
December 29, 1956	Mid-Lane SCD	Name change: formerly West Central SCD	Lane
September 30, 1957	Trout Creek SCD	District formation	Jefferson
March 11, 1958	Adrian SCD	District formation	Malheur
June 17, 1958	North Clackamas SCD	District formation	Clackamas

Date of Formation	Conservation District Name at the Time of Action	Action	County
June 23, 1960	Jackson SCD	Name change: formerly Sams Valley-Beagle SCD	Jackson
October 24, 1960	East Umatilla SCD	District formation	Umatilla
June 8, 1961	South Clackamas SCD	District formation	Clackamas
June 12, 1962	Coos SCD	District formation	Coos
1963	"and Water" was added to the name of conservation districts by the Oregon Legislature.		
December 10, 1963	Wheeler SWCD	District formation	Wheeler
October 12, 1964	Clatsop SWCD	District formation	Clatsop
January 12, 1965	Tillamook County SWCD	Formed by consolidation of South Tillamook SCD and North Tillamook SCD	Tillamook
March 21, 1966	Clatsop SWCD	Consolidated with Necanicum SCD	Clatsop
April 25, 1966	Polk SWCD	District formation	Polk
August 16, 1966	Columbia SWCD	Formed by consolidation of Clatskanie SCD and Scappoose-Rainier SCD	Columbia
October 17, 1966	Jackson SWCD	Consolidated with Rogue SCD	Jackson
April 29, 1970	South Douglas SWCD	District formation	Douglas
May 20, 1971	Upper Willamette SWCD	Consolidated with Mid-Lane	Lane
September 10, 1971	Marion SWCD	Formed by consolidation of Santiam SCD, Silver Creek SCD, and Mt. Angel SCD	Marion
March 16, 1972	Clatsop SWCD	Consolidated with Warrenton Dune SCD	Clatsop
May 25, 1972	Crook County SWCD	District formation	Crook
June 6, 1972	Harney SWCD	District formation	Harney
June 25, 1972	Klamath SWCD	Consolidated with Poe Valley SCD	Klamath
December 20, 1972	Morrow SWCD	Formed by consolidation of Heppner SCD and Boardman SCD	Morrow
June 10, 1973	Wasco SWCD	Formed by consolidation of Southern Wasco SCD, Northern Wasco SCD, and Central Wasco SCD	Wasco
November 2, 1973	Wasco County SWCD	Name change: formerly Wasco SWCD	Wasco
February 5, 1974	Klamath SWCD	Consolidated with Langell Valley	Klamath
March 13, 1974	Umatilla County SWCD	Formed by consolidation of West Umatilla SCD, Southern Umatilla SCD, and East Umatilla SCD	Umatilla

Date of Formation	Conservation District Name at the Time of Action	Action	County
March 22, 1974	Clackamas County SWCD	Formed by consolidation of North Clackamas SCD and South Clackamas SCD	Clackamas
June 6, 1974	Malheur County SWCD	Consolidated with Adrian SCD	Malheur
September 5, 1974	Jefferson County SWCD	Name change: formerly Trout Creek SWCD	Jefferson
April 14, 1975	West Multnomah SWCD	Name change: formerly Sauvie Island SCD	Multnomah
March 24, 1976	Union SWCD	Consolidated with the Elgin SCD	Union
March 7, 1978	Linn SWCD	Formed by consolidation of Linn-Lane SCD and East Linn SCD	Linn
June 9, 1987	Douglas SWCD	Formed by consolidation of North Douglas SCD and South Douglas SCD	Douglas
September 9, 1987	Deschutes SWCD	Name change: formerly Midstate SCD	Deschutes
May 3, 1988	East Lane SWCD	Formed by consolidation of North Lane SCD, Upper Willamette SWCD, and Mid-Lane SCD	Lane
December 11, 2002	Tualatin SWCD	Name change: formerly Washington County SWCD	Washington
March 4, 2008	Upper Willamette SWCD	Name change: formerly East Lane SWCD	Lane
June 22, 2015	Clackamas SWCD	Name change: formerly Clackamas County SWCD	Clackamas

Certificated Names of Conservation Districts

Recommended Policy

Each conservation district should use its certificated name on legal documents, contracts, correspondence, financial records, publications, to properly and legally identify itself.



When a conservation district is formed, it must follow the procedures in Oregon Revised Statute (ORS) 568.210 through 568.440 to receive a Certificate of Organization and become certificated by the Oregon Secretary of State. Once the Secretary of State approves the name for a conservation district, the certificated name of the conservation district should be used until the district decides to legally change it.

Oregon Conservation District Certificated Names

Baker Valley Soil and Water Conservation District	Grant Soil and Water Conservation District	Morrow Soil and Water Conservation District
Benton Soil and Water Conservation District	Harney Soil and Water Conservation District	Polk Soil and Water Conservation District
Burnt River Soil and Water Conservation District	Hood River Soil and Water Conservation District	Sherman County Soil and Water Conservation District
Clackamas Soil and Water Conservation District	Illinois Valley Soil and Water Conservation District	Siuslaw Soil and Water Conservation District
Clatsop Soil and Water Conservation District	Jackson Soil and Water Conservation District	Tillamook County Soil and Water Conservation District
Columbia Soil and Water Conservation District	Jefferson County Soil and Water Conservation District	Tualatin Soil and Water Conservation District
Coos Soil and Water Conservation District	Josephine Soil and Water Conservation District	Umatilla County Soil and Water Conservation District
Crook County Soil and Water Conservation District	Keating Soil and Water Conservation District	Umpqua Soil and Water Conservation District
Curry County Soil and Water Conservation District	Klamath Soil and Water Conservation District	Union Soil and Water Conservation District
Deschutes Soil and Water Conservation District	Lakeview Soil and Water Conservation District	Upper Willamette Soil and Water Conservation District
Douglas Soil and Water Conservation District	Lincoln Soil and Water Conservation District	Wallowa Soil and Water Conservation District
Eagle Valley Soil and Water Conservation District	Linn Soil and Water Conservation District	Wasco County Soil and Water Conservation District
East Multnomah Soil and Water Conservation District	Malheur County Soil and Water Conservation District	West Multnomah Soil and Water Conservation District
Ft. Rock/Silver Lake Soil and Water Conservation District	Marion Soil and Water Conservation District	Wheeler Soil and Water Conservation District
Gilliam County Soil and Water Conservation District	Monument Soil and Water Conservation District	Yamhill Soil and Water Conservation District

Chronological Listing of Conservation Districts with Permanent Tax Rates

The following conservation districts received voter approval to secure a permanent tax rate.

1986 Yamhill SWCD	2006 West Multnomah SWCD
2000 Marion SWCD	Sherman County SWCD
2002 Polk SWCD	Jackson SWCD
	Clackamas SWCD
2004 Benton SWCD	2008 Columbia SWCD
East Multnomah SWCD	
Wasco County SWCD	2012 Tillamook County SWCD

Tribal Conservation Districts

The Confederated Tribes of the Umatilla Indian Reservation formed the Tiicham Conservation District in 2003. This conservation district was formed under tribal law, as were approximately twenty other tribal conservation districts nationwide. The Tiicham Conservation District is governed by the Board of Trustees, the tribal governing body, and has its own set of by-laws. A majority of the members must be enrolled tribal members. The Tiicham Conservation District and the Umatilla County SWCD boundaries overlap where the boundaries include the tribes' ceded lands, encompassing over six million acres in Oregon and Washington.

2 Laws and Rules Governing Conservation Districts

Enabling Legislation

Definitions

Oregon conservation districts are political subdivisions of state government, but are not state agencies. Conservation districts are considered municipal corporations, a form of local government that is required to follow many of the same laws that govern state agencies. As defined in Oregon Revised Statute 174.116 local government specifically includes soil and water conservation districts.

Statute: A law enacted by the legislative assembly of a nation or state.—*Webster’s Dictionary*

Administrative Rule: A directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy or describes an agency’s procedure or practice requirements.—*Oregon Attorney General’s Administrative Law Manual*

Code of Federal Regulations (CFR): The codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.—*U.S. Government Printing Office*

United States Code (USC): The United States Code is the codification by subject matter of the general and permanent laws of the United States.—*U.S. Government Printing Office*

Oregon Revised Statutes, Chapter 568

Legal Requirement

Sections in bold relate to conservation district operations. Directors and employees should be familiar with these sections.



The primary statutes relating to the formation and governance of Oregon Soil and Water Conservation Districts are contained in Oregon Revised Statutes (ORS) 568.

See the Resources section at the end of this chapter for links to the complete text of these statutes.

SOIL & WATER CONSERVATION; MANAGEMENT

AGRICULTURE

SOIL AND WATER CONSERVATION DISTRICTS

(Generally)

568.210 Definitions for ORS 568.210 to 568.808 and 568.900 to 568.933

568.225 Policy

568.300 Petition for formation of district; contents; consolidation of petitions

568.310 Notice of hearing; questions considered

568.320 Right to be heard; subsequent notice and hearings

568.330 Determination of need for district; factors considered in determination; territory need not be contiguous

568.340 Determination to not form district; subsequent petitions may be filed

568.351 Determination of boundaries for proposed district; notice of plan to issue order; publication; request for referendum

568.370 Eligible electors

568.380 Department to pay expenses and supervise hearings and referenda; informalities in referendum

568.391 Referendum process; ballot contents; results

568.400 Appointment of first directors of district

568.410 Formation of district

568.420 Certificate of formation; boundaries of district

568.431 Petitions for inclusion of territory; conditions; referendum

568.433 Petitions for withdrawal of territory; conditions; referendum

568.435 Boundary change notice for taxation purposes

568.440 District legally formed; certificate as evidence

568.445 Petitions for inclusion of territory wholly within another district; approval or disapproval by directors and department

568.450 Procedure for consolidating districts

568.460 Referendum; eligible electors; majority required

568.471 Effect of consolidating districts

<p>568.481 Methods for initiating dissolution of district; notice of process initiation; plan of dissolution and liquidation; public hearings; dissolution order; referendum</p> <p>568.491 Termination of board of directors; appointment of board of trustees; notice of dissolution; certificate of dissolution</p> <p>568.495 Disposition of district assets; insolvency; rules</p> <p>568.500 Order of dissolution; effect</p> <p>568.510 Proceedings for dissolution limited</p> <p>568.520 Petitions nominating directors; regular elections; duties of department</p> <p>568.530 Ballots; write-in votes; unfilled positions</p> <p>568.542 Payment of expenses for director election from county funds</p> <p>568.545 Procedure for selection of directors of consolidated districts; selection of officers</p> <p>568.550 General powers of board of directors; erosion control covenants; interagency cooperation; land use regulations; department rules</p> <p>568.552 Power of directors to manage and control water resources and projects; authority of Water Resources Commission</p>	<p>568.554 District to submit program and work plans for department review</p> <p>568.555 Name of district may be changed</p> <p>568.560 Number of directors; director qualifications; officers; election; terms; vacancies</p> <p>568.565 Procedures for changing number of directors</p> <p>568.570 Majority constitutes a quorum</p> <p>568.580 Annual meeting</p> <p>568.590 Notice of annual meeting</p> <p>568.600 Legal counsel; delegation of powers; assistance to department</p> <p>568.610 Records; audits</p> <p>568.620 Consultation with county or municipal representatives</p> <p>568.730 Officials may enter private lands</p> <p>568.780 Certain public agencies to be deemed owners</p> <p>568.790 County funds for personnel and other uses</p> <p>568.801 Stream control and management projects; application; designation and implementation; rules</p> <p>568.803 General obligation bonds; refunding bonds; special taxes</p> <p>568.805 Special assessments; improvement bonds; objections by landowners</p>	<p>(Tax Levying Authority)</p> <p>568.806 Ad valorem tax; budget; collection</p> <p>568.807 Electors authorizing taxation; election date</p> <p>568.808 Taxing district to file legal description and map</p> <p>WIND EROSION CONTROL</p> <p>568.810 Purpose of ORS 568.810 to 568.890; types of wind erosion</p> <p>568.820 Designation of areas by county court upon petition; description of boundaries</p> <p>568.830 Publication and posting of notices describing districts; when regulations are enforced</p> <p>568.840 Election of advisory board; meetings; members; functions</p> <p>568.850 Wind erosion inspector; appointment; duties; appeal from decision; compensation; expenses</p> <p>568.860 Inspector may enter lands in district; service of notice on owner or occupant</p> <p>568.870 County court may authorize inspector to control erosion; expenses of control</p> <p>568.880 Tax levy for wind erosion control</p> <p>568.890 District may be dissolved; disposition of district funds; change of district boundaries</p>
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AGRICULTURAL WATER QUALITY MANAGEMENT

- 568.900 Definitions for ORS 568.900 to 568.933
- 568.903 “Landowner” defined
- 568.906 Plan implementation to involve local agencies**
- 568.909 Boundaries for land subject to water quality plans; implementation of plan and rules

- 568.912 Management plan rules; required actions under rules; prohibiting specific practices; landowner appeals
- 568.915 Entry upon land; purpose; consultation with Department of Justice; notice to landowners**
- 568.918 Notice to landowner of failure to perform requirements

- 568.921 Fees from landowners
- 568.924 Interagency agreements
- 568.927 Law inapplicable to certain forest practices
- 568.930 Agricultural activities subject to plan requirements; consultation with Environmental Quality Commission; review and revision of plans

District Powers and Authorities

The general powers and authorities of conservation districts in Oregon are described in ORS 568.550:

ORS 568.550 General powers of board of directors; erosion control covenants; interagency cooperation; land use regulations; department rules.

- (1) The board of directors of a soil and water conservation district has the following powers:
 - (a) To secure surveys and investigations and do research relating to:
 - (A) The character of soil erosion;
 - (B) The character of floodwater and sediment damage;
 - (C) All phases of the conservation , development, utilization and disposal of water; and
 - (D) The preventive measures, control measures and improvements needed.
 - (b) To conduct demonstrational projects on lands within the district upon obtaining the consent of the owner and occupier of such lands.
 - (A) Carrying on within the district soil erosion control and prevention operations, water quality improvement, watershed enhancement and improvement, fish and wildlife habitat management activities and other natural resource management activities; or
 - (c) To carry out preventive and control measures on lands within the district upon obtaining the consent of the owner and occupier of those lands.
 - (d) To enter into written agreements with and, within the limits of appropriations duly made available to the board by law, to furnish financial or other aid to any governmental or nongovernmental agency or any owner or occupier of lands within the district, for the purpose of:
 - (A) Carrying on within the district soil erosion control and prevention operations, water quality improvement, watershed enhancement and improvement, fish and wildlife habitat management activities and other natural resource management activities; or
 - (B) Carrying out district responsibilities under ORS 541.898, 568.225, 568.550 and 568.900 to 568.933.
 - (e) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest or devise any property, real or personal or rights or interests therein, to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of ORS 568.210 to 568.808 and 568.900 to 568.933, and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the

- purposes and the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.
- (f) To borrow money and to mortgage personal property of the district as security for the borrowed money, if the district first gives notice of and holds a public hearing within the district to provide landowners with the opportunity to be heard. The State Department of Agriculture shall adopt rules specifying the manner for giving notice of a hearing under this subsection.
- (g) To issue general obligation bonds of the district as provided in ORS 568.803.
- (h) To make available, on such terms as the directors shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings and other material or equipment.
- (i) To construct, operate and maintain such structures as may be necessary or convenient for performance of any of the operations authorized in ORS 568.210 to 568.808 and 568.900 to 568.933.
- (j) To develop comprehensive plans and specifications for the conservation of soil resources and for the continued control and prevention of soil erosion within the district, and to publish such plans, specifications and information and bring them to the attention of owners and occupiers of lands within the district.
- (k) To take over, by purchase, lease or otherwise, and to administer, any soil conservation , erosion control or erosion prevention project, or combination thereof, located within district boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies.
- (L) To manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation , erosion control or erosion prevention project, or combination thereof, within district boundaries.
- (m) To act as agent for the United States or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil conservation , erosion control or erosion prevention project, or combination thereof, within district boundaries.
- (n) To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations.
- (o) To sue and to be sued in the name of the district, to have a seal, which shall be judicially noticed, to have perpetual succession unless terminated as provided by law, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to make, and from time to time amend or repeal, rules not inconsistent with ORS 568.210 to 568.808 and 568.900 to 568.933 to carry into effect its purposes and powers.
- (p) To purchase liability or indemnity insurance, in such amounts and containing such terms and conditions as the board believes necessary for the protection of directors, officers and employees of the district against claims incurred in the performance of official duties. The premiums for such insurance shall be paid out of moneys available for expenditure by the district.
- (q) To place liens on real and personal property.
- (r) To enter into written agreements with, coordinate activities with and provide assistance to landowners, managers and residents within

- the district and federal state and local governments, relating to natural resource issues, including but not limited to issues of:
- (A) Agriculture and forestry;
 - (B) Economic development based on natural resources;
 - (C) Watershed management and ecosystem health;
 - (D) Invasive species;
 - (E) Alternative and renewable energy;
 - (F) Air quality;
 - (G) Animal waste and nutrient management;
 - (H) Carbon sequestration;
 - (I) Access to market-based services and certification;
 - (J) Fuel reduction and wildfire planning and management; and
 - (K) Preservation of agricultural, forestry and other lands.
- (s) To conduct outreach and conservation education activities.
 - (t) To provide financial assistance, including but not limited to loans and grants to implement activities and projects authorized under ORS 271.715 to 271.795, 568.210 to 568.808 or 568.900 to 568.933.
 - (u) To hold patents, trademarks and copyrights.
 - (v) To hold conservation easements under ORS 271.715 to 271.795.
- (2) As a condition to the extending of any benefits under ORS 568.210 to 568.808 or 568.900 to 568.933 to lands, or the performance of work upon lands, the directors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such
- agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.
- (3) In order to avoid duplication of activities under subsection (1)(a) of this section, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies.
- (4) A district may not adopt land use regulations under ORS chapter 197, 215 or 227. A district has the standing of an affected property owner to participate in public processes involving administrative rules, regulations, goals, guidelines, plans or other public body actions that may affect one or more properties within the district. [Amended by 1955 c.142 §16; 1957 c.603 §4; 1961 c.640 §3; 1973 c.656 §13; 1981 c.92 §29; 2005 c.22 §386; 2005 c.282 §1; 2009 c.220 §26]

Related Statute and Administrative Rules

Additionally, conservation districts are subject to the provisions of other Oregon Revised Statutes (ORS), Oregon Administrative Rules (OARs), and U.S. Codes including those outlined below. See the Resources section at the end of this chapter for links to the complete text of these rules and statutes.

Description	Law
Americans with Disabilities Act of 1990 (ADA)—State and Local Government requirements for Equal Opportunity for Individuals with Disabilities, and Public Accommodations.	28 CFR Part 35 & 36 (Title II & III)
Audits of Accounts of State & State-Aided Institutions and Agencies—Authorizes the Secretary of State to conduct audits.	ORS 297.210-297.250
Bond or Letter of Credit for Member of Boards of Certain Districts—Requirement for directors or staff who controls money or property.	ORS 198.210-198.220
Conservation & Highway Scenic Preservation Easements—Requirements for acquiring and creating conservation easements.	ORS 271.715-271.795
Civil Rights Act of 1964, Title VII—Employment laws regarding Equal Opportunity Employment/Sexual Harassment/Discrimination.	Volume 42 USC Chapter 21 Subchapter VI, Section 2000e-2000e-17
Government Ethics—State statute applying to directors, employees, and agents to prevent abuse of office and ensure public trust.	ORS 244
Intergovernmental Cooperation—Authority of local governments to make intergovernmental agreements.	ORS 190.003-190.110
Local Budget Law—Requirements of conservation districts with a tax levy.	ORS 294.305-294.565
Local Government Borrowing—Authority to issue general obligation bonds.	ORS 287A
Municipal Audit Law—Requirements for financial reviews and audits.	ORS 297.405-297.555
Natural Resources Division; duties; insurance for soil and water conservation districts.	ORS 561.400
Nonaggregate Mineral Surface Mines—Requirement for Department of Geology and Mineral Industries to consult with conservation districts.	ORS 517.905-517.915
Oaths of Office—Requirement for all directors to take an oath of office.	Oregon Constitution, Article XV, Section 3
Property of the state, counties and other municipal corporations—Property exemptions from taxation.	ORS 307.090
Public Contracting—General Provisions.	ORS 279A
Public Contracting—Miscellaneous Provisions.	ORS 279
Public Contracting—Public Improvements and Related Contracts.	ORS 279C
Public Contracting—Public Procurements.	ORS 279B
Public Contracting—Review of Public Contracts.	OAR 137, Div. 45
Public Contracting Model Rules—Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts.	OAR 137, Div. 48

Description	Law
Public Contracting Model Rules—General Provisions Related to Public Contracting.	OAR 137, Div. 46
Public Contracting Model Rules—General Provisions Related to Public Contracts for Construction Services.	OAR 137, Div. 49
Public Contracting Model Rules—Public Procurement for Goods and Services.	OAR 137, Div. 47
Public Meetings—Requirements for decisions to be arrived at openly and meetings to be open to the public.	ORS 192.610-192.710
Public Records—Requirements for record retention, destruction, and public inspection.	ORS 192.001-192.607
Soil and Water Conservation Commission membership; compensation and expenses; forfeiture of office; functions.	ORS 561.395
Special Districts Generally—Requirements for compensation, bond or letter of credit, and recall.	ORS 198
Tort Actions Against Public Bodies—Scope of liability, insurance, and limitations.	ORS 30.260-30.300
Unlawful Discrimination—State statute prohibiting discrimination in employment, housing, and whistle-blowing.	ORS 659A
Water Quality—State statute to protect, maintain and improve the quality of the waters of the state.	ORS 468B
Watershed Management & Enhancement—State statutes implementing the Oregon Plan.	ORS 541.890-541.969
Watershed Protection & Flood Prevention Projects—State statute authorizing the Water Resources Commission to work cooperatively with the U.S. Department of Agriculture.	ORS 542.750

Special Districts



All Oregon soil and water conservation districts are classified as special districts under ORS 174. The Special Districts Association of Oregon (SDAO) was formed in 1979 to give special districts a stronger and united voice at the Oregon Legislature. SDAO provides advocacy with state administrative agencies and other units of government, training, information resources, and other support programs. SDAO services and programs include:

- Legislative Program
- Insurance Program
- Pre-Loss Legal Services
- Loss Control Consultations
- Claims Administration
- Research and Technical Assistance
- Education and Training
- Financing Programs
- Management Consulting
- Background Checks
- Drug-Free Workplace

See the Resources section at the end of this chapter for SDAO contact information.

Recommended Policy

It is highly recommended that conservation districts are members of SDAO to be eligible to participate in the programs and have access to SDAO's resources.

Oregon's Agricultural Water Quality Management Program

In 1993, the Oregon Legislature passed the Agricultural Water Quality Management Act (Senate Bill 1010), directing the Oregon Department of Agriculture (ODA) to develop plans to prevent and control water pollution from agricultural activities and soil erosion and achieve water quality standards. The legislation identified several circumstances that did prompt ODA to develop plans, including a determination by the Environmental Quality Commission to develop Total Maximum Daily Loads for a waterbody, declaration of a groundwater management area, or when a plan was otherwise required by state or federal law. Senate Bill 502 was passed in 1995 to further clarify that ODA is responsible to regulate agriculture with respect to water quality. The Agricultural Water Quality Management Act is found in statutes ORS 561.190 and ORS 568.900-568.933.

ODA worked with Local Advisory Committees (LACs) comprised of farmers, ranchers, and other interests groups, to develop water quality management plans and adopt regulations in 39 regions of the state. In 2011, two of the regions elected to merge into one, leaving 38 regions.

The Legislature specified in the Agricultural Water Quality Management Program's enabling statute that conservation districts

should be involved in plan development and implementation to the “fullest extent practical.” Conservation districts have a lead role in working directly with farmers and ranchers to implement on-the-ground projects to support Oregon’s water quality goals. Conservation districts also have strong partnerships with the U.S. Department of Agriculture, watershed councils, and other agencies and organizations that leverage additional resources, technical, and financial support for projects.

Since 1997, the Oregon Legislature has allocated funding for conservation districts to support the development and implementation of agricultural water quality area plans and rules. In addition to providing technical assistance to landowners, conservation districts help ODA to set up the LACs, coordinating the LAC meetings, providing leadership during the LAC’s work, and conducting education and outreach about the plan and regulation development process. Consistent with legislative direction, ODA has intergovernmental agreements with conservation districts to assist with the implementation of the Agriculture Water Quality Management Program.

Resources

The SWCD laws document is in the Appendix.

The full text of an ORS is available at www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx.

The full text of an OAR is available at arcweb.sos.state.or.us/pages/rules.

Description	Law	Link
Americans with Disabilities Act of 1990	28 CFR Part 35—Part 36 (Title II and III)	www.ada.gov/2010_regs.htm
Audits of Accounts of State & State-Aided Institutions and Agencies	ORS 297.210 - 297.250	www.oregonlegislature.gov/bills_laws/ors/ors297.html
Bond or Letter of Credit for Member of Boards of Certain Districts	ORS 198.210 - 198.220	www.oregonlegislature.gov/bills_laws/ors/ors198.html
Conservation & Highway Scenic Preservation Easements	ORS 271.715 - 271.795	www.oregonlegislature.gov/bills_laws/ors/ors271.html
Construction of Statutes; General Definitions	ORS 174	www.oregonlegislature.gov/bills_laws/ors/ors174.html
Civil Rights Act of 1964-Title VII: Equal Opportunity Employment, Sexual Harassment and Discrimination	Volume 42 USC Chapter 21 Subchapter VI, Section 2000e - 2000e-17	www.eeoc.gov/laws/statutes/titlevii.cfm
County and Special District Retention Schedule	OAR 166, Div 150	arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_150.html
Government Ethics (Applies to all directors, employees, and agents)	ORS 244	www.oregonlegislature.gov/bills_laws/ors/ors244.html
Intergovernmental Cooperation	ORS 190.003 - 190.110	www.oregonlegislature.gov/bills_laws/ors/ors190.html
Local Budget Law -Required of district with a tax levy	ORS 294.305 - 294.565	www.oregonlegislature.gov/bills_laws/ors/ors294.html
Local Government Borrowing	ORS 287A	www.oregonlegislature.gov/bills_laws/ors/ors287A.html
Municipal Audit Law	ORS 297.405 - 297.555	www.oregonlegislature.gov/bills_laws/ors/ors297.html
Natural Resources Division; duties; insurance for soil and water conservation districts	ORS 561.400	www.oregonlegislature.gov/bills_laws/ors/ors561.html
Nonaggregate Mineral Surface Mines	ORS 517.905 - 517.915	www.oregonlegislature.gov/bills_laws/ors/ors517.html

Description	Law	Link
Oath of Office (Required for all directors)	Oregon Constitution, Article XV, Section 3	bluebook.state.or.us/state/constitution/constitution15.htm
Property of the state, counties and other municipal corporations	ORS 307.090	www.oregonlegislature.gov/bills_laws/ors/ors307.html
Public Contracting—General Provisions	ORS 279A	www.oregonlegislature.gov/bills_laws/ors/ors279a.html
Public Contracting—Miscellaneous Provisions	ORS 279	www.oregonlegislature.gov/bills_laws/ors/ors279.html
Public Contracting—Public Improvements and Related Contracts	ORS 279C	www.oregonlegislature.gov/bills_laws/ors/ors279c.html
Public Contracting—Public Procurements	ORS 279B	www.oregonlegislature.gov/bills_laws/ors/ors279b.html
Public Contracting—Review of Public Contracts	OAR 137, Div. 45	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_045.html
Public Contracting Model Rules—Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts	OAR 137, Div. 48	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html
Public Contracting Model Rules—General Provisions Related to Public Contracting	OAR 137, Div. 46	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_046.html
Public Contracting Model Rules—General Provisions Related to Public Contracts for Construction Services	OAR 137, Div. 49	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html
Public Contracting Model Rules—Public Procurement for Goods and Services	OAR 137, Div. 47	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html
Public Meetings	ORS 192.610 - 192.710	www.oregonlegislature.gov/bills_laws/ors/ors192.html
Public Records	ORS 192.001 - 192.607	www.oregonlegislature.gov/bills_laws/ors/ors192.html
Soil and Water Conservation; Water Quality Management	ORS 568	www.oregonlegislature.gov/bills_laws/ors/ors568.html
Soil and Water Conservation Commission membership; compensation and expenses; forfeiture of office; functions	ORS 561.395	www.oregonlegislature.gov/bills_laws/ors/ors561.html

Description	Law	Link
Special Districts Generally	ORS 198	www.oregonlegislature.gov/bills_laws/ors/ors198.html
Tort Actions Against Public Bodies	ORS 30.260 - 30.300	www.oregonlegislature.gov/bills_laws/ors/ors030.html
Unlawful Discrimination	ORS 659A	www.oregonlegislature.gov/bills_laws/ors/ors659a.html
Water Quality	ORS 468B	www.oregonlegislature.gov/bills_laws/ors/ors468b.html
Watershed Management & Enhancement; The Oregon Plan	ORS 541.890 - 541.969	www.oregonlegislature.gov/bills_laws/ors/ors541.html
Watershed Protection & Flood Prevention Projects	ORS 542.750	www.oregonlegislature.gov/bills_laws/ors/ors542.html

SDAO Main Office

PO Box 12613

Salem, OR 97309

Toll Free _____ (800) 285-5461

Salem Area _____ (503) 371-8667

Fax _____ (503) 371-4781

E-mail Accounting, Employee Benefits,
or General Information _____ sdao@sdao.com

E-mail Member Services _____ memberservices@sdao.com

E-mail Risk Management _____ losscontrol@sdao.com

E-mail Underwriting _____ underwriting@sdao.com

www.sdao.com

SDAO Claims Office

PO Box 23879

Tigard, OR 97281

Toll Free _____ (800) 305-1736

Tigard Area _____ (503) 670-7066

E-mail Property/Liability _____ claims@sdao.com

Fax _____ (503) 620-9817

E-mail Workers' Compensation _____ wc@sdao.com

Fax _____ (503) 620-6217

3 Conservation District Directors

Directors

“Director” is the title given to a person who is elected or appointed to serve on a conservation district board. In some states, directors are called supervisors or district officials. In Oregon, conservation district directors are elected in the November General Election held in even-numbered years. Directors serve four-year terms. Director terms are staggered so that all positions are not typically elected simultaneously. Staggered terms help provide continuity on the board and maintain operational consistency. A conservation district board may appoint a person to fill a vacant director position between elections.

Roles and Responsibilities of Directors and Boards

ORS 568.550 outlines the general statutory powers granted to conservation district boards (see Chapter 2). Individual directors do not have individual powers and authorities under statute, unless granted by the conservation district board. Individual directors may be given authority or power to act on behalf of the board for specific limited tasks. This authority or power is granted through board action (resolution, motion, policy) and must be recorded in the conservation district board meeting minutes. Conservation district boards may choose to limit or grant authorities to individual directors relating to different actions, such as:

- Staff supervision.
- Obligating conservation district funds.
- Serving as a conservation district spokesperson for public presentations, media.
- Managing projects.
- Obligating or committing conservation district staff time or other conservation district resources.
- Signing documents.

Effective boards work cooperatively as a unit to plan and oversee the implementation of their conservation district's programs. As a representative of the conservation district board, opinions expressed publicly by individual directors should be consistent with established board policy, regardless of the individual's personal agenda or opinions.

Director Position Descriptions and Policy

Although conservation district directors do not have individual powers and authorities under statute, unless granted by the conservation district board, it is in the best interest of the conservation district to identify the duties and responsibilities expected of individual directors. This can be accomplished by establishing conservation district director position descriptions or conservation district policy. Some customary duties and responsibilities of individual directors include:

- Attend and actively participate in all board meetings.
- Come to meetings prepared.
- Carry out committee responsibilities.
- Stay abreast of local conservation issues.
- Attend area and state meetings of the various state associations and other conservation partners.
- Participate in training opportunities.
- Promote the conservation district's work to local landowners.
- Promote the conservation district's work to its constituency.
- Promote the conservation district's work to agencies and organizations.
- Promote the conservation district's work to legislators and other decision makers regarding the conservation district's funding.

Conservation District Board Responsibilities

In order to effectively exercise the powers and authorities as stated in ORS 568, conservation district boards should:

- Identify local conservation needs, programs, and services.
- Keep its conservation district's mission ("reason for being") in focus.
- Work effectively with conservation district staff, cooperating agencies, and partners.
- Implement conservation district programs effectively.
- Be knowledgeable about laws that govern board operations, such as budget, audit, public meetings, and contracting.
- Develop and implement a long-range plan and an annual work plan.

- Report to the public on conservation district programs and accomplishments.
 - Inform legislators and local government officials of conservation district accomplishments.
 - Recruit, train, and utilize volunteers and associate directors.
 - Participate with the Oregon Department of Agriculture (ODA) in a periodic review of conservation district operations.
 - Recruit new conservation district directors and associate directors.
 - Seek new partners in conservation efforts.

Director Positions and Eligibility

ORS 568.560(2) and (3) describes the eligibility requirements for a person to become a conservation district director. ORS 568.560(1) requires that conservation district boards shall have either five or seven directors, who are elected at the November General Election in even-numbered years. Each conservation district is certified by ODA as having a five-director board or a seven-director board. A board must follow the processes described in ORS 568.565 to change its number of positions. See the section below on Changing the Number of Directors for more information.

District Zoning

To ensure proper representation in a conservation district, each conservation district is divided into legally-defined zones. A five-member board must have three zone director positions and two at-large director positions. By statute, a seven-member board must have five zone director positions and two at-large director positions. The term of office of each position is four years.

Zone Director Eligibility

To become a zone director, two options are available. All requirements listed under each option must be met to be eligible.

Option #1:

An individual may qualify for a zone position if the land ownership or land management requirements are met. For Option #1, a zone director must:

- Own or manage 10 or more acres of land in the district. Zone directors may either:
 - Reside within the zone that is represented, and own or manage 10 or more acres in the conservation district boundaries.
—or—
 - Reside within the conservation district boundaries, and own or manage 10 or more acres within the zone that is being represented.
- Be involved in the active management of the property.
- Be a registered voter.

Option #2:

An individual may qualify for a zone position in lieu of the land ownership or management requirements in Option #1. For Option #2, a zone director must:

- Reside within the zone that is represented.
- Have served at least one year as a director or associate director of a conservation district.
- Have a conservation plan approved by the conservation district.
- Be a registered voter.

At-Large Director Eligibility

There are no land ownership or management requirements for at-large positions. At-Large Directors must:

- Reside within the boundaries of the conservation district.
- Be a registered voter.

Vacating Director Positions

When a director position becomes vacant before the term expires upon ODA receiving notice of, or declaring a position vacant. As per ORS 568.560(7), a position becomes vacant under the following circumstances:

- A conservation district director is not attending publicly advertised meetings of the district board, and has missed at least three consecutive meetings; a majority of the board provides a written recommendation that the position be declared vacant by ODA. The

position becomes vacant when ODA issues a declaration. See the section below that describes the steps to vacate a position that is no longer active.

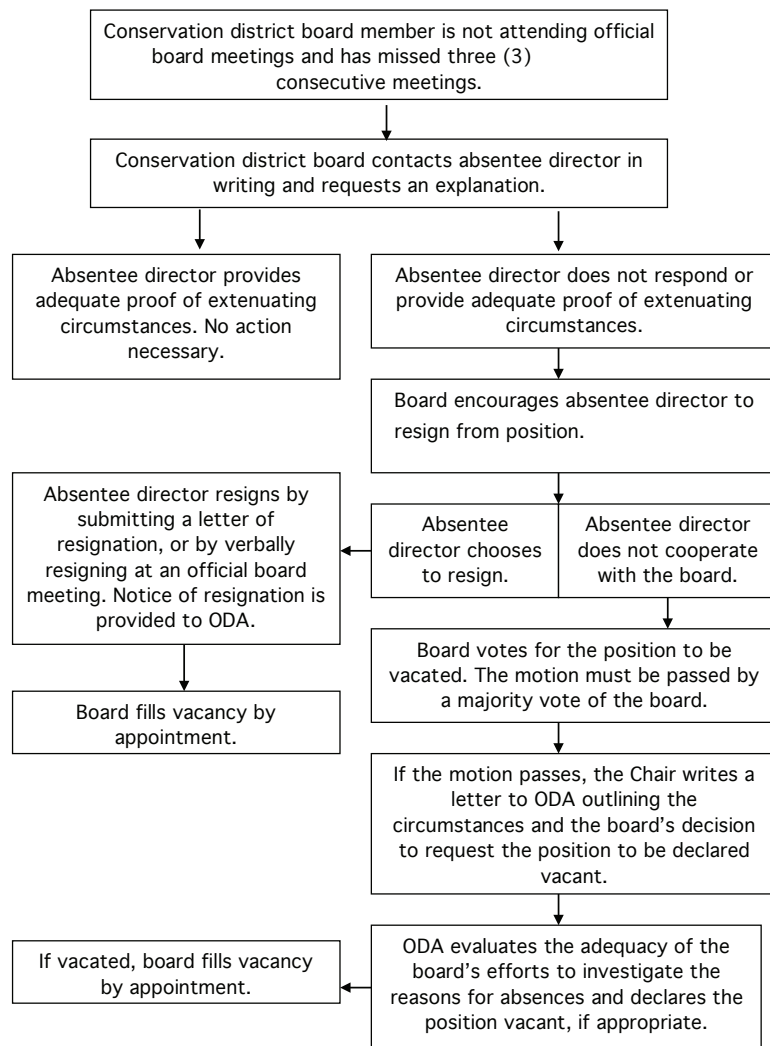
- No individual qualifies for election to have their name placed on the ballot, or to have the write-in votes cast in their name counted. The position becomes vacant on January 1 following the General Election.
- ODA determines a candidate that received the most votes does not qualify to hold the position. The position becomes vacant on January 1 following the General Election, unless another individual that is qualified has been appointed to the position.
- A director serving in a position no longer qualifies to hold the position. The position becomes vacant upon ODA declaring that the individual no longer qualifies for the position.
- A director resigns from a position. The position becomes vacant upon ODA receiving notice of the resignation.
- A director, elected or appointed, refuses to take the oath of office as a director. ODA may declare the position vacant if the oath of office signed by the director is not provided.

Vacating an Inactive Board Position

ORS 568.560(7)(a) states, “The department, upon the written recommendation of a majority of the members of the local governing body of a district, may declare vacant the position of a director who is absent from three consecutive meetings of the local governing body of the district. A position becomes vacant under this subsection upon the issuance of the declaration by the department.”

If a conservation district director is not attending publicly advertised meetings of the conservation district board and has missed at least three consecutive meetings, the board may request the position be declared vacant by ODA. Conservation district boards should use the following process to vacate an inactive board position.

VACATING AN INACTIVE BOARD POSITION



Filling a Vacant Position by Appointment

According to ORS 568.560(8), a board may fill a vacancy that occurs between General Elections by a majority vote of remaining board members. If the remaining board directors cannot agree on an appointee, ODA may make an appointment to fill the vacant position.

An appointed director must meet the director eligibility requirements as described above. For example, a conservation district board cannot fill a vacated zone director position with an associate director unless the associate director meets either Option #1 or Option #2 of the zone eligibility requirements.

An appointed director will serve until the next General Election, regardless of term. The appointment will end on January 1 following the next General Election. For example, if an individual is appointed to a position with a term that expires after the next General Election, that position must be listed on the next General Election ballot to fill the remainder of the term. The individual appointed may apply to have their name placed on the ballot to be elected to the position to serve until the term expires.

Changing the Number of Directors

Demographic changes within a conservation district's boundaries may make it necessary to reduce or increase the number of director positions. To change the number of director positions the conservation district must follow the procedures as outlined in ORS 568.565.

Upon the written recommendation and majority vote of the conservation district's board, the number of directors of the governing body may be either 1) increased from five to seven, or 2) reduced from seven to five. The zones and terms shall be determined by ODA as provided in ORS 568.560(5), ORS 568.565, and OAR 603-071-0025.

Director Elections



Conservation district director elections occur during the General Election in November on even-numbered years. ORS 568 and ORS 255 outline the basic process for director elections. Where ORS 568 is incomplete, election law under ORS 255 is followed. There are also a number of other election laws that apply to director elections such as ORS 260 for Campaign Finance Regulation and Election Offenses, and ORS 251 for the Voters' Pamphlet.

ODA is the filing officer for conservation district elections. Conservation districts and candidates must follow specific guidelines to have candidate names placed on the ballot. ODA notifies each conservation district which positions are up for re-election, procedures for candidates and conservation districts, applicable laws and rules, and timelines. Conservation districts and candidates are responsible to submit the required forms and information to ODA and county clerks before the deadlines. Candidates are responsible for publishing their information in the local Voters' Pamphlet.

Best Management Practice

The November General Election is a prime opportunity to market the conservation district's programs and services. Directors need to be aware that there are campaign restrictions on conservation district staff. These restrictions are outlined in Chapter 6.

Director Election Procedures



Election laws are enacted and modified by the Oregon Legislature. The Secretary of State, Elections Division publishes several resources prior to each General Election that reflect any changes in election law. Prior to the beginning of the election process, ODA provides each conservation district a packet with candidate instructions and filing forms, positions on the ballot, and information about law changes and procedures for conservation district director elections.

Director positions that will be on the General Election ballot are:

- Positions with the term ending that election year.
- Appointed positions since the last General Election.
- Positions that are vacant.

It is the responsibility of the conservation district and candidates to make sure election deadlines are met. Most counties publish a Voters' Pamphlet. Contact the local county clerk to get the instructions and deadlines to be listed in the Voters' Pamphlet.

Best Management Practice

Conservation district boards should encourage qualified persons to be candidates for director positions. It is in the best interest of the conservation district to have at least one candidate for each position listed on the ballot.

Election Issues

During each General Election, issues may arise that cause difficulties for a conservation district board. Some examples follow:

Best Management Practice

Counting write-in votes adds to the county's election costs and can result in an unfavorable public perception of the conservation district. This again illustrates the importance of having qualified candidates for all positions on the ballot.



No candidate files to have their name on the ballot (write-ins)

If no candidate files to have their name placed on the ballot, the position becomes open for write-in votes on the ballot. In order for the write-in votes to be counted for an individual, a "Declaration of Intent and Request for Write-In Votes to be Tallied" form must be filed with the Department per ORS 568.530. In the event the minimum number of required write-in votes is met, the county will need to count all write-in votes per their regular election law procedure and ORS 254.500.

No candidate filed to be listed on the ballot or to have write-in votes counted

If no individual files to have their name placed on the ballot and no person files to have the write-in votes counted, then the county clerk may not count any votes cast for the position. The position becomes vacant on January 1 following the General Election. The conservation district board director previously holding the position does not continue serving in the position after January 1 following the General Election.

Tie votes

If a board position in the General Election ends in a tie vote, an automatic recount results. ODA will call the county clerk and request a recount. If, after the recount is done, there is still a tie vote, the winner is identified by drawing lots (e.g., flip of a coin, drawing of a straw). The law does not state how the lot is to be drawn. The County Election Officer or ODA may draw the lot. If ODA draws the lot, the candidates who are tied are invited to be present for the drawing per ORS 254.575.

Holding more than one position

An individual cannot hold more than one position on the same conservation district board.

Holding two lucrative positions

The Oregon Constitution Article II, Section 10 does not allow a person to hold two lucrative elected positions at the same time. However, since conservation district directors are not paid, director positions are not considered lucrative.

Employee serving as director on another conservation district board

An employee of one conservation district may serve on the board of another conservation district, as long as the director eligibility requirements are met. An employee of an agency (ODA, DEQ, NRCS) may also serve on a conservation district board, as long as the director eligibility requirements are met.

Winner not qualified

If an individual gets the majority of the votes, by write-in or otherwise, for a conservation district director position at the General Election but does not meet the eligibility requirements for that director position, the individual getting the next highest number of votes does not assume the position. The position becomes vacant January 1 following the General Election.

General Election Costs for Director Elections

ORS 568.542 states, "The expenses incurred for the election of directors of a soil and water conservation district under ORS 568.210 to 568.808 and 568.900 to 568.933 shall be paid out of county funds by the county or counties within which the territory of the district lies." Some county clerks may not be aware of this provision. If a conservation district receives a bill from its county clerk for conservation director elections, the clerk should be provided a copy of ORS 568.542.

ORS 568.542 does not apply to conservation district tax measures. Conservation districts are responsible for the cost of a tax measure placed on the ballot.

Oath of Office

Article XV, Section 3 of the Oregon Constitution provides that "[E]very person elected or appointed to any office under this Constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office."

All directors (elected and appointed) need to take the oath of office at the first conservation district board meeting they attend following January 1, as required by the Oregon Constitution. An individual cannot assume the official duties of conservation district director until the oath of office is taken.

Instructions for administering the oath of office:

1. Two copies of the Oath of Office are to be signed by:
 - a. The elected or appointed director.
 - b. The conservation district board chair, a notary public, or other authorized official, such as a county commissioner, who is present at the swearing in of the director.
2. One copy of the Oath of Office is retained for your records.
3. One copy of the Oath of Office is to be mailed to:

Attn.: Grants Administrative Officer
Oregon Department of Agriculture
SWCD Program
635 Capitol St. NE
Salem, OR 97301

Recommended Policy

For consistency, each conservation district should designate and authorize a person(s) to be the authorized signatory for the Oath of Office. There is no requirement that the signatory be a notary public. The conservation district board chair, or other official can be designated to sign the Oath of Office.



The Oath of Office form can be found in the Appendix. A link to download this form is also included in the Resources section at the end of this chapter.

Recall Election Costs

Conservation district directors are subject to recall by the local citizenry (ORS 198.425). The statutes that govern the process of conducting a recall are described in ORS 249.865 through 249.877. If a conservation district director is subjected to a recall election, the cost of the election must be paid by the conservation district. The cost of the recall election is not the responsibility of those initiating the recall petition drive, nor the county, nor the Oregon Department of Agriculture.

Associate Directors and Director Emeritus

Conservation districts can expand conservation district capabilities by appointing associate directors and director emeritus. Associate directors and director emeritus do not vote on board decisions. However, they can augment the board's knowledge and experience level and assist with conservation district programs and activities. Associate directors and director emeritus, once officially appointed by the conservation district board, are covered by the same Tort Liability Insurance as the directors while doing conservation district work. More information on Tort Liability Insurance is provided in Chapter 4.

Associate Directors



An associate director serves until January 1 in odd numbered years. Every two years conservation district boards should select individuals they wish to appoint or reappoint to associate director positions. The conservation district should record in its minutes when a person is appointed to be an associate director. An associate director does not vote when the board makes an official decision. An associate director may be appointed to a vacant position or elected to a position. The associate director must meet the statutory requirements for director eligibility as outlined earlier in this chapter. Documentation of the associate director appointment is required if an associate director wishes to qualify as a zone director.

Best Management Practice

Conservation district boards are encouraged to do a self-assessment of the strengths and weaknesses of their boards. If there appears to be an area of expertise that is needed but is missing among the board of directors, the conservation district board could recruit an associate director with that expertise.

Director Emeritus

Director emeritus is an appointed position with a conservation district. The position is reserved for a person who previously served as a conservation district director in the United States or its territories where conservation districts exist. A director emeritus does not vote when the board makes an official decision.

A director emeritus serves until January 1 in odd numbered years. Every two years conservation district boards should select individuals they wish to reappoint as directors emeritus.

Administrative Structure



ORS 568.560(4) requires all conservation district boards to designate, at a minimum, a chair and secretary from among the directors. A conservation district should also appoint other officers and committees as needed. It is the responsibility of each conservation district board to identify its needs and adopt policies, duties and procedures for each of its officials.

Best Management Practice

Conservation districts should select and adopt board meeting operating procedures and provide this information to all board members and others attending conservation district board meetings. Some conservation districts post their board meeting rules on the wall or provide a written copy of these rules to people attending the meetings to help them understand the procedures under which the board conducts meetings.

Recommended Policy

It is recommended that job descriptions be written and approved by the board for each officer and general board position.



The following is a list of customary officer positions and responsibilities.

Chair

The chair is selected by the conservation district board to carry out certain leadership functions and responsibilities. The chair is typically given responsibility to:

- Set meeting agendas.
- Preside at meetings.
- Appoint committees.
- Assign responsibilities.
- Request reports.
- Orient new directors.
- Any other functions and responsibilities as determined by the board.

One of the main roles of a chair is to preside at conservation district board meetings. The chair usually conducts the meeting according to some common parliamentary procedures or according to other established conservation district policy. Generally the chair entertains motions from other members of the governing body, calls on people to speak, appoints committees if necessary, limits discussion, and facilitates the process to conduct business.

Serving as the chair does not preclude a director from voting. In fact, one of the most important functions of an elected official is to participate in the official decision-making process. All directors, including the chair, should vote on all motions and decisions unless there are any compelling circumstances, such as an actual conflict of interest. No statute prohibits any director or the chair from making or seconding a motion.

Vice Chair

Many conservation districts choose to elect a vice chair as one of its officers. If a conservation district decides to have a vice chair, the district should identify the roles and responsibilities for the position. Some of the responsibilities may include:

- Act in place of the chair when needed.
- Advise the chair on program and policy.
- Arrange special programs for regular board meetings.
- Serve as chair of standing committees.
- Other responsibilities defined by the conservation district board.

Secretary



As mentioned earlier in this section, ORS 568.560(4) states, “The directors shall designate a chairperson, secretary and other officers as necessary and may, from time to time, change such designation.” Every conservation district must select a director to serve as the board secretary. However, the conservation district director selected as secretary is not required to perform all secretarial or clerical functions within the conservation district. A conservation district board may delegate secretarial duties to an employee, associate director, contractor, or volunteer if desired. It is common for conservation district staff to record conservation district board minutes and prepare information, agendas, correspondence, reports, and public meeting notices.

Best Management Practice

It is recommended conservation district boards adopt policy that clarifies the responsibilities of the secretary. For example, the conservation district may choose to require a signature of the secretary on conservation district board meeting minutes, resolutions, budget documents, and other selected documents. There may also be specific responsibilities for the secretary to record meeting minutes during an executive session when other staff or associate directors may not be available.

Treasurer

Many conservation districts choose to elect a treasurer as one of its officers. Typical functions of a treasurer include:

- Oversee the conservation district's finances.
- Serve as chair of the finance committee.
- Obtain/provide fidelity or surety bonds for persons handling funds (to protect from theft and misuse of conservation district funds).
- Lead budget development.
- Receive, deposit, disburse funds.
- Keep complete financial records.
- Present financial statements at conservation district board meetings.
- Other responsibilities defined by the conservation district board.

Other Officers and Director Roles

Conservation district boards may designate additional officers or identify other roles for directors based on local need. Examples might be, a meeting facilitator, time keeper, volunteer coordinator, public relations, media contact, or spokesperson.

Registered Agent and Registered Office

Special Districts are required to designate a registered agent and a registered office per ORS 297.465, Municipal Audit Law and OAR 162-010-0020(10). ORS 297.465(4) references ORS 198.340, Dissolution of inactive conservation districts requires conservation districts to designate a registered agent and a registered office:

ORS 198.340 Designation of Registered Office and Agent.

- (1) A special district shall designate a registered office and a registered agent. The registered agent shall be an agent of the district upon whom any process, notice or demand required or permitted by law to be served upon the district may be served. A registered agent shall be an individual resident of this state whose address is identical with the registered office of the district. The registered office may be, but need not be, the same as the place of business of the special district.
- (2) The district may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State and county clerk of each county in which located a statement setting forth:
 - (a) The name of the district.
 - (b) If the address of its registered office is changed, the address to which the registered office is to be changed.
 - (c) If its registered agent is changed, the name of its successor registered agent.
 - (d) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - (e) That such change was authorized by resolution duly adopted by the district board.
- (3) The statement shall be subscribed and sworn to by the secretary, financial officer or chairperson of the district board.

The original of the registered office and agent form must be filed with the Secretary of State, and a copy filed with the county clerk and with ODA's Natural Resource Program Area.

The registered office and agent form for special districts can be found in the Appendix. A link to download this form is also included in the Resources section at the end of the chapter.

Committees

Committees can be an effective way for conservation districts to plan and implement their work. There are two primary types of committees:

1. A standing committee is a permanent committee charged with working on a basic aspect of conservation district work. Standing committees may have a focus of education, finance, personnel, resource concerns, community relations, land use planning, water quality, or other important issue.
2. A short term or “ad hoc” committee is a temporary committee charged with a specific task, or for a specific time period. Ad hoc committees may focus on an election, annual meeting, grant writing, or other specific task. Ad hoc committees are disbanded when the assigned task or timeframe is completed.



When forming committees, conservation districts should clearly identify:

- Purpose of the committee.
- Expected outcomes.
- Desired role and participation of each entity on the committee (e.g., voting roles, consultation, advisory only).
- Time frame for reporting back to the conservation district board or completing tasks.

Committee members may include conservation district directors members, associate directors, directors emeritus, conservation district advisors, representatives of cooperating agencies and associations, or interested citizens. However, if there is a quorum of conservation district directors on the committee, the committee meetings are subject to public meeting law.

Legal Requirement

Public record and public meeting laws apply to any committee established by the conservation district board. If the committee has been given authority by the board to make recommendations to the board or make decisions on behalf of the board, its meetings are considered public meetings, and must be duly noticed and comply with all other aspects of public meeting law, see Chapter 7.

Director Compensation

Recommended Policy

Each conservation district should adopt policies and procedures on the compensation of directors. Policies should include conditions, processes, rates, and funding sources for reimbursement and compensation. Conservation districts that choose to compensate and/or reimburse its directors must also verify that this is an allowable expense for the designated funding source (e.g., general fund).



Every conservation district board has the statutory authority to compensate and/or reimburse its directors for costs incurred while doing conservation district business, ORS 198.190.

Compensation: A conservation district director may receive an amount not to exceed \$50 for each day, or portion thereof, as compensation for services performed as a member of the board. Director compensation shall not be deemed lucrative and is subject to payroll withholding as required by federal and state law including the Social Security Act.

Reimbursement: The conservation district board may reimburse a director for actual and reasonable traveling and other expenses necessarily incurred by the director while performing official duties.

Director Training

Conservation District employees and directors should use the numerous training opportunities available to receive training from the SWCD Program staff and SDAO to increase their knowledge and understanding of legal requirements and best management practices.

Resources

Statutes, Laws, and Rules

ORS 198—Special Districts Generally

https://www.oregonlegislature.gov/bills_laws/ors/ors198.html

ORS 251—Voters’ Pamphlet

https://www.oregonlegislature.gov/bills_laws/ors/ors251.html

ORS 254—Conduct of Elections

https://www.oregonlegislature.gov/bills_laws/ors/ors254.html

ORS 255—Special District Elections

https://www.oregonlegislature.gov/bills_laws/ors/ors255.html

ORS 260—Campaign Finance Regulation; Election Offenses

https://www.oregonlegislature.gov/bills_laws/ors/ors260.html

ORS 568—Soil and Water Conservation; Water Quality Management

https://www.oregonlegislature.gov/bills_laws/ors/ors568.html

OAR 603—ODA: Referendum and Election Procedures

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_603/603_tofc.html

Oregon Constitution, Article XV, Section 3—Oath of Office

<http://bluebook.state.or.us/state/constitution/constitution15.htm>

Other Information

Oath of Office form

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/DistrictOperations.aspx

Director Powers and Responsibilities—ODA Fact Sheet

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDDirectorPowersfactsheet.pdf

Registered Office and Agent form

See Appendix Chapter 3, or

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDRegisteredAgentOfficeform.pdf

Registered Agents and Service of Process FAQ

<http://sos.oregon.gov/business/Pages/registered-agents-service-of-process.aspx>

To Update Registration

<http://sos.oregon.gov/business/Pages/update-registration.aspx>

Director elections

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/CandidatePacketforSWCDDirectorElections.pdf

4 Conservation District Operations

The purpose of this chapter is to highlight information regarding conservation district operations. While this information was gathered from many sources, they are all are cited in the Resources section at the end of the chapter. Three primary sources are *Oregon Government Ethics Law, A Guide for Public Officials*; *Attorney General's Public Contracting Handbook*; and ORS 244 and 568.

Staying Legal

The Five Basic Requirements

Conservation districts are governed by specific enabling legislation under ORS 568. Conservation districts are also subject to other statutes and administrative rules effecting local government and special districts.

All conservation districts should become familiar with the five basic requirements identified in ORS 568. At a minimum, conservation districts need to comply with these five requirements to stay legal and be eligible for grant funds administered by ODA.


The following table provides a list of the five requirements and a reference to the statutes relating to these requirements.

Legal Requirement

The annual meeting time and date must be set by resolution of the board, not by motion or other means. A sample resolution can be found in the Appendix, and is available to download from the link provided in the Resources section at the end of this chapter. Copies of the annual meeting resolution and the published notice of the annual meeting must be sent to the ODA SWCD Program.

Legal Requirement

All district meetings must comply with the Americans With Disabilities Act (ADA). For information on the requirements of the ADA, see the link to the ADA website in the Resources section at the end of this chapter.

Requirement	Relating Statute and Text
1. Annual Work Plan 2. Long-Range Plan	ORS 568.554 District to submit program and work plans for department review. Each conservation district shall submit to the State Department of Agriculture its proposed long-range program and annual work plans for review and comment.
3. Annual Meeting  4. Annual Report	ORS 568.580 Annual meeting. Each year after the creation of the first board of directors at a time fixed by resolution of the board, the board, by giving due notice, shall call an annual meeting of the landowners in the district and present an annual report and audit. ORS 568.590 Notice of annual meeting. No later than 15 days prior to the annual meeting, the board of directors for a soil and water conservation district shall cause notices to be published in a paper of general circulation in the area, setting forth the time and place of holding the meeting.
5. Annual Financial Reports	ORS 568.610 Records; audits. The board of directors for a soil and water conservation district shall: (1) Provide for the keeping of full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted. (2) Provide for an annual audit of the accounts of receipts and disbursements in accordance with ORS 297.210, 297.230 and 297.405 to 297.555.

Annual and Long-range Business Plans



Planning is the basic tool to develop conservation district programs. To develop and maintain an effective conservation district program, directors and staff must identify local conservation needs, often referred to as ‘resource concerns;’ set corresponding goals; develop clear measurable objectives towards those goals and identify the tasks needed to accomplish those objectives. Oregon Revised Statute (ORS) 568.554 requires conservation districts to create and submit to the Oregon Department of Agriculture (ODA) both a long-range business plan and an annual work plan. The long-



range business plan, annual work plan, and annual budget should all work together to guide the daily operations and programs of the conservation district.

Legal Requirement

Beginning with the 2015-2017 biennium, each conservation district will be required to have a current long-range business plan on file with ODA in order to be eligible for the SWCD Capacity Grants.

Best Management Practice

Examples and tools for long-range business and annual work plans can be found on the SWCD Program web site in the Planning Toolbox, see the Reference section at the end of the chapter.

Long-range Business Plans

A long-range business plan is developed and updated every three to five years as a broad outline of the conservation district’s purpose, response to natural resource concerns, and current and future operations. The long-range business plan is a living document and should be reviewed annually and used to provide guidance in developing the annual work plan. The long-range business plan should have goals and objectives which can be connected to the individual tasks of the annual work plan.

A good long-range business plan can be used to educate the public, partners, and potential funding agencies about the mission, available programs, and needs of the conservation district. The plan can identify areas for collaboration, where responsibilities overlap with partners, and identify where help is needed. It is important to include the public and partners in the long-range business plan development and updates as much as possible. The conservation district may want to review the long-range and strategic plans of their partners, in particular NRCS and their local watershed councils to determine areas of potential collaboration.

If a conservation district is considering asking their constituents for the authority to levy an ad valorem tax, their long-range business plan becomes a powerful tool to explain the purposes and services of the conservation district. The plan can show the public what potential services the conservation district would like to offer and their associated resource needs that justify the ad valorem tax.

Best Management Practice

The SWCD Program staff can provide assistance in starting and completing a Long-range Business Plan. A template is also available on the SWCD Program web site for conservation districts to use, see Resources section.



Contents of a long-range business plan

The following is a general outline and explanation of the contents of a typical conservation district long-range business plan:

1. An executive summary.
2. Geography and agriculture of the conservation district.
3. The structure and governance of the conservation district.
 - a. This can include an explanation of the enabling and governing legislation, history of the conservation district, and a description of the conservation district leadership.
4. The mission statement of the conservation district.
 - a. A mission statement describes the fundamental purpose of the conservation district, succinctly describing why it exists and what it does to achieve its vision.
5. The vision statement of the conservation district.
 - a. A vision statement outlines what the conservation district wants to be, or how it wants the county in which it operates to be.
 - b. The vision statement is a long-term view and concentrates on the future.
6. Values and/or guiding principles of the conservation district.
 - a. Values are beliefs that are shared among the stakeholders of the conservation district.
 - b. Values drive the conservation district's culture and priorities and provide a framework in which decisions are made.
7. The roles and responsibilities of the conservation district and partners.
8. The goals and objectives of the conservation district.
 - a. Goals are broad outlines of where the conservation district wants to go.
 - b. Goals are usually long-term.
 - c. Objectives are concrete steps to reach the goals and have measurable outcomes.
 - d. In the conservation district's annual work plan, the individual items will be the tasks needed to reach the objectives.

9. The natural resource concerns of the conservation district.
 - a. The list of natural resource concerns should include current conditions and expected outcomes.
10. The conservation district's programs.
 - a. The conservation district should think about how the services of the conservation district fit into program areas that relate to both the natural resource concerns and the goals of the conservation district.
11. The current capacity and future needs of the conservation district.
 - a. This is the section of the long-range business plan where the conservation district can justify the need for additional funding and resources.

Annual Work Plans

An annual work plan outlines specific activities the conservation district will pursue in the next fiscal year to address the goals and objectives defined in the long-range business plan. The annual work plan describes in detail who is going to do what, by when, and how. The plan should be completed prior to the beginning of the fiscal year and cover the activities planned over the next fiscal year (July 1 to June 30). The annual work plan is submitted to ODA for review and comment as part of the application process to be eligible for the SWCD Capacity Grants.

The annual work plan should include work and tasks that can realistically be accomplished during one year. Each task should be tied to a specific goal and objective from the long-range business plan. Tasks should define a planned completion date, identify who is responsible to implement it, and estimate the amount of time to complete the task. Some annual work plans also include a budget for each task. The annual work plan should include the daily operations of the conservation district as well as programs, events, water quality projects, and Scope of Work tasks. Daily operations include staff and board meetings, answering public inquiries, bookkeeping, partnership meetings. Conservation district programs should be broken down to the project and task level in order to accurately develop timelines and completion dates, and to assign the responsible person(s).

A workload analysis is often included in an annual work plan. Workload analysis is a method used to determine the time, effort, and resources necessary to carry out the conservation district's operations,

resulting in identifying the conservation district's actual staffing needs to complete the annual work plan. In its simplest form the workload analysis includes each staff, board member, and volunteer assigned a particular amount of time (either in hours or days) to complete each task of the annual work plan. Adding up the total hours or days assigned to each person and comparing that number to the maximum available time will allow the conservation district to determine if each person is under-worked, overworked or working to their capacity. When calculating maximum available hours or days, be sure to include holiday, vacation, and sick days. After performing an initial workload analysis, the conservation district may need to re-balance task assignments, scale back planned programs, and/or hire additional staff.

The annual work plan is also a useful tool for performance evaluations to help determine if staff are meeting goals and completing assigned tasks. An example annual work plan with a workload analysis can be found on the SWCD Program web site listed in the Resources section at the end of the chapter.

Other Legal Requirements

Conservation districts should become familiar with the other statutes and administrative rules relating to conservation district operations identified in Chapter 2 of this Guidebook. Of particular importance, are the statutes and administrative rules relating to public meetings and records, conflict of interest, employment laws, public contracting, civil rights, and discrimination.

Posting Requirements

As an employer of record, a conservation district is required by law to post certain information at a readily visible site in the conservation district office. These laws are commonly referred to as federal and state posting requirements, and provide legal information to employees on minimum wage, family and medical leave, and other employment laws. Information on the posting requirements and the individual posters will be discussed in Chapter 8.

Public Meeting Law

The Oregon form of government requires an informed public be aware of the deliberations and decisions of governing bodies, and the information used to make the decisions. It is the intent of Oregon's public meeting law that decisions of governing bodies be arrived at openly. Thus, public meeting law provides that any member of the public must be permitted to attend any meeting of the governing body, except for those designated as "executive sessions." Public meeting law addresses meeting access by the public, notice of meetings, minutes and the recording of public votes. Public meeting law will be discussed in Chapter 7.

Public Records Law

The legislative policy that underlies Oregon's public records law substantiates that the public is entitled to know how the public's business is being conducted. The public records law advances this policy by granting the public a broad right to examine records created, maintained, cared for, or controlled by public bodies. Additionally, public records retention rules provide for the retention and disposition of public records. Public records law and retention rules will be covered in Chapter 7.

Government Ethics Law



The provisions in Oregon government ethics law restrict some choices, decisions, or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens, because service is a public trust. The provisions in ORS 244 were enacted to provide safeguards for that trust.

Public officials are held personally responsible for complying with the provisions in Oregon government ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose the nature of conflicts of interest. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

The rest of this section outlines the basic law. Some of the content is taken directly from *Oregon Government Ethics Law, A Guide for Public Officials*, or directly from ORS 244. The Oregon Ethics Commission should be consulted if there are any questions.

Best Management Practice

Every director and employee of each conservation district should read the *Oregon Government Ethics Law, A Guide for Public Officials*. The document can be found in the Appendix or obtained from the Oregon Ethics Commission or on the ODA SWCD Program web site, see the Resources section at the end of this chapter.

Who is covered

ORS 244.020(14) describes a public official as any person who, when an alleged violation occurs, is serving the State of Oregon, any of its political subdivisions, or any other public body of the state as an officer, employee, agent or otherwise, whether the person is compensated for such services or not. Public officials under ORS 244.020(14) include conservation district directors, associate directors, employees, and volunteers with regular duties. Government ethics law also covers public officials' relatives, members of their household and businesses with which officials or relatives are associated. Relative is defined in ORS 244.020(15) and includes the following partial list:

- Your spouse.
- Your children or spouse's children.
- Your siblings and spouses of siblings.
- Your spouse's siblings and their spouses.
- Your parents and spouse's parents.
- Any person for whom you have a legal support obligation.

Prohibited uses

The following is a partial list of the common prohibited uses of a public official's position by the public official, their relatives, members of their household, or related businesses:

- Using or attempting to use an official position to obtain financial gain, or avoidance of financial detriment, which would not otherwise be available, if not for the holding of the official position or office.
- Solicitation or promise of future employment based on decisions made or actions taken.
- Use of confidential information for personal gain.
- “Actual” or “potential” conflict of interest.
- Exceptions (partial list):
 - Reimbursement of expenses.
 - “Honorarium” up to \$50.
 - “Gifts” from sources that have an “administrative or legislative interest” up to \$50 per calendar year.
 - “Gifts” from sources with no legislative or administrative interest in an unlimited amount.

Conflict of interest

An “**actual conflict of interest**” is that which **would** result in private monetary or pecuniary benefit or detriment of that public official. If a director has an actual conflict of interest he or she must announce publicly the nature of the conflict (i.e., have it recorded in the minutes), and refrain from participation in discussion, debate, or voting on the issue. The director with the actual conflict of interest may not vote except in circumstances where their vote is required to meet the minimum quorum requirements. If other public officials not in an elected position (associated director, employee, volunteer) have an actual conflict of interest, they must notify their appointing official (supervisor) in writing of the conflict of interest.

A “**potential conflict of interest**” is that which **could** result in private pecuniary benefit or detriment. If an elected director has a potential conflict of interest, he or she must announce publicly the nature of the potential conflict prior to taking any action.

Contracts and Agreements

Public contracting is a complicated process. ODA provides limited technical assistance or legal advice. Conservation districts are encouraged to seek assistance from legal counsel, attend trainings and workshops, and contact other conservation districts that have training and experience.

Public Contracting

Conservation districts are required to follow state contracting law (ORS 279, 279a, 279b and 279c; OAR Chapter 137 Divisions 45 through 49). Each conservation district should adopt public contracting rules and policies that outline the method for which public contracts, services, and goods are procured. The Department of Justice has a publication titled *The Attorney General's Public Contract Handbook*, which can be purchased. Be aware that this handbook was published in 2010 and revisions to public contracting law have been made since then. The most current model rules for public contracting are contained in OAR Chapter 137 Division 46 through 49, see the Resources section.

Hold Harmless or Indemnity Clauses and Review of Draft Contracts and Agreements

It is important to include a "hold harmless or indemnity" clause in contracts and agreements. A hold harmless clause specifies that the conservation district will not be responsible for any actions by the contractor or others party to the contract that cause damage to others. Any contract or agreement prepared by an entity other than the conservation district, should be reviewed carefully to insure that the hold harmless clause does not hold the conservation district accountable for the actions of the other party. Tort Liability Insurance Coverage, provided through the Oregon Department of Administrative Service, Risk Management Program, only covers the conservation district for its representatives' actions, not those of another party.

The standard "hold harmless" clause for conservation district contracts and agreements is:

"The conservation district agrees to be responsible for any damage or any third party liability which may arise from its (name of project) subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260-30.300, and the Oregon Constitution, Article XI, Section 7, to the extent of liability arising out of negligence of the conservation district."

ODA has resources available to review contracts and agreements. ODA can help conservation districts determine if there are any concerns or problems in the contract or agreement, provide guidance to minimize the risk to the conservation district, and help modify the wording of the liability or indemnity portions of the contract or agreement. However, conservation districts are encouraged to have contracts and agreements reviewed by legal counsel and/or other appropriate entities.

Contract Liability—Loss of Tort Coverage

Tort liability does not apply to liability assumed under a contract. If a conservation district contracts with a person to do something, that person has the same rights as if they had contracted with a private company. If something goes wrong and the conservation district breaches the contract, the conservation district could be sued (e.g., if the conservation district fails to make payment for work performed under the contract). If that happens, the general liability insurance provided through ODA and the Department of Administrative Service, Risk Management Program does not apply. Tort liability insurance only covers legal actions involving torts.

Vehicles

Conservation District Vehicles

When purchasing a vehicle, it is important to remember that conservation district funds are public funds. Therefore, the conservation district must use a competitive process when purchasing a vehicle. Conservation districts are eligible to purchase state surplus vehicles, and should contact the Oregon Department of Administrative Services (DAS) by visiting the DAS web site for more information. Regardless of the vendor, or if the conservation district chooses to purchase a new or used vehicle, conservation districts must follow the procurement procedures set out in ORS 279A.

Insurance coverage for conservation districts

All conservation district directors, associate directors, employees, and volunteers are provided tort liability coverage under the state's self-insurance program. ODA pays the required charges to the state's Risk Management Division for this coverage. Every two years, ODA provides each conservation district a copy of the insurance documents. The documents can be downloaded from the Insurance and Risk Management section in ODA's SWCD Services, see link in the Resources section, or contact the ODA SWCD Program for copies.

Conservation District directors and staff should review and become familiar with the insurance documents and the provisions of this coverage, and be clear about what is and is not covered. The information in the documents will be helpful when determining what additional insurance is needed or desired for the conservation district.

Insurance coverage for conservation district-owned vehicles

Oregon's financial responsibility law (ORS 806) requires every driver to insure their motor vehicle with at least the minimum coverage of automobile insurance. Conservation district representatives are covered by the state's self-insurance policy, and are provided liability protection under the Oregon Tort Claims Act (ORS 30.260-30.300) while operating a conservation district-owned vehicle. If a conservation district wishes to obtain its own comprehensive automobile insurance for collision, fire, theft, replacement, and other costs, the conservation district will need to purchase the additional insurance coverage through a private carrier.

Oregon tort claims act exclusions

Be advised there are some exclusions from coverage under the Oregon Tort Claims Act. Specifically, the limits and protections of the Oregon Tort Claims Act do not apply when conservation districts operate vehicles or work outside the state of Oregon. If conservation districts are operating vehicles and/or conducting business outside of the state of Oregon, they should purchase extra liability insurance that would cover claim costs exceeding the limits provided under the state’s policy.

There are additional exclusions identified in the "Local Government Self-Insurance" document. Conservation districts may choose to purchase additional insurance to cover identified exclusions that affect their conservation district, such as the use of watercraft over 25 feet. Conservation districts should consult with insurance providers to determine additional insurance needs and coverage requirements.

Use of Conservation District and Personal Vehicles

Best Management Practice

As a risk management practice, conservation districts should require proof of insurance from those people using personal vehicles for official conservation district business.



Personal vehicles are often used by conservation districts for official business. It is important that all conservation districts ensure that employees who use personal vehicles have at least the minimum insurance required by state law. It is essential to have policies and procedures regarding the use of both conservation district and personal vehicles for official conservation district business. These

Recommended Policy

These items should be addressed in conservation district policies.



	Conservation District Vehicle	Personal Vehicle
Licensing and insurance documents (e.g., drivers license, vehicle registration, insurance)	X	X
Accident and/or claim reporting requirements and procedures	X	X
The conditions under which vehicles can be used such as, what is official business, or what approval is needed to use a personal vehicle.	X	X
Reimbursement rates		X
Mileage documentation requirements	X	X
Safety requirements, equipment, and/or inspection and maintenance of vehicles (seat belts, operational standards)	X	
Clarification that conservation district is not responsible for repairs and/or maintenance of personal vehicles		X

policies and procedures apply to directors, associate directors, directors emeritus, staff, volunteers, and any other agents of the conservation district.

An accident occurs with a personal vehicle being used on conservation district business?

A person's own automobile insurance takes first position. If the limits of the person's insurance are exceeded, then the liability coverage from the state takes second position and covers the damages up to established policy limits.

Use of State or Federally-owned Vehicles

Conservation districts often ask about the insurance requirements when using USDA Natural Resources Conservation Service (NRCS) or other non-conservation district-owned vehicles. NRCS guidance pertaining to insurance requirements when conservation districts use Natural Resources Conservation Service (NRCS) vehicles is contained in the *Oregon Supplement to the NRCS General Manual 120, part 405 subpart F*. This information states that NRCS may loan vehicles to a conservation district and that all loans require a formal written agreement and must be signed by the NRCS State Conservationist and the Chair of the conservation district board. The conservation district shall carry a property damage and bodily injury liability insurance policy covering its employees and others under its supervision, while driving NRCS vehicles on conservation district assignments when they would not be agents of the government. The policy shall be in an amount approved by the NRCS State Administrative Officer (a minimum of \$100,000/\$300,000 liability and \$50,000 property damage) and shall include the United States as an insured there under. The conservation district will also be responsible for damage to the equipment resulting from gross negligence of a conservation district or state employee.

State Motor Pool Vehicles

Conservation districts are eligible to lease vehicles from the state motor pool. In doing so, a conservation district must enter into an "Intergovernmental or Interagency Agreement for the Cooperative Provision and Use of Vehicle Fleet and Motor Pool Services" with the state motor pool. Any conservation district considering leasing a state motor pool vehicle is urged to be sure it has reviewed the agreement carefully, particularly with respect to the kinds of comprehensive automobile insurance that might be needed.

The state motor pool will require the conservation district to provide to the DAS a "certificate of insurance" showing that the conservation district carries comprehensive collision, fire, and theft insurance. Most of these kinds of insurance policies "total" out vehicles at appraisal book value at the time of the accident. However, the Interagency Agreement provided by the state motor pool may state that the lessee will replace the "totaled" vehicle at a "new car value." This means the conservation district would need to provide the difference in cost between the insurance settlement and the price of a new replacement vehicle.

When leasing a vehicle from the state motor pool, or any other source, be sure the district knows what level of coverage is needed to meet the requirements of the agreement, and determine the affordability of the additional insurance cost, before signing an agreement. See the Resources section at the end of this chapter for the state motor pool contact information.

Licensing

Since conservation districts are not state agencies, they are not required to have an E (Exempt) license plate on their conservation district-owned vehicles. When the conservation district obtains a license plate from Oregon Department of Driver and Motor Vehicle Services (DMV) for a conservation district-owned vehicle, it can choose whether to get the E-plate. The E-plate registration fees are generally less expensive.

Equipment

Equipment Accountability

All equipment purchased by a conservation district is public property. The conservation district is responsible for keeping an up-to-date inventory of this equipment, its use, and its location (e.g., where it is stored, or who is using it and how). As outlined in Oregon government ethics law, public officials are prohibited from using public equipment for personal purposes. Conservation district resource use must be consistent with appropriate conservation district policy to avoid actual or perceived misuse of public equipment.

Equipment Insurance

The Risk Management Program in DAS, does not provide property insurance for conservation districts. Each conservation district needs to determine whether it wishes to purchase appropriate property insurance for equipment, tools.

Oregon Cooperative Procurement Program

The Oregon Cooperative Procurement Program allows conservation districts access to state contracts for purchasing goods and services, procurement training opportunities, and unlimited advertising on the Oregon Procurement Information Network (ORPIN). Additionally, a reciprocal interstate agreement allows access to designated State of Washington contracts.

Participants pay an annual fee for services based on their organization's fiscal year budget. The State of Oregon Cooperative Procurement Program allows its members to utilize certain Oregon state price agreements for goods and services.

Contact information for the Oregon Cooperative Procurement Program can be found in the Resources section.

Disposal of Used Equipment and Property

In general, the conservation district board should declare the used equipment as surplus, and decide how it is to be disposed. Before disposal of any used equipment, conservation districts need to be aware of any possible conditions by funding sources that purchased the equipment limiting disposal. Disposal may include actual disposal in the trash, recycling, donation to other organizations (governmental or private/non-profit), or sale. The board should ensure there is no violation of Oregon government ethics law in the disposal process. If the equipment was purchased by another funding source, conservation districts need to be aware of conditions limiting disposal.

Conservation districts have two primary options for selling equipment they no longer need:

Option #1

A conservation district may sell its equipment itself, seeking bids locally. If this option is used, the conservation district must be very careful not to be "in conflict of interest," and must be ethical in how it goes about the sale and/or bid process.

Example: A direct sale to a conservation district director or friend of the family, may be considered both a conflict of interest and unethical.

All interested persons must have an equal opportunity to bid on the item for sale. Items for sale should be advertised for at least two weeks.

Option #2

A conservation district may choose to work with DAS to take care of everything from advertising to the actual sale. The equipment can be left at the local site, but the sale would be handled through DAS in Salem and the funds would go to the conservation district. This option takes away the conservation district's risk of a conflict of interest and the potential for an ethics violation, since DAS manages the process. For more information regarding Oregon's State and Federal Surplus Property Programs, contact DAS. See the Resources section at the end of the chapter.

Oregon's state and federal surplus property program

Conservation districts are eligible to purchase state surplus equipment if they meet eligibility. An eligibility application form and an authorized signers form are required before purchasing. In addition to surplus equipment, conservation districts are eligible to shop at the Surplus Property General Store. Contact DAS for more information. See the Resources section at the end of the chapter.

Insurance/Risk Management

Risk Management Concepts

All individuals, small companies, corporations, and various types of governments assume risk when conducting business. Conservation districts, like any other entity, assume and expose themselves to certain types of risk while acting as a local unit of government, an employer, and in other roles they assume (e.g., landowner, contractor). Conservation districts can employ different techniques and methods to manage and reduce their exposure to risk.

Risk management must be an integral part of conservation district activities. The strategies districts develop to minimize risk will help guarantee continued operations. Risk assessments are valuable tools for districts to use. Risk assessments can be done at anytime and by anyone. They help identify and develop strategies to eliminate or minimize risk.

The DAS Risk Management Program offers several tools and resources in addition to those available through the Special District Association

of Oregon (SDAO). See the Resources section at the end of this chapter for the links and documents.

The following basic questions outline the beginning steps to conduct a risk assessment:

What are your conservation district's activities?

- What will you be doing?
- Where will it be done?
- Will it be done in the State of Oregon?
- What materials or substances will be used?

Who will be performing these activities?

- Are they your agents, employees, board members, or volunteers?
- Are they independent contractors, or employees of the conservation district, county, city, or municipality?

What are the risks associated with these activities?

- Injury to your agents, employees, board members, or volunteers.
- Injury to others covered by their employer's workers' compensation coverage.
- Injury to third parties.
- Third-party property damage.

Rank the risks.

- What is the chance of a loss occurring: high, medium, or low?
- How much might this loss cost?

How are these risks covered?

- Are they covered by the state tort liability policy?
- Is there a contract with the service provider?
- Does the contract transfer the risk and require insurance coverage?
- Do you have a commercial insurance policy covering the risk?
- Is the risk so low that it can be uninsured?

Are there other ways to minimize the risk?

- Are the participants properly oriented and trained?
- Is supervision required?
- Are there clear expectations?
- Are there policies and procedures?
- Are the duties clearly delineated?
- Are you acting in good faith?
- Are you following reasonable, professional, and industry standards?

- Is it best to use an experienced professional in this case?
 - What level of professional or industry standard is needed?
 - Are you meeting this standard?
 - Are you a good neighbor?
 - Have you addressed community concerns?
 - Do neighbors know when and where the activity will begin?
 - Do they know how the task will be accomplished and the length of the project?
 - Do all participants recognize and know how to handle endangered species and culture resource issues?
 - Have you filed a permit with U.S. Fish and Wildlife for exemption from accidental or unintentional “take” of an endangered species?

Policies and Procedures

A common way to reduce and/or transfer risk is develop and adopt district policies and procedures. Policies and procedures are the self-imposed written rules and procedures under which the district directors, staff, and volunteers operate. Policies and procedures should be developed for many areas of district operations. If policies are adopted, it is important to follow those policies otherwise the conservation district may be held responsible for not following its own policy.

Some areas may include:

- Personnel Management
- Orientation and Training
- Financial Management and Budgeting
- Long-range Business Planning
- Equipment and Vehicle Use
- Ethics and Conflict of Interest
- Roles of Directors and Officers
- Roles of Associate Directors
- Volunteers
- Public Contracting
- Parliamentary Procedure
- Meeting Management
- Public Records Requests
- Communications
- Agreement with Partners
- Memorandum of Understanding
- Fund Raising
- Campaigning
- Risk Management
- Sexual Harassment Prevention
- Safety
- Americans with Disabilities Act
- Drug and Alcohol Use
- Entry on to Private Property

Several of these operation and policy areas are covered in other parts of this Guidebook.

Legal Assistance to Conservation Districts

If a legal issue or a potential legal issue arises in a conservation district, ODA's SWCD Program should always be contacted. ODA staff may be able to direct the conservation district to sources of assistance or to resources about which the conservation district might not be aware.

Depending on the nature of the issues, there are several agencies that may be able to help a conservation district work through a local problem. Contact information is listed in the Resources section:

- Special District Association of Oregon
- Department of Administrative Service, Risk Management Program
- Bureau of Labor and Industries
- Oregon Department of Revenue
- Secretary of State, Election Division
- Secretary of State, Audits Division

Attorney General Legal Counsel

ORS 568.600(1) states that conservation district "directors may call upon the Attorney General for such legal services as they may require, or may employ their own counsel." What that statute does not say, is the conservation district must pay for the services rendered, including, but not limited to:

- Telephone calls
- Research
- Opinions
- Staff time not associated with tort claim
- Other assistance as needed

If it is a matter that pertains to conservation districts statewide, then a request for Attorney General assistance should be made through ODA. In addition, the ODA SWCD Program keeps a record of all Attorney General Opinions relating to conservation districts.

Recommended Policy

It is strongly recommended that conservation districts make every reasonable effort to obtain permission from the landowner or operator before entering private property. Procedures relating to entry should be outlined in conservation district policy.



Entering Private Lands

ORS 568.730 states, "Officials may enter private lands. The directors or designated representatives of a soil and water conservation district have authority to go upon any lands within the district after notifying the owner or operator for the purpose of making surveys and carrying out the responsibilities with which the directors or representatives are vested by law. The directors or representatives shall take due precaution at all times to prevent injury to growing crops or livestock. [Amended by 2009 c.220 §32]"

Additionally, in implementing agricultural water quality management program strategies, ORS 568.915(1) states, "After making a reasonable attempt to notify the landowner, the state Department of Agriculture or a designee of the department may enter any lands within the area subject to a water quality management plan for the purpose of determining: (a) Those actions that may be required of landowners under ORS 568.900 to 568.933 or rules adopted under ORS 586.912; and (b) Whether the landowner is carrying out the required actions."

Changing District Name or Structure

Changing a Conservation District Name

ORS 568.555 defines the process to change the name of a conservation district. Upon approval of ODA, the directors of a conservation district may submit to the Secretary of State a proposed name change for the conservation district. The Secretary of State will verify the new name is not identical to another conservation district name, or so similar as to lead to confusion or uncertainty with another conservation district, and then record and issue to the conservation district, a new Certificate of Organization bearing the new certificated name. ODA SWCD Program staff can assist conservation districts with the process of a name change.

The "soil and water conservation district" part of each conservation district's name can not be changed, as it is designated by statute. In addition, conservation districts are not allowed to register to operate under a DBA (doing business as), and cannot legally register to do business under a different name in Oregon, since they are a form of government.

Changing the Number of Directors

ORS 568.560 specifies that ODA provides for the zoning to ensure proper and equitable representation of all the people in the district, and to facilitate conservation district functions and elections. A conservation district board shall consist of either five or seven directors, elected or appointed. Two of the director positions shall be at-large positions.

A conservation district may reduce the number of directors from seven to five, or increase the number of directors from five to seven. The procedure is outlined in ORS 568.565 and ORS 568.560. The zone boundaries are affected when a conservation district changes the number of director positions, and the zone boundaries will need to match the number of zone positions. The process for zone boundary changes is outlined in the section below. Conservation districts should contact ODA for detailed instructions for changing the number of directors and zone boundaries.

Reducing the Number of Directors From Seven to Five

ORS 568.565 (1) states, “Upon the written recommendation of the local governing body of a district having seven directors, the number of directors of such governing body may be reduced from seven to five by holding a meeting of the governing body at which the directors elect five persons from among their number to serve as directors of the district. The term of office of the directors elected pursuant to this section shall be as provided in ORS 568.560 (5)(c).”

ORS 568.560 (5)(c) states, “The term of office of each director shall be four years, except that of the directors first elected as provided in ORS 568.565 (1), three shall serve until January first following the first general election and two shall serve until January first following the second general election after the date of their election, as determined by them by lot at the meeting referred to in ORS 568.565 (1).”

Increasing the Number of Directors From Five to Seven

ORS 568.565(2), states, “Upon the written recommendation and majority vote of the local governing body of a district having five directors, the number of directors for the district may be increased to seven. Notwithstanding any unexpired term of office to which a member may have been elected, all five zone positions shall be placed on the ballot at the next following general election. The department shall determine the terms of office for the positions as provided in ORS 568.560 (5)(d). Any vacancy that occurs in a zone position shall be filled as provided under ORS 568.560.”

ORS 568.560 (5)(d) states, “Of the zone directors elected as provided under ORS 568.565 (2), three shall serve until January first following the first general election and two shall serve until January first following the second general election after the date of their election, as determined by lot at the meeting referred to in ORS 568.565 (2).”

Zone Boundary Changes

ORS 568.560(1) states, "...To ensure proper representation of all the people in the district and to facilitate district functions, the State Department of Agriculture shall provide for the zoning of each district, and shall provide each time directors are elected or appointed for the proper and equitable representation for each zone." The statute allows ODA to consider requests for zone changes submitted by conservation districts. The procedure for conservation district zoning is outlined in OAR 603-071-0025.

OAR 603-071-0025 "Procedure for District Zoning and Elections Affected Thereby

'In accordance with the provisions of subsection (1) of ORS 568.560, whereby the department is directed to provide for the zoning of each Soil and Water Conservation District in order to assure proper representation of all people in the district and to facilitate district functions, the following procedure shall be followed:

'(1) Each Soil and Water Conservation District Board of Directors shall prepare a map of the district indicating the Board's proposed zones for the election of directors. In those districts where the Board of Directors consists of five members, the zones shall be three in number, and in those districts where the Board of Directors consists of seven members the zones shall be five in number.

'(2) After preparation of said zoning map, the same shall be submitted to the department which shall review the proposed zones for compliance with the provisions of ORS 568.560, and thereafter either adopt the zones as proposed or modify the zones so as to cause the same to be in compliance with above cited statute.

'(3) The department shall notify each Soil and Water Conservation District Board of Directors of the approved zoning of the district. Each director elected from one of the established zones shall meet the "land manager" requirements of subsection (1) of ORS 568.560, and the statutory provision for election of two "land occupiers" to a board (who need not be land managers), may be complied with by the election of two members at-large. Any registered voter residing within the district is qualified to be elected to an at-large position on the board."

The previous ORS and OARs do not state how zones are to be determined; they only address proper and equitable representation. In order for a conservation district to change one or more zone boundaries, these steps must be followed:

1. The conservation district board determines what zone boundary changes are needed.
2. The conservation district board develops a map showing the proposed new boundaries. The proposed zone boundary changes must be approved by official board action. Zone boundaries must follow rivers and streams, roads and highways, and/or township, range and section lines.
3. The conservation district submits a request for the proposed zone boundary change to ODA's SWCD Program. The request must include:
 - a. Map showing proposed zone boundary changes.
 - b. Letter of explanation of the zone boundary changes.
 - c. Documentation of board action approving the request for zone boundary changes (e.g., meeting minutes).
4. ODA acts on the request, and if approved, issues a map and a written description of the new zone boundaries. ODA determines if the current zone directors qualify under the new zone boundaries as per ORS 568.560(3). ODA will provide a copy of the new zone boundaries map and a list identifying the current director representing each zone to the local county clerk and to the conservation district.
5. The new zone boundaries go into effect when the above steps are completed.

Conservation District Boundary Changes

The legal process to change boundaries of conservation districts is set forth in ORS 568.431 and 568.471 and is different from other special districts. Conservation district boards, either by resolution or by petition, can initiate the process of conservation district boundary change for the purpose of including territory that is already in an adjacent conservation district, see ORS 568.445. Landowners may petition for the inclusion of territory not in a conservation district, or for the withdrawal of territory already in a conservation district, see ORS 568.431 and 568.433. Factors to consider when deliberating a boundary change, include the effects of taxing conservation district

boundaries, the reaction of the landowners, and the effect on other conservation districts.

Conservation districts interested in modifying the conservation district boundaries should contact the ODA SWCD Program to obtain assistance.

Consolidation of Conservation Districts

ORS 568.450 through 568.471 describes the process to consolidate conservation districts. The procedure to consolidate districts may be initiated by petition or resolution. ODA recommends that the affected conservation districts hold joint informational meetings to discuss the pros and cons of consolidation, legal and financial obligations and liabilities, and other pertinent factors.

Conservation districts interested in consolidating should contact ODA SWCD Program staff to obtain assistance.

Tort Insurance

Tort Liability Insurance Coverage

Definition of a tort

Conservation districts are provided protection from tort liability for their actions while doing conservation district business through tort liability insurance coverage. A tort is defined as a wrongful act, injury, or damage (not involving a breach of contract), for which a civil action can be brought. ORS 30.260(8) defines a tort as "the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy."

Extending state tort liability coverage

ORS 561.400 explains that the state covers conservation district employees, agents, and volunteers. Coverage is rarely provided to non-state entities and often requires legislative approval.

Insurance coverage for conservation districts

As previously discussed, all conservation district directors, associate directors, employees, and volunteers are provided tort liability coverage under the state's self-insurance program. ODA pays the required charges to the state's DAS Risk Management Program for this coverage.

Every two years ODA provides each conservation district with a copy of the insurance documents listed below:

- District Insurance Certificate
- Local Government Self-Insurance
- Uninsured Motorist—Endorsement #1
- Personal Injury Protection—Endorsement #2

Additional copies of these documents can be obtained from the Insurance and Risk Management section in the ODA SWCD Program's web site. Conservation district directors and staff should review and become familiar with the documents and the provisions of this coverage, and be clear about what is covered and what is not. The information in the documents will be helpful when determining what additional insurance is needed or desired at the conservation district. Conservation districts may contact the ODA SWCD Program for additional copies.

Oregon tort claims act exclusions

Be advised that there are some exclusions from coverage under the Oregon Tort Claims Act. Specifically, the limits and protections of the Oregon Tort Claims Act do not apply when conservation districts operate vehicles or work outside the State of Oregon. If conservation districts are operating vehicles and/or conducting business outside of the State of Oregon, they should purchase extra liability insurance that would cover claim costs exceeding the limits provided under the state's policy.

There are additional exclusions identified in the *Local Government Self-Insurance* document. Some conservation districts may choose to purchase additional insurance to cover identified exclusions that affect their conservation district, such as the use of watercraft over 25 feet. Conservation districts should consult with insurance providers to determine additional insurance needs and coverage requirements.

Authority to purchase coverage

ORS 568.550(p) authorizes conservation districts “to purchase liability or indemnity insurance, in such amounts and containing such terms and conditions as the board believes necessary for the protection of directors, officers and employees of the district against claims incurred in the performance of official duties. The premiums for such insurance shall be paid out of moneys available for expenditure by the district.”



Recommended Policy

Conservation districts should work with their private insurance carrier to determine what additional insurance coverage is needed for their specific operations.

Questions Regarding Tort Liability Insurance

Is tort liability insurance coverage provided for conservation districts?

Yes. All Oregon conservation districts have a local government liability policy through Oregon's DAS Risk Management Program. The policy is subject to the Oregon Tort Claims Act and the Oregon Constitution.

Who pays for the coverage?

ODA pays the insurance premiums through legislative appropriation from the Natural Resource Program Area budget.

Who is covered?

All conservation district directors, associate directors, directors emeritus, employees, and volunteers are covered when they meet of the following criteria:

1. All conservation district directors, associate directors, directors emeritus, and employees who are under the direction of the board.
2. All conservation district volunteers involved in conservation district projects. A volunteer is a person who:
 - a. The conservation district appoints to perform official conservation district business.
 - b. Receives no compensation for this service.
 - c. Works at the conservation district's request or consent, under the conservation district's direction and control.
3. Watershed council staff who are employed by the conservation district and get direction from the conservation district board and staff.

When does coverage begin?

- Coverage for conservation district directors begins when an elected or appointed director takes the "Oath of Office" at a conservation district board meeting, and it is recorded in the conservation district's board meeting minutes.
- Coverage for an associate director or a director emeritus begins when the conservation district board votes to appoint a person to that position. The board meeting minutes should reflect the name of the person who has been appointed to the associate director or director emeritus position.
- Employee coverage begins on his or her employment starting date.

- Volunteers become covered on the date a signed Volunteer Agreement form is received by the conservation district. The board meeting minutes should reflect the volunteer's appointment and should specify the terms of volunteer service, including tasks, length of service.

Are participants in conservation district-sponsored activities, or field trips on private property covered?

Before conducting a field trip, it is important for the conservation district to determine who is covered and who isn't. Only those conservation district-related persons who are normally covered by the tort liability insurance are covered on a field trip. State and federal agency participants in field trips have coverage through their agencies, but other individuals may not be covered. The conservation district should ask them to sign a Field Trip Waiver of Liability form before accepting them as participants in the field trip. A sample event waiver of liability form is included in the Appendix, and a link can be found in the Resources section.

Also, the property owner hosting the event is not covered by the conservation district's liability insurance. The conservation district should always verify with the property owner that he or she has adequate comprehensive liability insurance coverage before plans for the field trip are finalized. It is recommended that the conservation district enter into a written agreement with the property owner to hold an event on the property.

Is the conservation district's tort liability insurance coverage in effect when conservation district officials are driving a conservation district, state, or federal vehicle on conservation district business?

Yes, it is in effect.

Is the conservation district's tort liability insurance coverage in effect when conservation district officials are driving a personal vehicle on conservation district business?

Yes. Anyone driving a personal vehicle on conservation district business must also have his or her own liability coverage, at least to the minimum required by Oregon law. Conservation districts should be aware that private insurance pays first in the event of a claim.

Does the conservation district's liability insurance coverage include physical damage insurance coverage?

No. The tort liability insurance coverage is only for liability. The conservation district must obtain physical damage insurance coverage when using conservation district, state, or federal vehicles. The conservation district must purchase a commercial auto insurance policy

that includes non-owned auto coverage. Be aware that some potential insurers claim that a commercial auto insurance policy that includes non-owned auto coverage is a liability policy, not a physical damage policy. DAS Risk Management Program will verify that it is a physical damage insurance policy, not a liability insurance policy.

What state agency administers the tort liability insurance program?

The DAS Risk Management Program.

What are the coverage limits?

Limits are outlined in Oregon Tort Claims Act Limits outlined in ORS 30.272 and ORS 30.273 and updated each year.

What isn't covered?

- Criminal complaints or actions.
- Acts not arising in the performance of duty.
- Slander.
- Malfeasance in office, or for acts due to willful or wanton neglect of duty or that were committed maliciously with intent to injure.
- For the assumption of liability to another party because of negligence, unless a written agreement was entered into prior to a loss.
- Workers' compensation.
- Public Meetings Law violation claims.
- Protective relief actions.
- Pollution.
- Aircraft, except Unmanned Aerial Vehicles (UAVs or drones).
- Watercraft over 25 feet in length.
- Personal property.

What should the conservation district do in the event of an accident or occurrence, or if someone makes a claim or suit against it?

1. Notify DAS Risk Management Program and the ODA SWCD Program of any accident or occurrence that may result in a claim. Include how, when, and where the occurrence took place, and the names and addresses of any injured persons or of any witnesses.
2. Notify DAS Risk Management Program and the ODA SWCD Program promptly of any actual claims or suits. Send copies of demands, notices, summons, or legal papers to the contact information for DAS and ODA provided in the Resources section at the end of this chapter.

3. Cooperate with the DAS Risk Management Program in the investigation, settlement, or defense of the claim or suit.

When will the state represent me in a lawsuit?

The tort liability insurance contract policy includes DAS providing defense for any public official, employee, or agent from any tort claim or demand which arose out of an alleged act or omission occurring in the performance of duty. If it is unclear whether the lawsuit arose from a conservation district's representative's duties, the Attorney General's Office will tell the conservation district early in the investigation if they will defend the conservation district. Once the State decides to defend the conservation district, it will continue to defend the conservation district unless the conservation district fails to cooperate in the investigation, or acts to prejudice the case.

Under certain circumstances, individuals are personally liable for their actions. Being personally liable means an individual pays his or her own attorney, court costs, settlements, judgments, and other expenses. Some clear cases of personal liability include, but are not limited to:

1. Charge of ethics violation.
2. Traffic or motor vehicle citations.
3. Charge of criminal act or criminal contempt.
4. Wrong allegedly done when an individual was acting outside the scope of his or her conservation district employment or board position.
5. When the alleged wrong, if true, constitutes intentional harm, a willful neglect of duty, malfeasance in office, or gross recklessness.
6. Failure to cooperate or acting to prejudice the state's defense.
7. Professional licensure sanctions, complaints, or discipline.
8. Payments of transfers of state funds or property in violation of the law.
9. Negligent or willful damage, or loss to state assets.

Resources

Statutes, Laws, and Rules

ORS 244—Government Ethics

https://www.oregonlegislature.gov/bills_laws/ors/ors244.html

ORS 30—Tort Actions Against Public Bodies

https://www.oregonlegislature.gov/bills_laws/ors/ors030.html

ORS 568—Soil and Water Conservation; Water Quality Management

https://www.oregonlegislature.gov/bills_laws/ors/ors568.html

ORS 561—Natural Resources Division; duties; insurance for soil and water conservation districts

https://www.oregonlegislature.gov/bills_laws/ors/ors561.html

Chapter 806—Financial Responsibility Law

https://www.oregonlegislature.gov/bills_laws/ors/ors806.html

OAR 603—ODA: Referendum and Election Procedures

http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_603/603_tofc.html

ORS 279—Public Contracting—Miscellaneous Provisions

https://www.oregonlegislature.gov/bills_laws/ors/ors279.html

ORS 279A—Public Contracting—General Provisions

https://www.oregonlegislature.gov/bills_laws/ors/ors279a.html

ORS 279B—Public Contracting—Public Procurements

https://www.oregonlegislature.gov/bills_laws/ors/ors279b.html

ORS 279C—Public Contracting—Public Improvements and Related Contracts

https://www.oregonlegislature.gov/bills_laws/ors/ors279c.html

OAR 137, Div. 45—Public Contracting—Review of Public Contracts

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_045.html

OAR 137, Div. 46—Public Contracting Model Rules—General Provisions Related to Public Contracting

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_046.html

OAR 137, Div. 47—Public Contracting Model Rules—Public Procurement for Goods and Services

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html

OAR 137, Div. 48—Public Contracting Model Rules—Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html

OAR 137, Div. 49—Public Contracting Model Rules—General Provisions Related to Public Contracts for Construction Services

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html

The Americans with Disabilities Act

<http://www.ada.gov>

Other Information

State Motor Pool

Fleet & Parking Services
1100 Airport Road SE
Salem, OR 97301
Phone _____ (503) 378-4377
www.oregon.gov/DAS/EAM/FPS/pages/index.aspx

Government Ethics Law

Oregon Government Ethics Commission
3218 Pringle Road SE, Suite 220
Salem, OR 97302
Phone _____ (503) 378-5105
Fax _____ (503) 373-1456
www.oregon.gov/ogec

Oregon Government Ethics Law: A Guide for Public Officials

www.oregon.gov/OGEC/docs/public_official_guide/2010-10_po_guide_active_links.docx
Ethics Law: Supplement to a Guide for Public Officials
http://www.oregon.gov/OGEC/docs/Public_Official_Guide/2010%20PO%20Guide_2015%20Supplement.pdf

SWCD Director Training Ethics Fact Sheet

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDEthicsPublicOfficialsfactsheet.pdf

Sample resolution to set the date for the annual meeting:

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDAnnualMeetingResolutionsample.doc

Sample event waiver

See Appendix Chapter 4.

Legal Assistance

Department of Administrative Services

Risk Management Program
1225 Ferry St. SE U150
Salem, Oregon 97301
Phone _____ (503) 373-7475
www.oregon.gov/DAS/EGS/Risk

Special Districts Association of Oregon

P.O. Box 12613
Salem, OR 97309
Phone _____ (503) 371-8667
Toll Free _____ (800) 285-5461
www.sdao.com

Bureau of Labor and Industries

800 NE Oregon, Suite 1045
Portland, OR 97232
Phone _____ (971) 673-0761
www.oregon.gov/boli

Oregon Department of Revenue

955 Center St. NE
Salem, OR 97301
Phone _____ (503) 378-4988
Toll Free _____ (800) 356-4222
www.oregon.gov/dor

Secretary of State's Elections Division

255 Capitol St. NE, Suite 501
Salem, Oregon 97310
Phone _____ (503) 986-1518
www.oregonvotes.org

Secretary of State's Audits Division

Public Service Building Suite 500
255 Capitol St. NE
Salem OR 97310
Phone _____ (503) 986-2255
sos.oregon.gov/audits/Pages/default.aspx

Public Contracting

Department of Justice

100 Justice Building
1162 Court St. NE
Salem, OR 97301
Phone _____ (503) 378-2992
www.doj.state.or.us

Publication:

Attorney General's Public Contracting Handbook (2010)
www.doj.state.or.us/pdf/publications_orderform.pdf

Risk Management

Department of Administrative Services

Risk Management Program

1225 Ferry St. SE U150

Salem, Oregon 97301

Phone _____ (503) 373-7475

www.oregon.gov/DAS/EGS/Risk

DAS Risk Management Program—risk assessment tools

- **Volunteer Information:**

www.oregon.gov/DAS/EGS/Risk/pages/riskeyvolunteers.aspx

- **Alcohol Risk Control Policy:**

www.oregon.gov/DAS/EGS/Risk/docs/AlcoholPolicy93.pdf

- **Risk Assessment Toolkit:**

www.oregon.gov/DAS/EGS/Risk/pages/riskassessmentroadmaptoolkit.aspx

Five-Step/One Page Risk Assessment Tool

- **Self-Insurance Program Documents**

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/LocalGovernmentSelfInsurance.pdf

Oregon's State and Federal Surplus Property Programs

Property Distribution Center

1655 Salem Industrial Drive NE

Salem, OR 97301

Phone _____ (503) 378-6020

www.oregon.gov/DAS/EAM/SURPLS/pages/index.aspx

Oregon Cooperative Procurement Program

Department of Administrative Services

Procurement Services Office

1225 Ferry St. SE

Salem, OR 97301

Phone _____ (503) 378-3976

www.oregon.gov/DAS/EGS/ps/Pages/orcppAbout.aspx

SWCD Program Planning Toolbox

Long Range Business Plan Template

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDLongRangeBusinessPlantemplate.docx

Annual Work Plan with Workload Analysis Example

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/YamhillSWCDAnnualWorkPlan.xls

5 District Finances

The purpose of this chapter is to highlight information regarding conservation district finances. While this information was gathered from many sources, a few of the sources are *Tax Election Ballot Measures for Soil and Water Conservation Districts* and ORS 294, 297, and 568. Other sources are listed at the end of the chapter in the Resources section.

Public Funds

All funds obtained by a conservation district are public funds, whether they come from public or private sources. Directors have a fiduciary responsibility to ensure that these public funds are expended in a proper and lawful matter. ORS 294.100 states, "It is unlawful for any public official to expend any moneys in excess of the amounts provided by law, or for any other or different purpose than provided by law." The statute also outlines that as public officials, conservation district directors can be held civilly liable for misuse of public funds. A civil suit against a conservation district director can be brought by the district attorney, or if the expenditure constitutes malfeasance in office or willful or wanton neglect of duty, by any taxpayer of the conservation district.

Fiscal Administration

Fiduciary responsibility is arguably the most important function of a conservation district's board of directors. The conservation district board has the following fiscal responsibilities:

- Create and adopt a conservation district budget.
- Develop internal financial control policies.
- Manage funds consistent with fiduciary responsibility.

Legal Requirement

All conservation districts are required to prepare an annual budget for all conservation district operations, and submit it to ODA when applying for the SWCD Capacity Grant.

If a conservation district receives property tax revenues (i.e., ad valorem tax), it is required by law to prepare its budget according to Oregon Local Budget Law as outlined in ORS 294.305-294.565. See Resources section.

Best Management Practice

Conservation districts are encouraged to adopt a budgeting procedure consistent with Oregon Local Budget Law, whether they are a taxing district or not. Each conservation district should obtain a copy of the *Local Budgeting Manual*. This manual provides guidance on developing a budget and includes examples of budget preparation.

- Maintain accurate and complete financial records and reports including:
 - Conservation district budget.
 - Revenues and expenditures.
 - Property and assets (e.g., cash, equipment, furniture, vehicles, inventory).
- Manage cash deposits, investments, and other financial holdings.
- Review monthly financial or treasurer's report.
- Report to appropriate local, state, and federal agencies and governments.
- Annual Audits.

Budgets



A budget is a financial plan that estimates the resources and expenditures required to conduct business in the upcoming year. A properly prepared budget allows lawful appropriations, which provides the authority to spend money. Spending outside this authority is unlawful and subjects public officials to the liabilities outlined in ORS 294.100.



The preferred method of preparing a conservation district's budget is to follow "fund accounting" principles. Fund accounting means there are different funding sources that identify different parts of the budget (i.e., general funds, specific grant funds, tax revenues).

When developing an annual budget, the conservation district should consider the following:

- Projected workload (workload analysis). The estimated time and costs required of directors, staff, and volunteers to achieve the objectives and actions identified in the Annual Work Plan.
- Anticipated resources and revenues from all sources, including:
 - Beginning fund balances.
 - Federal and state grants.
 - Private and corporate sources.
 - Local county funding.
 - Tax revenues.
 - Fund-raising activities.
 - Use of savings.
 - Transfers from other funds.
 - Interest earned.

- Donations.
- Other sources of income.
- Projected expenditures for all purposes including:
 - Operating expenses (e.g., rent, utilities, insurance, bonds, board meetings, audits, reports).
 - Personal expenses (e.g., salary/wages, benefits, taxes, health insurance).
 - Materials and supplies (e.g., office supplies, printing, postage, first aide).
 - Equipment (e.g., computers, GPS units, printers, cameras, scanners).
 - Capital outlay (e.g., large equipment, vehicles, buildings, furniture).
 - Project expenses (e.g., fence posts, plants).
 - Field equipment (e.g., sprayers, weeders, brush cutters).
 - Contracted services (e.g., contractors, consulting, lab work, web site, publishing).
 - Training (e.g., Connect, OACD, SDAO).
 - Travel and mileage (e.g., reimbursement for food, lodging and other travel expenses).
 - Debt service (e.g., interest and repayment of loans).
- Other financial requirements:
 - Operating contingency.
 - Reserve funds.
 - Transfers to other funds.

The budget may be prepared by the entire board, a designated budget officer or treasurer, a finance committee, a consultant, or designated staff. Once prepared and reviewed, the board adopts the conservation district budget in its entirety by board action. By adopting the budget, the board is authorizing the conservation district to conduct transactions as outlined in the budget.



Conservation district boards should review the budget on a regular basis to monitor transactions and determine whether the conservation district will stay within its budget during the fiscal year. Conservation districts will need to revise their budgets during the year to allow for (1) receipt of new or unanticipated revenues, or (2) payment of expenditures which were not anticipated in the current budget.

Legal Requirement

For conservation districts required to operate under Oregon Local Budget Law, there is a very specific process to revise the budget. Conservation districts need to refer to the *Local Budgeting Manual* for guidance on this matter.

Best Management Practice

Conservation district boards should assign financial duties in a manner so that no individual controls all phases of collecting, recording, and processing cash, checks, and transactions (i.e., separation of duties). Bank statements should be sent directly to a director without other financial duties for opening and review.

It is recommended that conservation districts have a financial statement which identifies the transactions that have been conducted and/or transactions to be approved by the board. Approval of all financial statements and payments should be reflected in the board minutes. In addition, financial statements should be attached as part of the minutes.



The conservation district's financial policies and procedures should outline the manner in which conservation district transactions are conducted, recorded, and reported. These policies should include procedures on the:

- Recording and reporting of transactions.
- Authorization of expenditures and the paying of bills.
- Establishment and authorization to use credit cards and revolving accounts.
- Transfer of funds.
- Reconciliation of bank statements.
- Security of checks, credit cards, and bookkeeping record.

Some conservation district boards choose to retain their authority to review and approve transactions by official board actions at regular board meetings. This can affect the timely payment of bills or ability to conduct other necessary financial transactions. The board may authorize a specific board member or staff person to administer financial transactions within the approved budget categories and/or within certain financial limits.

Financial Reports and Records

Financial reports provide the necessary information for directors to make accurate financial decisions. Conservation districts are also required to provide a variety of financial reports and records in order to satisfy statutory requirements, grant agreements, and internal control needs. Financial information can also be used when conducting conservation district outreach activities and to show the public how the conservation district is using its funds. A properly prepared financial statement provides transparency in the conservation district's operations.

There are four basic types of financial reports that should be provided by the conservation district:

Type	Frequency	Due Date
Treasurer's Report: <ul style="list-style-type: none"> • Statement of income and expenses • Check register • Fund balances • Budget vs actual 	Monthly	In advance of the board meeting so directors can receive the report and review it before the meeting.
Annual Budget	Annually; revised as needed	July 1 (beginning of fiscal year) for conservation districts without taxing authority. Conservation districts with taxing authority need to follow the timelines outline in ORS 294 for the Local Budget Law.
Audit, Financial Review or Secretary of State Report (see the section on Oregon Municipal Audit Law for more information)	Annually	Audit & Financial Review—December 31. Secretary of State Report—September 30.
Year-End Financial Summary or Audit	Annually	Presented at the annual meeting with the annual report.



All of these reports should be made available and accessible to the public, partners, grantors, and other interested parties.

These reports can also be useful to prepare informational materials and public presentations regarding conservation district programs.

Legal Requirement

According to ORS 198.34, if a conservation district fails to file its audit, financial review or Secretary of State report for three consecutive years, the Secretary of State will notify the conservation district's county board. The county board will then initiate proceedings to dissolve the conservation district.

Audits and Bonding Requirements

Oregon Municipal Audit Law

Conservation district audit and fidelity/surety bonding requirements, as per the Municipal Audits Law follows:

Total expenditures for all purposes, including money expended for debt retirement	Audit Requirement	Due Date	Fidelity/Surety Bond Requirement
Less than \$150,000	Self-prepared financial statement "In Lieu of Audit Report."	90 days from end of fiscal year.	At least equal to the annual receipts.
\$150,000 to \$500,000	Financial statement reviewed by an authorized accountant. This is sometimes referred to as a "Financial Review."	180 days from end of fiscal year.	Equal to 10% of annual receipts, but not less than \$10,000.
Greater than \$500,000	An audit of all accounts and fiscal affairs by an authorized accountant. This is sometimes referred to as a "Full Audit."	180 days from end of fiscal year.	No bond is required under Municipal Audit Law, but Special Districts Law ORS 198.210-198-220 does require a bond, the amount of which is determined by the conservation district.

A Secretary of State filing fee is required based on the amount of the expenditure (ORS 297.485).

The Financial Review and Audit Process

When obtaining a certified public accountant (CPA) to do either a financial review or full audit, the CPA must be licensed by the state Board of Accountancy. The CPA must hold a municipal audit license, be on the municipal roster described in ORS 297.670, and be licensed to practice as a CPA to audit government entities in Oregon. When doing a financial review or audit, the CPA fills out a summary form for Municipal Corporations provided by the Secretary of State's office. The CPA sends the summary form to the Secretary of State's office. The Secretary of State may grant an extension to the filing deadline upon request. The conservation district is responsible for filing the "In Lieu of Audit Report" to the Secretary of State. Contact the Secretary of State's Audit Division to obtain more information on the requirements

of Municipal Audit Law and to obtain the appropriate forms, see Resources section.

Federal "Single Audit" Requirements

All non-Federal entities that expend \$500,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996. A single audit is intended to provide a cost-effective audit for non-Federal entities in that one audit is conducted in lieu of multiple audits of individual programs. As provided in ORS 297.455, a Federal single audit will satisfy the requirements of the Municipal Audit Law, although a Secretary of State filing fee will still apply. Federal agencies may have differing audit requirements associated with grant funds. Check with the granting federal agency to see if its requirements are different from that in the Single Audit Act Amendments of 1996.

Fidelity and Surety Bonding



A fidelity/surety bond indemnifies an employer for losses caused by fraudulent or dishonest acts by the conservation district employees or officials such as:

- Stealing cash/money or other items.
- Writing unapproved checks to others or to oneself.
- Falsifying financial records.
- Taking publicly-owned equipment, furnishings, or supplies for personal use.



The conservation district is responsible for purchasing the bond(s). Bonds can be purchased from SDAO, or a qualified independent insurance company or financial institution. The required amount of the bond is dependent upon the type of reporting required under Municipal Audit Law. Under Special Districts Law all conservation districts must have a fidelity bond, but the amount is not specified and is left up to the conservation district to decide. Municipal Audit Law provides minimum amounts for fidelity bonds as outlined in the previous table.

Suspected financial losses or fraud may be investigated under the following options:

- Secretary of State Audits Division performs or directs investigations as needed.

Legal Requirement

Oregon conservation districts are legal subdivisions of the state, and are subject to the Municipal Audit Law (ORS 297.405-297.555). Conservation districts are required by law to provide a fidelity or surety bond for any members of the board or its employees who are charged with possession and control of funds.

Best Management Practice

To ensure adequate bond coverage, conservation districts should consider both their receipts and expenditures throughout the fiscal year, not just the minimum requirements of the law. Conservation districts should also consult their CPA or insurance agent to ensure that the amount of their bond meets any requirements of the law. If your conservation district suspects dishonesty or fraud, contact the Secretary of State Audits Division and/or the Department of Justice, contact information is provided in the Resources section. You may also want to contact your insurance agent and ODA.

- Oregon Department of Justice (DOJ) advises and assists the Audits Division. DOJ takes the lead on potential losses with a criminal component (i.e., embezzlement).
- You should request the District Attorney, in the respective county, to seek restitution as part of the criminal prosecution.

Sources and Mechanisms for Funding

The first step in planning for conservation district funding is to define the conservation district's need for funds. The conservation district should refer to its annual work plan, long-range business plan, and workload analysis to determine funding needs. The conservation district should then assess what funds are available from county appropriations, federal and state grants, local income-producing projects, individuals, corporations, businesses, foundations, and any other appropriate sources.

Tax Levying Authority, General Obligation Bonds and Special Assessments

Legal Requirement

Conservation districts that receive property tax revenues are required by law to prepare its budget according to Oregon Local Budget Law.



Tax Levying Authority (ORS 568.806-568.808)

The 1983 Oregon Legislature authorized conservation districts to seek voter approval to levy an ad valorem property tax within the boundaries of each conservation district. Each conservation district must receive voter approval, through the passage of a ballot measure, before taxes can be levied and collected for the conservation district.

Through its taxing authority a conservation district may choose to seek either a permanent tax rate or a local option tax.

- A **permanent tax rate** is an ad valorem property tax rate limit expressed in dollars per thousand of assessed value (i.e., \$0.25 per \$1000). Once established, no action of the conservation district or its voters can increase or decrease this limit. The permanent tax rate is an upper limit, and a conservation district may choose to not collect all the tax it has authority to in any given year.
- A **local option tax** is an ad valorem tax approved by the voters of a local government for a specific number of years for general or specific purposes. Local option taxes used for general operating purposes can be imposed from one to five years. Local option taxes used for capital projects may be imposed for the expected useful life of the capital project or 10 years, whichever is less.

Important: Only new conservation districts or conservation districts that have never imposed a property tax can seek voter approval of a permanent tax rate limit. Therefore, if a conservation district successfully imposes a local option tax the conservation district may never seek a permanent tax rate. However, if a permanent tax rate has previously been established, the conservation district may impose local option taxes in the future.

Ballot measures for permanent tax rate and local option taxes may be placed on the ballot in March, May, September, or November on the days specified in ORS 255.345. Conservation districts should keep in mind that ballot measures to levy taxes in March or September elections of any year are required to meet the “Double Majority” rule where fifty percent of the registered voters must participate in the election.

A conservation district that receives voter approval for a tax measure in March, May, or September is eligible to begin receiving tax dollars the following November. If the conservation district receives voter approval in November, funds will not become available to the conservation district until the following November.

Any conservation district contemplating seeking voter approval for a tax measure, should begin the planning process well in advance of the election date. There are many steps in the process and they must be well thought out in advance. Additionally, conservation districts will want to plan and conduct an outreach and education campaign to inform their constituents about the services the conservation district currently provides and what it plans to provide given the resources provided for by an ad valorem tax. Conservation districts should consult with several different entities regarding the proper procedures for filing ballot measures.

The SWCD Program has presentations it can give to a conservation district that is interested in seeking taxing authority. These presentations outline the steps in the process and what the conservation district will want to consider if they wish to move forward. In addition to the presentations, the SWCD Program has several resources available on its web site, see the Resources section for the links.

In the table below are some of the important agencies and publications a conservation district should consult, see the Resources section for contact information and web links.

Important Agency	Publications or activity for Conservation Districts to follow
County Board of Commissioners	Consultation
County Clerk or Elections Officer	Consultation
County Tax Assessor	Consultation
County Tax Collector	Consultation
Oregon Department of Agriculture SWCD Program	Consultation
Special Districts Association of Oregon	Consultation
Secretary of State Elections Division	<i>County, City, and District Referral Manual</i> Ballot measure forms and instructions
Secretary of State Elections Division	Campaign Finance Manual Campaign finance reporting forms and instructions
Oregon Department of Revenue	<i>Local Budget Law Manual</i> Local Budget Law trainings and classes
Oregon Government Standards and Practices Commission	<i>Oregon Government Standards & Practices Laws, A Guide For Public Officials</i>

Recommended Policy

It is strongly advised that conservation districts consult their legal counsel and ODA when considering a general obligation bond, special assessments, or improvement bonds.

General Obligation Bonds



Conservation districts may issue general obligation bonds funded by an ad valorem tax approved by the voters. General obligation bonds are used to finance capital projects. ORS 568.803 outlines the manner in which general obligation bonds may be issued.

Special Assessments and Improvement Bonds

Under ORS 568.805, conservation districts have the authority to levy special assessments against property that directly benefits from the exercise of authorized powers and functions of conservation districts. Conservation districts may issue improvement bonds funded by the special assessment. ORS 568.805 outlines the manner in which assessments may be levied and the noticed required to be given to affected property owners. If enough written objection is received by the conservation district, the proposed special assessment must be terminated.

State Funds

Grant funds to support conservation district operations have been appropriated by the Oregon Legislature to the Oregon Watershed Enhancement Board (OWEB). The funds appropriated are from constitutionally dedicated State Lottery funds (Oregon Constitution Article XV, Section 4b). OWEB and ODA work closely together to administer and manage the grant funds to conservation districts. The primary purpose of these funds for conservation districts are:

- To implement the Agricultural Water Quality Management Area Plans.
- To serve as the Local Management Agency (LMA) under the Agricultural Water Quality Management Program.
- To provide technical assistance and outreach that implements the Oregon Plan for Salmon and Watersheds.
- Restoration and protection of native fish, wildlife, watersheds, and water quality.

For more information regarding the grant funds for conservation district support, contact the Oregon Department of Agriculture, SWCD Program, See the Resources section for contact information.

There are a number of other state agencies with possible funding sources for conservation activities and programs including but not limited to:

- Oregon Watershed Enhancement Board (OWEB)
- Oregon Department of Environmental Quality (DEQ)
- Oregon Department of Fish and Wildlife (ODF&W)
- Oregon Department of Forestry (ODF)
- Oregon Department of Agriculture (ODA)

Chapter 9 of this Guidebook includes additional information about grants and conservation programs offered by state and federal partners, see the Resources section for contact information for the above list.

County Funds

Some conservation districts receive county funds for operations and projects. Conservation districts should make a special effort to inform local government officials (e.g., county commissioners, road department) of the services and programs they can offer to the county.

When communicating with the county, the conservation district may choose to highlight some of the following partnership benefits:

- The conservation district provides benefits and assistance to individual landowners in the county.
- The conservation districts can help the county with soil surveys and interpretations for planning, county assessment, structures, highways, and noxious weed control.
- Preventing erosion can reduce road drainage clean-up cost.
- Conservation investments contribute to the local economy.
- Added value of well-cared-for properties maintains the local tax base.
- Conservation district programs are cost-effective because of high volunteer inputs.
- Conservation districts leverage federal and state dollars and bring those dollars into the local economy.
- Conservation districts can serve as local sponsors for some federally-funded programs, such as the Emergency Watershed Protection program, which allow for millions of federal dollars to be used for conservation efforts related to floods or droughts.
- Cooperative agreements with assisting agencies bring state and federal assistance to the county.
- Conservation districts serve as advocates for local landowners to secure assistance.

Federal Funds

Funds for conservation projects and programs are available from a number of federal agencies. Some possible sources for funding include but are not limited to:

- USDA—Natural Resource Conservation Service
- USDA—Forest Service
- USDA—Farm Service Agency
- Environmental Protection Agency
- Bonneville Power Administration
- Bureau of Land Management
- U.S. Fish and Wildlife

Chapter 9 of this Guidebook includes additional information about grants and conservation programs offered by state and federal partners, see the Resources section for contact information for the above list.

Grant Funds

Grant funds are awarded to an entity on a competitive basis for a fixed period of time and usually for a specific purpose. Federal and state governments, state councils, along with private and industrial foundations are all sources of grants. However, many private foundations and corporations, grant funds only to entities that have an Internal Revenue Service (IRS) 501(c)(3) non-profit status designation. A discussion on the eligibility of conservation districts for IRS 501(c)(3) non-profit status designation follows later in this section.

Fund-Raising

Conservation districts have the legal ability to undertake local fund-raising activities. Be sure that the district is not promoting or endorsing a specific name brand or product when holding a fund-raising activity. Examples of fund-raising activities include:

- Conservation equipment rental (e.g., no-till drill, weed pullers).
- Retail sales (e.g., trees, plants, hats, books, posters).
- Silent Auction.
- Special events (e.g., bake sales, golf tournaments, walk-a-thons).
- Testimonials-charge a specific amount of money for a dinner in testimony to someone.
- Service fees paid for providing conservation services (e.g., soil testing, tree planting).
- Direct appeals for donations through media, mail, web sites, or telephone.
- Memorials, bequests, and honorary gifts (e.g., the relative of a deceased conservation-minded person establishing a scholarship or conservation fund in his/her memory).
- Membership (e.g., annual contributions from individuals, agencies, and/or organizations).
- Sponsorship for individual projects (e.g., sponsorship of Envirothon participants or a workshop).
- Advertisement in district newsletter.

The most effective way to successfully raise funds is to develop and follow a fund-raising plan. Conservation District Directors should be active in fund-raising planning and events. Staff can help, but the

directors are ultimately responsible. When budgeting staff time for fund-raising activities, the board should determine if sufficient income could be recovered from the investment of that staff time.

The Council of Better Business Bureaus has several resources available including the Standards for Charity Accountability, see Resources section for link to the web site.

Tax Deductibility for Donations/Contributions

IRS Code, Section 170(c)(1) defines contributions or gifts to a state or any of its political subdivisions (i.e., conservation districts) as "charitable" contributions for tax purposes, and therefore tax deductible.

Conservation districts have the authority under ORS 568.550(1)(e), "To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest or devise any property, real or personal or rights or interests therein, to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of ORS 568.210 to 568.808 and 568.900 to 568.933, and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933."

Conservation districts should consult the *IRS Publication 526: Charitable Contributions* for more information on the requirements for contributions, limits, reporting, receipts, see Resources for a link to this publication.

Tax Exempt vs. Nonprofit

Conservation districts are classified by the IRS as tax exempt under the IRS Code, Section 115. Conservation districts do not qualify as nonprofits under the IRS Code, Section 501(c)(3).

Tax Exemption Eligibility

IRS Code, Section 115 specifically excludes the income of municipal governments/corporations (which includes conservation districts) from its definition of gross income; therefore, making conservation districts tax exempt. Conservation districts are classified as **municipal governments/corporations**, rather than agencies of the state, for this purpose.

As a special service to government entities, the IRS will provide, without charge, a “government affirmation letter” as documentation of tax-exempt status. Conservation districts may request a letter by contacting the IRS or visiting the IRS web site, see Resources section for contact information.

Nonprofit Ineligibility

A state or municipal instrumentality may qualify under IRS Code, Section 501(c)(3) for *nonprofit* status if it is organized as a separate entity from the governmental unit that created it and if it otherwise meets the organizational and operational tests of Section 501(c)(3). Conservation districts are political subdivisions of state government, **are not** organized as a separate entity from a governmental unit, and **do not** meet a sufficient number of the IRS Code, Section 501(c)(3) non-profit status eligibility criteria to get approved as IRS Code, Section 501(c)(3) non-profit entities.

Although conservation districts are currently not eligible to qualify for IRS Code, Section 501(c)(3) nonprofit status, they can partner with other entities that have this eligibility, such as the Oregon Association of Conservation Districts Foundation, or foundations formed through the USDA Resource Conservation and Development (RC&D) programs in the state.

Resources

Statutes, Laws, and Rules

ORS 198—Special Districts Generally

https://www.oregonlegislature.gov/bills_laws/ors/ors198.html

ORS 255—Special District Elections

https://www.oregonlegislature.gov/bills_laws/ors/ors255.html

ORS 294—Local Budget Law

https://www.oregonlegislature.gov/bills_laws/ors/ors294.html

ORS 297—Municipal Audit Law

https://www.oregonlegislature.gov/bills_laws/ors/ors297.html

ORS 568—Soil and Water Conservation; Water Quality Management

https://www.oregonlegislature.gov/bills_laws/ors/ors568.html

Local Budget Law

Oregon Department of Revenue

955 Center St. NE

Salem, OR 97301

Phone _____ (503) 945-8293

Phone _____ (800) 356-4222

Fax _____ (503) 945-8738

<https://www.oregon.gov/DOR/programs/property/Pages/local-budget.aspx>

Municipal Audit Law

Secretary of State, Audits Division

Public Service Building, Suite 500

255 Capitol St. NE

Salem, OR 97310

Phone _____ (503) 986-2255

Fax _____ (503) 378-6767

sos.oregon.gov/audits/Pages/default.aspx

Federal "Single Audit"

www.whitehouse.gov/omb/financial_fin_single_audit

Fidelity Bonding

Special Districts Association of Oregon (SDAO)

PO Box 12613
Salem, OR 97309
Toll Free _____ (800) 285-5461
Salem Area _____ (503) 371-8667
Fax _____ (503) 371-4781
E-mail _____ sdao@sdao.com
www.sdao.com

Department of Administrative Services

Risk Management

1225 Ferry St. SE U150
Salem OR 97301
Phone _____ (503) 373-7475
Fax _____ (503) 373-7337
www.oregon.gov/DAS/EGS/Risk/Pages/contact_us.aspx

Department of Justice

General Counsel

1162 Court St. NE
Salem, OR 97301
Phone _____ (503) 378-4400
www.doj.state.or.us/divisions/pages/general_counsel_index.aspx

Taxing Authority

Oregon Department of Agriculture

SWCD Program

635 Capitol St. NE
Salem, OR 97301
Phone _____ (503) 986-4700
www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/TaxingAuthority.aspx

Publication:

Tax Election Ballot Measures for Soil and Water Conservation Districts
www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDTaxElectionBallotMeasures.doc

Secretary of State**Elections Division**

255 Capitol St. NE, Suite 501

Salem, OR 97310

Phone _____ (503) 986-1518

E-mail _____ elections.sos@state.or.us

www.oregonvotes.gov**Election Manuals**www.oregonvotes.org/pages/publications/manuals/index.html**Oregon Government Ethics Commission**

3218 Pringle Road SE, Suite 220

Salem, OR 97302

Phone _____ (503) 378-5105

Fax _____ (503) 373-1456

www.oregon.gov/ogec**Publication:***Oregon Government Ethics Law: A Guide for Public Officials***Internal Revenue Service****Proof of Tax-Exempt Status and other IRS services**

Phone _____ (877) 829-5500

www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/

FSLG-Customer-Services

IRS Publication 526: Charitable Contributionswww.irs.gov/pub/irs-pdf/p526.pdf**Council of Better Business Bureaus****Information for Charities and Donors**www.give.org**Funding Sources**

State Funding Sources**Oregon Department of Agriculture****SWCD Program**

635 Capitol St. NE

Salem, OR 97301

Phone _____ (503) 986-4700

Fax _____ (503) 986-4730

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCD.aspx

Oregon Watershed Enhancement Board

775 Summer St. NE, Suite 360

Salem, OR 97301

Phone _____ (503) 986-0718

Fax _____ (503) 986-0199

www.oregon.gov/oweb

Oregon Department of Fish and Wildlife

4034 Fairview Industrial Drive SE

Salem, OR 97302

Phone _____ (503) 947-6000

Toll Free _____ (800) 720-ODFW

www.dfw.state.or.us

Department of Environmental Quality

811 SW Sixth Ave.

Portland, OR 97204

Phone _____ (503) 229-5696

Toll Free _____ (800) 452-4011

Fax _____ (503) 229-6124

www.oregon.gov/DEQ

Oregon Department of Forestry

2600 State St.

Salem, OR 97310

Phone _____ (503) 945-7200

Fax _____ (503) 945-7212

www.oregon.gov/ODF

Oregon Department of Agriculture

Plant Programs Area

635 Capitol St. NE

Salem, OR 97301

Phone _____ (503) 986-4644

Fax _____ (503) 986-4762

www.oregon.gov/ODA/programs/PlantHealth/Pages/AboutPlantHealth.aspx

Oregon Department of Agriculture

Development and Marketing Programs

1207 NW Naito Parkway, Suite 104

Portland, OR 97209

Phone _____ (503) 872-6600

Fax _____ (503) 872-6601

www.oregon.gov/ODA/programs/MarketAccess/DevelopmentMarketing/Pages/AboutDevelopmentMarketing.aspx

Federal Funding and Programs**USDA—Natural Resources Conservation Service**

1201 NE Lloyd Blvd., Suite 900

Portland, OR 97232

Phone _____ (503) 414-3200

www.or.nrcs.usda.gov**USDA—Farm Service Agency**

7620 SW Mohawk

Tualatin, Oregon 97062

Phone _____ (503) 692-6830

www.fsa.usda.gov**USDA—Forest Service****Pacific Northwest Region**

P.O. Box 3623

Portland, OR 97208

Phone _____ (503) 808-2468

www.fs.usda.gov/r6**Environmental Protection Agency****Oregon Operational Office**

805 SW Broadway, Suite 500

Portland, OR 97205

Phone _____ (503) 326-3250

www.epa.gov**Bonneville Power Administration**

P.O. Box 3621

Portland, OR 97208

Phone _____ (503) 230-3000

www.bpa.gov**Bureau of Land Management****Oregon State Office**

P.O. Box 2965

Portland, OR 97208

Phone _____ (503) 808-6002

www.blm.gov**U.S. Fish and Wildlife Service**

Phone _____ (800) 344-9453

www.fws.gov

6 Political Campaigning and Lobbying

The purpose of this chapter is to selectively highlight important information regarding political campaigning and lobbying from many sources. The primary source is the Oregon Secretary of State manual titled, *Restrictions on Political Campaigning by Public Employees, ORS 260.432*. Some of the material is taken directly from this manual and the other sources listed. Other sources are cited in the Resources section at the end of the chapter.

Political Activity

Introduction



ORS 260.432 details allowable and restricted activities of public officials (both employees and elected officials) concerning political activity. While the following guidelines are provided, conservation districts are encouraged to consult with the Secretary of State, Elections Division or an attorney with specific questions. Conservation districts considering a tax ballot measure should become familiar with these restrictions and consult with ODA, the State's Elections Division, or an attorney if needed.

Best Management Practice

It is recommended that all conservation districts obtain copies of the *Restrictions on Political Campaigning by Public Employees, ORS 260.432*, manual for their directors and staff. Contact information for the Secretary of State, Elections Division and a web link to download the manual can be found in the Resources section at the end of the chapter.

Political Activities of Directors

Directors, as elected officials, may spend their work time on ballot measures. Elected officials may spend their work time on ballot measures, whether the position they hold is paid or unpaid under ORS 260.432(4)(a). A governing body of elected officials can take positions on ballot measures. The courts have recognized the right, if not the duty, of elected officials to speak out on major issues, particularly on matters that affect the governmental body on which they serve. However, elected officials must be careful not to involve staff in their

advocacy campaign (e.g., staff persons cannot type advocacy statements or speeches for elected officials on agency time or use agency resources).

ORS 260.432 Statutory Provisions

Essentially, public employees may not engage in political activity while on the job. These statutes define what it means to promote or oppose ballot measures and candidates, and when a public employee is “on the job during work hours.”

ORS 260.432(1) explains that a person, including public employers and elected officials, may not require a public employee to promote or oppose any political committee or any initiative, referendum or recall petition, ballot measure or candidate.

ORS 260.432(2) explains that public employees may not be involved in promoting or opposing any political committee or any initiative, referendum or recall petition, measure or candidate “while on the job during working hours.”

ORS 260.432(3) explains that each public employer must have posted, in all appropriate places where public employees work, a notice about the prohibitions of ORS 260.432. A copy of this notice is provided in the Appendix.

When Does ORS 260.432 Apply

- For initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer.
- For a ballot measure referred to the ballot by a governing body (conservation district, city, county, state) as soon as the measure is certified to the ballot. A county, city or conservation district measure is certified to the ballot when the elections official files the referral with the county election office.
- For a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a).
- For political committees, whenever the political committee is active.

Overview of Restrictions and Allowable Activities

The overriding principle is that public employees may not use their work time to support or oppose measures, candidates, recalls, political committees, or petitions. Oregon election law does not specify any amount of work time that may be used before a violation occurs, so a

public employee may be found in violation even though they used a minimal amount of work time.

An elected official or any other employer of a public employee, may not require or direct public employees to prepare or distribute advocacy materials.

Who is Covered

As a general rule, all non-elected public employees are covered by ORS 260.432. Elected officials are covered insofar as they direct other public employees to engage in political activities. Federal employees are covered by the federal Hatch Act. Contact the U.S. Office of Special Counsel for more information, see the Resources section for contact information.

Salaried vs. Hourly “On the Job”

Public employees have the right to participate in political activity on their own time; however, salaried employees’ work time is not as easily measured as hourly workers. If the work performed falls generally within the job duties of the public employee, the work is performed in an official capacity, regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function, they are considered “on duty.” A “regular workday” may not be definable for a position, or may not have a specific time period. It is based on the activities and whether the person is acting, or appears to be acting in an official capacity.

During public appearances, the employee should specifically announce to the audience that they are not acting in their official capacity if they are engaging in political advocacy. Such an announcement would not negate a subsequent statement or action in circumstances that show the public employee is acting in his or her official capacity.

Common activities that are always undertaken in an official capacity (regardless of time of day or location), and are therefore subject to the requirements of ORS 260.432 include:

- Posting material to an official web site and approving material to be posted to an official web site.
- Drafting or distributing an official publication from the jurisdiction.
- Appearing at an event as a representative of a jurisdiction.

Candidates and Elected Officials

Elected officials cannot command public employees to engage in political advocacy. A request made by an elected official is considered a command. An elected official may only solicit volunteer help from public employees during the employee's breaks or other personal time.

An elected official, as part of a governing body, may vote to support or oppose a measure put before the body. The elected official may publicly discuss the vote. Elected officials may not use public employee staff time, except for ministerial functions.

An elected official's opinion piece, letter, or speech advocating a political position may not be published in a jurisdiction's newsletter or other publication produced or distributed by public employees.

Equal Access to Public Resources

In general, conservation districts may make certain resources available for advocacy activities and candidates for public office, but must grant equal access for all political groups and candidates. This includes charging the same fee or requiring the same permit. Public resources may include meeting spaces, equipment, and contact lists that are normally available to the public.

Information in the Media

Use of public employee title

Use of a public employee's working title tends to indicate that he or she is acting in their official capacity. Even if the material is produced on the employee's personal time. Use of their title may indicate to the public that they are speaking on behalf of their agency. The Secretary of State, Elections Division would consider the use of a working title, one factor when determining if a public employee was on the job, or acting in their official capacity, when they engaged in political advocacy.

Guest opinions and letters to the editor

If a public employee is asked in their official capacity to produce a guest opinion related to a ballot measure or candidate, the content must be impartial. A public employee may write a letter to the editor that contains political advocacy so long as they do so on their own time and not in their official capacity.

Elected officials are not subject to these limitations. They may produce guest opinions or letters to the editor related to a ballot measure or candidate without an impartiality subject to other limitations of

ORS 260.432 discussed elsewhere in this chapter. These limitations include publications in conservation district newsletters, web sites, and mailings.

Conservation district interaction with the media

A spokesperson for a conservation district may respond to media inquiries about the possible effects of a measure or petition, so long as the information they provide is impartial. The public employee must not state or imply support or opposition.

A public employee may draft and distribute an impartial news release, except for a news release regarding a resolution advocating a political position on a measure. Information that is entirely factual may nonetheless be considered advocacy (e.g., by omitting required cost information).

Material Produced by Governing Bodies

Any materials produced by public employees while on the job, during work hours must be impartial. The Secretary of State, Elections Division is available to review documents prior to publication to ensure compliance with ORS 260.432. If the document is submitted to the Secretary of State, Elections Division and approved in writing, there will be no violation of ORS 260.432 as long as, what is printed does not deviate from the approved version. This review process will be completed within five business days of the submission of the document.

When the Secretary of State, Elections Division receives a document for prior review (usually submitted by fax or e-mail), they will review it utilizing the impartiality requirements outlined in the *Restrictions on Political Campaigning by Public Employees ORS 260.432*. The Secretary of State, Elections Division will then reply to the conservation district, usually by e-mail, with a statement that the document as submitted is acceptable, or with notes about how to make the document more impartial. The conservation district may re-submit the material incorporating the suggested changes as many times as necessary.

Web sites, E-mails, and New Media

No advocacy material may be posted on any government web site or blog, unless it is part of an official function of the agency. Candidates and other political groups may link to government web sites, but government web sites may not contain links to advocacy material. Government web sites may contain public records about measures or candidates. Those public records must be treated the same as other public records, which do not contain advocacy.

Public employees may open and read e-mails that contain political advocacy. They may not, while on the job during work hours, send or forward e-mails that contain advocacy, except as outlined below:

- A public employee may forward an e-mail containing advocacy to their personal e-mail, so long as this does not violate the employer's policies.
- A public employee may forward an e-mail containing links to advocacy material only when that material is relevant to the government agency and the public employee does not provide commentary.

Public employees may not post to government Twitter or Facebook, material that contains political advocacy.

Impartial Ballot Measure Information

ORS 260.432 applies when:

- For initiative, referendum and recall petition efforts as soon as a prospective petition is filed with the appropriate elections filing officer.
- For a ballot measure referred to the ballot by a conservation district as soon as the measure is certified to the ballot. A district measure is certified to the ballot when the elections official files the referral with the county election office.

The actions taken by a conservation district and its public employees in the planning stages of a proposed measure are not subject to ORS 260.432.

Public employees may produce and distribute advocacy material about referrals prior to the measure being certified to the ballot. Any public employee work time used to change, amend, edit, distribute a document found to be supporting or opposing a referral between the date it is certified to the ballot until the date of the pertinent election could be a violation of ORS 260.432.

Example: A conservation district manager may produce a memorandum to the board of directors about the need for a possible ad valorem tax. If the board of directors refers the ad valorem tax measure, then that memorandum cannot be proactively distributed after the measure is certified. The conservation district could respond to a public records request for the memorandum.

Public employees may respond to public records requests for documents that contain advocacy, even if the measure has been certified. They may not proactively distribute those materials after the measure is certified.

Resolutions (vote taken) by a conservation district board

Elected boards of conservation districts may take a position on a ballot measure (or initiative, referendum, or recall petition) provided there is no use of public employee work time to advocate that position.

The following table outlines what a public employee may or may not do in regards to a conservation district’s resolution that advocates a political position on a ballot measure, initiative, referendum, or recall.

May	May Not
Edit the jurisdiction’s name and board member names to conform it to the requirements for the resolution.	Draft, type, or edit the resolution.
Prepare neutral, factual information for the board to use in taking a position on the measure, including impartial information on how the measure could affect the jurisdiction.	Recommend how to vote on the resolution.
Be available at the board meeting to offer impartial information upon request.	Sign a resolution, unless the public employee’s signature is ministerial and included only to attest that the board took the vote.
Respond to direct questions from the media about the resolution, if their response is impartial.	Prepare a news release or other announcement of the resolution.
If the jurisdiction has a history of listing all action items from meetings in a regularly published publication, they may include the vote in an impartial manner.	Include the vote or position of the governing body in a jurisdiction newsletter or other publication.
Use work time to record the vote if that is part of the employee’s work duties.	Use work time for regular job duties, such as responding to public records requests, taking minutes, retyping the resolution to conform to the required format.

Ballot titles

Public employees may use work time to draft impartial ballot titles. A public employee may also defend a challenged ballot title.

Explanatory statements

Public employees may use work time to draft impartial explanatory statements.

Conservation district board discussing possible effects of a measure with public employees

A conservation district board may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure.

Pursuant to ORS 260.665, it is a crime to threaten loss of employment (or other loss) or offer a thing of value to induce someone to vote in a particular manner.

Public employers discussing possible effects of a measure with public employees

A public employer may tell employees about the possible effects of a measure so long as the information presented is impartial and balanced. They may not encourage (implicitly or explicitly) public employees to support or oppose the measure.

Measure debates

A forum to allow political proponents and opponents to debate ballot measures may be held using public employee work time as long as equal access is granted.

Political Action Committee

Best Management Practice

It is recommended that any PAC that may be formed, have the involvement of less than a quorum of the conservation district directors to avoid any potential violation of public meeting and record laws.



To avoid confusion of the use of work time by public employees and use of public funds to advocate for a particular ballot measure, interested citizens may want to form a Political Action Committee (PAC) which can legally solicit contributions and produce and distribute advocacy materials. The formation of a PAC must occur before any funds are collected. PACs must be filed with the county elections officer. The forms and guidebooks necessary to form a PAC and report contributions and expenditures are available from the county elections officer.

Personal Expression by Public Employees

Distribution of political material

Public employees may not distribute material that contains political advocacy while on the job during work hours, except public employees may, as part of their job duties, process and distribute incoming mail addressed to specific employees that contains political advocacy.

Political material may be distributed in public jurisdictions if the person doing the distribution is not on the job, if other people would be granted equal access, and if it does not violate the jurisdiction's policies.

Verbal communication

ORS 260.432 does not restrict the right of a public employee to express personal political views during their personal time. However, it does restrict some verbal communication while on the job during working hours (or while acting in an "official capacity").

A public employee cannot promote or oppose a political position while they are on the job during work hours.

Public presentations and speeches

A public employee cannot give a speech or presentation advocating a political position if they are on the job or acting in their official capacity. A conservation district board member may give political presentations and speeches, so long as no public employee work time is utilized.

When making a presentation that contains political advocacy during non-work time, the public employee should announce that they are acting in their capacity as a private citizen. The employee should also document that they were not on the job.

Meetings

Public employees may attend meetings at which political issues are discussed, so long as they do not engage in political advocacy themselves while on the job or acting in their official capacity.

Public employees cannot be compelled to attend political presentations. If a conservation district has a mandatory staff meeting and a political group is making a presentation, the agency must make it clear that attendance at the political presentation is optional. Public employees who do attend the political presentation must do so during non-work time. Political advocacy presentations should not occur in close proximity to events requiring public employee attendance.

Political buttons and clothing

Public employees may wear political buttons or clothing at work so long as it does not violate conservation district policy. A conservation district board may not request or require that public employees wear political clothing, buttons.

Penalties for Violations

ORS 260.995 authorizes the Secretary of State to impose a civil penalty of up to \$250 for each violation of ORS 260.432. A conservation district employee who is determined by the Secretary of State to have violated ORS 260.432, must pay any assessed civil penalty out of his or her own funds.

It is illegal for public bodies to use public funds to advocate for or against ballot measures or candidates as stated previously. In addition, ORS 294.100(1) states, “it is unlawful for any public official to expend any money in excess of the amounts, or for any other or different purpose than provided by Law.” ORS 294.100(2) makes public officials who violate ORS 294.100(1) civilly liable for money improperly spent, and authorizes suit by the district attorney or taxpayers to seek recovery of that money from the officials who authorized the expenditure.

Lobbying

Definition

ORS 171.725(8) defines lobbying as “influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.”

What is Lobbying

You are lobbying when you

Talk or write to a legislator or to his or her staff to influence legislative action. This includes:

- Testimony favoring or opposing a bill or budget.
- Proposing amendments to a bill, including technical amendments.
- A letter, memo, or e-mail favoring or opposing a bill or budget.
- Formal or casual conversations favoring or opposing a bill or budget.

- Talk or write to a legislator or to his or her staff to promote good will toward an agency or program.
- Talk or write to others with the intent to ask them to influence legislative action. This includes:
 - Meetings where you ask people to support or oppose a bill or budget.
 - Letters, memos, e-mails, or newsletters asking people to support or oppose a bill.

You are not lobbying when you

- Talk or write to a legislator or to his or her staff merely to provide facts. Facts may include fact estimates and expert opinions of fact. The facts may apply to any program, budget, bill, or issue.
- Work within your agency to research, write, or otherwise develop a bill or budget.
- Research or write testimony supporting or opposing a bill.
- Are waiting to present testimony or meet with legislators or staff.
- Write or talk to anyone to solicit their input on an agency's legislative proposals or budget.
- Support work for an agency's lobbying activities, but do not communicate, yourself, with legislators or their staff.

Conservation Districts' Authority to Lobby

In an Attorney General's Letter Opinion, *DOJ File No. 603-137-NR012-90, issued May 24, 1990*, a response was provided for the question, "Do soil and water conservation districts have authority to lobby?" The answer provided was "Yes, but with some limitations."

Conservation districts are authorized under ORS 568.225(2) to participate in effectuating the policy by which they are formed, which is set out in ORS 568.225(1). ORS 568.225(2) provides a broad grant of authority by the legislature to the conservation districts to engage in activities which further the legislative policy set out in ORS 568.225(1). However, it is illegal for public bodies to use public funds to advocate for or against ballot measures or candidates.

The use of public funds for lobbying is permissible as long as:

- It is the legislature or other government entity that is being lobbied and not the electorate.
- The lobbying does not take place indirectly through a political action committee.

- The lobbying is not in support or opposition of a particular candidate or measure (i.e., a conservation district may lobby for a bill presented to the legislature or other government body, but cannot lobby for a measure or candidate brought before the voters during an election).
- The funds used to pay for the lobbying or lobbyist be either from funds specifically designated for that purpose or at least from funds not designated for some other specific purpose. General grant money, not restricted to particular purposes, can be used for general conservation district business, including lobbying.

Registration

Persons who exceed an aggregate amount of 24 hours during any calendar quarter in lobbying, or who spend more than \$100 for lobbying during a calendar quarter, must register with the Oregon Government Ethics Commission. Once registered, lobbyist expenditures must be reported quarterly.

Resources

Statutes, Laws, and Rules

ORS 171—Lobbying Regulation

https://www.oregonlegislature.gov/bills_laws/ors/ors171.html

ORS 260—Campaign Finance Regulation; Election Offenses

https://www.oregonlegislature.gov/bills_laws/ors/ors260.html

ORS 294—Local Budget Law

https://www.oregonlegislature.gov/bills_laws/ors/ors294.html

ORS 568—Soil and Water Conservation; Water Quality Management

https://www.oregonlegislature.gov/bills_laws/ors/ors568.html

Other Information

Secretary of State

Elections Division

255 Capitol St. NE, Suite 501

Salem, OR 97310

Phone _____ (503) 986-1518

Fax _____ (503) 373-7414

www.oregonvotes.gov

Publication

Restrictions on Political Campaigning by Public Employees

www.oregonvotes.gov/doc/publications/restrictions.pdf

Oregon Government Ethics Commission

3218 Pringle Road SE, Suite 220

Salem, OR 97302

Phone _____ (503) 378-5105

Fax _____ (503) 373-1456

www.oregon.gov/ogec

U.S. Office of Special Counsel

Phone _____ (800) 854-2824

www.osc.gov

7 Public Meetings and Records



The purpose of this chapter is to provide information for public meetings and records. Oregon's Public Meetings and Records Laws are the foundation for open and transparent government. The Oregon form of government requires an informed public be aware of the deliberations and decisions of governing bodies and the information upon which decisions are made. The public is entitled to know how the public's business is being conducted. Information in this section has been taken from the *Attorney General's Public Records and Public Meetings Manual* along with other sources.

Public Meetings

Although law does not specify the frequency of conservation district board meetings it is common practice, and highly recommended by ODA, that conservation district boards meet monthly. Meetings are fundamental to conducting conservation district business. Monthly board meetings have several purposes, among which are:

- To discuss and act on regular conservation district business.
- To establish conservation district policy.
- Identify natural resource issues and concerns and how to address them.
- Formulate annual work plans and long-range business plans.
- Monitor the implementation of annual and long-range work plans.
- Provide information and receive reports.
- Review and approve conservation and cooperator plans.
- Manage conservation district finances (e.g., authorize budgets, pay bills, appropriate resources).
- Act on personnel matters (e.g., hire, review).
- Conduct executive sessions, as needed.
- Report to the public and hear public comment.

Best Management Practice

All conservation districts should obtain a copy of the *Attorney General's Public Records and Public Meetings Manual*. The public records and meetings manual is revised after each legislative session. To stay current with changes in the law, conservation districts should obtain the most recent copy of the manual. Copies can be purchased from the Oregon Department of Justice or downloaded from the web site. See the Resources section for more information.

Public Meetings Law

It is the intent of public meetings law that decisions of governing bodies be arrived at openly. Public meetings law applies to all meetings of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. A conservation district is both a governing body and a public body according to ORS 192.610, and is therefore subject to Oregon's public meetings law per ORS 192.620-192.710. With the exception of executive sessions, public meeting law requires that meetings be open to the public, have advance notice given, have minutes taken, and that votes be made publicly and recorded.

Meetings of a conservation district board must be open to the public, unless specifically exempted by law. In order to be considered a meeting, a majority of the board (i.e., a quorum) must be present to make a decision or deliberate toward a decision on any matter. An advisory board, committee, subcommittee, task force, or other official group that has authority to make decisions or recommendations to the conservation district on policy or administration, is also required to comply with public meetings law. A staff meeting is not covered under the public meetings law, because it does not require a quorum, and staff simply make recommendations to the board for consideration. However, if a staff meeting includes enough board members to form a quorum, then it must be open to the public.

Public meetings law is not a "public participation law." The right of the public to attend public meetings does not include the right to participate by giving testimony or comment. However, the public must be allowed to give comment on the employment of a public officer, or the standards to be used in hiring a chief executive officer.

What is a "public" meeting?

ORS 192.610(5) defines a public meeting as, "the convening of a governing body for which a quorum is required in order to make a decision or deliberate toward a decision on a matter." A quorum of the conservation district board must be present for the board to make decisions. All official actions of the conservation district board must be taken by open public vote (i.e., no secret ballot).

What is a quorum?

ORS 174.130 states, "majority can exercise authority given jointly."

ORS 568.570 states, "majority constitutes a quorum." When determining whether a quorum is present for conservation district board purposes, a majority of the board positions must be present, regardless of any vacant positions at the time of the meeting:

- A seven-position board must have at least four directors present.
- A five-position board must have at least three directors present.

What should a board do if it discovers it has violated public meetings law by making a formal decision without having a quorum present?

ORS 192.680(1) states, "A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption."

Does an advisory board, council, committee, subcommittee, task force, and other official group have to comply with public meetings law?

Any advisory board, council, committee, subcommittee, task force, or other official group of two or more members that has been granted authority by the board to make (a) recommendations to or (b) decisions on behalf of the board on policy or administration is a considered a "governing body," and; therefore, must adhere to public meetings law. This is true regardless of the number of elected board members, if any, on the advisory board.

Can several conservation district directors meet informally, other than at the monthly board meeting, to discuss conservation district business?

If a quorum of the governing body meets to discuss conservation district business outside the jurisdiction of the publicly advertised conservation district board meeting, they are violating public meetings law. A quorum of the conservation district directors of a board may attend a social gathering together, but they may not deliberate toward or make a decision regarding conservation district business, unless the conservation district advertised the gathering as a place and time where the conservation district would conduct official business.

Are conservation district "retreats" subject to public meetings law?

According to the Attorney General's manual, the answer depends on the matters discussed at the retreat. If the retreat were confined for instance, to training and personal interaction, the public meetings law would not apply. However, if at the retreat the governing body deliberates or makes a decision on official business, the public meetings law applies (i.e., a public notice must be published, minutes prepared, and the location needs to be consistent with public meetings law).

May a quorum of members of a governing body participate in a "community retreat" sponsored by a chamber of commerce?

Yes, so long as they avoid getting together as a group for any deliberations.

What of a "retreat" for employees and administrators of the public body, attended by members of the governing body?

Such a "retreat" can be organized to avoid the meeting of a quorum of the governing body for the purpose of gathering information or "deliberation" toward decisions on matters within their responsibility. However, it is also very easy for information gathering or policy deliberations by members of the governing body to occur, in violation of the public meetings law.

Are there limitations on where the conservation district board can hold its meetings?

Yes. A conservation district board:

1. May not hold a meeting in a facility in which discrimination is practiced.
2. Must hold its meetings in a facility that is accessible by everyone, including those with disabilities.

If a conservation district uses a facility which discriminates on the basis of race, creed, color, gender, age, national origin, or disability, it is out of compliance with the Civil Rights Act of 1964 as amended, and the Americans with Disabilities Act (ADA). For example, if a conservation district's usual meeting place is on the second floor of a building that has no wheelchair access to that floor, (i.e., an elevator or other device) the conservation district is out of compliance with the Americans with Disabilities Act. Each conservation district should become familiar with the requirements of these two Acts and insure compliance.

May a conservation district board hold its meetings outside the geographic boundaries of its jurisdiction?

Yes, in certain circumstances. ORS 192.630(4) states, "Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action."

Can public meetings be held by telephone conference calls or other electronic communications?

Yes. Notice to the public must be given, and the board must provide at least one place where the public can listen to the meeting by speakerphone or other devices. The minutes of the meeting must reflect that it was held by teleconference and that provisions were made for the board members and public to hear the entire conversation and all decisions.

E-mails: The *Attorney General's Public Records and Public Meetings Manual* mentions that communication between and among a quorum of members of a governing body convening on electronically-linked personal computers (i.e., e-mail, cell phone texting) are subject to the public meetings law if the communications constitute a decision or deliberation toward a decision for which a quorum is required, or the gathering of information on which to deliberate. Therefore, caution should be used both by board members and conservation district staff when communicating by e-mail between and with board members to ensure that there is no violation of public meeting law. There is a new law taking effect on January 1, 2013, that addresses e-mails in the public sector.

Are interpreters required to be provided at meetings?

Conservation districts should make every effort to provide an interpreter for a disabled person. ORS 192.630(5) states:

(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Health Authority or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

Visit the Department of Human Services web site (see the Resources section) to request interpreter services.

The Attorney General's Public Records and Public Meetings Manual states:

"The Americans with Disabilities Act may impose requirements beyond state law. The ADA requires public bodies to ensure that their communications with persons with disabilities are as effective as communications with others. For deaf or hard-of-hearing individuals who do not use sign language, other means of communication, such as assistive listening devices, may be necessary. If the meeting is held by electronic means, the needs of persons with vision or hearing impairments may need to be considered. Also, if written materials will be used during the public meeting, the governing body must make the material available, when requested by individuals with vision impairments, in a form usable to them, such as large print, Braille or audiotapes. A public body cannot charge a person with a disability to

cover the cost of providing such additional aids and services. Remedies for violation of the ADA are not limited to the state law provisions of ORS 192.680.”

With whom are complaints or suits filed by a person who feels a conservation district has not complied with Oregon's Public Meetings Law?

ORS 192.680(2) advises that complaints or suits in regard to an alleged violation of the public meetings law be filed with the circuit court of the county in which the conservation district board ordinarily meets.

Voting Requirements

What constitutes a quorum?

ORS 568.570 states, "majority of the directors constitutes a quorum."

Oregon's public meetings law does not define quorum. However, ORS 174.130 and ORS 568.570 do as previously outlined in this chapter. A quorum for a conservation district board means a **majority of the board positions** must be present whether or not all positions are actually filled at the time. If there is a gathering of less than a quorum at a meeting, under Oregon's public meetings law, **no binding decisions can be made.**

How many affirmative votes are required to take official action or pass a motion at a conservation district board meeting?

The *Attorney General's Public Records and Public Meetings Manual*, addresses this question in detail. Here are a few excerpts from the manual:

"Attorneys General have consistently advised that this statute requires a majority of all members of a board, commission or council to concur in order to make a decision. When ORS 174.130 applies, a majority of those present and voting in favor of a particular action is **not sufficient** to authorize that action **unless** that majority is more than one-half of the **total members** of the board, commission or council." (emphasis added)

What this means is a majority vote is required of all elected directors of the conservation district for the decision of a topic. The following is an example for a conservation district with a seven-member board.

If four board members are present, and only three members vote in favor of a motion, the motion will have insufficient votes to pass, because three votes will not provide concurrence of the majority of the governing body. With four members present, all board members need

to vote in favor of a motion for it to pass. If five or more members are present, and there are at least four votes in favor of a motion with one or more against, the motion will pass, because there is concurrence of the majority of the governing body.

The same principle applies for a five-member board. A minimum of three votes is required to pass a motion of a five-member board.

Is consensus an appropriate decision-making method for official board decisions?

Since there are varying descriptions and levels of consensus, it is recommended that conservation district boards make official decisions by recording votes. A board may be in consensus on a particular issue, but it is recommended that boards make decisions based on votes of the members present.

Can conservation district directors vote by "secret ballot"?

No. All conservation district decisions must be made by public vote. Secret ballots are prohibited. If the vote is unanimous, the meeting minutes can state such, as long as the directors present at the time of the vote are identified in the meeting minutes. However, if the vote is not unanimous, the vote of each member must be recorded by name in the minutes. Written ballots are permitted, but each ballot must identify the member voting and the vote must be publicly announced.

Can associate directors and directors emeritus vote when the conservation district board makes official decisions?

No. Associate directors and directors emeritus are not voting members of the board.

If there are not enough directors at a conservation district board meeting to have a quorum, can the conservation district call a board director who is not in attendance on the phone to get their vote on an agenda item?

Only if the conservation district board has provided a speakerphone or other device by which everyone in attendance at the conservation district board meeting can hear the conversation provided by the director who has been called. The director must participate in the full discussion of the matter at hand, not just participate in the vote. If the conservation district uses this procedure, the meeting minutes must state that the vote was cast in that manner and that meeting participants heard the conversation on a speakerphone or other device. The director on the speakerphone or other device should state their name for the record and so that the public has confirmation of the director's identity.

Executive Session



The public meetings law authorizes governing bodies to meet in executive session in certain limited circumstances.

An executive session is a meeting that is closed to certain persons or organizations for the purpose of discussing sensitive matters.



Because violations of executive session provisions of public meeting law are subject to civil penalties and investigation by the Oregon Government Ethics Commission, conservation district boards should exercise care when entering into executive sessions.

executive sessions.

For what purposes can a conservation district board enter into executive session?

ORS 192.660 outlines the topics governing bodies have authority to call for an executive session. The following is taken from ORS 192.660 with further explanations and are subjects most common for conservation district boards:

1. Employment of public officers, employees, and agents—a meeting to discuss the specific hiring of a public officer, employee, or staff member. An “individual agent” for this purpose means an independent contractor.
2. Discipline of public officers and employees—a meeting called to discuss the discipline or termination of a public officer, employee, or staff member, unless the person requests an open hearing.
3. Labor negotiations—labor negotiations can be held in an open meeting unless both sides of the negotiations request that they be held in executive session. Labor negotiations are not subject to noticing requirements contained in public meetings law.
4. Real property transactions—a meeting to discuss or negotiate on a property transaction.
5. Exempt public records—if any of the records considered exempt from public records law are discussed at a meeting then the conservation district may hold an executive session.
6. Trade negotiations—to consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competitions with governing bodies in other states or nations.
7. Legal counsel—a meeting may be held in executive session for the purpose of consulting with legal counsel concerning the legal rights and duties of current litigation or litigation likely to be filed. The governing body must bar any member of the news media from

Legal Requirement

No final decisions can be made in executive session. The board needs to make all decisions during the open session of the public meeting.

Best Management Practice

An executive session “checklist” is available on the ODA SWCD Program web site, see the Resources section and the Appendix. The conservation district board chair should use this tool whenever entering into executive session.

attending the executive session if the member of the news media is a party to the litigation or is an employee, agent, or contractor of a news media organization that is a party to the litigation.

8. Performance evaluations—a meeting to review the performance of a chief executive officer, other officers, employees, and staff members of the conservation district if the person whose performance is being reviewed and evaluated does not request an open hearing. In order to permit the affected person to request an open hearing, the governing body must give sufficient advance notice to the person of his or her right to decide whether to require that the performance evaluation be conducted in open session.
9. Public investments—an executive session may be called to negotiate with private persons or businesses regarding a proposed acquisition, exchange, or liquidation of public investments.

May a conservation district board reach a decision in an executive session?

No. The conservation district board may not reach a final decision in executive session, but it may informally decide or reach a consensus. The board must then go to open session to act formally on the matter.

What if the decision is to take no action? For example, a complaint with respect to a public official, informally concluded to be without sufficient merit to warrant discipline.

It is appropriate, but probably not required to announce in open session that the matter was not resolved, that no decision was reached, or that in the absence of a motion for action, no action will be taken. However, if a final "no action" decision is made by vote of a quorum of the board, the decision must be made and announced in open session.

Is a public notice required to hold an executive session that is not associated with a regularly scheduled board meeting?

Yes. If the conservation district wants to hold an executive session that is separate from the regularly noticed board meeting, the executive session must be noticed in the same manner as a regular board meeting. As described in ORS 192.640(2) the notice must state the legal provision from the list in ORS 192.660(2) authorizing the executive session.

Can an executive session be called during a regular conservation district board meeting without having advertised the executive session as part of the board meeting agenda?

Yes. An executive session can be called during a regular board meeting that has been publicly noticed, even though the executive session

was not part of the meeting notice. However, the presiding officer must announce the statutory authority for the executive session, ORS 192.640(2), before going into executive session. The reason for the executive session must be one of the acceptable categories identified in ORS 192.660(2).

If the media requests to attend an executive session, must the conservation district grant the request?

Yes. Public meetings law expressly provides that the news media shall be allowed to attend executive sessions. However, the conservation district board can require that specified information in the executive session not be disclosed by the media. If the conservation district board wishes to exercise non-disclosure, they must first inform the media of the restriction. The *Attorney General's Public Records and Public Meetings Manual* has more instructions on the non-disclosure of information.

May a governing body restrict the number of media representatives attending an executive session?

Perhaps. A governing body probably would be able to limit attendance to one representative of each medium wishing to be represented. It should be reasonable to limit total attendance to a number that would not interfere with the governing body's deliberations.

May a reporter who has a personal stake in a matter, or who has a close relationship to someone who is personally interested, be excluded from a special session?

The law does not provide for this exclusion, but if the attendance of a reporter with direct personal interest would frustrate the purpose of the executive session, a governing body could justify barring the individual.

Must reporters be permitted access to executive sessions conducted by electronic conference?

Yes.

If during an executive session, the members of the governing body discuss matters outside its proper scope, what is the proper role of media present? May they begin taking notes?

The public meetings law does not prohibit media representatives from taking notes of executive sessions they attend, whether or not the discussion includes matters outside the lawful scope of the executive session. The law merely permits the governing body to require that specified information discussed during executive session not be disclosed.

May the conservation district board permit persons other than the media to attend an executive session?

Yes. Executive sessions are generally closed to all, except members of the conservation district board and the media. The board may invite or approve other specified persons to attend.

Are minutes from an executive session required and how should they be kept?

Minutes of an executive session are required. ORS 192.650(2) allows a record of any executive session to be kept in the form of a sound recording, which need not be transcribed unless otherwise provided by law. ORS 192.652 states, "If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action, and the court shall determine their admissibility."

May a governing body reviewing or evaluating a public employee's performance in executive session exclude the employee from attending?

If the employee requests a public session, the meeting must be held in public, and the employee may not be excluded. If the employee makes no such request, then the employee may be excluded.

With whom are complaints or suits filed concerning executive sessions?

ORS 192.685 directs complaints concerning violations of executive session law are made to the Oregon Government Ethics Commission (OGEC) for review and investigation. The OGEC may impose civil penalties for violating any provisions of ORS 192.660. The Attorney General and district attorneys have no enforcement role under the public meetings law.

Notice Requirements

Legal Requirement

A meeting without proper notice is a violation of public meetings law.



A conservation district board is required to give public notice of its meetings. The public notice must provide the time and place of the meeting. Public meetings law also requires that a notice of any meeting include a list of the principal subjects anticipated to be considered at the meeting. The notice of meeting should be provided far enough in advance of the meeting to give interested persons an opportunity to attend.

Meeting notices

Participants, including the general public, should be notified well ahead of the meeting as a courtesy to the public. Notice should be posted a minimum of two weeks in advance of the meeting. Also advised, is that the conservation district create and provide an annual calendar of regular board meetings available to the public.

The public must be notified of the time and place of conservation district board meetings. Also, the conservation district board must give notice to the persons and the media that have stated in writing they wish to be notified of every meeting.

The notice of any meeting that will include an executive session should be given to the media and public. The notice must state that the executive session is closed to the public, and include the statutory reason why it is closed.

The public must be provided with an agenda for all regular, special, and emergency meetings. The agenda need not go into detail, but it must include a list of the principal subjects anticipated to be discussed at the meeting. It must be clear enough that interested persons will have an accurate idea of what the meeting will cover.

Not every proposed item of business is required to be on the agenda. The conservation district must make a "reasonable" effort to include all of the important items, but if an additional subject arises too late to be included in the notice, it may still be discussed at the meeting.

The following are suggested ways to meet the public meeting notice requirement for regular, special, and emergency meetings:

1. **Press releases:** Press releases should be given to the appropriate publications and news services. These commonly include:
 - a. **Wire service:** Associated Press. Notices directed to this service at its main offices at the Press Room in the State Capitol Building in Salem, Oregon, will reach the service. In other areas of the state, notices directed to subscribing news media should reach the wire service.
 - b. **Local media representatives:** If the meeting involves a local matter, then the notice should be sent to local media.
 - c. **Trade papers:** Special interest publications and professional journals.

2. **Mailing lists:** Conservation districts maintaining mailing lists of persons or groups for notice of public meetings should send notices to the persons on the list.
3. **Interested persons:** If a conservation district is aware of persons interested in receiving notice of a meeting, these persons should be notified. Persons who request in writing to be noticed of meetings, must be given notice.
4. **Notice boards:** Some smaller communities have a designated area or bulletin board for posting notices. Governing bodies may want to post notices of meetings in such areas. Posting to a notice board or to a web site alone does not satisfy the notice requirement.

Paid display advertising is not required. A conservation district is not required to ensure that the press release is published. News media requesting notice of meetings must be given notice.

Regularly scheduled meetings: The notice for a regular meeting must be reasonably calculated to give notice of the time and place for the meeting "to interested persons including media which have requested notice." Notice should be provided a minimum of two weeks prior to the meeting.

Special meetings: Special meetings require at least 24-hours notice. Press releases should be given to wire services, other media, and interested persons. News media requesting notice must be notified.

Emergency meetings: Meetings are considered an emergency if they are called with less than 24-hours notice. An actual emergency must exist and the meeting minutes must describe the reason for the emergency. The conservation district must still make an effort to contact the media and issue public notice.

Commonly Asked Questions and Answers

How far in advance must a public body give notice of its meetings?

Far enough in advance to reasonably give interested persons actual notice and an opportunity to attend. Because the notice must specify the principle subjects to be covered, it must be given separately for each meeting. An example, even though the public and news media know that the conservation district board meets every Wednesday evening, the conservation district must provide adequate notice of each meeting as required by statute.

Is a notice on a bulletin board or conservation district web site sufficient?

No.

Must meeting notices be published as legal notices?

No.

May a governing body issue a single notice for a "continuous session" that may last for several days?

In most circumstances yes, if the governing body can identify the approximate times that principle subjects will be discussed.

Does the public meetings law notice requirement require the purchase of advertising?

No, it requires only appropriate notice.

Must a notice be posted for a meeting that is exclusively an executive session?

Yes. The notice requirements are the same and must include statutory authority for the executive session.

Is a meeting without proper notice an illegal meeting?

Yes. A meeting without proper notice violates the public meetings law.

If a news medium requests notice of meetings, is it sufficient for that notice to be mailed "general delivery" to that news medium?

In most circumstances yes, if mailed far enough in advance. It is up to the news medium to establish procedures to ensure that the proper person receives the notice. For a special or emergency meeting, a telephone call to a responsible person is necessary.

Is a media request to receive notice of any meetings sufficient to require notice of special and emergency meetings?

Yes.

Effective Conservation District Board Meetings

Board meetings are fundamental to conducting conservation district business, and can often be inefficient, long, and discouraging. Effective board meetings can be conducted with planning and good facilitation by the presiding officer. Conservation district boards with effective board meetings have adopted and follow board meeting policies, have clear and detailed agendas, stay on schedule, and have respectful conduct of director behavior.

Each conservation district should determine and develop its own procedures for holding meetings. It is customary that the chair serves as the presiding officer over meetings and it is their responsibility to follow the agenda. The presiding officer or the board itself may elect to appoint a person to facilitate a discussion on a topic or issue. This person can be a board member, staff, volunteer, or consultant. The person's role as facilitator will be to lead the board through a discussion, and lead the group through decision-making processes. While following the agenda is important, meetings should be conducted in such a manner as to provide a full and fair opportunity for discussion of the issues in an efficient and timely manner.

Many conservation districts have a policy to contact board members and committee members by telephone a day or two before the meeting to encourage good participation. Setting a yearly calendar for all board meetings will help people know in advance when meetings will take place.

A clear and detailed agenda is sent to the board members at least one week in advance. An agenda is an important tool for planning and holding effective meetings. An agenda identifies:

- All items to be brought before the board for discussion.
- The persons responsible for facilitating and/or providing the information for each agenda item.
- An "anticipated action" for each agenda item.
- Timeline for discussions and action for each agenda item.

Items may be added to or modified on the agenda, but conservation districts should make every effort to follow the agenda as a courtesy to the public and invited guests.

Clearly defined meeting time limits

Board meetings should start and end on time. As a courtesy to board members, staff, partners, and the public, conservation districts are encouraged to limit their meetings to two hours.

Ways to shorten meeting times include:

- Well planned agenda.
- Presiding officer (or appointed time keeper) keeps board on schedule and on task.
- Board decision to postpone, assign to committee, or eliminate items from the agenda.

- Advance written or e-mailed reports from staff, committee chairs, treasurer, provided to the board for review in advance of the meeting, using the meeting time for “highlights.”
- Utilize established policies and procedures for conducting meetings (e.g., *Robert’s Rules of Order*, conservation district policies and procedures).
- Assign responsibilities to investigate and prepare background information on an item to be discussed (e.g., location for annual meeting, new equipment specifications).
- If it is determined during the course of the meeting that more information is needed on an agenda item, assign the item to a person/committee to gather information.
- Schedule a second meeting to discuss topic or move agenda item to the end, or add to the next regular meeting if it can wait.
- Be courteous when scheduling invited guests or participants. Advise them of their time limit and when they will be presenting. Accommodations should be made for travel times and efficiency of meeting time when scheduling speakers.
- Define the action requested of the board. Clearly identify what the board is asked to do. Separate items into “action” items and “discussion” items.



Follow defined procedures for conducting meetings

Many conservation districts find that a modified version of *Robert’s Rules of Order* is a useful resource for conducting meetings. Conservation districts need to formally adopt a decision-making process, and make sure that all board members understand the policy. An outline of the procedures for motions and voting, or a flow chart demonstrating the procedure may be useful in outlining the conservation district’s policy. An example of a conservation district meeting motion policy can be found in the Appendix. A link to a *Robert’s Rules of Order* cheat sheet can be found on the resources page.

Recommended Policy

It is highly recommended that conservation districts adopt and follow procedures and policies for conducting meetings, particularly regarding official action to be taken by the board.

Make appropriate meeting arrangements

Pay close attention to meeting arrangements. Plan in advance for:

- A comfortable room
- Parking
- Directional signs
- Refreshments
- Audio-visual equipment (e.g., easels, easel pens, masking tape, slides, overhead and computer projectors, extension cords)

Arrange the meeting room so everyone has as much face-to-face contact with everyone else in the room as possible. If members of the general public are present, or if the conservation district invites guest

presenters, use name tags with large letters or nameplates to help participants know who's present.

Board members and the board chair act responsibly

A good board member will:

- Come prepared and read the board packet before the meeting.
- Arrive on time.
- Respect fellow board members and staff, their opinions, and the decisions of the board.
- Quiet all cell phones and refrain from using personal electronic devices during the meeting.
- Be conscious of body language and non-verbal responses; body language can be just as disrespectful as words.
- Keep an open mind, focus on the facts, and will not attack other board members or staff.
- Be respectful of differences and seek to reach a consensus.
- Listen and respect others while they speak.
- Participate in discussions respectfully and in a constructive manner.
- Represent the board decisions and positions, even when they are not the individual board member's position.

A good board chair (or presiding officer) will:

- Keep the meeting on schedule. Ask permission to extend discussions.
- Manage side discussions and help board stay focused.
- Encourage “dumb” questions, respectful dissent, and authentic disagreements.
- Recap each agenda item and the resulting action.
- Make sure each person says at least one thing at every board meeting.

Public Participation

The presiding officer in a public meeting has inherent authority to keep order and to impose any reasonable restrictions necessary for the efficient and orderly conduct of a meeting. If public participation is to be part of the meeting, the presiding officer may regulate the order and length of appearances to presentations of relevant points. Any person who fails to comply with reasonable rules of conduct, or who causes a disturbance may be asked or required to leave and upon failure to do so, becomes a trespasser. However, it is questionable whether

a governing body may exclude a member of the public, because the person engaged in misconduct at a previous public meeting.

Does the public meetings law grant the public the right to testify before the conservation district board?

No. The public meetings law is a public attendance law, not a public participation law. It does not give the public the right to interact with the conservation district board during its meeting. The board; however, may request public participation or provide time on the agenda for public comment. Public comment may be restricted to a time limit.

What can be done if a person causes a disruption in a board meeting and refuses to comply with reasonable rules of conduct?

The presiding officer has inherent authority to keep order and to impose any reasonable restrictions necessary to conduct an efficient and orderly meeting. Any person who isn't willing to follow the rules or restrictions imposed, or causes a disturbance, may be asked or required to leave, and if he or she refuses to do so, becomes a trespasser and may be arrested.

May a person who has disrupted prior meetings, assaulted board members, be excluded from a public meeting?

It is doubtful that a person may be excluded for prior conduct. The person who causes the disruption may be arrested for trespass.

Public use of Recorders, Cameras, and Microphones

The Attorney General has concluded that members of the public cannot be prohibited from unobtrusively recording the proceedings of a public meeting.

Can anyone record a conservation district board meeting?

Yes. Anyone can record or videotape a meeting, subject to reasonable rules of the conservation district board to avoid disruption.

Must the governing body be informed of the intent to record?

No.

Smoking at Public Meetings

ORS 192.710(1) states, "No person shall smoke or carry any lighted smoking instrument in a room where a public meeting is being held or is to continue after a recess. For purposes of this subsection, a public meeting is being held from the time the agenda or meeting notice

indicates the meeting is to commence regardless of the time it actually commences."

Minutes of Meetings

Minutes provide a written record of the proceedings of the meeting, are considered public record, and must be made available to the interested general public within a reasonable time period.

Requirements of ORS 192.650

ORS 192.650 requires conservation districts to keep minutes of all meetings. ORS 192.650 states:

"(1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

'(a) All members of the governing body present;

'(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

'(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

'(d) The substance of any discussion on any matter; and

'(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

'(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

'(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

'(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording."

Minutes of executive sessions should be kept separately from minutes of public meetings.

It is recommended that draft minutes be distributed as soon as possible after the meeting. Minutes distributed to board members and participants have a written reference to commitments they made, and can note corrections or additions to the minutes while the meeting is still fresh in memory.

It is highly recommended that conservation districts adopt policies on how minutes are produced and distributed. Suggestions for policies include:

1. Staff position or board member responsible for writing the minutes.
2. Board reviews minutes at next regular board meeting.
3. How minutes are amended.
4. Adoption of minutes.
5. Designated signer (e.g., board members, chair, secretary, staff) of approved minutes.
6. Distribution of minutes.

Distribution of minutes



Minutes must be provided to any person that has requested a copy. All minutes or recordings shall be available to the public within a reasonable time after the meeting.

The ODA SWCD Program should be on each conservation district's mailing list for approved minutes. Minutes should clearly indicate the date of board approval. Minutes that are sent in draft form will not be retained by ODA. ODA reviews the minutes and submits a copy of the minutes to the State Archives for permanent retention. In addition to ODA, several conservation partners have requested to regularly receive conservation district meeting minutes.

Retention of minutes

1. Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in county records) must be retained

Legal Requirement

The minute distribution list in the Resources section of this chapter, is provided as an official request to receive the approved meeting minutes monthly. Please update the conservation district's mailing list for meeting minutes to include those in the list. Approved minutes should be mailed or e-mailed to the list provided in the Resources section within a reasonable time after the meeting. Minutes should also be provided to any person that requests a copy, or asks to be added to the conservation district's mailing list.

permanently by the conservation district in paper or microfilm form.

2. Executive session minutes must be retained for 10 years.
3. Audio or visual recordings must be retained for one year after minutes are prepared and approved.
4. Other records and exhibits not pertinent to minutes must be retained for five years.

Do board meeting minutes need to be written verbatim?

No. Meeting minutes need not be a written verbatim transcript. There should be enough detail to provide an adequate reflection of subjects discussed, views of board members and participants, and a record of final disposition.

Can board meeting minutes be withheld from the public, because the minutes will not be approved until the next board meeting?

No. After the board meeting minutes are prepared, they cannot be withheld from the public, even though they have not yet been approved by the board. Minutes must be prepared and available within a “reasonable time after the meeting” per ORS 192.650(1). It is advisable; however, to mark any copies provided to the public, before they are approved by the board as “DRAFT.” Following review and approval, the final minutes should be signed and dated for the official record.

Public Records Law and Retention Rules

Public records law grants the public a broad right to examine records created, maintained, cared for, or controlled by public bodies. This law is primarily a disclosure statute, not a confidentiality statute. Additionally, public records retention rules provide for the retention and disposition of public records. There is a new law taking effect on January 1, 2014, that addresses e-mails in the public sector. The Oregon Department of Justice will be publishing an updated version of the *Attorney General’s Public Records and Public Meetings Manual* to address these changes and any other changes needed.

Public Records Law

Under ORS 192.420, every person has a right to inspect any nonexempt records of a public body in the state. The Attorney General has concluded that “person” does not mean public body. This means a public body cannot use the public records law to obtain records from

another public body. However, under ORS 568.600(3), conservation districts are required to make all records and information pertaining to the conservation district available to ODA.

Who is subject to the public records law?

ORS 192.420 applies to any public body in Oregon. Public body as defined in ORS 192.410(3), "includes every state officer, agency, department, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council, or agency thereof; and any other public agency of this state." Remember that conservation districts are included in the "special districts" and "municipal corporation" titles.

What records are covered by the law?

ORS 192.410(4) defines public record as including, "any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics."

ORS 192.410(6) defines writing to include, "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." The Oregon Department of Justice advises that e-mails and electronic communications are also considered public records.

Records need not have been prepared originally by the public body to qualify as public records. If the information is owned, used, or retained by the public body, it is subject to public records law.

Public records requests



The procedures must include:

- The name and address of one or more persons to whom public record requests may be sent.
- The amount and manner of calculating fees that the public body charges for requests of public records.

A sample procedure is provided in the *Attorney General's Public Records and Public Meetings Manual*.

Legal Requirement

Conservation districts must adopt written procedures for responding to public records requests.

What is the time frame to respond to public records requests?

If a request is made in writing, the conservation district must provide a response acknowledging receipt of the request "as soon as practicable and without unreasonable delay." The *Attorney General's Public Records and Public Meetings Manual* explains that it should be possible to make requested records available within 10 working days; however, recognizing that in some cases more time may be required.

Can the public inspect and examine original documents?

ORS 192.430 requires a custodian of public records to provide "proper and reasonable opportunities for inspection and examination of records in the office of the custodian...during usual business hours" to persons seeking access to public records. The public is entitled to inspect nonexempt records as promptly as a public body can make them available, and must provide "reasonable facilities for making memoranda or abstracts from the records."

May a public body charge a fee per page for copies of public records and for time spent putting the information together?

Yes. A public body may charge its actual cost to make the records available for inspection or for furnishing copies. The cost per copy should reflect the cost for a person to locate the information, copy it, and other administrative overhead. ORS 192.440 has more detailed language.

Can a public body require prepayment of a public records request?

Yes. The law permits the public body to do so, and most public bodies request prepayment.

When does a public body waive or reduce fees?

ORS 192.440 allows a waiver or reduction of fees and provides a process for petitioning from unreasonable denials of fee waivers or reductions. The custodian of any public record may furnish copies without charge if the custodian determines that the waiver or reduction of fees is in the public interest. A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the countydistrict attorney.

Recommended Policy

A procedure for the public to request fee waivers and fee reductions, should be addressed in the conservation district's policy for public records requests.



What public records are exempt from disclosure?

There are specific and limited types of records that are exempt from public disclosure under Oregon public records law. These exemptions are not covered in this Guidebook. Conservation districts should consult ORS 192.501 and 192.502 and the *Attorney General's Public*

Records and Public Meetings Manual for specific information and guidance.

When should the federal Freedom of Information Act (FOIA) be considered?

Records that pertain to the use of federal funds (e.g., the Conservation Reserve Enhanced Program records) may be covered under FOIA. Care should be taken when determining the disclosure or exemption of such records. The conservation district may want to consult legal counsel.

Where does a person go for review of a denial of records in the custody of a public body made up of elected officials?

According to ORS 192.480, a suit for injunctive or declaratory relief is filed with the circuit court of the county in which the public body is located.

Be advised, if the petitioner prevails, the conservation district may be required to compensate the petitioner for litigation cost, including attorney fees.

Public Records Retention



In Oregon, the State Archivist has statutory responsibility and authority to authorize destruction of public records per ORS 192.105. OAR 166 Division 150 is the mechanism by which that authority is given to counties and special districts, and provides for the orderly retention and disposition of public records regardless of the format of the records. If federal funds are involved, records retention requirements of the United States Government must be observed. A link to OAR 166 Division 150 for the General Records Retention Schedule for Counties and Special Districts and example policies and worksheets can be found in the Resources section.

Recommended Policy

Conservation districts should develop, adopt, and follow a records retention policy.

Best Management Practice

Because of the importance of maintaining and keeping permanent records, the conservation district should identify and use a secure storage facility for keeping permanent, confidential, and other important records such as minutes, personnel records, and financial documents. Some suggestions are off-site storage, fire-proof safe or storage cabinet, or bank vaults.

Resources

Statutes, Laws, and Rules

ORS 174—Construction of Statutes; General Definitions

www.oregonlegislature.gov/bills_laws/ors/ors174.html

ORS 192—Records; Public Reports and Meetings

www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

ORS 568—Soil and Water Conservation; Water Quality Management

www.oregonlegislature.gov/bills_laws/ors/ors568.html

OAR 166, Div 150—County and Special District Retention Schedule

arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_150.html

Other Information

Oregon Department of Justice

1162 Court St. NE

Salem, Oregon 97310

Phone _____ (503) 378-2992 x 325

www.doj.state.or.us/public_records/pages/index.aspx

Publication: Attorney General's Public Records and Public Meetings Manual

www.doj.state.or.us/public_records/manual/pages/index.aspx

Department of Human Services

Oregon's Deaf and Hard of Hearing Services

www.oregon.gov/DHS/odhhs/Pages/ecs.aspx

Roberts Rules of Order

<http://robertsrules.com/faq.html#16>

Executive Session Checklist

See form in Appendix Chapter 7, or

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDExecutiveSessionChecklist.pdf

Robert's Rules of Order Cheat Sheet

http://diphi.web.unc.edu/files/2012/02/MSG-ROBERTS_RULES_CHEAT_SHEET.pdf

ODA SWCD Toolbox—Board Operations Tools and Examples

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/DistrictOperations.aspx

ODA SWCD Toolbox—Public Meetings and Records

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/PublicMeetingsRecords.aspx

SWCD Director Training Fact Sheets

Public Meeting Law:

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDPublicMeetingLawfactsheet.pdf

Public Record Law:

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDPublicRecordsLawfactsheet.pdf

Effective Board Meetings:

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/SWCDEffectiveBoardMeetingsFactsheet.pdf

Public Records

OAR Chapter 166 Division 150: General Records Retention Schedule for Counties and Special Districts

arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_150.html

SWCD Program Toolbox: Records Management

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/PublicMeetingsRecords.aspx

Minutes Distribution List

The following list is provided as an official request to receive the approved meeting minutes monthly. Please update the conservation district's mailing list for the distribution of the meeting minutes to include:

Oregon Department of Agriculture—SWCD Program

Attn: Grants Administrative Officer
635 Capitol St. NE
Salem, OR 97301

For current contact information, please visit:

The Soil and Water Conservation Commission (SWCC) member representing your conservation district.

You can find the SWCC member representing your conservation district at:
www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCD.aspx

The NRCS basin team leader representing your district

You can find your NRCS basin team leader at: <http://www.nrcs.usda.gov/wps/portal/nrcs/main/or/contact/local/#BTL>

Natural Resources Conservation Service

Attn: State Conservationist
1201 NE Lloyd Blvd., Suite 900
Portland, OR 97232

Natural Resources Conservation Service

Attn: Partnership Liaison
1201 NE Lloyd Blvd., Suite 900
Portland, OR 97232

Oregon Association of Conservation Districts

Two copies: One for president and one for executive director
Attn: Executive Director and President
PO Box 12931
Salem, OR 97309

8 Conservation District as Employer

This chapter is meant to be a very basic resource for the conservation district as an employer. Information, references, and samples are provided to help the conservation district be a more effective employer, comply with current laws, and provide a healthy working environment for all employees, volunteers, and directors. **This chapter is not legal**



advice. Conservation districts should consult their own legal counsel or personnel management professional for specific questions.

Employee vs. Independent Contractor

It is important for conservation districts to be clear if they are hiring an employee or an independent contractor. The laws, rules, and responsibilities governing each are different. Failure to properly classify those working for or with the conservation district can lead to fines, penalties, and considerable legal expenses.

An employee is anyone who performs services for pay for another person or organization under the direction and control of the person or organization. The employer has the legal right to control the method and result of the services, even if the employer does not always exercise that right.

In general, independent contractors must be free from direction and control of the hiring organization, subject to the right to specify the desired result. In Oregon, workers may only be classified as independent contractors if they meet the provisions of laws and court decisions that define independent contractor and employer-employee relationships. The statutory definition of an independent contractor can be found in ORS 670.600 to 670.610, but should not be used on its own. Definitions and “tests” to determine if a person is an independent

Best Management Practice

The Oregon Department of Revenue has published an excellent guide entitled *Oregon Business Guide: Employer's Guide for Doing Business in Oregon*. The Oregon Association of Conservation Districts (OACD) has developed a *Personnel Management Handbook for Conservation District Directors and District Managers*. It is highly recommended that all conservation districts obtain copies of these two handbooks, see Resources section. Additionally, Special Districts Association of Oregon (SDAO) provides numerous training opportunities and expert legal counsel to SDAO members. If the conservation district is a member of SDAO, they should utilize their services to the fullest extent possible.

contractor vary from agency to agency. Any conservation district considering hiring an independent contractor should consult the appropriate government agencies and possibly their legal counsel. Some of the common tests include the Internal Revenue Service's *20 Factor Test*, the Oregon Bureau of Labor and Industries' *Economic Realities Test*, and Oregon's Workers' Compensation's *Right to Control and Nature of Work Tests*. These tests can be found in the *Oregon Business Guide*.

Some of the agencies that can provide assistance in determining the status of an independent contractor are:

- Bureau of Labor and Industries (BOLI)
- Employment Department
- Department of Revenue (DOR)
- Internal Revenue Service (IRS)
- Workers Compensation Division, within the Department of Consumer and Business Services (DCBS)

DOR has an independent contractor information web page where conservation districts can find information to help understand more on this issue, see the Resources section for web address and contact information.

District Director Responsibilities

As the “Employer of Record,” the conservation district board of directors has ultimate responsibility for the conservation district employees. Therefore, responsibility for personnel management lies primarily with the conservation district directors. The responsibilities listed below should not be delegated to others, although directors should seek out advice and assistance from agencies, personnel professionals, other conservation districts, and their employees. Conservation district directors should take responsibility for:

- Developing and operating a personnel management system.
- Developing, approving, and administrating written personnel policies.
- Ensuring all employees are regularly evaluated by their supervisors, including the evaluation of the conservation district manager by the conservation district board.
- Providing training for conservation district board members and employees on personnel policies.
- Ensuring that employees are well trained and work well together as a team.

- Providing appropriate working conditions and resources to ensure employee success performing their job duties.
- Maintaining complete, written records documenting all pertinent policies, personnel actions, and management decisions.

Legal Responsibilities of an Employer

When a conservation district hires an employee, the conservation district takes on the legal responsibilities of being an employer.

Conservation districts should refer to the DOR's *Oregon Business Guide: Employer's Guide for Doing Business in Oregon*, OACD's *Personnel Management Handbook for Conservation District Directors and District Managers*, and appropriate state and federal agencies for details. A basic checklist of recommendations when hiring your first employee, provided by the *Oregon Business Guide*, can be found in the Appendix.

BOLI Technical Assistance for Employers Program, provides information on wage and hour laws, employment of minors, family leave, and civil rights laws, including the state disability law. BOLI also offers employers management training. They maintain a regular seminar scheduled on various topics. Conservation districts should contact BOLI for more information, see the Resources section for contact information.

Registration

Oregon employers are required to both register with the State of Oregon and obtain a Federal Employer Identification Number (EIN) prior to hiring any employee. An EIN can be obtained online, over the phone, or by mail from the IRS, see the Resources section for contact



information. DOR's *Combined Employer's Registration* form is used to receive a Business Identification Number (BIN).

A copy of the form should be retained by the conservation district and kept on file.

Legal Requirement

All Oregon conservation districts have an EIN. If you are not able to locate your EIN, you may contact the SWCD Program staff for the number.

Workers' Compensation Insurance

All employers are subject to the Oregon Workers' Compensation Law. Employers must obtain workers' compensation insurance before they employ. Failing to provide workers' compensation coverage will subject employers to penalties and liability for all claims costs if an employee is injured on the job. Insurance can be provided through a private insurance company or through the Oregon Insurance Plan, see Resources section. Most conservation districts in Oregon obtain their workers' compensation insurance through SDAO.

Taxes

Best Management Practice

Properly withholding, paying, and reporting payroll taxes can be complicated. The professional services of a contracted bookkeeper or payroll service can be of great assistance. Bookkeeping software, such as QuickBooks, offers payroll subscriptions that can greatly reduce the risks associated with payroll deductions and payments.



There are several types of federal, state, and local taxes that must be withheld from an employee's wages, in addition to the taxes paid by the conservation district as an employer.

The following is a summary of the different taxes. Consult the DOR's *Oregon Business Guide* and the appropriate agency for detailed information.

Federal Payroll Taxes

Employers are required to withhold federal income, Medicare, and Social Security taxes. In addition, employers are required to pay matching Medicare and Social Security taxes at the same time. Conservation districts, as employers, make monthly or quarterly deposits to the IRS and file a Form 941 quarterly. IRS's Publication 15, *Circular E, Employer's Tax Guide* provides payroll reporting guidelines, as well as withholding rates and tables. This publication is normally mailed to all registered employers annually.

Oregon Combined Payroll Tax Reporting

The Combined Payroll Tax forms are used to report all Oregon payroll taxes together. The form Oregon Tax Coupon (OTC) is used as a combined payment coupon for all the payroll tax deposits. These Oregon payroll taxes include withholding and transit taxes administered by the DOR, unemployment insurance taxes administered by the Employment Department, and the Worker's Benefit Fund assessment administered by DCBS. These different taxes are explained below.

State Withholding Tax

All Oregon employers must withhold state taxes from an employee's wages, each time the employee is paid. Most Oregon employers' due dates for paying state withholding taxes is the same as the due dates for making federal tax withholding, Medicare, and Social Security deposits.

Information on the amount of tax to withhold can be determined from the Oregon Withholding Tax Tables found on the Internet at the DOR's web site or by contacting the DOR by phone, see the Resources section.

Transit Taxes

Employers within the TriMet or Lane Transit districts are subject to transit taxes. Contact the DOR for more information, see the Resources section.

Unemployment Tax

Employers are required to pay unemployment insurance. For the purposes of unemployment taxes and benefits, conservation districts are considered political subdivision employers, and have tax reporting options available to them including reimbursement instead of paying taxes. However, it is not recommended that conservation districts use the reimbursement options, as it can become a financial burden to the conservation district. Information regarding unemployment insurance options can be obtained from DOR or the Employment Department. Conservation districts are exempt from paying the Federal Unemployment Tax Assessment (FUTA).

Workers' Benefit Fund Assessment

Employers pay an assessment on workers' compensation insurance premiums through their insurer to the DCBS. Another assessment, the Workers' Benefit Fund assessment, is used to fund the Workers' Benefit Fund maintained by DCBS. The assessment rate is determined in the fall of each year. The total assessment is calculated based on the number of hours each employee works; half is withheld from the employee's wages, and half is paid by the employer.

Year-End Tax Reporting

Employers are required to file year-end reports with state and federal authorities. These forms include:

- W-2s to each employee.
- W-3 (summary of all W-2s and all original W-2s) to the Social Security Administration.
- WR (tax withholding reconciliation report) to the Oregon Department of Revenue (DOR).
- IRS form 1099s to all contractors, vendors, and certain others paid by the conservation district beyond the minimum dollar amount established by the IRS.
- IRS form 1096 (summary of 1099s and original 1099 forms) to the IRS.

Conservation districts can contact the IRS and DOR for more information and to obtain copies of these forms.

Posting Requirements

Legal Requirement

In general, these notices must be posted in a conspicuous place where employees may regularly view them. Employers with more than one work location are generally required to display these posters at each worksite.



Small Oregon employers (less than 25 employees) need to provide the following postings and notices:

- Oregon State Minimum Wage poster
- Oregon OSHA poster
- Oregon Protections for Victims of Domestic Violence, Harassment, Sexual Assault and Stalking poster
- Federal Minimum Wage poster
- EEO is the Law poster
- Federal Polygraph Protection Notice
- Federal USERRA (military rights) poster

These posters can be obtained from the BOLI web site and downloaded for free, see the Resources section. They also offer, for a fee, a convenient all-in-one poster. Additional postings are required if a conservation district has more than 25 employees.

Additional postings, regardless of the number of employees, include:

- No Smoking poster/decal can be obtained from Oregon Health Authority, see the Resources section.
- Workers' Compensation Notice of Compliance is issued by the Workers' Compensation Division upon receipt of proof of coverage filing from the employer's insurer.
- Employment Insurance Notice is sent by the Employment Department when processing your business registration. A duplicate can be obtained from the Employment Department.

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against disabled persons in the areas of employment, public accommodation, and public service. Information on the requirements of the ADA can be found in the Resources section.

Best Management Practice

Conservation districts should develop policies addressing discrimination against customers and employees based on hiring, review, and promotional practices.



Employment Discrimination Laws

Most of us are aware of the traditional equal rights based on one's race, age, gender, color, disability, or religion, but state and federal laws cover a host of other protected classes and activities. Numerous and sometimes confusing legal provisions and

interpretations have been made regarding employment discrimination laws. The issues are not only difficult to define, but require informed diligence to comply with them. Discrimination against an employee who belongs to one of the protected classes is usually a violation of the law. BOLI produces a *Civil Rights Handbook* with detailed information, see the Resources section.

When developing or revising personnel policies and procedures addressing discrimination, conservation districts should contact the following agencies for assistance:

- Bureau of Labor and Industries (BOLI)
- Special Districts Association of Oregon (SDAO)
- Oregon Department of Agriculture (ODA)
- Oregon Association of Conservation Districts (OACD)

See the Resources section for contact information.

Overtime, Compensatory Time, and Exempt vs. Non-Exempt Employees



As a government employer, certain employees may be classified as exempt from overtime pay. The type of work the individual performs and the location of the work performed determines exempt status. Exempt employees may include executives, managers, supervisors, and administrative and professional employees. Exempt employees may be given compensatory time (e.g. time off in lieu of monetary overtime compensation), also known as “comp time,” for work in a week exceeding 40 hours. Non-exempt employees must be given overtime pay when the time worked in a week exceeds 40 hours. Overtime is paid at 1.5 times the regular rate for the extra hours worked. According to BOLI, paying on a “salary basis” does not make an employee exempt from overtime pay or relieve the overtime obligation.



Work performed by the employee, but away from the employer’s premise or job site is considered work time. If the employer knows or has reason to believe that work is being performed, the time spent must be counted as work. It is the duty of the employer to exercise control to ensure only authorized work is occurring. The mere adoption of a policy against unauthorized and overtime work is not enough.

Best Management Practice

Because of the complexity of determining the exempt or non-exempt status of positions, conservation districts should work with BOLI to ensure each job position is in the right classification for the actual work performed.

Legal Requirement

A conservation district is still liable to pay overtime even if the work is performed without authorization, and regardless if a conservation district has policies prohibiting overtime work without prior authorization.

Employees may not volunteer or be asked to volunteer time to perform their normal job duties.

Protected Sick Time

All employers with 10 or more employees (at least 6 for employers located in Portland) in Oregon must provide up to 40 hours of paid leave per year. Employers with less than 10 employees (less than 6 for employers located in Portland) must provide up to 40 hours of unpaid protected sick time. For more information see the BOLI Protected Leave web site (link provided in Resources section).

Workplace Safety and Safety Committees

All employers in Oregon must have a safety committee or hold safety meetings regardless of the number of employees. The requirements of safety committees or holding safety meetings vary depending on the number of employees employed by your conservation district and the type of work they perform. These requirements include the frequency of meetings and taking of minutes. Oregon Occupational Safety and Health Division (OSHA) has a publication outlining the requirements, see the Resources section.

Every person working for a conservation district has the right to a safe place in which to work, without undue worry about dangerous conditions. Every person who participates in the affairs of the conservation district, whether they are employees, managers, directors, or volunteers, must accept responsibility for a safe workplace. It is vitally important for conservation districts to have not only policies and procedures to ensure the safety of their employees, but also a culture of safe work practices.

Legal Requirement

A quick guide to safety committee and safety meeting requirements can be found on the OSHA web site, see the Resources section.



Both federal and state laws govern workplace safety, and many of the provisions of the laws vary by the type of work performed. In Oregon, the Oregon Occupational Safety and Health Division (OSHA) regulates workplace safety. Conservation districts should review OSHA's web site for an overview of laws and requirements that govern each individual conservation district's particular work environment. A good place to start is OSHA's web site for new employers and small businesses, Tools of the Trade, see the Resources section.

Best Management Practice

SDAO members enrolled in their general liability insurance program are eligible for workplace safety assistance, on-site safety inspections, and a grant program to provide funds for safety and security projects.



OSHA not only investigates workplace injuries and fatalities, but also conducts site visits to determine compliance with safety laws. It is important that conservation districts develop and adopt policies and procedures that address workplace safety. These policies should include:

- Proper use of equipment, tools, and personal protective equipment.
- Driving and vehicles.
- Reporting of unsafe working conditions and accidents.
- Safety committees and/or safety meetings.

- Workplace violence.
- Substance abuse and treatment.

Political Activities

Political activities of employees, as well as conservation district board members, are restricted while an employee is on the job. Limitations on political activities are covered in detail in Chapter 6.

Hiring Employees

Hiring an employee is one of the most important decisions a conservation district can make. There are several steps and important considerations to hiring an employee. The following section is a brief description of the basic steps to follow.

Determine Need

Before hiring an employee it is important to determine the purpose and needs of the conservation district. Some of the questions the conservation district should ask itself are:

- What work needs to be done that is not currently being done?
- Is this work that is on-going or for a limited duration?
- Is this work that can be accomplished with a full-time or part-time employee, or can this work be accomplished by existing staff, directors, or a volunteer?
- What sources of funds are available to fund the position?
- What knowledge, skills, and abilities are required to do the job successfully?

Develop a Job Description

A well-written job description is essential to the successful recruitment and retention of potential employees. Job descriptions are important not only in the hiring process, but also for employees and employers to understand job expectations, boundaries, and for performance evaluations. The following should be considered while writing a job description:

- Job title.
- Primary purpose of the job.
- Employee status: full-time, part-time, exempt, non-exempt.
- Anticipated job start date and duration if limited.
- Supervision.
- Wage.

Legal Requirement

The City of Portland has a more stringent version of the new Oregon law referred to as “Ban the Box” which disallows questions on job applications related to arrest records or prior convictions. Conservation districts should consult the BOLI website for more information.

- Essential functions and secondary functions.
- Minimum qualifications and requirements.
- Work schedule.
- Work conditions (outdoor, night or weekend meetings).
- Trial service period.

Example job descriptions are available on the SWCD Program web site, see the Resources section.

Recruitment

Once a well-written job description is developed there are important steps in the recruitment process. The conservation district will want to outline a recruitment plan, which should include the following:



- Develop or obtain an application form and questions to be included in the application. Be sure not to include any questions on the application that asks about the job applicant’s arrest record or prior convictions.

Recommended Policy

A district policy regarding Veterans’ Preference Points should be developed and incorporated into the Conservation District’s hiring policy. Information on Veterans’ Preference Points can be found at the Oregon Department of Veterans’ Affairs website. A link is provided in the Resources section.



- Be sure to include information on how an applicant can qualify for and submit documentation for Veterans’ Preference Points.

- Determine how long the recruitment will remain open.
- Advertise position in as many appropriate places as possible. Be sure to include the Oregon Employment Department, OACD e-mail list, local, and regional newspapers.
- Establish a committee to evaluate applications and interview candidates.

Interviews

Be cautious of a potential or actual conflict of interest that might exist between a member of the interview committee and a candidate due to family or business relationships.

Legal Requirement

Depending on the circumstances, the meetings of the interview committee may be subject to Public Meetings Law.



- Develop a set of interview questions to be asked of all candidates and score sheets to evaluate applications and score interviewees.

- Review applications for minimum requirements and suitability for the position.
- Select and interview candidates.
- Check references and conduct background checks (highly recommended).
- Interview committee makes a recommendation to the conservation district board of directors for selection of a candidate.

Hiring

Once a candidate has been selected, there are still several steps to complete before the candidate becomes an employee and begins work.

- A written job offer is developed using the job description. The job offer should include a clarification of wages, benefits, job title, and general duties. The conservation district may need or want to negotiate with the candidate on some of these items, especially if a wage range was described in the job description.
- The candidate and representative of the conservation district sign the job offer. Upon signing of the job offer, the district should notify the other applicants that the position has been filled and thank them for their interest.
- Fill out the appropriate forms on the first day on the job:
 - Federal forms: W-4 (tax withholding), W-5 (earned income credit advance payment, if the person qualifies), and I-9 (employment eligibility verification).
 - State forms: New Hire Reporting Form from the Department of Justice, see the Resources section.
 - Conservation District Forms: Employee Information Sheet, Emergency Contact Information.
- Provide the new employee with an orientation.



Conservation districts should create an orientation checklist to ensure that nothing is overlooked. Orientation should not only include filling out appropriate forms, the introduction of fellow employees, and to tour the conservation district equipment and facilities, but also provide an opportunity to read and ask questions about personnel policies and safety procedures.

Best Management Practice

It is recommended that all employees sign a form confirming that they have read and understood the conservation district's personnel and safety policies.

Retaining Employees

Trial Service

A trial service period is part of the selection process used to confirm the initial employment decision and to release those whose performance is not satisfactory. During the trial service period, the employee and the conservation district have an opportunity to determine whether further employment with the conservation district is appropriate. Trial service periods customarily last from 30-180 days.

During the trial service period, the employee or conservation district can terminate the employment relationship for any reason. Conservation districts should establish policies outlining if and which

benefits an employee is eligible for, both during and after the trial service, and if sick and vacation time are accrued during that period.

Employee Performance Evaluations

It is very important for a conservation district board or manager to provide input to its employees on how well they are meeting the work expectations of the conservation district as outlined in the job description. Although considerable communication and feedback may occur on a regular basis, it is helpful to an employee to have an overall evaluation of their performance and for a clarification of expectations. Good performance evaluations also include an opportunity for the employee to not only comment on their own performance, but also provide input on how well their supervisor (e.g., the board of directors or conservation district manager) is providing direction for the employee. If there are weaknesses in the communication process, in either direction, the performance evaluation interview is a good time to identify them. Employee performance evaluations should be conducted both in writing and orally.

Terminating Employees

Oregon is an “at-will” employment state. That means an employer can terminate an employee at any time, for any reason or no reason at all. The employee is also free to leave employment at any time for any reason. However, laws and court cases have placed major restrictions on an employer’s right to terminate employees or to treat some employees differently from others. State and federal laws prohibit discrimination against employees. The conservation district may be liable in court for employment actions that violate public policy.

Oregon employees are considered to be at-will employees unless that status is changed by contract provisions, personnel policies, or oral promises which convert the employee’s job into a “property right.” If at-will status is altered, the employee may be terminated only for good cause and must be afforded due process.

Best Management Practice

Conservation districts that are considering personnel actions, especially termination, should consult SDAO before taking any action. SDAO has pre-loss legal assistance to aid in disciplinary and termination actions.

If the conservation district’s liability insurance is through SDAO, there can be significant penalties for not contacting SDAO prior to terminating an employee.



The conservation district must have clear personnel policies, job descriptions, job offers, and other documents that define the job as at-will. Conservation districts should not use words like permanent in job descriptions, documents, and communications, and do not make a promise of a permanent, full-time position. It is recommended that the term regular be used instead. Policies should state at the very beginning that they are not a contract and that the conservation district reserves the right to employ at-will, and both the

conservation district or the employee can terminate the employment relationship at any time.

There are several possible legal ramifications that come with terminating an employee. At-will employers may still be required to defend their actions in court. It is prudent for conservation districts to have good records documenting legitimate business reasons for any substantial personnel action. This includes employee performance evaluations, discipline for conservation district policies, or any other similar actions.

Leave and Benefits

Employee benefits include all compensation received by the employee in excess of the base wage. A broad range of benefits are available. There are some leave benefits that are mandatory by law.

Mandatory Leave Benefits

The following are mandatory leave benefits. However, some benefits may not apply to your conservation district due to the number of employees. Conservation districts should consult BOLI's *Personnel Management Handbook*, see BOLI for specific information on each type of leave.

- Court Leave and Jury Duty.
- Crime Victims' Leave (6 or more employees).
- Military Leave.
- Disability Leave.
- Leave for On-the Job Injuries.
- Domestic Violence Leave (6 or more employees).
- Oregon Family Leave Act (25 or more employees).
- Federal Family and Medical Leave Act (As a public employer, all conservation district employees are covered, yet may not be eligible for the leave).

See Resources section for contact information.

Optional Benefits

Conservation districts may choose to offer optional benefits and leaves. The employer sets the rules for accrual and use of benefits in policy. Oregon does allow a "use it or lose it" practice. Conservation district policy should clearly outline the benefits and leaves offered, as well as

their manner of use and accrual. The following is a list of common benefits offered in both the public and private sector.

- Vacation Time
- Sick Leave
- Holidays
- Personal Time Off (PTO)
- Unpaid Leave
- Bereavement
- Religious Accommodation
- Bonuses
- Insurance (e.g., medical, dental, vision, life)
- Retirement

Supervision of Employees

The conservation district board of directors is the "Employer of Record" for the conservation district. As the employer of record, the conservation district board is responsible for administrative oversight of employees. A conservation district with more than one employee may assign one of the employees the responsibility of daily administrative oversight of the other employees, but ultimately the board is responsible.

The conservation district board may delegate supervision in several ways. These include:

- Assigning a conservation district manager supervisory responsibility to other employees. It is important that the board of directors maintain active supervisory responsibility over the conservation district manager.
- Assigning an individual board member supervisory responsibility over employees. This is often the method used in small conservation districts with only one or two employees.
- Appointing a personnel committee to supervise responsibility over employees. This method can be cumbersome and confusing to employees, because there is more than one person acting as their supervisor.

Regardless of the method of supervision, it is important that clear lines of communication and authority be outlined in conservation district policy. It is important for both supervisors and employees to know and understand who is to guide the work activities of employees, authorize overtime and leave, and conduct performance reviews and disciplinary actions. Board members need to remember that they do not have any individual supervisory role except that authorized by the board of directors through board action. Employees should not have five or seven individual supervisors making individual decisions

on their work activities. It is confusing and creates a difficult work environment. Clear supervisory roles should not preclude communication between non-supervisory board members and staff, but communication should be appropriate, limited to information sharing, and not undermine the authority of the employees' delegated supervisor.



Best Management Practice

Personnel policies are not static. Conservation districts should review their personnel policy manual every few years to ensure applicability to current employment situations and compliance with current laws.

Employee supervision is both an art and a science, requiring many skills. Conservation districts should invest in continual training for supervisors. Workshops and trainings provided by SDAO, BOLI, OCEAN, and other entities and should be utilized on a regular basis.

Personnel Policies

Every conservation district that has employees needs to develop personnel policies by which the board and the employee can operate and measure performance. The number of possible items that can be included in personnel policies may seem unwieldy and daunting. However, if the conservation district develops its policies before they are needed and everyone understands what they are, the conservation district and the employees will have a greater awareness of the board-employee relationship. The idea is for everyone to work as a team. See the list of recommended personnel policies in Appendix.

Conservation districts do not need to start from scratch when developing or updating personnel policies. Many conservation districts in Oregon have developed excellent policies and are usually willing to share examples. Conservation districts should also consult SDAO and the ODA SWCD Program for assistance. Some conservation districts have used legal counsel to write and review personnel policies.

Beware using another entity's personnel handbook verbatim, as it can lead to policies that are not applicable or understood.

Some common mistakes that conservation districts will want to avoid when writing personnel policies include:

- Creating policies that are vague and/or confusing.
- Creating policies that are too broad.
- Creating a personnel policy manual that is too long.
- Creating policies that make promises the conservation district can not keep.
- Creating policies that do not contain flexible language. (Language should use terms like "Including, but not limited to...")

Resources

Statutes, Laws, and Rules

ORS 670—Occupations and Professions Generally

https://www.oregonlegislature.gov/bills_laws/ors/ors670.html

28 CFR Part 35—Part 36—Americans with Disabilities Act of 1990
(Title II and III)

www.ada.gov/2010_regs.htm

Volume 42 USC Chapter 21 Subchapter VI, Section 2000e - 2000e-17—

Civil Rights Act of 1964—Title VII: Equal Opportunity Employment,
Sexual Harassment and Discrimination

www.eeoc.gov/laws/statutes/titlevii.cfm

Protected Sick Leave

www.oregon.gov/boli/WHD/OST/pages/index.aspx

Other Information

Personnel Management Handbook for Conservation District Directors and District Managers

www.oacd.org/packets/resources/OACD_personnel_handbook_2008.pdf

Oregon Business Guide: Employer's Guide for Doing Business in Oregon

<http://sos.oregon.gov/business/documents/business-guides/employer-guide.pdf>

Oregon Department of Agriculture

SWCD web site — Personnel Management Toolbox

[www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/
Employer.aspx](http://www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/Employer.aspx)

Oregon Department of Revenue

PO Box 14800

Salem, OR 97309

Phone _____ (503) 945-8091

www.oregon.gov/DOR

Oregon Tax Forms and Publications

www.oregon.gov/DOR/pages/forms.aspx

Independent Contracting Web site

www.OregonIndependentContractors.com

Central Business Registry (for obtaining a BIN)

www.filinginoregon.com/cbr

Internal Revenue Service

[http://www.irs.gov/Government-Entities/Federal,-State-&-Local-
Governments/FSLG-Toolkit](http://www.irs.gov/Government-Entities/Federal,-State-&-Local-Governments/FSLG-Toolkit)

Oregon Employment Department

875 Union St. NE
Salem, OR 97310
Phone _____ (503) 947-1488
www.oregon.gov/EMPLOY/TAX

Department of Consumer and Business Services (DCBS)

Fiscal and Business Services
PO Box 14480
Salem, OR 97309
www.oregon.gov/DCBS/FABS

The Oregon Insurance Plan

National Council on Compensation Insurance
Phone _____ (800) 622-4123

Bureau of Labor and Industries (BOLI)

Technical Assistance for Employers Program
800 NE Oregon, Suite 1045
Portland, OR 97232
Phone _____ (971) 673-0824
www.oregon.gov/boli/TA

Required Posters

www.oregon.gov/boli/TA/Pages/Req_Post.aspx

Civil Rights Handbook (and additional useful handbooks)

www.oregon.gov/BOLI/TA/pages/t_tabooks.aspx

Oregon Health Authority

Smoke free workplace posters/decals
[www.public.health.oregon.gov/PreventionWellness/TobaccoPrevention/
EducationalResources/Pages/index.aspx](http://www.public.health.oregon.gov/PreventionWellness/TobaccoPrevention/EducationalResources/Pages/index.aspx)

Americans with Disabilities Act (general information)

Northwest ADA & Information Technology
CDRC/OHSU
PO Box 574
Portland, OR 97207
Phone _____ (800) 949-4232

Oregon Department of Veterans' Affairs

www.oregon.gov/odva/Pages/employment.aspx

Example Job Descriptions

[www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/
Employer.aspx](http://www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/Employer.aspx)

Oregon New Hire Reporting Form

www.oregonchildsupport.gov/forms/docs/csf010580.pdf

Oregon Occupational Safety and Health Division (OSHA)

Phone _____ (503) 378-3272

Toll Free _____ (800) 922-2689

www.orosha.org

Tools of the Trade web site

www.orosha.org/toolkit/index.htm

Safety Committees and Meetings

www.oregon.gov/ODA/shared/Documents/Publications/NaturalResources/QuickGuidetoSafetyCommitteeandMeetings.pdf

Special Districts Association of Oregon (SDAO)

PO Box 12613

Salem, OR 97309-0613

Phone _____ (800) 285-5461

www.sdao.com

9 Developing and Maintaining Partner Relationships

This chapter discusses some of the agreements the conservation districts need to maintain, and covers some of the common partners that conservation districts are likely to work with. Conservation districts can do an even better job fulfilling their mission when they partner with a variety of different groups, such as local governments, non-governmental organizations, watershed councils, and state and federal agencies. See the Resources section for partner contact information.

Types of Agreements

There are many different types of agreements to formalize the relationship between conservation districts and other organizations, both public and private. The following is a partial list of agreements that are commonly used with conservation district partners:

1) Intergovernmental Agreement

An Intergovernmental Agreement (IGA) is a contract between two governmental entities. An IGA is a legally binding document that defines the obligations of all parties involved in a project or providing a service. An IGA often involves a financial component.

2) Memorandum of Understanding

A Memorandum of Understanding (MOU) is a document describing an agreement between two or more parties. An MOU expresses an understanding for an intended common purpose or action. An MOU is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. An MOU is usually more general than an Memorandum of Agreement and outlines general agreement of principles.

3) Memorandum of Agreement

A Memorandum of Agreement (MOA) is a document written between parties to cooperate on an agreed upon project or meet an agreed objective. The purpose of an MOA is to have a written understanding of the agreement between parties. It is generally more specific in scope and responsibility than a MOU.

Relationships and Partners

Oregon Department of Agriculture, Natural Resources Program Area, and Soil and Water Conservation District Program

The Natural Resource Division is defined in statute (ORS 561.400); however, internal reorganization of ODA calls this Division the Natural Resources Program Area (NRPA). For purposes of this Guidebook, they are interchangeable.

NRPA has various responsibilities in the management of natural resource programs in the state of Oregon.

NRPA addresses water quality and natural resource conservation on agricultural lands through the following programs:

- Agricultural Water Quality Management.
- Confined Animal Feeding Operation.
- Land Use (technical assistance related to use of prime farm land for development).
- Smoke Management (also referred to as field burning).
- Pesticide registration, licensing, and regulation.
- Fertilizer registration and regulation.
- Pesticide Analytical and Response Center
- Pesticide Stewardship Partnership.
- Shellfish Plat Leasing (shellfish production on state owned estuary lands).
- Weather modification permit requests.
- Soil and Water Conservation Districts (SWCD)

NRPA has responsibility to provide administrative oversight of the conservation districts as provided for in ORS 561.400. Some of the primary duties and powers in this statute are to:

- Review and approve or disapprove all projects, practices, budgets, contracts, or regulations of conservation districts.

- Keep the directors of the conservation districts informed of the activities and experiences of other conservation districts, to assist in the interchange of advice and information among the conservation districts, and to promote cooperation among the conservation districts.
- Coordinate, as much as possible, the various programs of the conservation districts.
- Disseminate information concerning the activities and programs of conservation districts and encourage formation of such conservation districts in areas where they would be desirable and feasible.
- Receive, from any source, materials, machinery and equipment and to transfer such to any conservation district under terms and conditions deemed appropriate, including payment by the conservation district for costs of delivery or use.
- Receive from any public or private source, donations, gifts, and grants for the furtherance of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources affecting agriculture.
- Assist in the development of agricultural management procedures and practices relating to natural resources for the prevention of soil erosion and water contamination or enhancement of water quality and quantity.
- Provide to soil and water conservation districts and their officers, employees, and agents acting within the scope of their employment or duties, protection against liability as part of the insurance the Oregon Department of Administrative Services provides to ODA.

The SWCD Program is part of the NRPA and provides services to the 45 SWCDs throughout Oregon. These services include technical support and limited administrative oversight, with the intent of reducing both liability and risk to the conservation districts and ODA. Some of the responsibilities coordinated by the SWCD Program include:

- Coordinating board member elections.
- Administering grants.
- Providing technical assistance, training, resources, templates, tools, and fact sheets.
- Reviewing annual work plans and long-range business plans.
- Receiving and archiving conservation district minutes.
- Receiving annual reports and financial reports.
- Soliciting legal advice from the attorney.

Soil and Water Conservation Commission

In 1981, the Oregon Legislature adopted ORS 561.395 and established the Soil and Water Conservation Commission (SWCC) to provide for coordination between Oregon's Soil and Water Conservation Districts and ODA. Prior to 1981, the SWCC was an independent agency with policy making authority. When the SWCC was incorporated into ODA, its policy making authority was changed to authority to recommend policy to the Director of ODA.

The function of the SWCC is to advise and make recommendations to ODA in the administration of its duties. To assist with this advisory role, the Chair of the SWCC, by statute, is also a member of the Oregon Board of Agriculture. The SWCC also has a major role in recommending policy for the administration of the capacity grants provided to conservation districts. The SWCC provides assistance and direction to Oregon's 45 conservation districts. The SWCC coordinates with ODA, NRPA and the SWCC's advisors and partners.

Membership

The SWCC consists of seven members appointed by the Director of the Oregon Department of Agriculture. Each member must be a citizen of the state of Oregon and a director of a conservation district board at the time of appointment. SWCC members serve staggered four-year terms. SWCC members each represent different regions of the state and often a specific natural resource expertise. SWCC members are not salaried and serve as volunteers. Staff support for the SWCC is provided by the NRPA.

The SWCC has non-voting advisory members, who represent various state and federal agencies, and other organizations. Current advisors represent the U.S. Department of Agriculture Natural Resources Conservation Service, Farm Service Agency, Oregon State University Extension Service, Oregon Association of Conservation Districts, Oregon Department of Forestry, the Oregon Watershed Enhancement Board, Oregon Conservation Education and Assistance Network, and the Oregon Association of Resource Conservation and Development Councils.

A list of the SWCC members, their areas of assignment, and the SWCC advisors is provided in the *Soil and Water Conservation District Directory*. A link to the list of SWCC members is also provided in the Resources section.

NOTE: The following information about partners was provided by each partner.

Farm Service Agency

The Farm Service Agency (FSA) was formed in 1933 as the USDA Agricultural Adjustment Administration. Over the years the name has changed, as well as the number and type of programs administered by the agency, and it ultimately became the Farm Service Agency (FSA). The FSA is a significant partner with SWCDs by providing considerable financial and other assistance to the agricultural producers serviced by the conservation districts.

According to USDA publication PA-1551, FSA currently administers farm commodity, crop insurance, farm credit, and conservation programs for farmers through a network of state and county offices. FSA programs are directed primarily at agricultural producers, or in the case of loans, at those with farming experience. The majority of FSA employees work with producing farmers who maintain a crop history by making an annual report of planted acres to FSA offices.

Some of the programs administered by FSA include:

- Commodity programs for wheat, corn, grain, sorghum, barley, oats, rye, oil seeds, rice, tobacco, peanuts, milk, cotton, sugar, and honey to stabilize prices and provide for a supply of critical food and fiber. FSA makes Commodity Credit Corporation commodity loans to eligible farmers, using the stored crop as collateral.
- Federal crop insurance purchased by farmers covers production losses due to unavoidable causes, such as drought, hail, wind, and excessive rain, for insurable crops.
- Direct and guaranteed farm ownership and operating loan programs to help farmers who are temporarily unable to obtain private, commercial credit.
- Financing for farm programs, and for the purchase, storage, and disposal of commodities owned by the federal government, through the government-owned Commodity Credit Corporation.
- Low interest emergency loans program, to farmers who qualify, for losses due to a natural disaster event.
- Conservation Reserve Program (CRP), which targets the most fragile farmland and encourages farmers to temporarily retire the land from active farming and establish a permanent cover on “highly erodible” land.
- Conservation Reserve Enhancement Program (CREP), which is a partnership between federal, state, and local entities, expands the practices established in the Conservation Reserve Program.

Financial incentives are provided by FSA, while local conservation districts and their state and federal agency partners provide technical assistance.

National Association of Conservation Districts

The National Association of Conservation Districts (NACD) is the nonprofit organization that represents America's 3,000 conservation districts and the 17,000 men and women who serve on their governing boards. Conservation districts are local units of government established under state law to carry out natural resource management programs at the local level. Conservation districts work with millions of cooperating landowners and operators to help them manage and protect land and water resources on all private lands and many public lands in the United States.

NACD's mission is to serve conservation districts by providing national leadership and a unified voice for natural resource conservation. The goals of the organization are to:

- Represent conservation districts as their national voice on conservation issues.
- Provide useful information to conservation districts and their state associations.
- Build partnerships with federal and state agencies and other organizations in order to carry out conservation district priorities and programs.
- Analyze programs and policy issues that have an impact on local conservation districts.
- Offer needed and cost-effective services to conservation districts.

NACD also provides training materials and information to conservation districts regarding national legislative issues, program development, federal agency activities, conservation district capacity.

Natural Resources Conservation Service

The USDA Natural Resources Conservation Service (NRCS) provides technical and financial assistance to producers who install conservation practices through Farm Bill programs.

NRCS technical assistance is supported with discretionary and mandatory funds. Discretionary funding, provided annually through the Conservation Technical Assistance Program (CTA), is pivotal to NRCS's success. CTA supports everyday operations, scientific research, technology transfer, and is key to the development of individual

conservation plans. The land user, in consultation with NRCS specialists, develops a conservation plan that is suited to his or her individual operation. Once a producer has a conservation plan, he or she can implement it with or without further assistance from NRCS.

Financial assistance is available to eligible applicants to implement their conservation plans. Mandatory funds provided through Farm Bill programs are used to cover the costs of detailed planning needed to implement conservation practices and provide financial assistance to help defray some of the costs of conservation practices installation.

The following is a summary of the various conservation programs funded through the Farm Bill and other federal programs:

- Agricultural Water Enhancement Program (AWEP), subprogram of the Environmental Quality Incentives Program (EQIP) focused on water conservation and quality.
- Conservation Stewardship Program (CSP), encourages producers to embrace long-term comprehensive conservation by maintaining and improving existing practices.
- Cooperative Conservation Partnership Initiative (CCPI), partnered program that uses 6% of EQIP, WHIP, and CSP funds to address resource concerns in priority areas.
- Emergency Watershed Protection Program (EWP), undertakes emergency measures on watersheds damages by fire, flood and other natural resource calamities to prevent erosion and runoff that could endanger lives/property.
- Environmental Quality Incentives Program (EQIP), assistance for a broad spectrum of conservation practices that promote agricultural production, forest management and environmental quality.
- Farm and Ranch Lands Protection Program (FRPP), allows productive lands to remain in agricultural production under private ownership.
- Grassland Reserve Program (GRP), assists landowners in restoring and protecting grassland, range-land, and pastureland, while maintaining viable ranching operations.
- Wildlife Habitat Incentives Program (WHIP), assistance to improve wildlife habitat on private agricultural, forest, and tribal land.
- Wetlands Reserve Program (WRP), restores wetlands and wetland habitat on marginal agricultural land.

In Oregon, funds are administered strategically throughout the state. NRCS field offices work with partners and private landowners to develop long-range plans with corresponding conservation implementation strategies to identify and prioritize the top resource

concerns in their local area. This plan clearly defines the issues and goals, along with the means and activities to solve these concerns. Collectively focusing agency expertise and resources on the highest priority resource concerns in the highest priority areas ensures the most efficient and productive use of federal resources. Additionally, funding and support from other agencies and groups is leveraged and coordinated to focus on mutual issues of high priority.

Oregon Association of Conservation Districts

The Oregon Association of Conservation Districts (OACD) was established on December 29, 1948, and was incorporated as a nonprofit corporation on January 29, 1976. All conservation districts and water control districts are eligible to become members of the OACD. A member district is one that has paid, in full, the regularly assessed dues of OACD for the current calendar year. Individuals or businesses that pay the assigned dues become associate members. Associate members do not vote on OACD matters. However, they receive information, minutes, and other updates from OACD. Associate members are welcome to attend OACD business meetings and the OACD Annual Meeting and Conference.

Governance of OACD is through an executive board comprised of at-large elected officers and basin representatives. Only conservation district directors can hold executive board positions. Officer positions include: President, First Vice President/President Elect, Second Vice President, Immediate Past President, Secretary, and Treasurer. OACD has identified eight major geographic basins in the state. Each basin is represented by a district director who is locally elected to be a basin representative. The eight basins are the North Coast Basin, Lower Willamette Basin, Upper Willamette Basin, Southwest Oregon Basin, Deschutes-Hood River Basin, High Desert Basin, John Day-Umatilla Basin, and Snake River Basin.

The Executive Board governance is established in the OACD Constitution and By-laws. There are four standing committees, and ad hoc committees are established as needed. The OACD Executive Board meets quarterly and conducts an annual meeting and conference in November. All meetings are open to the public. All programs and services of OACD are offered on a non-discriminatory basis.

OACD's Constitution and By-laws define its purposes and operational procedures. OACD also has a mission and vision statement, and a set of guiding principals.

The purposes of OACD are to:

- Promote the conservation and wise use of the natural resources of the state of Oregon, by serving as the state association of member soil and water conservation districts and water control districts.
- Speak for those who are committed to the belief Oregon's soil, water, air, and renewable resources must be used in accordance with the needs of the people of the state, while maintaining a quality environment and a productive economy.
- Cooperate with public and private organizations with similar purposes toward the adoption of statewide policies and programs effectively contributing to a quality environment and a productive economy.
- Inform the public of the value of soil and water conservation, flood prevention, proper land use planning, orderly economic development, recreation development, fish and wildlife enhancement, and other benefits.

Policies are established by resolution or by board vote. Resolutions are voted on by the membership at a business meeting during OACD's annual convention in November. Each member conservation district is entitled to one vote by an elected or officially-appointed director at any legally-called meeting of OACD.

Oregon Conservation Education and Assistance Network

The Oregon Conservation Education and Assistance Network (OCEAN), which was originally founded as the Oregon Conservation Employee Association Network in 1992 as a membership organization. The purpose of OCEAN is to provide conservation district employees with education, professional development, capacity building, and opportunities to solve natural resource conservation issues that conservation districts face throughout the state. OCEAN's strategy is to deliver the most comprehensive professional development program for conservation district employees by enhancing the skills necessary to be successful in delivering conservation on the ground. OCEAN's strategic goals are to:

- Be the authority for training and conservation technology delivery.
- Build bridges between conservation districts and others to improve conservation effectiveness.
- Have the organizational knowledge to be self-sustaining.
- Enlist members that are actively involved in the organization to support the mission.

OCEAN delivers conservation based technical training, professional development, education, assistance, and networking opportunities to 150+ conservation district employees in Oregon through the CONNECT training conference. This is OCEAN's main endeavor and provides attendees with two full days of technical training built around the feedback received from the attendees themselves. It is well attended and provides a depth of training that was previously unavailable to conservation district employees on a statewide scale. OCEAN is aiming to expand to more focused regional trainings to its basin members in the future.

OCEAN's voting membership is comprised of soil and water conservation district employees throughout Oregon, and non-voting membership is open to anyone. OCEAN has an eleven member Board of Representatives, drawing a member from each of eight distinct basins and three at-large positions.

Oregon State University Extension Service

The Oregon State University (OSU) Extension Service is a key partner with conservation districts. The OSU Extension Service delivers objective, research-based education to help Oregonians solve problems, develop leadership, and manage resources wisely. The OSU Extension Service is the "front door to OSU." It is also the premier provider of education that meets the needs of Oregonians and contributes

significantly to strong individuals, families and communities, a vibrant economy, and sustainable natural resources. The OSU Extension Service has been in Oregon since 1911 and has offices and faculty in all 36 counties. OSU Extension Service's educational goals include economic development, youth and family development, natural resource conservation and management, and leadership development. Extension's program areas include agriculture and natural resources, home gardening, 4-H and youth development, family and community development, ocean and coastal resources, nutrition, diet and health, and forestry.

OSU Extension Service faculty in field offices around the state work closely with the same private landowners as do the conservation districts. The field office faculty are instrumental in helping landowners apply research principles developed at the university. Conservation districts should work with OSU Extension Service and develop a relationship at the local level and access their assistance in delivering conservation programs.

Oregon Watershed Enhancement Board

The Oregon Watershed Enhancement Board (OWEB) is a state agency that provides grants to help Oregonians take care of local streams, rivers, wetlands, and natural areas. The mission of OWEB is to help protect and restore healthy watersheds and natural habitats that support thriving communities and strong economies. In 1999, House Bill 3225 created the Oregon Watershed Enhancement Board (OWEB) as a state agency to further refined the Oregon Plan for Salmon and Watersheds to administer the watershed restoration and protection funds made available by Ballot Measure 66. Measure 66 dedicated 15% of lottery funds to acquisition and maintenance of state parks and the restoration of native salmonids and watersheds. The Legislature gave OWEB a variety of coordination and prioritization responsibilities to steer Oregon toward more strategic investments in restoration. In 2010, Ballot Measure 76 made permanent the Constitutional dedication of the 15% of lottery revenues for state parks and watersheds.

The Oregon Watershed Enhancement Board consists of 17 members drawn from state natural resource agency commissions, federal agencies, and the public at large (ORS 541.900). The Board brings together a diverse range of interests to decide on applications for grant awards. Public members are appointed by the Governor and confirmed by the Senate for a term of four years. A member is eligible for reappointment, but may not serve more than two consecutive terms.

The current list of board members can be found at OWEB's web site, see the Resources section at the end of this chapter.

Strategic Plan

In 2010, OWEB created a plan to provide high level strategic guidance and direction to help restore and protect Oregon's watersheds in light of significant driving forces like human use, population growth, urbanization, and climate change. The plan represents OWEB's thinking about how to continue the work on behalf of Oregon citizens; it does not attempt to review or address all of OWEB's responsibilities and programs. The strategic plan has the following goals:

- Goal 1: Restore and sustain resilient ecosystems through program and project investments that enhance watershed and ecosystem functions and processes and support community needs.
- Goal 2: Support an enduring, high capacity local infrastructure for conducting watershed and habitat restoration and conservation.
- Goal 3: Provide information to help Oregonians understand the need for and engage in activities that support healthy watersheds.
- Goal 4: Build and maintain strong partnerships with local, state, tribal, and federal agencies, nonprofit organizations, and private landowners for watershed and habitat restoration and conservation.
- Goal 5: Ensure efficient and accountable administration of all investments.

OWEB Programs

OWEB provides a number of program services to local groups interested in conducting watershed restoration activities. The following are program services provided by OWEB:

Grant Program

The primary responsibility of the OWEB program is to solicit, review, evaluate, award, and manage grants for watershed enhancement projects. The program manages a portfolio of more than 1,100 active grants. OWEB administers a grant program funding a variety of activities, all of which fall into two general categories of grants: Grants for Operating Capacity and Grants for Restoration Activities. The primary responsibility for grant administration is with regional staff.

- Grants for Capacity
 - Watershed Council Support
 - SWCD Support
 - Building Capacity Grants
 - Lower Columbia Estuary Program

- Open Solicitation Grants
 - Restoration Grants
 - Technical Assistance Grants
 - Monitoring and Effectiveness Monitoring Grants
 - Outreach
 - Assessment
 - Land Acquisition Grants
 - Water Acquisition Grants
 - Oregon State Weed Board Grants
 - Small Grants
 - Conservation Reserve Enhancement Program (CREP) Grants
 - CREP Technical Assistance Grants
- Focused Investments
 - Whole Watersheds Restoration Initiative
 - Deschutes Special Investment Partnership
 - Willamette Special Investment Partnership
 - Upper Klamath Special Investment Partnership

Fiscal Services and Training

The OWEB Fiscal Services Section maintains a grant database of all applications and awarded grants. Fiscal staff provide fiscal accounting for the grant program and assists regional staff with the fiscal elements of grant administration. The Fiscal Services Section also provides training for watershed councils, soil and water conservation districts, and other grantees on fiscal administration of grants. Training is provided regionally and at the location of the grant recipient.

Monitoring and Reporting

OWEB has maintained a database of watershed restoration and enhancement projects since 1995. The database is maintained to document all grants completed by OWEB grantees. The agency uses this and other OWEB databases to report to NOAA Fisheries as required under annual grants from the Pacific Coastal Salmon Recovery Fund. The OWEB Monitoring and Reporting Section also develops and maintains online reporting and visualization tools. In addition, the section undertakes effectiveness monitoring of restoration investments.

Policy and Oregon Plan Coordination

The Policy and Oregon Plan Coordination Section is responsible for policy (e.g., legislative and administrative rule-related) work. The section also oversees OWEB's Focused Investments, such as the

partnership investments in the Deschutes, Willamette, and Klamath basins and CREP.

Resource Conservation and Development

The purpose of the Resource Conservation and Development (RC&D) program is to accelerate the conservation, development and utilization of natural resources, improve the general level of economic activity, and to enhance the environment and standard of living in designated RC&D areas. It improves the capability of state, tribal, and local units of government and local nonprofit organizations in rural areas to plan, develop and carry out programs for resource conservation and development. The program also establishes or improves coordination systems in rural areas. Current program objectives focus on improvement of quality of life achieved through natural resources conservation and community development which leads to sustainable communities, prudent use (development), and the management and conservation of natural resources. RC&D areas are locally sponsored areas designated by the Secretary of Agriculture for RC&D technical and financial assistance program funds.

RC&Ds are involved in land conservation, water management, community development, and environmental enhancement projects. Each RC&D program area has a council, whose members represent sponsoring organizations, soil and water conservation districts, towns, water control districts, and nonprofit groups. The local council determines what problems exist in the area it represents, identifies priorities, and sets goals to find solutions.

Special Districts Association of Oregon

Special Districts Association of Oregon (SDAO) was formed in 1979 to give special districts a stronger and united voice at the Oregon Legislature. As with similar associations that support cities, counties, schools, and local government, SDAO provides advocacy with state administrative agencies and other units of government, training, information resources, and other support programs. SDAO has grown its membership to nearly 900 local government members. Based upon its legal status and bylaws, SDAO programs are limited primarily to Oregon special districts as listed in Oregon Revised Statute (ORS) 198; intergovernmental organizations created under ORS 190; affiliate organizations covered by the Oregon Tort Claims Act in ORS 30; and educational service districts under ORS 334.

In 1985, SDAO created a self-insured Trust, Special Districts Insurance Services Trust (SDIS), to escape the volatilities of the traditional

insurance market. The SDIS Trust is governed by a seven member Board of Trustees, appointed by the association Board, and operates under a Declaration of Trust. The Trust governs through its adopted bylaws and is responsible for protecting and managing funds related to the insurance programs, and developing arrangements and strategies necessary to implement the programs.

The SDIS Trust created an opportunity for members to control insurance costs by jointly pooling resources to self-insure for property, liability and workers' compensation coverage. All the participants in the SDIS Trust, both members and associate members, are owners of the program. All of the equity, or surplus, belongs to the participants. SDIS's only objective is to provide reasonable, stable rates and broad coverage to Oregon public entities, unlike an insurance company where the profits are distributed to shareholders.

SDAO has become increasingly important as the membership has grown and the operation of special districts has become more complex. It has become an effective lobbying and educational organization that strives to serve the needs of its members. SDAO services and programs include:

- Legislative Program
- Insurance Program
- Pre-Loss Legal Services
- Loss Control Consultations
- Claims Administration
- Research and Technical Assistance
- Education and Training
- Financing Programs
- Management Consulting
- Background Checks
- Drug-Free Workplace

Watershed Councils

Watershed Councils are voluntary local organizations, designated by local government groups convened by county government bodies, to address the goal of sustaining natural resource and watershed protection and enhancement within a watershed. Watershed councils consist of a majority of local residents, including local officials. A watershed council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation of watershed action programs. A local watershed council may include representatives of local government, representatives of nongovernment organizations, and private citizens, including, but not limited to:

- Representatives of local and regional boards, commissions, conservation districts and agencies.

- Representatives of federally recognized Indian tribes.
- Public interest group representatives.
- Private landowners.
- Industry representatives.
- Members of academic, scientific, and professional communities.
- Representatives of state and federal agencies.

Watershed and political boundaries often don't match. Many organizations, agencies and individuals also own and manage the natural resources of a watershed. Councils bring varied interests together in a non-regulatory setting to form a common vision for the ecological and economic sustainability and livability of their watershed. Watershed councils can work across jurisdictional boundaries and across agency mandates to look at the watershed more holistically.

Every watershed council is unique. Membership, operational procedures, and projects vary depending on the concerns, issues and people in that particular watershed. The statutory definition of a watershed council requires that they represent the "balance of interested and affected persons within the watershed."

Council members represent local knowledge and have ties to the existing community. The council can be a forum to bring local, state, and federal land management agencies and plans together with local property owners and private land managers. Councils often identify landowner participants for projects, develop priorities for local projects, and establish goals and standards for future conditions in the watershed.

Watershed councils have typically coordinated the development of watershed assessments, action plans, and monitoring programs. Other roles for watershed councils include planning and implementing on-the-ground restoration projects and educational programs. Watershed councils may also provide coordinated, broad-based review of land management plans to local, state, and federal decision makers.

Many conservation districts and watershed councils cooperate on natural resource and watershed improvement projects, and have close working relationships. Often a district director serves on the watershed council. In some instances, conservation districts serve as the fiscal agent for the local watershed council(s). Some council coordinators or other staff are employed by the conservation district or share office space. The partnership of conservation districts and watershed councils in watershed improvement efforts can provide enhanced effectiveness and efficiency and each organization has an important role to play in local watershed improvement efforts.

A list of watershed councils and their contact information can be found at the OWEB web site, see the Resources section.

Similarities and Differences of Conservation Districts and Watershed Councils:

Conservation Districts	Watershed Councils
Locally organized. Formed by petition to ODA and referendum vote of the public.	Locally organized. Convened by and with the approval of local government.
Based largely on county boundaries.	Based on watershed boundaries. Watershed sizes vary across the state.
Authorized and governed by statute—ORS 568 and several others.	Authorized by statute—ORS 541
Must be certified by Secretary of State.	Not certified by Secretary of State, unless the council decides to incorporate.
Board members serve voluntarily without pay.	Council members serve voluntarily without pay.
Directors elected on General Election ballot by voters within the district.	Council members selected by various means—some may represent an organization, area of the watershed, or stakeholder group, others may represent themselves.
Minimum age to be a member is 18, by statute.	Minimum age to be a council member is determined by council by-laws or charter.
Director must be a registered voter and meet land ownership, management and zone requirements	Qualifications of membership determined by council bylaws or charter.
By statute, five or seven board positions (local decision).	No set number of council positions. May have designated members, a general membership, or a steering/executive committee.
Political subdivisions of the state, classified as local government entities (Municipal Corporations). (Not a state agency).	Local entities. May be advisory boards to other entities. May become an incorporated organization. (Not a state agency).
Subject to state laws governing public entities, including public contracting, public meetings and records law, municipal audit, state and federal employment laws, workers compensation, public officials ethics law.	Not subject to state laws governing public entities.
Provided Local Government General Comprehensive Liability Insurance by Oregon Dept. of Agriculture.	Provided general comprehensive liability insurance by the state [ORS 541].
May have employees.	May have employees.
Funds administered by the district.	Funds may be administered by the council or by another agency or organization on behalf of the council.

Conservation Districts	Watershed Councils
Non-regulatory unless districts exercise authorities under ORS 568.630 - 568.690 (voter approval required).	Non-regulatory.
By statute, can form land use regulations, by referendum (ORS 568.630 - 568-690).	Not authorized to form land use regulations.
As public entities, protected under the Oregon Tort Claims Act.	Not protected under the Oregon Tort Claims Act.
Eligible to join the Local Government Investment Pool.	Not eligible to join the Local Government Investment Pool.
Classified as a Special District and subject to all statutes governing Special Districts—ORS 198.	Not a special district.
Eligible to join the Special Districts Association of Oregon.	Not eligible to join the Special Districts Association of Oregon.
Eligible to become a member of the Public Employees Retirement System.	Not eligible to become a member of the Public Employees Retirement System.
Many options for funding including local tax authority.	Many options for funding except local tax authority.
By statute, may obtain a permanent tax rate or local option taxes with voter approval.	Not eligible to be a taxing body.
Not eligible for IRS 501(c)(3) nonprofit status.	May be eligible for IRS Sec. 501(c)(3) nonprofit status.
By statute, must have a quorum of board positions present to conduct business.	Quorum requirements to conduct business specified in by-laws or charter.
By statute, may enter onto private property after notification (ORS 568.730). HOWEVER, most districts have policies requiring landowner approval to enter lands.	No authority to enter onto private property without landowner approval.
By statute, may access legal counsel from the Attorney General, SDAO, or other private source. Must request attorney general counsel through ODA and pay costs.	Must make own arrangements for legal counsel and be responsible for payment of counsel.
Annual requirements of Long-range plan, Annual work plan, annual meeting, annual report and annual financial audit, required by statute. Additional annual requirements determined by grant agreements and district policies.	Annual requirements determined by grant agreements and charter.
Administrative oversight by the Oregon Department of Agriculture.	May report to county government, or other entity, as determined by by-laws or charter.

Network of Oregon Watershed Councils

The Network of Oregon Watershed Councils is dedicated to supporting the work of watershed councils throughout the state by increasing council capacity, improving key relationships, and promoting public awareness of watersheds and watershed councils.

Resources

Statutes, Laws, and Rules

ORS 541 — Watershed Management & Enhancement; The Oregon Plan
https://www.oregonlegislature.gov/bills_laws/ors/ors541.html

ORS 568 — Soil and Water Conservation; Water Quality Management
https://www.oregonlegislature.gov/bills_laws/ors/ors568.html

ORS 561 — Natural Resources Division; duties; insurance for soil and water conservation districts
https://www.oregonlegislature.gov/bills_laws/ors/ors561.html

Oregon Constitution: Article XV: Sec. 4.b — Use of net proceeds from state lottery for salmon restoration and watershed and wildlife habitat protection
<http://bluebook.state.or.us/state/constitution/constitution15.htm>

Other Information

Oregon Department of Agriculture (ODA)

SWCD Program

Natural Resources Program Area

635 Capitol St. NE

Salem, OR 97301

Phone _____ (503) 986-4700

Fax _____ (503) 986-4730

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCD.aspx

Soil and Water Conservation Commission (SWCC)

c/o Natural Resources Program Area

635 Capitol St. NE

Salem, OR 97301

Phone _____ (503) 986-4775

Fax _____ (503) 986-4730

www.oregon.gov/ODA/programs/NaturalResources/Pages/Meetings.aspx

Commission Members

www.oregon.gov/ODA/programs/NaturalResources/SWCD/Pages/SWCC.aspx

Partner Contact List

National Association of Conservation Districts (NACD)

NACD Headquarters
509 Capitol Ct. NE
Washington, DC 20002
Phone _____ (202) 547-NACD (6223)
Fax _____ (202) 547-6450
www.nacdnet.org

Network of Oregon Watershed Councils

1130 Liberty St. SE, Suite 3
Salem, OR 97302
Phone _____ (503) 362-1246
www.oregonwatersheds.org

Oregon Association of Conservation Districts (OACD)

737 13th St. SE
Salem OR 97301
Phone _____ (503) 566-9157
Fax _____ (503) 588-2577
www.oacd.org

Oregon Conservation Education and Assistance Network (OCEAN)

PO Box 127
Heppner, OR 97836
541-426-4521, Ext. 108
<https://oceanconnect.org>

Oregon State University (OSU) Extension Service

Extension Administration
101 Ballard Hall
Oregon State University
Corvallis, OR 97331
Phone _____ (541) 737-2713
Fax _____ (541) 737-4423
www.extension.oregonstate.edu

Oregon Watershed Enhancement Board (OWEB)

775 Summer St., NE, Suite 360
Salem, OR 97301
Phone _____ (503) 986-0718
Fax _____ (503) 986-0199
www.oregon.gov/OWEB

Resource Conservation and Development Program (RC&D)

<http://www.narcdc.org>

Special Districts Association of Oregon (SDAO)

PO Box 12613

Salem, OR 97309

Toll Free _____ (800) 285-5461

Salem Area _____ (503) 371-8667

Fax _____ (503) 371-4781

E-mail _____ sdao@sdao.com

www.sdao.com

U.S. Department of Agriculture (USDA) Farm Service Agency (FSA)

7620 SW Mohawk

Tualatin, OR 97062

Phone _____ (503) 692-6830

Fax _____ (503) 692-8139

www.fsa.usda.gov

USDA Natural Resources Conservation Service (NRCS)

1201 NE Lloyd Blvd. Suite 900

Portland, OR 97232

Phone _____ (503) 414-3200

Fax: _____ (503) 414-3103

www.or.nrcs.usda.gov

Chapter 2: Laws Affecting Soil and Water Conservation Districts

Description	Law	Link
Americans with Disabilities Act of 1990	28 CFR Part 35 - Part 36 (Title II and III)	www.ada.gov/2010_regs.htm
Audits of Accounts of State & State-Aided Institutions and Agencies	ORS 297.210 - 297.250	www.oregonlegislature.gov/bills_laws/ors/ors297.html
Bond or Letter of Credit for Member of Boards of Certain Districts	ORS 198.210 – 198.220	www.oregonlegislature.gov/bills_laws/ors/ors198.html
Conservation & Highway Scenic Preservation Easements	ORS 271.715 - 271.795	www.oregonlegislature.gov/bills_laws/ors/ors271.html
Construction of Statutes; General Definitions	ORS 174	www.oregonlegislature.gov/bills_laws/ors/ors174.html
Civil Rights Act of 1964-Title VII: Equal Opportunity Employment, Sexual Harassment and Discrimination	Volume 42 USC Chapter 21 Subchapter VI, Section 2000e - 2000e-17	www.eeoc.gov/laws/statutes/titlevii.cfm
County and Special District Retention Schedule	OAR 166, Div 150	arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_150.html
Government Ethics (Applies to all directors, employees, and agents)	ORS 244	www.oregonlegislature.gov/bills_laws/ors/ors244.html
Intergovernmental Cooperation	ORS 190.003 - 190.110	www.oregonlegislature.gov/bills_laws/ors/ors190.html
Local Budget Law -Required of district with a tax levy	ORS 294.305 - 294.565	www.oregonlegislature.gov/bills_laws/ors/ors294.html
Local Government Borrowing	ORS 287A	www.oregonlegislature.gov/bills_laws/ors/ors287A.html
Municipal Audit Law	ORS 297.405 - 297.555	www.oregonlegislature.gov/bills_laws/ors/ors297.html
Natural Resources Division; duties; insurance for soil and water conservation districts	ORS 561.400	www.oregonlegislature.gov/bills_laws/ors/ors561.html
Nonaggregate Mineral Surface Mines	ORS 517.905 - 517.915	www.oregonlegislature.gov/bills_laws/ors/ors517.html
Oath of Office (Required for all directors)	Oregon Constitution, Article XV, Section 3	bluebook.state.or.us/state/constitution/constitution15.htm
Property of the state, counties and other municipal corporations	ORS 307.090	www.oregonlegislature.gov/bills_laws/ors/ors307.html
Public Contracting - General Provisions	ORS 279A	www.oregonlegislature.gov/bills_laws/ors/ors279a.html
Public Contracting - Miscellaneous Provisions	ORS 279	www.oregonlegislature.gov/bills_laws/ors/ors279.html
Public Contracting - Public Improvements and Related Contracts	ORS 279C	www.oregonlegislature.gov/bills_laws/ors/ors279c.html
Public Contracting - Public Procurements	ORS 279B	www.oregonlegislature.gov/bills_laws/ors/ors279b.html
Public Contracting – Review of Public Contracts	OAR 137, Div. 45	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_045.html
Public Contracting Model Rules – Consultant Selection: Architectural, Engineering and Land Surveying Services and Related Services Contracts	OAR 137, Div. 48	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html
Public Contracting Model Rules –	OAR 137, Div. 46	arcweb.sos.state.or.us/pages/rules/oars

Description	Law	Link
General Provisions Related to Public Contracting		_100/oar_137/137_046.html
Public Contracting Model Rules – General Provisions Related to Public Contracts for Construction Services	OAR 137, Div. 49	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html
Public Contracting Model Rules – Public Procurement for Goods and Services	OAR 137, Div. 47	arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html
Public Meetings	ORS 192.610 - 192.710	www.oregonlegislature.gov/bills_laws/ors/ors192.html
Public Records	ORS 192.001 – 192.607	www.oregonlegislature.gov/bills_laws/ors/ors192.html
Soil and Water Conservation; Water Quality Management	ORS 568	www.oregonlegislature.gov/bills_laws/ors/ors568.html
Soil and Water Conservation Commission membership; compensation and expenses; forfeiture of office; functions	ORS 561.395	www.oregonlegislature.gov/bills_laws/ors/ors561.html
Special Districts Generally	ORS 198	www.oregonlegislature.gov/bills_laws/ors/ors198.html
Tort Actions Against Public Bodies	ORS 30.260 – 30.300	www.oregonlegislature.gov/bills_laws/ors/ors030.html
Unlawful Discrimination	ORS 659A	www.oregonlegislature.gov/bills_laws/ors/ors659a.html
Water Quality	ORS 468B	www.oregonlegislature.gov/bills_laws/ors/ors468b.html
Watershed Management & Enhancement; The Oregon Plan	ORS 541.890 - 541.969	www.oregonlegislature.gov/bills_laws/ors/ors541.html
Watershed Protection & Flood Prevention Projects	ORS 542.750	www.oregonlegislature.gov/bills_laws/ors/ors542.html

Chapter 3: Oath of Office

OATH OF OFFICE

I, _____, do solemnly swear (or affirm), that I will support the Constitution of the United States and the Constitution of the State of Oregon, and that I will faithfully discharge the duties of the office of Director of the _____ Soil and Water Conservation District upon which I am now about to enter.

Director's Signature

Subscribed and sworn to before me this _____ day of _____ 20____.

Signature of Authorized District Official

Instructions for completing the Oath of Office

Article XV, Section 3 of the Oregon Constitution provides that “[E]very person elected or appointed to any office under this Constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.”

1. Two copies of the Oath of Office is to be signed by:
 - The elected or appointed director, and
 - The SWCD board chair, a notary public, or other authorized official, such as a county commissioner, who is present at the swearing in of the director.
2. One copy of the Oath of Office is retained for your records.
3. One copy of the Oath of Office is to be mailed to:

Grants Administrative Officer
Oregon Department of Agriculture
SWCD Program
Natural Resources Program Area
635 Capitol St. NE
Salem, OR 97301

4. The newly elected or appointed director is to be sworn-in at a district board meeting. A director cannot assume the duties of the board position until the oath of office is signed and the director is sworn-in.

Note: For consistency, each SWCD should designate and authorize a person(s) to be the authorized signatory for the Oaths of Office. There is no requirement that the signatory be a notary public. The district board chair, or other official, can be designated to sign the oath.

Chapter 3: Registered Office and Agent Form

NOTICE OF DESIGNATION OF SPECIAL DISTRICT REGISTERED OFFICE AND REGISTERED AGENT

I, _____, (Secretary) (Financial Officer)
(Chairman of the Board) of this district, a municipal corporation, organized under the provisions
of ORS Chapter 198, certify that:

1. Pursuant to a resolution of the District Board, duly adopted, the registered office of this
district is:

(Street Address of Registered Office, City, Zip)

2. The registered agent in Oregon at such registered office is:

(Name of Registered Agent)

IN WITNESS WHEREOF, this district has caused this instrument to be executed in its name by
the (Secretary) (Financial Officer) (Chairman of the Board) of the District this _____ day
of _____, 20_____.

(Name of District)

By: _____
(Secretary) (Financial Officer) (Chairman of the Board)

STATE OF OREGON)
) ss.
County of _____)

Signed before me on _____ by _____

Notary Public – Oregon
My Commission Expires: _____

INSTRUCTIONS: A new form must be filed each time a change is made in either the registered agent or the
registered office. There is no fee for filing this form. Please send the form to:

Secretary of State
Archives Division
800 Summer St. NE
Salem, OR 97310

Revised: 5/2006

Chapter 4: Sample Annual Meeting Resolution

(Print on district letterhead)

**Resolution of the _____ Soil and Water Conservation District
Resolution # _____**

A Resolution Establishing the Date of the _____ SWCD's Annual Meeting

Whereas Oregon Revised Statute 568.580 states that by resolution of the board, by giving due notice, the board of directors shall call an annual meeting of the landowners in the district and present an annual report and audit; therefore,

Be It Resolved that the Annual Meeting of the _____ SWCD will be held on _____ at _____ and,

Be It Further Resolved that the Board of Directors of the _____ SWCD authorize the District Manager and staff to plan and execute all necessary tasks to plan and present the Annual Meeting.

Signature of District Chair

Date of Board Action

Chapter 4: Oregon Government Ethics Law: A Guide for Public Officials

OREGON GOVERNMENT ETHICS LAW

A GUIDE FOR PUBLIC OFFICIALS



Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544
Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

Adopted October 2010

DISCLAIMER

This guide has been approved by the Oregon Government Ethics Commission pursuant to ORS 244.320. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, statutes and rules have been summarized and paraphrased in this guide. Therefore, the discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

Any public official, business or any person shall not be liable under ORS Chapter 244 for any action or transaction carried out in accordance with Commission opinions set forth in this guide. "In accordance with" the opinions means that the fact circumstances of any action or transaction for which any public official, business or person shall not be liable must be the same fact circumstances for an action or transaction described in this guide as the basis for an opinion in this guide.

There may be other laws or regulations not within the jurisdiction of the Commission that apply to actions or transactions described in this guide.

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INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission has jurisdiction for ORS 171.725 through 171.992, related to lobbying regulations, and ORS 192.660, which are the executive session provisions of Oregon Public Meetings law.

The Commission publishes a guide for lobbyists and clients or employers of lobbyists regulated under provisions in ORS Chapter 171. This guide for public officials includes a discussion of some provisions that may also apply to lobbying activities, which are addressed by Lobbying Regulations. This is especially true when a lobbying activity involves paying the expenses for meals, lodging, travel, entertainment or other financial benefits of a legislative or executive official. Under specific circumstances, ORS Chapter 244 would allow the payment of such expenses, but the public official may have a reporting requirement under ORS Chapter 244 and the source of the payment may be required to register as a lobbyist or report the expenditure. If you have questions regarding registering as a lobbyist, lobbying activity or reports for lobbying expenditures, please refer to our Guide to Lobbying in Oregon.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. The statutory authority for executive sessions is limited to specific topics or procedures. This guide does not discuss that portion of the Oregon Public Meetings law, but there is a detailed discussion of ORS 192.660 in the Attorney General's Public Records and Meetings Manual, available on-line at www.doj.state.or.us/public_records/manual.shtml.

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. It is intended to be a useful discussion, in understandable terms, of topics and issues that are often the focus of inquiries the Commission receives from public officials and citizens. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, ORS Chapter 171.725 through 171.992, relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at www.oregon.gov/ogec. Questions or comments may be submitted to the Commission by email at ogec.mail@state.or.us, by fax to 503-373-1456 or by telephone to 503-378-5105.

JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited to provisions in ORS Chapter 244, ORS 171.725 through 171.992 and ORS 192.660. Other Oregon statutes may also regulate the activities of elected officials and public employees. Some examples are:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Criminal activity of any type would fall under the jurisdiction of federal, state or local law enforcement.
- The Commission does not have jurisdiction over the laws that govern public meetings or records, except for the executive session provisions in ORS 192.660.
- The Oregon Bureau of Labor and Industries investigates cases involving employment related sexual harassment or discrimination on the basis of race, religion, disability or gender.

There are occasions when a public official engages in conduct that may be viewed as unethical, but that conduct may not be governed by Oregon Government Ethics law. Without an apparent statutory violation, the following are some examples of conduct by public officials that are not within the authority of the Commission to address:

- An elected official making promises or claims that are not acted upon.
- Public officials mismanaging or exercising poor judgment when administering public money.
- Public officials being rude or unmannerly.
- Public officials using deception or misrepresenting information or events.

While the conduct described above may not be addressed in Oregon Government Ethics law, public agency policies and procedures may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

PUBLIC OFFICIAL: AN OVERVIEW

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose the nature of conflicts of interest. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's government employer or the governing body represented by the public official.

Since compliance is the personal responsibility of each public official, public officials need to familiarize themselves with the wide variety of resources that offer information or training on the provisions in Oregon Government Ethics law. First, there are the statutes in ORS Chapter 244 and the Oregon Administrative Rules (OAR) in Chapter 199. Second, the Commission website, www.oregon.gov/ogec, offers information, training and links to this guide, ORS Chapter 244 and OAR Chapter 199. Many government agencies offer training or the agency may request it from the Commission's trainers. There are a number of membership organizations, such as The League of Oregon Cities, Association of Oregon Counties, Oregon School Boards Association and Oregon Special Districts Association that provide training to public officials from their government members. It is imperative for government agencies or organizations that employ or represent public officials to ensure their public officials receive training in Oregon Government Ethics law. Those that fail to provide this training do a disservice to the public officials who they employ or who represent them.

One provision, which is the cornerstone of Oregon Government Ethics law, prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses they are associated with through opportunities that would not otherwise be available but for the position or office held.

Public officials are allowed to receive salary and reimbursed expenses from their own government agencies. Under specific conditions public officials may also accept gifts. This guide will discuss those provisions.

Another provision that frequently applies to public officials when engaged in official actions of their official positions or offices is the requirement to disclose the nature of conflicts of interest. This guide will discuss the definition of a conflict of interest and describe the methods a public official must follow when met with a conflict of interest.

There is a requirement for some public officials who are elected to offices or hold other select positions to file an Annual Verified Statement of Economic Interest form. This guide

will discuss that filing requirement.

It is important for both public officials and members of the general public served by public officials to know that the provisions in Oregon Government Ethics law apply to the actions and conduct of individual public officials and not the actions of state and local governing bodies or government agencies. Each individual public official is personally responsible for complying with provisions in ORS Chapter 244. The statutes and rules discussed or illustrated in this guide do not and cannot address every set of circumstances a public official may encounter. When a public official is anticipating an official action or participation in an official event they must make a personal judgment as to the propriety of the action or the participation. The Commission staff is available to discuss the issues and offer guidance in making such judgments.

Oregon Government Ethics law addresses a wide range of actions, situations or events which a public official may encounter while serving a state or local government. This guide provides a discussion of the provisions that apply to circumstances that most public officials may encounter.

A PUBLIC OFFICIAL

Are you a public official?

“Public official” is defined in ORS 244.020(14) as any person who, when an alleged violation of ORS Chapter 244 occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Science University.

The Commission has adopted, by rule, additional language used to clarify the use of “agent in the definition of “public official.” The following is OAR 199-005-0035(7):

“As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).”

If I am a volunteer, does that make me a public official?

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, “irrespective of whether” you are “compensated” you are a public official. It is difficult to determine how many public officials are volunteers, but the number may approach 50,000. Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer, there are elected or appointed members of

governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts. This guide provides criteria to identify volunteers who will be considered public officials when applying the provisions in ORS Chapter 244.

If any one of the following elements apply to a volunteer position, the person holding that volunteer position will be defined as a “public official”:

- Elected or appointed to a governing body of a public body
- Appointed or selected for a position with a governing body or a government agency with responsibilities that include deciding or voting on matters that could have a pecuniary impact on the governing body, agency or other persons
- The volunteer position includes all of the following:
 1. Responsible for specific duties
 2. The duties are performed at a scheduled time and designated place.
 3. Volunteer is provided with the use of the public agency’s resources and equipment.
 4. The duties performed would have a pecuniary impact on any person, business or organization served by the public agency.

For purposes of ORS Chapter 244, volunteers are not public officials if they perform such tasks as picking up litter on public lands, participating in a scheduled community cleanup of buildings or grounds, participating in locating and eradicating invasive plants from public lands and other such occasional or seasonal events.

How are relatives of public officials affected by Oregon Government Ethics law?

Public officials must always comply with state law when participating in official actions that could result in personal financial benefits and also when participating in official actions that could result in financial benefits for a relative. Public officials should also know there may be limits and restrictions on gifts their relatives may accept when offered.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using or attempting to use official actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit. These provisions are discussed more comprehensively in the use of

position or office section starting on page 9, the gifts section starting on page 26 and the conflicts of interest section starting on page 21.

Who is a relative?

Public officials need to know how Oregon Government Ethics law defines who a “relative” is. In everyday conversation the use of “relative” is applied to a broader spectrum of individuals with “family ties” than those defined as relatives in ORS 244.020(15). When a provision in ORS Chapter 244 refers to “relative” it means one of the following:

- **Spouse** of a public official or candidate
- **Children** of a public official or candidate
- **Children of the spouse** of a public official or candidate
- **Siblings** of a public official or candidate
- **Siblings of the spouse** of a public official or candidate
- **Spouse of siblings** of a public official or candidate
- **Spouse of siblings of the spouse** of a public official or candidate
- **Parents** of the of public official or candidate
- **Parents of the spouse** of a public official or candidate
- **Person** for whom the public official or candidate has a **legal support obligation**
- **Person benefiting from a public official** when benefits are from the public official’s public employment
- **Person who provides benefits to a public official** or candidate when benefits are from the person’s employment

For purposes of “relatives” defined by the last two bulleted items, examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

How do the laws apply to a public official who either owns or is employed by a private business?

As with the definition of relative, public officials need to know how Oregon Government Ethics law defines what a “business” is or what a “business with which the person is associated is.” The same sound judgment a public official exercises when participating in actions that could result in a financial benefit to the public official or a relative of the public official should be used when participating in actions that could result in a financial benefit to a business with which the public official or the relative is associated.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a business with which the public official or a relative is associated. The provisions may also require the public official to disclose the nature of a conflict of interest when a business may receive a financial benefit.

ORS 244.020(2) provides the definition of a “**business**,” paraphrased as follows:

A “business” is a legal entity that has been formed for the purpose of producing income.

- Excluded from this definition are income-producing organizations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public official or a relative of the public official holds membership or an unpaid position as a member of the board of directors.
- It is important to remember that state and local government or special district entities are not formed for the purpose of producing income, which means they are not businesses.

ORS 244.020(3) provides the definition of a “**business with which the person is associated,**” paraphrased as follows:

In brief, a public official or the relative of the public official is associated with a business in the following circumstances:

- When, during the preceding calendar year, a public official or relative has held a position as director, officer, owner, employee or agent of a private business or a closely held corporation in which the public official or relative held or currently holds stock, stock options, equity interest or debt instrument over \$1,000.
- When, during the preceding calendar year, the public official or relative has owned or currently owns stock, equity interest, stock options or debt instruments of \$100,000 or more in a publicly held corporation.
- When the public official or relative is a director or officer of a publicly held corporation.
- When a public official is required by ORS 244.050 to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.

USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?

As defined earlier, public officials become public officials through employment, appointment, election or volunteering. **ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official.** The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. **ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information** gained because of the position held or by carrying out assigned duties to further the public official's personal gain. **ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain** if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6) also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firm, may encounter circumstances in which this provision may apply. For example, a member of a city council who is an architect has a developer as a client of the architect's business. If the developer has a proposed subdivision to be approved by the city council, the architect may not appear before the city council on behalf of the client developer. Another person representing the client developer on behalf of the architect's business may appear, but not the councilor/architect.

There are a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government

agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

The following examples are offered to illustrate what may constitute prohibited use or attempted use:

- The mayor of a city signs a contract obligating the city to pay for janitorial services provided by a business owned by a relative of the mayor.
- A city treasurer signs a city check payable to an office supply business that is owned by a relative.
- A city billing clerk alters water use records so that the amount billed to the clerk's parents will be less than the actual amount due.
- A volunteer firefighter borrows the fire district's power washer to prepare the exterior of the volunteer's personal residence for painting.
- A county public works employee stores a motor home that is owned by the employee's parents in a county building used for storing heavy equipment.
- An employee of a state agency has a private business and uses the agency's computer to advance the business by promoting, corresponding and managing the activities of the private business.
- A school district superintendent approves and signs her own request for reimbursement of personal expenses the superintendent incurred when conducting official business.

NOTE: While these examples are offered to illustrate the use of a public official's position prohibited by ORS 244.040(1), the practices in the examples may also illustrate occasions where a public official may be met with a conflict of interest as defined in ORS 244.020(1) and (12). There are circumstances when a public official may comply with provisions in ORS 244.040(1) while violating conflict of interest provisions in ORS 244.120 or the reverse [ORS 244.040(7)]. Refer to the detailed discussion of conflicts of interest starting on page 21.

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

Official Compensation: Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]

OAR 199-005-0035(3) provides a definition of “official compensation package:”

An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official's “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

The Commission often receives complaints that allege that a public official is using or attempting to the position held to gain financial benefits prohibited by ORS 244.040(1). Occasionally the financial benefits in these complaints are gained through the use of the public body's resources. Some examples are use of a vehicle for personal transportation, use of a computer for a personal private business enterprise or use of telecommunications equipment for personal business. Some respondents to complaints that involve the use a public body's resources will defend their use as being consistent with an informal longstanding practice. The financial benefit to a public official, from the use of a public body's resources, from what may be understood as an informal and longstanding practice does not meet the definition of part of an “official compensation package.” This is because the practice has not been specifically approved by the public body in a formal manner.

Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4):

The “reimbursement of expenses’ means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment.”

There are occasions when someone will refer to the payment of a public official's expenses by a person or entity other than the public official's public body as a reimbursement of expenses. That is not the reimbursement of expenses as used in ORS 244.040(2)(c) and defined in OAR 199-005-0035(4). If the payment of a public official's personal expenses does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

There are occasions when public officials are reimbursed for travel expenses the public official has paid while conducting official duties on behalf of the public official's public body. Sometimes the public body will prearrange for a public official's travel and pay the expenses in advance. Such advance payments are also viewed by the Commission

as the reimbursement of expenses allowed by ORS 244.040(2)(c).

Some public officials hold positions identified in ORS 244.050 as having a requirement to file the Annual Verified Statement of Economic Interest (SEI) form in April of each year. This requirement will be discussed elsewhere in this guide, but some who must submit the SEI forms believe that travel related expenses paid by the public official's public body must be listed in the SEI form. That is not true. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060 [OAR 199-005-0035(4)].

Honorarium: Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(7). A public official must know how honorarium is defined because there are many occasions when someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium in ORS 244.020(7).

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event. A public official may not accept honorarium if the value exceeds \$50 [ORS 244.042(3)(a)].

In brief, for a payment or something of economic value to be defined as an honorarium, several conditions must be met:

- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides services.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

Public officials may accept honorarium for services performed in relation to the private profession of the public official, although public officials must be sure, when they are offered a payment or something of economic value and it is referred to as an honorarium, that it does meet the definition in ORS 244.020(7). If it does not meet this definition, it may be a financial benefit prohibited or restricted by other provisions in ORS Chapter 244.

Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize a professional achievement of the public official [ORS 244.040(2)(d)].

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(6)(b)(C), honorarium allowed by ORS 244.040(2)(b), or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or may hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards regulated by ORS 244.040(2)(d).

Contributions to Legal Expense Trust Fund: There are provisions in ORS 244.209 that allow public officials who have become a respondent to a complaint under Oregon Government Ethics law to establish a legal expense trust fund. ORS 244.040(2)(h) allows a public official who has established this trust fund to solicit, accept and be the trustee for contributions to the established fund.

Gifts: Public officials may accept gifts [ORS 244.040(2)(e),(f) and (g)]. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that can be accepted by a public official. On the other hand, there are circumstances when the aggregate value of gifts accepted by a public official is restricted. There may also be reporting requirements that apply to public officials who accept gifts and to sources that provide the gifts. Refer to the detailed discussion of issues related to gifts starting on page 26.

NEPOTISM

Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?

No. Public officials who are relatives can be employed by the same public body employer at the same time, or serve on the same governing body of a public body at the same time.

However, ORS Chapter 244 does address the issue of “nepotism.” Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. The definition of “relative” in ORS Chapter 244 [ORS 244.175(4)] takes on a broader meaning when applying ORS 244.175 through ORS 244.179:

- **Spouse** of a public official
- **Children** of the public official or spouse
- **Parents** of the public official or spouse
- **Stepparents** of the public official or spouse
- **Stepchildren** of the public official or spouse
- **Brothers** of the public official or spouse
- **Sisters** of the public official or spouse
- **Half-brothers** of the public official or spouse
- **Half-sisters** of the public official or spouse
- **Brothers-in-law** of the public official or spouse
- **Sisters-in-law** of the public official or spouse
- **Sons-in-law** of the public official or spouse
- **Daughters-in-law** of the public official or spouse
- **Mothers-in-law** of the public official or spouse
- **Fathers-in-law** of the public official or spouse
- **Aunts** of the public official or spouse
- **Uncles** of the public official or spouse
- **Nieces** of the public official or spouse
- **Nephews** of the public official or spouse

What are the provisions that address nepotism?

After complying with the conflict of interest provisions in ORS 244.120, public officials cannot participate in any personnel action taken by the public agency that would impact the employment of a relative or member of the public official’s household. A public official may not participate in the following [ORS 244.177(1)]:

- Appointing, employing or promoting
- Discharging, firing or demoting
- Interviewing
- Discussing or debating the appointment, employment, promotion, discharge, firing or demotion

NOTE: Public officials who are elected members of the Oregon Legislative Assembly are not prohibited from participating in employment actions taken on positions held by relatives of the member’s personal staff [ORS 244.177(2)].

A public official who is assigned duties that include performing “ministerial acts” related to any stage of a relative’s employment is not prohibited from performing such acts. “Ministerial acts” would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings.

A public official may serve as a reference or provide a recommendation for a relative who has applied for a position of employment, promotion or is subject to any personnel action.

If a public official has a relative or a member of the public official’s household who has applied to be or serves as an unpaid volunteer, the public official may participate in any personnel action that involves the relative or member of the household. This provision only applies to unpaid volunteers who provide services to the public body and does not apply to unpaid volunteers who serve or seek appointment to a governing body of a public body. [ORS 244.177(3)(a) and (b)]

A public official may not directly **supervise** a person who is a relative or member of the public official’s household [ORS 244.179], except when:

- The public official is an elected member of the Oregon Legislative Assembly
- The public official is supervising an unpaid volunteer for the public body

Volunteers who are relatives or members of the household of a public official may be supervised by the public official. However, this would not apply if the volunteer position is as a member of the governing body of the public body. [ORS 244.179(3)]

ORS 244.179(4) allows a public body to adopt policies that specify when a public official, acting in an official capacity for the public body, may directly supervise a person who is a relative or member of the public official’s household.

PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation, but choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
 - Employees of governmental agencies must give written notice to their appointing authority.
 - Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

EMPLOYMENT OF FORMER PUBLIC OFFICIALS

How would Oregon Government Ethics law apply when a former public official is employed by a business that has a contract with the public body previously represented by the former public official?

For two years after a public official ceases holding or being employed in a position as a public official, that public official may not have a direct beneficial financial interest in a public contract when one of the parties to the contract is the public official's former public body if the contract was authorized by [ORS 244.047(2) and (3)]:

- The former public official, who authorized the contract while acting in the capacity previously held as a public official.
- The former public official, as a member of a governing body [board, commission, council, bureau, committee], participated in official action to approve the contract.

“Authorized by” is defined in OAR 199-005-0035(6) as meaning that the former public official had a significant role in the contracting process to include participating on a selection committee, recommending approval, voting, giving final authorization or signing a contract. The definition in the rule is as follows:

“As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

What are the restrictions on employment after I resign, retire or leave my public official position?

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; otherwise, most former public officials may enter the private work force with few restrictions.
- ORS 244.040(5) prohibits a former public official from attempting to use confidential information for personal gain if the confidential information was obtained while holding the position as a public official.
- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

ORS 244.045(1)
State Agencies:

Director of Department of Consumer and Business Services

Administrator of Division of Finance and Corporate Securities
 Administrator of Insurance Division
 Administrator of Oregon Liquor Control Commission
 Director of Oregon State Lottery
 Public Utility Commissioner

1. One year restriction on gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.
2. Two year restriction on lobbying or appearing as a representative before the agency on behalf of the activity, occupation or industry regulated by the agency for which the public official was the Director, Administrator or Commissioner.
3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2)

Oregon Department of Justice:

Deputy Attorney General
 Assistant Attorney General

1. Restricted for two years from lobbying or appearing before an agency that they represented while with the Department of Justice.

ORS 244.045(3)

Office of the Treasurer:

State Treasurer
 Chief Deputy State Treasurer

1. Restricted for one year from accepting financial benefit from a private entity with which there was negotiation or contract awarding \$25,000 in one year by the State Treasurer or Oregon Investment Council.
2. Restricted for one year from accepting financial benefit from a private entity with which there was investment of \$50,000 in one year by the State Treasurer or Oregon Investment Council.
3. Restricted for one year from being a lobbyist for an investment institution, manager or consultant or from appearing as a representative of an investment institution, manager or consultant before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4)

Public Officials who invested public funds:

1. Restricted for two years from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.
2. Restricted for two years from influencing or trying to influence the agency, board or commission.
3. Restricted for two years from disclosing confidential information gained through employment.

ORS 244.047

Public Officials who authorized a public contract:

1. A public official who authorized or had a significant role in a contract while acting in an official capacity may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.
2. A member of a board, commission, council, bureau, committee or other governing body who has participated in the authorization of a public contract may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

OAR 199-005-0035(6) indicates that “authorized by” means that public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval of a contract, serving on a selection committee or team, having the final authorizing authority or signing a contract.

ORS 244.045(5)

Department of State Police

Supervising programs related to Native American tribal gaming
Supervising programs related to Oregon State Lottery

1. Restricted for one year from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. Restricted for one year from gaining financial benefit from a private employer who sells gaming equipment or services.
3. Restricted for one year from trying to influence the Department of State Police or from disclosing confidential information.

Exceptions include subsequent employment with the state police,

appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6)
Legislative Assembly

Representative
Senator

After a legislator's membership in the Legislative Assembly ends, a legislator may not become a compensated lobbyist until adjournment of the next regularly scheduled session of the Legislative Assembly following the end of membership in the Legislative Assembly. *[Note: In 2008 and 2010, the first special sessions are considered to be regular sessions.]*

CONFLICTS OF INTEREST

How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1) and a **potential conflict of interest** is defined in ORS 244.020(12). In brief, a public official is met with a conflict of interest when participating in official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “would” and “could.” A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official’s relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest:

A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an **actual conflict of interest** when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.

A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest** when the members discuss or act on the invitation for bids on the sheetrock installation.

What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant

to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a). [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

Public Employees:

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244.120(1)(c)]

Elected Officials or Appointed Members of Boards and Commissions:

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite

for holding the public official position. [ORS 244.020(12)(a)] For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.

- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or “class”. The Commission has the authority to identify a group or class and determine the minimum size of that “class.” [ORS 244.020(12)(b) and ORS 244.290(3)(a)] For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)] For example, a city councilor is also an unpaid board member or member at the local YMCA. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure requirements and participation restrictions.

How is the public announcement of the nature of a conflict of interest recorded?

- The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records (minutes, audio/video recording) of the public body. [ORS 244.130(1)]

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

- The announcement needs to be made on each occasion when the public official is met with the conflict of interest. Each time a public official is met with a conflict of interest the nature must be disclosed. For example, an elected member of the city council would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. Another example would involve an employee in a city planning department who would have to give a separate written notice before each occasion they encounter a matter that gives rise to a conflict of interest. [ORS 244.120(3)]

If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

- No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)]. However, the public official faces the potential of personal liability for the violation.

LEGAL EXPENSE TRUST FUND

If a public official is the respondent to a complaint, can the public official solicit funds in order to pay for the cost of a legal defense?

The Oregon Government Ethics Commission can authorize a public official to establish a trust fund to be used to defray expenses incurred for a legal defense in any civil, criminal or other legal proceeding that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

The provisions regarding the establishment of this fund are detailed in ORS 244.205 through ORS 244.221. If a public official is considering the need to establish a legal expense trust fund, these provisions should be reviewed. The Commission staff is available to provide guidance on the procedures. The following are some of the significant elements of a legal expense trust fund:

- A public official may only have one trust fund at any one time [ORS 244.205(4)].
- The application to establish the fund must be submitted to the Commission for review and authorization. ORS 244.209 details what information and documents must accompany the application.
- The public official may act as the public official's fund trustee [ORS 244.211(2)].
- Once authorized and established, any person may contribute to the fund [ORS 244.213].
- Contributions from a principal campaign committee are not allowed [ORS 244.213(3)].
- Funds must be maintained in a single exclusive account [ORS 244.215].
- Quarterly reports of contributions and expenditures from the fund are required [ORS 244.217].
- The fund must be terminated within six months after the legal proceeding for which the fund was established has been concluded [ORS 244.219].
- When terminated, funds must be used to pay legal expenses, returned to contributors or donated to an organization exempt from taxation under section 501(c)(3) of the internal Revenue Code [ORS 244.221].

GIFTS

When Oregon Government Ethics law uses the word “gift” it has the meaning in ORS 244.020(6)(a):

“Gift’ means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to “others” who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from “others” who are not public officials or candidates.”

The Commission interprets “others” to indicate a significant portion of the general public in Oregon who are not public officials or candidates.

In other words, a “gift” is something of economic value that is offered to,

- A public official or candidate or to relatives or members of the household of a public official or candidate,
- Without cost or at a discount or as forgiven debt and,
- The same offer is not made or available to the general public who are not public officials or candidates.

[NOTE: In the following discussion, references to candidates are omitted to simplify the discussion. In most of the discussion, if you are a candidate, read the references to public official to mean “public official or candidate, if elected.”]

Oregon Government Ethics law establishes a framework of conditions for public officials to apply when they, their relatives or members of their households are offered gifts. If offered a gift, the public official must analyze the offer and decide if “something of value” can be accepted with or without restrictions.

There are restrictions on the value of gifts accepted by a public official, if the source of the gift has a legislative or administrative interest in decisions or votes the public official makes when acting in the capacity of a public official.

Legislative or administrative interest is defined in ORS 244.020(9) and is used, primarily, when applying the law to gifts accepted by public officials. Whether there is a legislative or administrative interest is pivotal to any decision a public official makes on accepting gifts. It

will mean the difference between being allowed to accept gifts without limits, accepting gifts with a limit of \$50 on the aggregate value, or accepting gifts under specific conditions and within specific parameters. As will be apparent in the following discussion, the burden of any decision on accepting a gift rests solely with the individual public official.

What does a public official need to know about a “Legislative or Administrative Interest”?

Beginning in 2010, the change to the definition of what a legislative or administrative interest is represents one of the most significant changes made in Oregon Government Ethics law during the 2009 session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift has a legislative or administrative interest will help determine whether the gift offered can be accepted without limits or with restrictions. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in official actions of the public official’s governmental agency. Now the focus is on the votes or decisions of each individual public official. The change places greater responsibility on the individual public official to decide if a gift can be accepted without limits or with restrictions imposed by ORS Chapter 244. Not every public official makes decisions or casts votes, as those actions are used in defining a legislative or administrative interest. This means that when gifts are offered to two or more public officials, in the same setting, one public official may be allowed to accept the offer without limits and another public official may be able to accept the offer, but it would be limited as to value or restricted by conditions that must be met when accepting.

The definition of a legislative or administrative interest as set forth in ORS 244.020(9) as follows:

“‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

In the context of gifts accepted by a public official, the public official must determine if the source of the offered gift has a legislative or administrative interest in the decisions or votes of the public official. When analyzing a set of circumstances and applying “legislative or administrative interest”, there are several factors to consider:

Source: The Commission adopted a rule that identifies the source of a gift as the person or entity that makes the ultimate and final payment of the gift’s expense. OAR 199-005-0030 places two burdens on a public official who accepts gifts. The

public official must know the identity of the source and, if applicable, avoid exceeding the limit on the aggregate value of gifts accepted from that source. [OAR 199-005-0030(2)]

Distinct from that of the general public: With regard to gifts, this phrase refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift would realize a financial gain or detriment from a vote or decision of a public official, that source has an economic interest in that public official. That economic interest is “distinct from that of the general public”, if the potential financial gain or detriment is distinct from the financial impact that would be realized by members of the general public from the votes or decisions of that same public official.

There are decisions or votes that have an economic impact on single individuals or individuals from specific businesses or groups that are distinct from the economic impact on members of the general public. On the other hand, there are many votes or decisions made by public officials that have the same general economic impact on individuals, businesses, organizations and members of the general public. Some examples of decisions or votes that would have an economic impact on the general public would be those that change water usage rates, fees for licenses or permits or fines for parking violations.

To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.

To further illustrate, real estate developers have an economic interest in any public official who has the authority to decide or vote to approve their land use applications or building permits. The economic interest of these developers is distinct from the economic interest held by members of the general public in those decisions or votes.

Vote: This has the common meaning of to vote as an elected member of a governing body of a public body or as an appointed member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

Decision: The Commission adopted OAR 199-005-0003 and defines “decision” in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on

the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source. This is because not all public officials in the same public body have the same authority, responsibilities or duties. Some may vote and make decisions, others may do one but not the other and many will not vote or make decisions, as “decision” is used in legislative or administrative interest.

There are public officials who, because they hold positions specified in ORS 244.050, must file the Annual Verified Statement of Economic Interest (SEI) form with the Commission on April 15 of each year. Some information listed in that form is required when certain financial interests, assets or liabilities, are related to a source with a legislative or administrative interest in the votes or decisions of the public official submitting the form. Refer to the table of contents to find the discussion of the SEI form in this guide.

Any discussion of gifts must begin with the reminder that if the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)]

If the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025]

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official have a \$50 limit, there are some gifts that are excluded from the definition of a “gift.” If the offer of a gift is excluded from the definition of a “gift,” the offer may be accepted by a public official. The value of gifts that are allowed as exclusions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year. [ORS 244.020(6)(b)]

Sources who offer gifts or other financial benefits to public officials must also be aware of the provisions in ORS Chapter 244. While the specific gift of paid expenses may be allowed by ORS 244.020(6)(b)(F), ORS 244.100(1) requires the source of this gift, if over \$50, to notify the public official in writing of the aggregate value of the paid expenses. There is also a notice requirement in ORS 244.100(2) for the source of an honorarium when the value exceeds \$15. Lobbyists, clients or employers of lobbyist and others who provide gifts or financial benefits to public officials should also familiarize themselves with the provisions in ORS 171.725 through ORS 171.992 and Divisions 5 and 10 of Chapter 199 in the Oregon Administrative Rules. The Commission has published a “Guide to Lobbying in Oregon” that provides a summary of these regulations and rules.

As previously mentioned, there are gifts that are allowed because they are excluded from the definition of a “gift” when offered under specific conditions or when prerequisites are

met. Although some gifts are allowed, it should be remembered that a source may have a notice requirement or there may be reporting requirements for the public official or the source. If you are a public official accepting gifts or a source offering gifts, it is important you become familiar with the requirements that may apply to you.

ORS 244.020(6)(b) provides a description of the **GIFTS THAT ARE ALLOWED** as exclusions to the definition of a “gift”:

[NOTE: Not all of these exclusions apply to gifts offered to candidates.]

- Campaign contributions as defined in ORS 260.005. *[ORS 244.020(6)(b)(A)]*
- Contributions to a legal expense trust fund established under ORS 244.209. *[ORS 244.020(6)(b)(G)]*
- Gifts from relatives or members of the household of public officials or candidates. *[ORS 244.020(6)(b)(B)]*
- Anything of economic value received by a public official or candidate, their relatives or members of their household when; *[ORS 244.020(6)(b)(O)]*

The receiving is part of the usual and customary practice of the person’s business, employment, or volunteer position with any legal non-profit or for-profit entity. *[ORS 244.020(6)(b)(O)(i)]*

The receiving bears no relationship to the person’s holding the official position or public office. *[ORS 244.020(6)(b)(O)(ii)]*

- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. *[ORS 244.020(6)(b)(C) and see resale value discussed in OAR199-005-0010]*
- Publications, subscriptions or other informational material related to the public official’s duties. *[ORS 244.020(6)(b)(D)]*
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. *[ORS 244.020(6)(b)(J)]*
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event. *[ORS 244.020(6)(b)(M) and see OAR 199-005-0001(3) and OAR 199-005-0025(1) for meaning of “incidental”]*
- Entertainment for a public official, a relative of the public official or a member of the public official’s household when the public official is acting in an official capacity and

representing a governing agency for a ceremonial purpose. [ORS 244.020(6)(b)(N) and see “ceremonial” defined in OAR 199-005-0025(2)]

- Cost of admission or food and beverage consumed by the public official, a member of the public official’s household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization. [ORS 244.020(6)(b)(E) and see this exception discussed in OAR 199-005-0015]
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. [ORS 244.020(6)(b)(L) and OAR 199-005-0025(1) also see OAR 199-005-0001(3) and (8)]
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. [ORS 244.020(6)(b)(K)]
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3). [ORS 244.020(6)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official’s household or staff may be accepted when the public official is representing the government agency or special district at one of the following: [ORS 244.020(6)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]
 - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(6)(b)(H)(i)]
 - Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(6)(b)(H)(ii)]

[NOTE: How and who may officially sanction and officially designate these events is addressed in OAR 199-005-0020(2)(b).]

- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip. [ORS 244.020(6)(b)(P)]

- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(6)(b)(I)]*
 - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; *[ORS 244.020(6)(b)(I)(i)]*
 - When the office of the Treasurer is engaged in business related to proposed investment or borrowing; *[ORS 244.020(6)(b)(I)(ii)]*
 - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money. *[ORS 244.020(6)(b)(I)(iii)]*

GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

Since ORS 244.040 was amended in 2007, the acceptance of gifts that comply with ORS 244.020(6) and ORS 244.025 is excluded from the prohibition on public officials' use or attempted use of an official position to gain financial benefits. If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does **not** prohibit the acceptance.

The discussion below is intended to assist public officials in understanding this distinction. There are more focused discussions of gifts starting on page 26 and the use of position or office starting on page 9. It should be understood this section may paraphrase information discussed more comprehensively in those areas of this guide. Also, the application of the gift provisions to candidates is not part of this discussion because, unless the candidate also qualifies as a public official on another basis, candidates are not public officials; therefore, the use of an official position prohibited by ORS 244.040(1) would not apply to a candidate who is not also a public official.

Oregon Government Ethics law does not prohibit public officials from accepting gifts [ORS 244.040(2)(e), (f) and (g)], but it does place on each individual public official the direct and personal responsibility to understand there are circumstances when the aggregate value of gifts may be restricted. Public officials are also prohibited from using or attempting to use a position held by the public official to obtain a prohibited financial benefit. These provisions of Oregon Government Ethics law often converge and require public officials to analyze and determine whether the opportunity to obtain financial benefits represents the use of an official position prohibited by ORS 244.040(1) or a gift addressed with other provisions in ORS Chapter 244 [ORS 244.020(6), ORS 244.025 or ORS 244.040(2)(e),(f) and (g)].

Is it a gift?

Public officials must understand the operative definition of a "gift" when deciding whether a gift may be accepted by a public official or candidate. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

Gift: "Something of economic value" given to a public official, a relative of the public official or a member of the public official's household for which the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.

If something of economic value is received by a public official from the government agency employer or the public body represented by the public official, that financial benefit is not considered a gift, it is a financial benefit addressed by ORS 244.040 and it is either allowed or prohibited.

Sources of gifts are private individuals, businesses, organizations or government agencies, but **not the agency represented by or employing the public official**. Sources may also be co-workers or representatives of the same public body who have purchased a gift with their **personal** resources.

Gifts may be accepted by a public official, if the source does not have a legislative or administrative interest in the votes or decisions of the public official. Specific gifts may be accepted, if the conditions of the offer exclude the gift from being defined as a gift [ORS 244.020(6)(b)(A) through (P)]. Gifts that are not excluded from the definition may be accepted from a source as long as the aggregate value of gifts from that source does not exceed \$50 in a calendar year. For additional assistance, see the discussion beginning on page 37 titled, “What if I am offered a gift?”

Is it a prohibited use of position?

Unlike gifts, which come from outside sources, ORS 244.040(1) focuses on the public official’s own actions. ORS 244.040(1) prohibits the **use or attempted use of the position** held by the public official to obtain benefits which are only available because of that position.

The prohibited financial benefits might take several forms. A public employee might have access to job related resources, business opportunities, or information, and might want to take financial advantage of this access. The financial benefit might be the avoidance of a personal expense, acquiring something of economic value, gaining extra income from private employment, or creating a new employment opportunity.

Although this “use of position” applies to situations where something of value is obtained, or there is an attempt to obtain something of value, **the Commission applies Oregon Government Ethics law to “something of economic value” offered to a public official that meets the definition of “gift,” it will be addressed as a gift in the analysis and application of the law.** The following are some examples to illustrate the Commission’s approach:

NOTE THAT IN THE FOLLOWING EXAMPLES, THE SOURCES OF THE FINANCIAL BENEFITS HAVE A LEGISLATIVE OR ADMINISTRATIVE INTEREST IN THE DECISIONS OR VOTES OF THE PUBLIC OFFICIALS.

That is important to remember because if there were no legislative or administrative interest the public officials may be allowed to accept the offers without restrictions. [ORS 244.040(2)(f)]

- A salesperson from a software company offers to take the county’s information technology manager out to lunch. Because the manager has purchasing authority, the salesperson has an administrative interest in the manager. The meal would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)] If the meal cost less than \$50, the manager may accept it, but should

keep a record of the gift and should be careful in future situations not to accept additional gifts from this source if the value would exceed \$50 total for the year. Of course, if the lunch costs more than \$50, the manager may not accept it in any case.

- A city manager attends a work-related conference paid for by the city. When the city manager checks out of the hotel, she is offered a coupon for two nights of free lodging at any hotel in the nationwide chain. Because the city manager is in charge of her own travel arrangements, the hotel has an administrative interest in her future hotel-booking decisions. If accepted and used for personal lodging, it would be a gift and the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. *[ORS 244.025(1)]* Note that if the city had adopted an official compensation package (as defined in OAR 199-005-0035) that included a provision allowing the city manager to use “loyalty program” benefits for personal use, the coupon could have been accepted.
- A county finance officer attends a work-related conference paid for by the county. When arriving at the conference the finance officer, as with others in attendance, is offered a gift basket containing assorted goods from the organization hosting the conference. Because the organization sells goods or services the finance officer has the authority to purchase, the source of the gift has an administrative interest in the finance officer. Typically, such a gift basket would be a “gift” and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. *[ORS 244.025(1)]* However, the law does not prohibit accepting things that are made available to a significant portion of the general public under the same terms and conditions. If the conference was open to members of the general public, and the attendees included a wide range of public and private participants, the baskets would not be considered gifts.
- A state employee is sent by his agency to attend a two-day training conference. A salesperson is near the conference registration table and offers a collection of gifts valued at over \$100 to all registrants. As in the last example, because the employee has the authority to purchase goods or services sold by the salesperson, the source of the gifts has an administrative interest in the state employee. Let’s also assume that the conference is only open to government employees. Under these circumstances the offered items would be gifts and any accepted could not exceed the \$50 limit on aggregate value from a single source in one calendar year. *[ORS 244.025(1)]*
- During the same conference, the state employee is going out to dinner after the conference adjourns for the day. While passing through the hotel lobby, he stops to speak with the salesperson who offered the gifts during the conference registration. The salesperson asks to join the state employee for dinner and offers to pay for the meal. The value of the meal would be included with the value of any gifts accepted earlier in the aggregate value of gifts, which cannot exceed \$50 in one calendar year. *[ORS 244.025(1)]*

- A city mayor goes out to lunch in a local city restaurant. During lunch a well known developer approaches the mayor and offers to pay for the mayor's meal. The developer has a legislative or administrative interest in decisions the mayor could make on his construction projects. The value of the meal, if accepted, would be included in the aggregate value of gifts from a source, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]
- A chief deputy who manages procurement for a county sheriff's office attends a conference on newly developed equipment for law enforcement agencies. Upon arrival, the deputy purchases with personal funds several "raffle tickets" each representing a chance to win a shotgun from the manufacturer valued at \$500. The opportunity to buy the tickets is only available to those attending the conference. During the final session of the conference the "raffle" ticket drawing is held and the chief deputy wins the shotgun. As explained above, if the conference was only open to public officials, or if few non-public employees were in attendance, the shotgun would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 from a single source in one calendar year. [ORS 244.025(1)]

When the Commission applies Oregon Government Ethics law to a financial benefit obtained by a public official by using or attempting to use an opportunity that would not otherwise be available but for the position or office held, ORS 244.040(1) will be used in the analysis and application of the law. The following are some examples to illustrate the Commission's approach:

- A city recorder has overseen the installation and implementation of a new software program to manage the city's financial records. The distributor of this software has a training event scheduled for employees who work for other cities' governments. The city recorder has been asked to participate as a trainer at the events and the distributor has offered to provide compensation and pay any expenses for food, lodging and travel. If the city recorder accepted this offer, it could constitute the use of the official position to gain a financial benefit because the opportunity for the compensation and paid expenses would not be available but for holding the position and performing the duties as the city recorder. [ORS 244.040(1)]
- A deputy fire chief, who is in charge of procuring equipment for fire stations in the district, locates a vendor that offers the make and model of an extension ladder to replace obsolete ladders in the district's stations. To increase the fire district's discount on each ladder, the deputy fire chief adds several extra ladders to the order. The deputy fire chief and two relatives take personal possession of the extra ladders and pay the fire district the amount the district paid for the ladders. The deputy fire chief would violate ORS 244.040(1) because the discounted price to the deputy fire chief and the relatives represents the use of position to avoid a financial detriment (discount) that is prohibited.

- A city council has scheduled a public council meeting in a room at a local restaurant. Before the scheduled meeting the councilors plan to use city funds to purchase dinner for councilors, the councilor's spouses and members of the city's staff attending the scheduled meeting. The councilors, who are accompanied by a spouse, would violate ORS 244.040(1) because the cost of the meal for the spouse would represent the use of position to avoid a financial detriment that is prohibited.

The responsibility for judgments and decisions made in order to comply with the various provisions in Oregon Government Ethics law rests with the individual public official who faces the circumstances that require a judgment or decision. That is true of questions regarding gifts, use of an official position, announcing the nature of conflicts of interest and the many situations addressed in ORS Chapter 244.

What if I am offered a gift?

First, insure you know the identity of the source of the gift. Remember, the source of a gift is the person or entity that made the ultimate payment for the gift's expense [See page 27].

Second, determine if the source of the gift has an economic interest in decisions or votes you make in your official capacity as a public official. If that economic interest is distinct from the interest held by members of the general public it is a legislative or administrative interest [See page 27].

- If the source does not have a legislative or administrative interest, gifts from that source are not prohibited or limited as to value or quantity.
- If the source has a legislative or administrative interest, you must answer the following questions:
 1. Is the gift offered under the conditions that would allow you to accept the gift because it is excluded from what is defined as a "gift"? These exclusions are found in ORS 244.020(6)(b) and described on pages 30 - 32 of this guide.
 2. What is the value of the gift? Remember, you can accept gifts [not excluded from the definition of "gift".] from a single source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year. [ORS 244.025]

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

There are approximately 5,500 Oregon public officials who must file an **Annual Verified Statement of Economic Interest (SEI)** form with the Oregon Government Ethics Commission by **April 15 of each calendar year**.

The **public officials who are required to file reports are specified in ORS 244.050**. Please refer to that section of the law to see if your specific position requires you to file these forms. In general, public officials who hold the following positions are required to file:

- State public officials who hold elected or appointed executive, legislative or judicial positions. This includes those who have been appointed to positions on certain boards or commissions.
- In counties, elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file, as do planning commission members and the county's principal administrator.
- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members must file.
- Administrative and financial officers in school districts, education service districts and community college districts must file.
- Some members of the board of directors for certain special districts must file.
- Candidates for some elected public offices are also required to file.

The Commission staff has identified the positions held by public officials who must file the SEI form and has them listed by jurisdiction. Each jurisdiction [city, county, executive department, board or commission, etc.] has a person who acts as the Commission's point of contact for that jurisdiction [OAR 199-020-0005(1)].

The **contact person** for each jurisdiction has an important role in the annual filing of the SEI forms. It is through the contact person that the Commission obtains the current name and address of each public official who is required to file. When there is a change, through resignation, appointment or election, in who holds a position, the contact person notifies the Commission. If there is a change in the filer's mailing address, it is the contact person who notifies the Commission.

As with other provisions in Oregon Government Ethics law, it is each public official's personal responsibility to ensure they comply with the requirement to complete and submit the SEI form by April 15. Those public officials who must file a SEI form are well served if the contact person ensures that the Commission has the correct name and address of the public official.

Beginning in January of each year the Commission prepares a list by jurisdiction of each public official required to file the SEI form. A list for each jurisdiction is sent to the contact person. The contact person is required to review the list for accuracy. After entering the necessary changes, the contact person must return the list that has been reviewed and corrected to the Commission by February 15. [OAR 199-020-0005(2)]

The contact person from each jurisdiction should ensure that each filer has been advised of the reporting requirements. Each filer should also receive information as to the procedures the jurisdiction follows to assist the filer in meeting the SEI filing requirement.

Based on the information provided by each of the jurisdictions' contacts, the Commission sends an annual SEI form directly to each individual public official required to file the form.

Again, the requirement to file the SEI is the personal responsibility of each public official. Each public official should comply and file timely, as the civil penalties for late filing are \$10 for each of the first 14 days after the filing deadline and \$50 for each day thereafter until the aggregate penalty reaches the maximum of \$5,000. [ORS 244.350(4)(c)]

SEI Form

When the forms are distributed in March of each year, the instructions and definitions are also included to assist the filer in completing the forms. The information needed to complete the form pertains to the previous calendar year.

NOTE: Only public officials who hold a position that is required to file, and who holds the position on April 15 of the year the SEI is due, must complete the form.

The following is a brief description of the information requested in the SEI form:

- Name and address of each business in which a position as officer or director was held by the filer or member of the household. [ORS 244.060(1)]
- Name and address of each business through which the filer or member of the household did business. [ORS 244.060(2)]
- Name and address and brief description of the sources of income for the filer and members of the household that represent 10 percent or more of the annual household income. [ORS 244.060(3)]
- Ownership interests held by the filer or members of the household in real property, except for the principal residence, located within the geographic boundaries of the governmental agency in which the filer holds the position or seeks to hold. [ORS 244.060(4)(a) and (b)]
- Honoraria or other items allowed by ORS 244.042 that exceed \$15 in value given to the filer or members of the filer's household. Include a description of the honoraria or item

and the date and time of the event when the item was received [ORS 244.060(7)]. Remember that honorarium cannot exceed \$50. [ORS 244.042(3)(a)]

- Name of each lobbyist associated with any business the filer or a member of the household is associated, unless the association is through stock held in publicly traded corporations. [ORS 244.090]
- If the public official received over \$50 from an entity to participate in a convention, fact-finding mission, trip, or other meeting as allowed by ORS 244.020(6)(b)(F), list the name and address of the entity that paid the expenses. Include the event date, aggregate expenses paid, purpose for participation a copy of the notice of aggregate value paid. [ORS 244.060(5) and ORS 244.100(1)] [Not required for candidates]
- If the public official received over \$50 from an entity to participate in a trade promotion, fact-finding mission, negotiations or economic development activities as allowed by ORS 244.020(6)(b)(H), list the name and address of the person that paid the expenses. Include the event date, aggregate expenses paid and nature of the event. [ORS 244.060(6)] [Not required for candidates]

The following is required if the information requested relates to an individual or business that has been or could reasonably be expected to do business with the filer's governmental agency or has a legislative or administrative interest in the filer's governmental agency:

- Name, address and description of each source of income (taxable or not) that exceeds \$1,000 for the filer or a member of the filer's household. [ORS 244.060(8)]
- Name of each person the filer or member of the filer's household has owed \$1,000 or more. Include the date of the loan and the interest rate. Debts on retail contracts or with regulated financial institutions are excluded. [ORS 244.070(1)]
- Business name, address and nature of beneficial interest over \$1,000, or investment held by the filer or a member of the household in stocks or securities over \$1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. [ORS 244.070(2)]
- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by a professional code of ethics. [ORS 244.070(3)]

OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all seven members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended as follows [ORS 244.250]:

- 1 Recommended by the Senate Democratic leadership
- 1 Recommended by the Senate Republican leadership
- 1 Recommended by the House Democratic leadership
- 1 Recommended by the House Republican leadership
- 3 Recommended by the Governor

No more than four commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The Commission members select a chairperson and vice chairperson annually. The Commission is administered by an executive director, who is selected by the Commission. Legal counsel is provided by the Oregon Department of Justice.

The Commission staff provides administration, training, guidance, issues written opinions, and conducts investigations when complaints are filed with the Commission.

Training:

The Commission has designated training as one of its highest priorities. It has two staff positions to provide training to public officials and lobbyists on the laws and regulations under its jurisdiction. Training is provided through presentations at training events, iLearnOregon, informational links on the website, topical handouts and guidance offered when inquiries are received.

Advice:

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.

- Written opinions on specific circumstances can also be requested.

Requests for written opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The facts and circumstances may define a proposed transaction and may be hypothetical or actual. If the circumstances indicate that a violation may have occurred, the staff cannot provide an opinion because to do so could compromise the Commission's objectivity if a complaint were to be filed. The written opinions will be in one of the following formats, as requested:

Staff Advice

ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as in person, by telephone, e-mail or letter. In a letter of advice, the proposed, hypothetical or actual facts are restated as presented in the request and the relevant laws or regulations are applied. The answer will conclude whether a particular action by a public official comports with the law.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received staff advice offered under the authority of ORS 244.284, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advice [ORS 244.284(2)].

For staff advice to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advice. The Commission is not prevented from finding a violation in these circumstances, but the sanction imposed could be affected.

Staff Advisory Opinion

ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The opinion is issued in a letter that restates the proposed, hypothetical or actual facts presented in the written request and identifies the relevant statutes. The letter will discuss how the law applies to the questions asked or raised by the fact circumstances presented in the request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days.

If the Commission determines that a respondent violated provisions of law within its jurisdictions and the respondent received a staff advisory opinion under the authority of ORS 244.282, in sanctioning the violation, the Commission may consider whether the public official committed the violation when relying on the staff advisory opinion [ORS 244.282(3)].

For the staff advisory opinion to be a factor in the sanction phase, it is important to understand that the circumstances the respondent described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the staff advisory opinion. The Commission is not prevented from finding a violation in these circumstances, but whether the sanction is imposed or its severity could be affected.

Commission Advisory Opinion

ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. This formal written opinion also restates the proposed, hypothetical or actual facts presented in a written request for a formal opinion by the Commission. The opinion will identify the relevant statutes and discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. These formal advisory opinions are reviewed by legal counsel before the Commission adopts them. The Commission must respond to any request for a Commission Advisory Opinion within 60 days, unless the Commission extends the deadline by an additional 60 days [ORS 244.280(1) and (2)].

The Commission may not impose a penalty on a person for any good faith action taken by the person while relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request [ORS 244.280(3)].

For the Commission Advisory Opinion to be a factor in preventing the imposition of a penalty, it is important to understand that the circumstances described in the request must have been an accurate description of what occurred when the respondent committed the violation. The actions of the respondent must have been those recommended or described in the Commission Advisory Opinion. The Commission is not prevented from finding a violation in these circumstances, but could be prevented from imposing a sanction.

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as “safe harbor” protection from becoming a respondent to a complaint filed with or initiated by the Commission?

There is no “safe harbor,” if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, from being found in violation of laws within the jurisdiction of the Commission, or from receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff. The conditions and protection is as follows:

- The fact circumstances described in the request must not misrepresent, misstate or omit material facts.
- Reliance on the advice or opinion means that the action or transactions of the person were those described or suggested in the advice or opinion.
- The protection applies only during the penalty phase, after the Commission has determined that a violation has occurred. If there was reliance on staff advice or a Staff Advisory Opinion, the Commission may consider the reliance during the penalty phase. If reliance was on a Commission Advisory Opinion, the Commission may not impose a penalty.

Any person who has not requested advice or an opinion must be cautious when trying to apply advice or opinions offered to others. The advice and opinions given are based on and tailored to the specific fact circumstances presented in a request. Fact circumstances vary from one situation to another and they vary from one public official to another. If a person reviews an opinion or advice issued to another for circumstances the person believes similar to those now met and relies on that advice, the person must ensure the similarity is sufficient for the application of law to be the same.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction, the law may have a different application for one public official than for other public officials.

Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 2,000 lobbyists and employers of lobbyists who file quarterly lobbying activity expense reports. Each of the nearly 1,000 lobbyists must file or renew their lobbying registrations every two years. There are approximately 5,500 public officials who must file the Annual Verified Statement of Economic Interest form each April 15.

Complaint Review Procedures:

Investigations are initiated through a complaint procedure [ORS 244.260]. Any person may file a signed, written complaint alleging that there may have been a violation of Oregon Government Ethics law, Lobbying Regulation or the executive session provisions of Oregon Public Meetings law. The complaint must state the person's reason for believing that a violation may have occurred and must include any evidence that supports that belief. The executive director reviews the complaint and if additional information is needed, the complainant is asked to provide that information.

If there is reason to believe that there has been a violation of laws within the jurisdiction of

the Commission, an investigation will be initiated. The Commission may also initiate an investigation on its own complaint by motion and vote. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed or acted upon.

When a complaint is accepted, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the Commission procedure is called the Preliminary Review Phase. The time allowed for this phase is limited to 135 days and the Commission must act on the complaint within that period.

If there is a pending criminal matter related to the same circumstances or actions to be addressed in the Preliminary Review, the time period is suspended until the criminal matter is concluded.

There may be a variety of reasons for a respondent to ask for additional time before the Commission determines whether there is cause to investigate the issues raised in the complaint. With the consent of the Commission, a respondent may request a waiver of the 135 day time limit. If a complaint is made against a candidate within 61 days of an election, the candidate may request a delay.

During the Preliminary Review Phase, the Commissioners and staff can make no public comment on the matter other than acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission ends the Preliminary Review Phase. Under most circumstances, the Commission will end the Preliminary Review Phase by either dismissing the complaint or finding cause to conduct an investigation. The Commission meets in executive session to conduct deliberations and vote on the finding of cause or to dismiss. After the close of the Preliminary Review Phase, the case file is open to public inspection.

If the complaint is dismissed, the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an Investigatory Phase begins. The investigatory phase is limited to 180 days.

During each phase, information and documents are solicited from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day investigatory period, the Commission will consider the results of the investigation. Normally, the Commission will either dismiss the complaint or make a preliminary finding that a violation of Oregon Government Ethics law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be a preponderance or sufficient evidence to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, the respondent is also encouraged to

negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement described in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of reprimand to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation is \$5,000, except for violations of the executive session provisions in ORS 192.660 where the maximum is \$1,000. Any financial gain that a respondent realized from a violation is subject to a forfeiture of twice the gain. Any monetary sanctions imposed and paid are deposited into the State of Oregon General Fund.

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Oregon Government Ethics Law citations

¹ ORS 244.020(14) “Public official” means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

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² ORS 244.020(15) “Relative” means:

- (a) The spouse of the public official or candidate;
- (b) Any children of the public official or of the public official's spouse;
- (c) Any children of the candidate or of the candidate's spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
- (e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse;
- (f) Any individual for whom the public official or candidate has a legal support obligation;
- (g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
- (h) Any individual from whom the candidate receives benefits arising from that individual's employment.

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³ ORS 244.020(2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity.

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⁴ ORS 244.020(3) “Business with which the person is associated” means:

- (a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
- (b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
- (c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
- (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

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⁵ ORS 244.050 Persons required to file statement of economic interest; filing deadline. (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

- (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.
- (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.
- (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.
- (d) The Deputy Attorney General.
- (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

(H) State Forester.

(I) State Geologist.

(J) Director of Human Services.

(K) Director of the Department of Consumer and Business Services.

(L) Director of the Department of State Lands.

(M) State Librarian.

(N) Administrator of Oregon Liquor Control Commission.

(O) Superintendent of State Police.

(P) Director of the Public Employees Retirement System.

(Q) Director of Department of Revenue.

(R) Director of Transportation.

(S) Public Utility Commissioner.

(T) Director of Veterans' Affairs.

(U) Executive director of Oregon Government Ethics Commission.

(V) Director of the State Department of Energy.

(W) Director and each assistant director of the Oregon State Lottery.

(X) Director of the Department of Corrections.

(Y) Director of the Oregon Department of Aviation.

(Z) Executive director of the Oregon Criminal Justice Commission.

(AA) Director of the Oregon Business Development Department.

(BB) Director of the Office of Emergency Management.

(CC) Director of the Employment Department.

(DD) Chief of staff for the Governor.

(EE) Administrator of the Office for Oregon Health Policy and Research.

(FF) Director of the Housing and Community Services Department.

(GG) State Court Administrator.

(HH) Director of the Department of Land Conservation and Development.

(II) Board chairperson of the Land Use Board of Appeals.

(JJ) State Marine Director.

(KK) Executive director of the Oregon Racing Commission.

(LL) State Parks and Recreation Director.

(MM) Public defense services executive director.

(NN) Chairperson of the Public Employees' Benefit Board.

(OO) Director of the Department of Public Safety Standards and Training.

(PP) Chairperson of the Oregon Student Assistance Commission.

(QQ) Executive director of the Oregon Watershed Enhancement Board.

(RR) Director of the Oregon Youth Authority.

(SS) Director of the Oregon Health Authority.

(h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.

(i) Every elected city or county official.

(j) Every member of a city or county planning, zoning or development commission.

(k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.

(L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.

(m) Every member of a governing body of a metropolitan service district and the executive officer thereof.

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- (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
 - (o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.
 - (p) Every member of the following state boards and commissions:
 - (A) Board of Geologic and Mineral Industries.
 - (B) Oregon Business Development Commission.
 - (C) State Board of Education.
 - (D) Environmental Quality Commission.
 - (E) Fish and Wildlife Commission of the State of Oregon.
 - (F) State Board of Forestry.
 - (G) Oregon Government Ethics Commission.
 - (H) Oregon Health Policy Board.
 - (I) State Board of Higher Education.
 - (J) Oregon Investment Council.
 - (K) Land Conservation and Development Commission.
 - (L) Oregon Liquor Control Commission.
 - (M) Oregon Short Term Fund Board.
 - (N) State Marine Board.
 - (O) Mass transit district boards.
 - (P) Energy Facility Siting Council.
 - (Q) Board of Commissioners of the Port of Portland.
 - (R) Employment Relations Board.
 - (S) Public Employees Retirement Board.
 - (T) Oregon Racing Commission.
 - (U) Oregon Transportation Commission.
 - (V) Wage and Hour Commission.
 - (W) Water Resources Commission.
 - (X) Workers' Compensation Board.
 - (Y) Oregon Facilities Authority.
 - (Z) Oregon State Lottery Commission.
 - (AA) Pacific Northwest Electric Power and Conservation Planning Council.
 - (BB) Columbia River Gorge Commission.
 - (CC) Oregon Health and Science University Board of Directors.
 - (DD) Capitol Planning Commission.
 - (q) The following officers of the State Treasurer:
 - (A) Chief Deputy State Treasurer.
 - (B) Chief of staff for the office of the State Treasurer.
 - (C) Director of the Investment Division.
 - (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.
 - (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
 - (2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.
 - (6) If a statement required to be filed under this section has not been received by the commission

within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the commission may impose a civil penalty as provided in ORS 244.350. [1974 c.72 §§4,4a; 1975 c.543 §3; 1977 c.588 §3; 1977 c.751 §16; 1979 c.374 §5; 1979 c.666 §6; 1979 c.697 §1; 1979 c.736 §1; 1979 c.829 §9b; 1987 c.373 §26; 1987 c.414 §148; 1987 c.566 §10; 1991 c.73 §2; 1991 c.160 §1; 1991 c.163 §1; 1991 c.470 §13; 1991 c.614 §2; 1993 c.500 §10; 1993 c.743 §11; 1995 c.79 §87; 1995 c.712 §94; 1997 c.652 §16; 1997 c.833 §22; 1999 c.59 §62; 1999 c.291 §28; 2001 c.104 §77; 2003 c.214 §1; 2003 c.784 §13; 2005 c.157 §6; 2005 c.217 §23; 2005 c.777 §14; 2007 c.813 §2; 2007 c.865 §17; 2007 c.877 §13; 2009 c.68 §5; 2009 c.595 §192; 2009 c.896 §10]

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⁶ ORS 244.040(1) Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

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⁷ ORS 244.040(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

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⁸ ORS 244.040(5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of holding position as a public official or the activities of the person as a public official.

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⁹ ORS 244.040(6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.

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¹⁰ ORS 244.020(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

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¹¹ ORS 244.020 (12) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other

group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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¹² ORS 244.040(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

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¹³ ORS 244.020(7) "Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event.

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¹⁴ ORS 244.042(3) This section does not prohibit:

(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or

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¹⁵ ORS 244.020(6)(b)(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25

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¹⁶ ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

(a) A copy of an executed trust agreement described in subsection (2) of this section;

(b) A sworn affidavit described in subsection (3) of this section signed by the public official; and

(c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

(a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and

(b) A designation of a trustee under ORS 244.211.

(3) The affidavit of the public official must state:

(a) The nature of the legal proceeding that requires establishment of the trust fund;

(b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and

(c) That the public official is responsible for the proper administration of the trust fund.

(4) The affidavit of the trustee must state that the trustee:

- (a) Has read and understands ORS 244.205 to 244.221; and
 (b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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¹⁷ ORS 244.175 Definitions for ORS 244.177 and 244.179. As used in ORS 244.177 and 244.179:

- (1) "Governing body" has the meaning given that term in ORS 192.610.
 (2) "Member of the household" means any person who resides with the public official.
 (3) "Public body" has the meaning given that term in ORS 174.109.
 (4) "Relative" means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters, half brothers, half sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law, fathers-in-law, aunts, uncles, nieces, nephews, stepparents, stepchildren or parents of the public official or of the public official's spouse. [2007 c.865 §26b; 2009 c.689 §3]

244.177 Employment of relative or member of household; exceptions. (1) Except as provided in subsections (2) to (4) of this section:

(a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.

(b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control. As used in this paragraph, "participate" does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.

(2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.

(b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) This section does not prohibit a public body from appointing, employing, promoting, discharging, firing or demoting a person who is a relative or member of the household of a public official serving the public body. [2007 c.865 §26c]

244.179 Supervision of relative or member of household; exceptions. (1) Notwithstanding ORS 659A.309 and except as provided in subsections (2) to (4) of this section, a public official acting in an official capacity may not directly supervise a person who is a relative or member of the household.

(2) A member of the Legislative Assembly may directly supervise a person who:

(a) Is a relative or member of the household; and

(b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.

(b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household. [2007 c.865 §26d]

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¹⁸ ORS 244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so. [1974 c.72 §10; 1975 c.543 §7; 1987 c.566 §15; 1993 c.743 §15]

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¹⁹ ORS 244.177(1) Employment of relative or member of household; exceptions. (1) Except as provided in subsections (2) to (4) of this section:

(a) A public official may not appoint, employ or promote a relative or member of the household to, or discharge, fire or demote a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.

(b) A public official may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative or member of the household to, or the discharge, firing or demotion of a relative or member of the household from, a position with the public body that the public official serves or over which the public official exercises jurisdiction or control. As used in this paragraph, "participate" does not include serving as a reference, providing a recommendation or performing other ministerial acts that are part of the normal job functions of the public official.

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²⁰ ORS 244.177(2) A member of the Legislative Assembly may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position on the personal legislative staff of the member of the Legislative Assembly.

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²¹ ORS 244.177(3)(a) A public official may appoint, employ, promote, discharge, fire or demote, or advocate for the appointment, employment, promotion, discharge, firing or demotion of, a relative or member of the household to or from a position as an unpaid volunteer with the public body that the public official serves or over which the public official exercises jurisdiction or control.

(b) Paragraph (a) of this subsection does not apply to the appointment, employment, promotion, discharge, firing or demotion of a relative or member of the household to a position as an unpaid member of a governing body of the public body that the public official serves or over which the public official exercises jurisdiction or control.

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²² ORS 244.179 Supervision of relative or member of household; exceptions. (1) Notwithstanding ORS 659A.309 and except as provided in subsections (2) to (4) of this section, a public official acting in an official capacity may not directly supervise a person who is a relative or member of the household.

(2) A member of the Legislative Assembly may directly supervise a person who:

(a) Is a relative or member of the household; and

(b) Serves as a public official in a position on the personal legislative staff of the member of the Legislative Assembly.

(3)(a) A public official acting in an official capacity may directly supervise a person who is a relative or member of the household if the person serves as an unpaid volunteer.

(b) Paragraph (a) of this subsection does not apply to service by a person in a position as an unpaid member of a governing body that a public official of whom the person is a relative or member of the household serves or over which the public official exercises jurisdiction or control.

(c) A relative or member of the household serving as an unpaid volunteer described in paragraph (a) of this subsection may receive reimbursement of expenses provided in the ordinary course of business to similarly situated unpaid volunteers.

(4) A public body may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or member of the household. [2007 c.865 §26d]

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²³ ORS 244.040(3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

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²⁴ ORS 244.047(2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.

(3) Subsection (2) of this section applies to a public contract that was authorized by:

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.

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²⁵ ORS 244.045 Regulation of subsequent employment of public officials; lobbying by former members of Legislative Assembly. (1) A person who has been a Public Utility Commissioner, the Director of the Department of Consumer and Business Services, the Administrator of the Division of Finance and Corporate Securities, the Administrator of the Insurance Division, the Administrator of the Oregon Liquor Control Commission or the Director of the Oregon State Lottery shall not:

(a) Within one year after the public official ceases to hold the position become an employee of or receive any financial gain, other than reimbursement of expenses, from any private employer engaged in the activity, occupation or industry over which the former public official had authority; or

(b) Within two years after the public official ceases to hold the position:

(A) Be a lobbyist for or appear as a representative before the agency over which the person exercised authority as a public official;

(B) Influence or try to influence the actions of the agency; or

(C) Disclose any confidential information gained as a public official.

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²⁶ ORS 244.045(2) A person who has been a Deputy Attorney General or an assistant attorney general shall not, within two years after the person ceases to hold the position, lobby or appear before an agency that the person represented while employed by the Department of Justice.

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²⁷ ORS 244.045(3) A person who has been the State Treasurer or the Chief Deputy State Treasurer shall not, within one year after ceasing to hold office:

(a) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council negotiated or to whom either awarded a contract providing for payment by the state of at least \$25,000 in any single year during the term of office of the treasurer;

(b) Accept employment from or be retained by any private entity with whom the office of the State Treasurer or the Oregon Investment Council placed at least \$50,000 of investment moneys in any single year during the term of office of the treasurer; or

(c) Be a lobbyist for an investment institution, manager or consultant, or appear before the office of the State Treasurer or Oregon Investment Council as a representative of an investment institution, manager or consultant.

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²⁸ 244.045(4) A public official who as part of the official's duties invested public funds shall not within two years after the public official ceases to hold the position:

(a) Be a lobbyist or appear as a representative before the agency, board or commission for which the former public official invested public funds;

(b) Influence or try to influence the agency, board or commission; or

(c) Disclose any confidential information gained as a public official.

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²⁹ ORS 244.047 Financial interest in public contract. (1) As used in this section:

(a) "Public body" has the meaning given that term in ORS 174.109.

(b) "Public contract" has the meaning given that term in ORS 279A.010.

(2) Except as provided in subsection (4) of this section, a person who ceases to hold a position as a public official may not have a direct beneficial financial interest in a public contract described in subsection (3) of this section for two years after the date the contract was authorized.

(3) Subsection (2) of this section applies to a public contract that was authorized by:

(a) The person acting in the capacity of a public official; or

(b) A board, commission, council, bureau, committee or other governing body of a public body of which the person was a member when the contract was authorized.

(4) Subsection (2) of this section does not apply to a person who was a member of a board, commission, council, bureau, committee or other governing body of a public body when the contract was authorized, but who did not participate in the authorization of the contract. [2007 c.877 §23a; 2009 c.689 §4a]

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³⁰ ORS 244.045(5)(a) A person who has been a member of the Department of State Police, who has held a position with the department with the responsibility for supervising, directing or administering programs relating to gaming by a Native American tribe or the Oregon State Lottery and who has been designated by the Superintendent of State Police by rule shall not, within one year after the member of the Department of State Police ceases to hold the position:

(A) Accept employment from or be retained by or receive any financial gain related to gaming from the Oregon State Lottery or any Native American tribe;

(B) Accept employment from or be retained by or receive any financial gain from any private employer selling or offering to sell gaming products or services;

(C) Influence or try to influence the actions of the Department of State Police; or

(D) Disclose any confidential information gained as a member of the Department of State Police.

(b) This subsection does not apply to:

(A) Appointment or employment of a person as an Oregon State Lottery Commissioner or as a Tribal Gaming Commissioner or regulatory agent thereof;

(B) Contracting with the Oregon State Lottery as a lottery game retailer;

(C) Financial gain received from personal gaming activities conducted as a private citizen; or

(D) Subsequent employment in any capacity by the Department of State Police.

(c) As used in this subsection, "Native American tribe" means any recognized Native American tribe or band of tribes authorized by the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. 2701 et seq., to conduct gambling operations on tribal land.

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³¹ ORS 244.045(6) A person who has been a member of the Legislative Assembly may not receive money or any other consideration for lobbying as defined in ORS 171.725 performed during the period beginning on the date the person ceases to be a member of the Legislative Assembly and ending on the date of adjournment sine die of the next regular session of the Legislative Assembly that begins after the date the person ceases to be a member of the Legislative Assembly. [1987 c.360 §1; 1993 c.743 §10; 1995 c.79 §86; 1997 c.750 §1; 2007 c.877 §15]

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³² ORS 244.020(1) "Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section.

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³³ ORS 244.020(12) "Potential conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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³⁴ ORS 244.120(1)(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

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³⁵ ORS 244.120(1)(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

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³⁶ ORS 244.120(1)(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

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³⁷ ORS 244.120(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

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³⁸ ORS 244.120(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

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³⁹ ORS 244.120(2)(b)(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

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⁴⁰ ORS 244.020(12)(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

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⁴¹ ORS 244.020(12)(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

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⁴² ORS 244.290(3)(a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes that qualify under the class exception from the definition of "potential conflict of interest" under ORS 244.020;

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⁴³ ORS 244.020(12)(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

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⁴⁴ ORS 244.130(1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time.

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⁴⁵ ORS 244.120(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

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⁴⁶ ORS 244.130(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [1974 c.72 §11; 1975 c.543 §8; 1993 c.743 §16; 2007 c.865 §9]

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⁴⁷ ORS 244.205 Legal expense trust fund; establishment; eligible legal expenses. (1) Subject to the authorization of the Oregon Government Ethics Commission as described in ORS 244.209, a public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses described in subsection (2) of this section.

(2) Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in any civil, criminal or other legal proceeding or investigation that relates to or arises

from the course and scope of duties of the person as a public official. The legal expenses must be incurred in connection with:

- (a) The issuance of a court's stalking protective order under ORS 30.866 or 163.738;
- (b) The issuance of a citation under ORS 163.735;
- (c) A criminal prosecution under ORS 163.732;
- (d) A civil action under ORS 30.866; or
- (e) Defending the public official in a proceeding or investigation brought or maintained by a public body as defined in ORS 174.109.

(3) Except as provided in subsection (2) of this section, a public official may not use proceeds from the trust fund for any personal use.

(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

(5) The provisions of ORS chapter 130 do not apply to a trust fund established under ORS 244.205 to 244.221. [2007 c.877 §29; 2009 c.505 §1]

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⁴⁸ ORS 244.205 Legal expense trust fund; establishment; eligible legal expenses. (1) Subject to the authorization of the Oregon Government Ethics Commission as described in ORS 244.209, a public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses described in subsection (2) of this section.

(2) Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in any civil, criminal or other legal proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. The legal expenses must be incurred in connection with:

- (a) The issuance of a court's stalking protective order under ORS 30.866 or 163.738;
- (b) The issuance of a citation under ORS 163.735;
- (c) A criminal prosecution under ORS 163.732;
- (d) A civil action under ORS 30.866; or
- (e) Defending the public official in a proceeding or investigation brought or maintained by a public body as defined in ORS 174.109.

(3) Except as provided in subsection (2) of this section, a public official may not use proceeds from the trust fund for any personal use.

(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

(5) The provisions of ORS chapter 130 do not apply to a trust fund established under ORS 244.205 to 244.221. [2007 c.877 §29; 2009 c.505 §1]

244.207 Use of fund proceeds. (1) The proceeds of a legal expense trust fund may be used to:

- (a) Defray legal expenses described in ORS 244.205;
- (b) Defray costs reasonably incurred in administering the trust fund, including but not limited to costs incident to the solicitation of funds; and
- (c) Discharge any tax liabilities incurred as a result of the creation, operation or administration of the trust fund.

(2) The proceeds of a trust fund may also be used to defray or discharge expenses, costs or liabilities incurred before the fund was established if the expenses, costs or liabilities are related to the legal proceeding for which the fund was established. [2007 c.877 §30]

244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

- (a) A copy of an executed trust agreement described in subsection (2) of this section;
- (b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
- (c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

- (a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
- (b) A designation of a trustee under ORS 244.211.

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- (3) The affidavit of the public official must state:
- (a) The nature of the legal proceeding that requires establishment of the trust fund;
 - (b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
 - (c) That the public official is responsible for the proper administration of the trust fund.
- (4) The affidavit of the trustee must state that the trustee:
- (a) Has read and understands ORS 244.205 to 244.221; and
 - (b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.
- (5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.
- (6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.
- (7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.
- (8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.
- (9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

244.210 [1975 c.216 §4; repealed by 1983 c.350 §62 (244.201 enacted in lieu of 244.200 and 244.210)]

244.211 Duties of trustee. (1) The trustee of a legal expense trust fund is responsible for:

- (a) The receipt and deposit of contributions to the trust fund;
- (b) The authorization of expenditures and disbursements from the trust fund;
- (c) The filing of quarterly statements required under ORS 244.217; and
- (d) The performance of other tasks incident to the administration of the trust fund.

(2) The public official who establishes the trust fund may either serve as the public official's own trustee or may appoint and certify to the Oregon Government Ethics Commission the name and address of a trustee. Any default or violation by the trustee shall be conclusively considered a default or violation by the public official. [2007 c.877 §32; 2009 c.505 §2]

244.213 Contributions to fund. (1) Except as provided in subsection (3) of this section, any person may contribute to a legal expense trust fund established under ORS 244.205 to 244.221.

(2) A person may make contributions of moneys to a legal expense trust fund in unlimited amounts. Pro bono legal assistance and other in-kind assistance may also be provided without limit and is considered a contribution subject to the reporting requirements of ORS 244.217.

(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

244.215 Fund account. (1) A trustee of a legal expense trust fund shall establish a single exclusive account in a financial institution, as defined in ORS 706.008. The financial institution must be located in this state and must ordinarily conduct business with the general public in this state.

- (2) The trustee shall maintain the account in the name of the trust fund.
- (3) All expenditures made by the trustee shall be drawn from the account and:
 - (a) Issued on a check signed by the trustee; or
 - (b) Paid using a debit card or other form of electronic transaction.
- (4) A contribution received by a trustee shall be deposited into the account not later than seven calendar days after the date the contribution is received. This subsection does not apply to in-kind contributions received.
- (5) This section does not prohibit the transfer of any amount deposited in the account into a certificate of deposit, stock fund or other investment instrument.
- (6) The account may not include any public or private moneys or any moneys of any other person,

other than contributions received by the trustee.

(7) A trustee shall retain a copy of each financial institution account statement from the account described in this section for not less than two years after the date the statement is issued by the financial institution. [2007 c.877 §34]

244.217 Statement of contributions received and expenditures made. (1) The trustee of a legal expense trust fund shall, according to the schedule described in subsection (3) of this section, file with the Oregon Government Ethics Commission a statement for the applicable reporting period showing contributions received by the trustee and expenditures made from the trust fund account established under ORS 244.215.

(2) Each statement shall list:

(a) The name and address of each person who contributed an aggregate amount of more than \$75, and the total amount contributed by that person;

(b) The total amount of contributions not listed under paragraph (a) of this subsection as a single item, but shall specify how those contributions were obtained;

(c) The amount and purpose of each expenditure and the name and address of each payee; and

(d) The name and address of any person contributing pro bono legal assistance and the fair market value of the assistance provided by the person.

(3) Statements required to be filed with the commission under this section shall be filed according to the schedule described in ORS 244.218.

(4) If no contributions are received and no expenditures made during the reporting period, the trustee shall file a statement indicating that no contributions were deposited and no expenditures were made.

(5) The trustee may amend a statement filed under this section without penalty if the amendment is filed with the commission not later than 30 days after the deadline for filing the statement. [2007 c.877 §35]

244.218 Quarterly filing of statements. Statements required to be filed with the Oregon Government Ethics Commission under ORS 244.217 shall be filed in each calendar year:

(1) Not later than April 15, for the accounting period beginning January 1 and ending March 31;

(2) Not later than July 15, for the accounting period beginning April 1 and ending June 30;

(3) Not later than October 15, for the accounting period beginning July 1 and ending September 30; and

(4) Not later than January 15 of the following calendar year, for the accounting period beginning October 1 and ending December 31. [Formerly 244.105]

Note: 244.218 was added to and made a part of ORS chapter 244 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

244.219 Termination of fund. (1) A legal expense trust fund established under ORS 244.205 to 244.221 may be terminated by:

(a) The public official who established the trust fund;

(b) Subject to subsection (2) of this section, the terms of the trust agreement; or

(c) The Oregon Government Ethics Commission following a determination by the commission that a violation of any provision of this chapter has occurred in connection with the trust fund.

(2) A trust agreement may provide that a legal expense trust fund is terminated not later than six months following the completion of the legal proceeding for which the fund was established. Upon application of the public official who established the trust fund, the commission may extend the existence of the trust fund to a specified date if the commission determines that the public official has incurred legal expenses that exceed the balance remaining in the fund. If the commission extends the existence of the trust fund, the trust fund terminates on the date the extension expires.

(3) Following termination of a legal expense trust fund, the trustee may not accept contributions to or make expenditures from the fund.

(4) Not later than 30 days after a trust fund is terminated, the trustee of the fund shall file with the commission a final report listing the totals of all contributions made to the fund and all expenditures made from the fund. [2007 c.877 §36]

244.221 Disposition of moneys in terminated fund; distribution of award of attorney fees, costs or

money judgment. (1) Not later than 30 days after a legal expense trust fund is terminated, the trustee of the fund shall return any moneys remaining in the fund to contributors to the fund on a pro rata basis.

(2) If the legal proceeding for which the trust fund was established results in an award of attorney fees, costs or any other money judgment award to or in favor of the public official, amounts awarded shall be distributed in the following order:

- (a) To pay outstanding legal expenses;
- (b) To contributors to the trust fund on a pro rata basis; and
- (c) To the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. [2007 c.877 §37]

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⁴⁹ ORS 244.205(4) A public official may not establish or maintain more than one legal expense trust fund at any one time.

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⁵⁰ ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

- (a) A copy of an executed trust agreement described in subsection (2) of this section;
 - (b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
 - (c) A sworn affidavit described in subsection (4) of this section signed by the trustee.
- (2) The trust agreement must contain the following:
- (a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
 - (b) A designation of a trustee under ORS 244.211.
- (3) The affidavit of the public official must state:
- (a) The nature of the legal proceeding that requires establishment of the trust fund;
 - (b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
 - (c) That the public official is responsible for the proper administration of the trust fund.
- (4) The affidavit of the trustee must state that the trustee:
- (a) Has read and understands ORS 244.205 to 244.221; and
 - (b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.
- (5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.
- (6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.
- (7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.
- (8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.
- (9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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⁵¹ ORS 244.211(2) The public official who establishes the trust fund may either serve as the public official's own trustee or may appoint and certify to the Oregon Government Ethics Commission the name and address of a trustee. Any default or violation by the trustee shall be conclusively considered a default or violation by the public official. [2007 c.877 §32; 2009 c.505 §2]

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⁵² ORS 244.213 Contributions to fund. (1) Except as provided in subsection (3) of this section, any person may contribute to a legal expense trust fund established under ORS 244.205 to 244.221.

(2) A person may make contributions of moneys to a legal expense trust fund in unlimited amounts. Pro bono legal assistance and other in-kind assistance may also be provided without limit and is considered a contribution subject to the reporting requirements of ORS 244.217.

(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

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⁵³ ORS 244.213(3) A political committee as defined in ORS 260.005 that is a principal campaign committee may not contribute to a legal expense trust fund. [2007 c.877 §33]

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⁵⁴ ORS 244.215 Fund account. (1) A trustee of a legal expense trust fund shall establish a single exclusive account in a financial institution, as defined in ORS 706.008. The financial institution must be located in this state and must ordinarily conduct business with the general public in this state.

(2) The trustee shall maintain the account in the name of the trust fund.

(3) All expenditures made by the trustee shall be drawn from the account and:

(a) Issued on a check signed by the trustee; or

(b) Paid using a debit card or other form of electronic transaction.

(4) A contribution received by a trustee shall be deposited into the account not later than seven calendar days after the date the contribution is received. This subsection does not apply to in-kind contributions received.

(5) This section does not prohibit the transfer of any amount deposited in the account into a certificate of deposit, stock fund or other investment instrument.

(6) The account may not include any public or private moneys or any moneys of any other person, other than contributions received by the trustee.

(7) A trustee shall retain a copy of each financial institution account statement from the account described in this section for not less than two years after the date the statement is issued by the financial institution. [2007 c.877 §34]

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⁵⁵ ORS 244.217 Statement of contributions received and expenditures made. (1) The trustee of a legal expense trust fund shall, according to the schedule described in subsection (3) of this section, file with the Oregon Government Ethics Commission a statement for the applicable reporting period showing contributions received by the trustee and expenditures made from the trust fund account established under ORS 244.215.

(2) Each statement shall list:

(a) The name and address of each person who contributed an aggregate amount of more than \$75, and the total amount contributed by that person;

(b) The total amount of contributions not listed under paragraph (a) of this subsection as a single item, but shall specify how those contributions were obtained;

(c) The amount and purpose of each expenditure and the name and address of each payee; and

(d) The name and address of any person contributing pro bono legal assistance and the fair market value of the assistance provided by the person.

(3) Statements required to be filed with the commission under this section shall be filed according to the schedule described in ORS 244.218.

(4) If no contributions are received and no expenditures made during the reporting period, the trustee shall file a statement indicating that no contributions were deposited and no expenditures were made.

(5) The trustee may amend a statement filed under this section without penalty if the amendment is filed with the commission not later than 30 days after the deadline for filing the statement. [2007 c.877 §35]

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⁵⁶ ORS 244.219 Termination of fund. (1) A legal expense trust fund established under ORS 244.205 to 244.221 may be terminated by:

- (a) The public official who established the trust fund;
- (b) Subject to subsection (2) of this section, the terms of the trust agreement; or
- (c) The Oregon Government Ethics Commission following a determination by the commission that a violation of any provision of this chapter has occurred in connection with the trust fund.

(2) A trust agreement may provide that a legal expense trust fund is terminated not later than six months following the completion of the legal proceeding for which the fund was established. Upon application of the public official who established the trust fund, the commission may extend the existence of the trust fund to a specified date if the commission determines that the public official has incurred legal expenses that exceed the balance remaining in the fund. If the commission extends the existence of the trust fund, the trust fund terminates on the date the extension expires.

(3) Following termination of a legal expense trust fund, the trustee may not accept contributions to or make expenditures from the fund.

(4) Not later than 30 days after a trust fund is terminated, the trustee of the fund shall file with the commission a final report listing the totals of all contributions made to the fund and all expenditures made from the fund. [2007 c.877 §36]

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⁵⁷ ORS 244.221 Disposition of moneys in terminated fund; distribution of award of attorney fees, costs or money judgment. (1) Not later than 30 days after a legal expense trust fund is terminated, the trustee of the fund shall return any moneys remaining in the fund to contributors to the fund on a pro rata basis.

(2) If the legal proceeding for which the trust fund was established results in an award of attorney fees, costs or any other money judgment award to or in favor of the public official, amounts awarded shall be distributed in the following order:

- (a) To pay outstanding legal expenses;
- (b) To contributors to the trust fund on a pro rata basis; and
- (c) To the public official or, if required by the trust agreement, to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. [2007 c.877 §37]

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⁵⁸ ORS 244.020(9) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in:

- (a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or
- (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.

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⁵⁹ ORS 244.040(2)(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

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⁶⁰ ORS 244.025 Gift limit. (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

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⁶¹ ORS 244.020(6)(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

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⁶² ORS 244.020 (6)(b)(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

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⁶³ ORS 244.100(1) Statements of expenses or honoraria provided to public official. (1) Any organization, unit of government, tribe or corporation that provides a public official with expenses with an aggregate value exceeding \$50 for an event described in ORS 244.020 (6)(b)(F) shall notify the public official in writing of the amount of the expense. The organization, unit, tribe or corporation shall provide the notice to the public official within 10 days after the date the expenses are incurred.

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⁶⁴ ORS 244.100(2) Any person that provides a public official or candidate, or a member of the household of the public official or candidate, with an honorarium or other item allowed under ORS 244.042 with a value exceeding \$15 shall notify the public official or candidate in writing of the value of the honorarium or other item. The person shall provide the notice to the public official or candidate within 10 days after the date of the event for which the honorarium or other item was received. [1975 c.543 §11; 1991 c.677 §1; 2007 c.865 §6; 2007 c.877 §21a; 2009 c.68 §8]

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⁶⁵ ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

- (a) A copy of an executed trust agreement described in subsection (2) of this section;
- (b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
- (c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

- (a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
- (b) A designation of a trustee under ORS 244.211.

(3) The affidavit of the public official must state:

- (a) The nature of the legal proceeding that requires establishment of the trust fund;
- (b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
- (c) That the public official is responsible for the proper administration of the trust fund.

(4) The affidavit of the trustee must state that the trustee:

- (a) Has read and understands ORS 244.205 to 244.221; and

(b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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⁶⁶ ORS 244.020(6)(b)(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

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⁶⁷ ORS 244.020(6)(b)(O)(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

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⁶⁸ ORS 244.020(6)(b)(O)(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

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⁶⁹ ORS 244.020(6)(b)(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

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⁷⁰ ORS 244.020(6)(b)(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

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⁷¹ ORS 244.020(6)(b)(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

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⁷² ORS 244.020(6)(b)(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

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⁷³ ORS 244.020(6)(b)(N) *Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.*

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⁷⁴ ORS 244.020(6)(b)(E) *Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.*

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⁷⁵ ORS 244.020(6)(b)(L) *Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.*

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⁷⁶ ORS 244.020(6)(b)(K) *Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.*

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⁷⁷ ORS 244.020(6)(b)(F) *Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.*

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⁷⁸ ORS 244.020(6)(b)(H) *Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:*

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⁷⁹ ORS 244.020(6)(b)(H)(i) *On an officially sanctioned trade-promotion or fact-finding mission; or*

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⁸⁰ ORS 244.020(6)(b)(H)(ii) *In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.*

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⁸¹ ORS 244.020(6)(b)(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

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⁸² ORS 244.020(6)(b)(I) Food or beverage consumed by a public official acting in an official capacity:

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⁸³ ORS 244.020(6)(b)(I)(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

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⁸⁴ ORS 244.020(6)(b)(I)(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

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⁸⁵ ORS 244.020(6)(b)(I)(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

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⁸⁶ ORS 244.020(6)(a) "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.

(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or
 (ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

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⁸⁷ ORS 244.025 **Gift limit.** (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

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⁸⁸ ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

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⁸⁹ ORS 244.040(2)(e), (f) and (g)] Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

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⁹⁰ ORS 244.020(6)(a): "Gift" means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

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⁹¹ ORS 244.040 **Prohibited use of official position or office; exceptions; other prohibited actions.**

(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

(2) Subsection (1) of this section does not apply to:

(a) Any part of an official compensation package as determined by the public body that the public official serves.

(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

(c) Reimbursement of expenses.

(d) An unsolicited award for professional achievement.

(e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest.

(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

(h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(3) A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.

(4) A public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official.

(5) A person who has ceased to be a public official may not attempt to further or further the personal gain of any person through the use of confidential information gained in the course of or by reason of

holding position as a public official or the activities of the person as a public official.

(6) A person may not attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate.

(7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120. [1974 c.72 §3; 1975 c.543 §2; 1987 c.566 §9; 1989 c.340 §3; 1991 c.146 §1; 1991 c.770 §6; 1991 c.911 §4; 1993 c.743 §9; 2007 c.877 §17; 2009 c.68 §4]

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⁹² ORS 244.020(6)(b)(A) through (P) (A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

(i) On an officially sanctioned trade-promotion or fact-finding mission; or

(ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

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(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

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⁹³ ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

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⁹⁴ ORS 244.040(2)(f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest.

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⁹⁵ ORS 244.025(1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

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⁹⁶ ORS 244.040(1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

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⁹⁷ ORS 244.020(6)(b) "Gift" does not mean:

(A) Contributions as defined in ORS 260.005.

(B) Gifts from relatives or members of the household of the public official or candidate.

(C) An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.

(D) Informational or program material, publications or subscriptions related to the recipient's

performance of official duties.

(E) Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

(G) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

- (i) On an officially sanctioned trade-promotion or fact-finding mission; or
- (ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

(I) Food or beverage consumed by a public official acting in an official capacity:

(i) In association with the review, approval, execution of documents or closing of a borrowing, investment or other financial transaction, including any business agreement between state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 and a private entity or public body as defined in ORS 174.109;

(ii) While engaged in due diligence research or presentations by the office of the State Treasurer related to an existing or proposed investment or borrowing; or

(iii) While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys.

(J) Waiver or discount of registration expenses or materials provided to a public official or candidate at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.

(K) Expenses provided by one public official to another public official for travel inside this state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

(L) Food or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

(M) Entertainment provided to a public official or candidate or a relative or member of the household of the public official or candidate that is incidental to the main purpose of another event.

(N) Entertainment provided to a public official or a relative or member of the household of the public official where the public official is acting in an official capacity while representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117 for a ceremonial purpose.

(O) Anything of economic value offered to or solicited or received by a public official or candidate, or a relative or member of the household of the public official or candidate:

(i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and

(ii) That bears no relationship to the public official's or candidate's holding of, or candidacy for, the official position or public office.

(P) Reasonable expenses paid to a public school employee for accompanying students on an educational trip.

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⁹⁸ ORS 244.025 **Gift limit.** (1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct. [2007 c.877 §18; 2009 c.68 §3]

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⁹⁹ ORS 244.050 **Persons required to file statement of economic interest; filing deadline.** (1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

(a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and members of the Legislative Assembly.

(b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.

(c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

(d) The Deputy Attorney General.

(e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(f) The Chancellor and Vice Chancellors of the Oregon University System and the president and vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the State Board of Higher Education.

(g) The following state officers:

(A) Adjutant General.

(B) Director of Agriculture.

(C) Manager of State Accident Insurance Fund Corporation.

(D) Water Resources Director.

(E) Director of Department of Environmental Quality.

(F) Director of Oregon Department of Administrative Services.

(G) State Fish and Wildlife Director.

(H) State Forester.

(I) State Geologist.

(J) Director of Human Services.

(K) Director of the Department of Consumer and Business Services.

(L) Director of the Department of State Lands.

(M) State Librarian.

(N) Administrator of Oregon Liquor Control Commission.

(O) Superintendent of State Police.

(P) Director of the Public Employees Retirement System.

(Q) Director of Department of Revenue.

(R) Director of Transportation.

(S) Public Utility Commissioner.

(T) Director of Veterans' Affairs.

(U) Executive director of Oregon Government Ethics Commission.

(V) Director of the State Department of Energy.

(W) Director and each assistant director of the Oregon State Lottery.

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- (X) Director of the Department of Corrections.
 - (Y) Director of the Oregon Department of Aviation.
 - (Z) Executive director of the Oregon Criminal Justice Commission.
 - (AA) Director of the Oregon Business Development Department.
 - (BB) Director of the Office of Emergency Management.
 - (CC) Director of the Employment Department.
 - (DD) Chief of staff for the Governor.
 - (EE) Administrator of the Office for Oregon Health Policy and Research.
 - (FF) Director of the Housing and Community Services Department.
 - (GG) State Court Administrator.
 - (HH) Director of the Department of Land Conservation and Development.
 - (II) Board chairperson of the Land Use Board of Appeals.
 - (JJ) State Marine Director.
 - (KK) Executive director of the Oregon Racing Commission.
 - (LL) State Parks and Recreation Director.
 - (MM) Public defense services executive director.
 - (NN) Chairperson of the Public Employees' Benefit Board.
 - (OO) Director of the Department of Public Safety Standards and Training.
 - (PP) Chairperson of the Oregon Student Assistance Commission.
 - (QQ) Executive director of the Oregon Watershed Enhancement Board.
 - (RR) Director of the Oregon Youth Authority.
 - (SS) Director of the Oregon Health Authority.
 - (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
 - (i) Every elected city or county official.
 - (j) Every member of a city or county planning, zoning or development commission.
 - (k) The chief executive officer of a city or county who performs the duties of manager or principal administrator of the city or county.
 - (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
 - (m) Every member of a governing body of a metropolitan service district and the executive officer thereof.
 - (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
 - (o) The chief administrative officer and the financial officer of each common and union high school district, education service district and community college district.
 - (p) Every member of the following state boards and commissions:
 - (A) Board of Geologic and Mineral Industries.
 - (B) Oregon Business Development Commission.
 - (C) State Board of Education.
 - (D) Environmental Quality Commission.
 - (E) Fish and Wildlife Commission of the State of Oregon.
 - (F) State Board of Forestry.
 - (G) Oregon Government Ethics Commission.
 - (H) Oregon Health Policy Board.
 - (I) State Board of Higher Education.
 - (J) Oregon Investment Council.
 - (K) Land Conservation and Development Commission.
 - (L) Oregon Liquor Control Commission.
 - (M) Oregon Short Term Fund Board.
 - (N) State Marine Board.
 - (O) Mass transit district boards.
 - (P) Energy Facility Siting Council.
 - (Q) Board of Commissioners of the Port of Portland.
 - (R) Employment Relations Board.
 - (S) Public Employees Retirement Board.
 - (T) Oregon Racing Commission.
 - (U) Oregon Transportation Commission.
 - (V) Wage and Hour Commission.
 - (W) Water Resources Commission.

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- (X) Workers' Compensation Board.
 - (Y) Oregon Facilities Authority.
 - (Z) Oregon State Lottery Commission.
 - (AA) Pacific Northwest Electric Power and Conservation Planning Council.
 - (BB) Columbia River Gorge Commission.
 - (CC) Oregon Health and Science University Board of Directors.
 - (DD) Capitol Planning Commission.
 - (q) The following officers of the State Treasurer:
 - (A) Chief Deputy State Treasurer.
 - (B) Chief of staff for the office of the State Treasurer.
 - (C) Director of the Investment Division.
 - (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953.
 - (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
 - (2) By April 15 next after the date an appointment takes effect, every appointed public official on a board or commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
 - (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.
 - (6) If a statement required to be filed under this section has not been received by the commission within five days after the date the statement is due, the commission shall notify the public official or candidate and give the public official or candidate not less than 15 days to comply with the requirements of this section. If the public official or candidate fails to comply by the date set by the commission, the commission may impose a civil penalty as provided in ORS 244.350. [1974 c.72 §§4,4a; 1975 c.543 §3; 1977 c.588 §3; 1977 c.751 §16; 1979 c.374 §5; 1979 c.666 §6; 1979 c.697 §1; 1979 c.736 §1; 1979 c.829 §9b; 1987 c.373 §26; 1987 c.414 §148; 1987 c.566 §10; 1991 c.73 §2; 1991 c.160 §1; 1991 c.163 §1; 1991 c.470 §13; 1991 c.614 §2; 1993 c.500 §10; 1993 c.743 §11; 1995 c.79 §87; 1995 c.712 §94; 1997 c.652 §16; 1997 c.833 §22; 1999 c.59 §62; 1999 c.291 §28; 2001 c.104 §77; 2003 c.214 §1; 2003 c.784 §13; 2005 c.157 §6; 2005 c.217 §23; 2005 c.777 §14; 2007 c.813 §2; 2007 c.865 §17; 2007 c.877 §13; 2009 c.68 §5; 2009 c.595 §192; 2009 c.896 §10]

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¹⁰⁰ ORS 244.350(4)(c) The commission may impose a civil penalty of \$10 for each of the first 14 days the statement is late beyond the date set by law, or by the commission under ORS 244.050, and \$50 for each day thereafter. The maximum penalty that may be imposed under this subsection is \$5,000.

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¹⁰¹ ORS 244.060(1) The names of all positions as officer of a business and business directorships held by the public official or candidate or a member of the household of the public official or candidate during the preceding calendar year, and the principal address and a brief description of each business.

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¹⁰² ORS 244.060(2) All names under which the public official or candidate and members of the household of the public official or candidate do business and the principal address and a brief description of each

business.

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¹⁰³ ORS 244.060(3) The names, principal addresses and brief descriptions of the sources of income received during the preceding calendar year by the public official or candidate or a member of the household of the public official or candidate that produce 10 percent or more of the total annual household income.

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¹⁰⁴ ORS 244.060(4)(a) and (b) (a) A list of all real property in which the public official or candidate or a member of the household of the public official or candidate has or has had any personal, beneficial ownership interest during the preceding calendar year, any options to purchase or sell real property, including a land sales contract, and any other rights of any kind in real property located within the geographic boundaries of the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

(b) This subsection does not require the listing of the principal residence of the public official or candidate.

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¹⁰⁵ ORS 244.042 (1) Except as provided in subsection (3) of this section, a public official may not solicit or receive, whether directly or indirectly, honoraria for the public official or any member of the household of the public official if the honoraria are solicited or received in connection with the official duties of the public official.

(2) Except as provided in subsection (3) of this section, a candidate may not solicit or receive, whether directly or indirectly, honoraria for the candidate or any member of the household of the candidate if the honoraria are solicited or received in connection with the official duties of the public office for which the person is a candidate.

(3) This section does not prohibit:

(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or

(b) The solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation or expertise of the public official or candidate. [2007 c.877 §24; 2009 c.68 §21]

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¹⁰⁶ ORS 244.060(7) All honoraria and other items allowed under ORS 244.042 with a value exceeding \$15 that are received by the public official, candidate or member of the household of the public official or candidate during the preceding calendar year, the provider of each honorarium or item and the date and time of the event for which the honorarium or item was received.

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¹⁰⁷ ORS 244.042(3)(a) The solicitation or receipt of an honorarium or a certificate, plaque, commemorative token or other item with a value of \$50 or less; or

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¹⁰⁸ ORS 244.090 **Report on association with compensated lobbyist.** (1) Each public official or candidate required to file a statement of economic interest under this chapter shall include on the statement the name of any compensated lobbyist who, during the preceding calendar year, was associated with a business with which the public official or candidate or a member of the household of the public official or candidate was also associated.

(2) Subsection (1) of this section does not apply if the only relationship between the public official or candidate and the lobbyist is that the public official or candidate and lobbyist hold stock in the same publicly traded corporation.

(3) As used in this section, "lobbyist" has the meaning given that term in ORS 171.725. [1974 c.72 §7; 1975 c.543 §6; 1987 c.566 §14; 2007 c.865 §32

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¹⁰⁹ ORS 244.020(6)(b)(F) Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117

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¹¹⁰ ORS 244.060(5) All expenses with an aggregate value exceeding \$50 received by the public official during the preceding calendar year when participating in a convention, mission, trip or other meeting described in ORS 244.020 (6)(b)(F), including the name and address of the organization, unit of government, tribe or corporation paying the expenses, the nature of the event and the date and amount of the expense.

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¹¹¹ ORS 244.100(1) Each statement of economic interest required to be filed under ORS 244.050, 244.060, 244.070 or 244.090, or by rule under ORS 244.290, and each trading statement required to be filed under ORS 244.055 shall be signed and certified as true by the person required to file it and shall contain a written declaration that the statement is made under the penalties of false swearing.

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¹¹² ORS 244.020(6)(b)(H) Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117:

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¹¹³ ORS 244.060(6) All expenses with an aggregate value exceeding \$50 received by the public official during the preceding calendar year when participating in a mission, negotiations or economic development activities described in ORS 244.020 (6)(b)(H), including the name and address of the person paying the expenses, the nature of the event and the date and amount of the expenditure.

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¹¹⁴ ORS 244.060(8) The name, principal address and brief description of each source of income exceeding an aggregate amount of \$1,000, whether or not taxable, received by the public official or candidate, or a member of the household of the public official or candidate, during the preceding calendar year, if the source of that income is derived from an individual or business that has a legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which the public official holds, or the candidate if elected would hold, an official position or over which the public official exercises, or the candidate if elected would exercise, any authority. [1974 c.72 §5; 1975 c.543 §4; 1987 c.566 §11; 1991 c.770 §7; 1993 c.743 §12;

2003 c.14 §116; 2007 c.877 §19; 2009 c.68 §6]

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¹¹⁵ ORS 244.070(1) Each person to whom the public official or candidate or a member of the household of the public official or candidate owes or has owed money in excess of \$1,000, the interest rate on money owed and the date of the loan, except for debts owed to any federal or state regulated financial institution or retail contracts.

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¹¹⁶ ORS 244.070(2) The name, principal address and brief description of the nature of each business in which the public official or candidate or a member of the household of the public official or candidate has or has had a personal, beneficial interest or investment, including stocks or other securities, in excess of \$1,000, except for individual items involved in a mutual fund or a blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.

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¹¹⁷ ORS 244.070(3) Each person for whom the public official or candidate has performed services for a fee in excess of \$1,000, except for any disclosure otherwise prohibited by law or by a professional code of ethics. [1974 c.72 §6; 1975 c.543 §5; 1987 c.566 §12; 2007 c.877 §20; 2009 c.68 §7]

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¹¹⁸ ORS 244.250 **Oregon Government Ethics Commission; appointment; term; quorum; compensation; legal counsel.** (1) The Oregon Government Ethics Commission is established, consisting of seven members. The appointment of a member of the commission is subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Members shall be appointed in the following manner:

(a) The Governor shall appoint four members from among persons recommended, one each by the leadership of the Democratic and Republican parties in each house of the Legislative Assembly. If a person recommended by the leadership of the Democratic or Republican party is not approved by the Governor, the leadership shall recommend another person.

(b) The Governor shall appoint three members without leadership recommendation. No more than two members appointed under this paragraph may be members of the same major political party.

(2) A person who holds any public office listed in ORS 244.050 (1) except as a member of the commission may not be appointed to the commission. No more than four members may be members of the same political party.

(3) The term of office of a member is four years. A member is not eligible to be appointed to more than one full term but may serve out an unexpired term. Vacancies shall be filled by the appointing authority for the unexpired term.

(4) The commission shall elect a chairperson and vice chairperson for such terms and duties as the commission may require.

(5) A quorum consists of four members but a final decision may not be made without an affirmative vote of a majority of the members appointed to the commission.

(6) Members shall be entitled to compensation and expenses as provided in ORS 292.495.

(7) The commission may retain or appoint qualified legal counsel who must be a member of the Oregon State Bar and who is responsible to the commission. The appointment of legal counsel under this subsection may be made only when the commission finds it is inappropriate and contrary to the public interest for the office of the Attorney General to represent concurrently more than one public official or agency in any matter before the commission because the representation:

(a) Would create or tend to create a conflict of interest; and

(b) Is not subject to ORS 180.230 or 180.235.

(8) The Attorney General may not represent before the commission any state public official who is the subject of any complaint or action of the commission at the commission's own instigation. [1974 c.72 §12; 1977 c.588 §6; 1987 c.566 §18; 1991 c.770 §3; 1993 c.743 §17; 2007 c.865 §1]

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¹¹⁹ ORS 244.284 **Staff advice; effect of reliance on advice.** (1) Upon the written or oral request of any person, the executive director or other staff of the Oregon Government Ethics Commission may issue written or oral staff advice on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. Any written advice not designated as a staff advisory opinion under ORS 244.282 is considered staff advice issued under this section.

(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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¹²⁰ ORS 244.284(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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¹²¹ ORS 244.282(3)(a) Except as provided in paragraph (b) of this subsection, unless the staff advisory opinion is revised or revoked, the commission may only issue a written letter of reprimand, explanation or education for any good faith action a person takes in reliance on a staff advisory opinion issued under this section.

(b) The commission may impose, for an action that is subject to a penalty and that is taken in reliance on a staff advisory opinion issued under this section, a penalty under ORS 244.350 or 244.360 on the person who requested the opinion if the commission determines that the person omitted or misstated material facts in making the request.

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¹²² ORS 244.280 **Commission advisory opinions; effect of reliance on opinion.** (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

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¹²³ ORS 244.280(1) and (2) - (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish

written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

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¹²⁴ ORS 244.280(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

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¹²⁵ ORS 244.280 through ORS 244.284 - **244.280 Commission advisory opinions; effect of reliance on opinion.** (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.

(2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.

(3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 or 244.360 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 or 244.360 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

244.282 Executive director and staff advisory opinions; effect of reliance on opinion. (1) Upon the written request of any person, the executive director of the Oregon Government Ethics Commission may issue and publish written staff advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance.

(2) Not later than 30 days after the date the executive director receives the written request for a staff advisory opinion, the executive director shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The executive director may ask the person requesting the advisory opinion to supply additional information the executive director considers necessary to render the opinion. The executive director may extend the 30-day deadline by one period not to exceed 30 days. The executive director shall clearly designate an opinion issued under this section as a staff advisory opinion.

(3)(a) Except as provided in paragraph (b) of this subsection, unless the staff advisory opinion is revised or revoked, the commission may only issue a written letter of reprimand, explanation or education for any good faith action a person takes in reliance on a staff advisory opinion issued under this section.

(b) The commission may impose, for an action that is subject to a penalty and that is taken in reliance on a staff advisory opinion issued under this section, a penalty under ORS 244.350 or 244.360 on the person who requested the opinion if the commission determines that the person omitted or misstated material facts in making the request.

(4) At each regular meeting of the commission, the executive director shall report to the commission on all staff advisory opinions issued since the last regular meeting of the commission. The commission on its own motion may issue a commission advisory opinion under ORS 244.280 on the same facts or circumstances that form the basis for any staff advisory opinion. [2007 c.865 §14; 2007 c.877 §39c; 2009 c.68 §12]

244.284 Staff advice; effect of reliance on advice. (1) Upon the written or oral request of any person, the executive director or other staff of the Oregon Government Ethics Commission may issue written or oral staff advice on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. Any written advice not designated as a staff advisory opinion under ORS 244.282 is considered staff advice issued under this section.

(2) Before imposing any penalty under ORS 244.350 or 244.360, the commission may consider whether the action that may be subject to penalty was taken in reliance on staff advice issued under this section. [2007 c.865 §15; 2007 c.877 §39d]

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¹²⁶ **ORS 244.260 Complaint and adjudicatory process; confidentiality; Preliminary Review Phase; Investigatory Phase; possible actions by order; report of findings; contested case procedure; limitation on commission action.** (1)(a) Any person may file with the Oregon Government Ethics Commission a signed written complaint alleging that there has been a violation of any provision of this chapter or of any rule adopted by the commission under this chapter. The complaint shall state the person's reason for believing that a violation occurred and include any evidence relating to the alleged violation.

(b) If at any time the commission has reason to believe that there has been a violation of a provision of this chapter or of a rule adopted by the commission under this chapter, the commission may proceed under this section on its own motion as if the commission had received a complaint.

(2)(a) Not later than two business days after receiving a complaint under this section, the commission shall notify the person who is the subject of the complaint.

(b) Before approving a motion to proceed under this section without a complaint, the commission shall provide notice to the person believed to have committed the violation of the time and place of the meeting at which the motion will be discussed. If the commission decides to proceed on its own motion, the commission shall give notice to the person not later than two business days after the motion is approved.

(c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of this subsection by mail and by telephone if the person can be reached by telephone. The notice must describe the nature of the alleged violation. The mailed notice must include copies of all materials submitted with a complaint. If the commission will consider a motion to proceed without a complaint, the notice must provide copies of all materials that the commission will consider at the hearing on the motion.

(d) Information that the commission considers before approving a motion to proceed on its own motion under this section and any correspondence regarding the motion or potential violation is confidential. Commission members and staff may not make any public comment or publicly disclose any materials relating to the motion pending the commission's approval to proceed. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.

(3) After receiving a complaint or deciding to proceed on its own motion, the commission shall undertake action in the Preliminary Review Phase to determine whether there is cause to undertake an investigation. If the person who is the subject of the action is a member of the Legislative Assembly, the commission shall determine whether the alleged violation involves conduct protected by section 9, Article

IV of the Oregon Constitution.

(4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the commission decides to proceed on its own motion and ends on the date the commission determines there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion. The Preliminary Review Phase may not exceed 135 days unless:

(A) A delay is stipulated to by both the person who is the subject of action under this section and the commission with the commission reserving a portion of the delay period to complete its actions; or

(B) A complaint is filed under this section with respect to a person who is a candidate for elective public office, the complaint is filed within 61 days before the date of an election at which the person is a candidate for nomination or election and a delay is requested in writing by the candidate. If the candidate makes a request under this subparagraph, the Preliminary Review Phase must be completed not later than 135 days after the date of the first meeting of the commission that is held after the date of the election.

(b) During the Preliminary Review Phase, the commission may seek, solicit or otherwise obtain any books, papers, records, memoranda or other additional information, administer oaths and take depositions necessary to determine whether there is cause to undertake an investigation or whether the alleged violation involves conduct protected by section 9, Article IV of the Oregon Constitution.

(c) The Preliminary Review Phase is confidential. Commission members and staff may acknowledge receipt of a complaint but may not make any public comment or publicly disclose any materials relating to a case during the Preliminary Review Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.

(d) At the conclusion of the Preliminary Review Phase, the commission shall conduct its deliberations in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.

(e) The time limit imposed in this subsection and the commission's inquiry are suspended if:

(A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission unless the parties stipulate otherwise; or

(B) A court has enjoined the commission from continuing its inquiry.

(5)(a) If the commission determines that there is not cause to undertake an investigation or that the alleged violation of this chapter involves conduct protected by section 9, Article IV of the Oregon Constitution, the commission shall dismiss the complaint or rescind its motion and formally enter the dismissal or rescission in its records. The commission shall notify the person who is the subject of action under this section of the dismissal or rescission. After dismissal or rescission, the commission may not take further action involving the person unless a new and different complaint is filed or action on the commission's own motion is undertaken based on different conduct.

(b) If the commission makes a finding of cause to undertake an investigation, the commission shall undertake action in the Investigatory Phase. The commission shall notify the person who is the subject of the investigation, identify the issues to be examined and confine the investigation to those issues. If the commission finds reason to expand the investigation, the commission shall move to do so, record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant, if any, and the person who is the subject of the investigation of the expansion and the scope of the investigation.

(6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to undertake an investigation and ends on the date the commission dismisses the complaint, rescinds its own motion, issues a settlement order, moves to commence a contested case proceeding or takes other action justified by the findings. The Investigatory Phase may not exceed 180 days unless a delay is stipulated to by both the person who is the subject of action under this section and the commission with the commission reserving a portion of the delay period to complete its actions.

(b) During the Investigatory Phase, the commission may seek any additional information, administer oaths, take depositions and issue subpoenas to compel attendance of witnesses and the production of

books, papers, records, memoranda or other information necessary to complete the investigation. If any person fails to comply with any subpoena issued under this paragraph or refuses to testify on any matters on which the person may be lawfully interrogated, the commission shall follow the procedure described in ORS 183.440 to compel compliance.

(c) The time limit imposed in this subsection and the commission's investigation are suspended if:

(A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission unless the parties stipulate otherwise; or

(B) A court has enjoined the commission from continuing its investigation.

(d) At the end of the Investigatory Phase, the commission shall take action by order. The action may include:

(A) Dismissal, with or without comment;

(B) Continuation of the investigation for a period not to exceed 30 days for the purpose of additional fact-finding;

(C) Moving to a contested case proceeding;

(D) Entering into a negotiated settlement; or

(E) Taking other appropriate action if justified by the findings.

(e) The commission may move to a contested case proceeding if the commission determines that the information presented to the commission is sufficient to make a preliminary finding of a violation of any provision of this chapter or of any rule adopted by the commission under this chapter.

(7) A person conducting any inquiry or investigation under this section shall:

(a) Conduct the inquiry or investigation in an impartial and objective manner; and

(b) Provide to the commission all favorable and unfavorable information the person collects.

(8) The commission shall report the findings of any inquiry or investigation in an impartial manner. The commission shall report both favorable and unfavorable findings and shall make the findings available to:

(a) The person who is the subject of the inquiry or investigation;

(b) The appointing authority, if any;

(c) The Attorney General, if the findings relate to a state public official;

(d) The appropriate district attorney, if the findings relate to a local public official; and

(e) The Commission on Judicial Fitness and Disability, if the findings relate to a judge.

(9) Hearings conducted under this chapter must be held before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The procedure shall be that for a contested case under ORS chapter 183.

(10) The Oregon Government Ethics Commission may not inquire into or investigate any conduct that occurred more than four years before a complaint is filed or a motion is approved under subsection (1) of this section.

(11) This section does not prevent the commission and the person alleged to have violated any provision of this chapter or any rule adopted by the commission under this chapter from stipulating to a finding of fact concerning the violation and consenting to an appropriate penalty. The commission shall enter an order based on the stipulation and consent.

(12) At any time during proceedings conducted under this section, the commission may enter into a negotiated settlement with the person who is the subject of action under this section.

(13) As used in this section:

(a) "Cause" means that there is a substantial, objective basis for believing that an offense or violation may have been committed and the person who is the subject of an inquiry may have committed the offense or violation.

(b) "Pending" means that a prosecuting attorney is either actively investigating the factual basis of the alleged criminal conduct, is preparing to seek or is seeking an accusatory instrument, has obtained an accusatory instrument and is proceeding to trial or is in trial or in the process of negotiating a plea. [1974 c.72 §13; 1989 c.807 §1; 1991 c.272 §1; 1991 c.770 §1a; 1993 c.743 §18; 1999 c.849 §§51,52; 1999 c.850 §1; 2003 c.75 §30; 2007 c.865 §23; 2009 c.163 §2]

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Oregon Government Ethics Law Legislative Updates

OREGON
GOVERNMENT ETHICS
LAW



SUPPLEMENT TO
A GUIDE FOR PUBLIC
OFFICIALS

2011 – 2015 LEGISLATIVE UPDATES

DISCLAIMER

This supplement is intended only for use as a tool in identifying recent legislative changes affecting text of the 2010 publication of the Oregon Government Ethics Commission’s Guide for Public Officials. **This document is not intended to replace the 2010 Guide for Public Officials, and may not reflect all legislative changes to Oregon Government Ethics Law (ORS Chapter 244) to date.**

A PUBLIC OFFICIAL

Are you a public official?..... p. 5

- “First partner” added to definition of “public official” (“First partner” is also newly defined at ORS 244.020(6), resulting in extensive renumbering of the definitions that follow it at ORS 244.020, (7) – (17)). *[HB 2020 (2015)]*
- Definition of “public official” renumbered ORS 244.020(15). *[HB 2020 (2015)]*

Who is a relative?..... p. 7

- “Spouse of siblings of a public official or candidate” and “ spouse of siblings of the spouse of a public official or candidate” removed from definition of “relative”. *[HB 2079 (2013)]*
- Definition of “relative” renumbered ORS 244.020(16). *[HB 2020 (2015)]*

USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?..... p. 10

- “Conflict of interest” definition referenced at ORS 244.020(12) renumbered ORS 244.020(13). *[HB 2020 (2015)]*

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?..... p. 12 - 13

Honorarium

- Definition of “honorarium” renumbered ORS 244.020(8). *[HB 2020 (2015)]*
- Newly added ORS 244.042(4) prohibits the Governor, First Partner, Secretary of State, State Treasurer, Attorney General and Commissioner of the Bureau of Labor and Industries from soliciting or receiving an honorarium, money or any other consideration, as defined in ORS 171.725, for any speaking engagement or presentation. *[HB 2020 (2015)]*

Awards for Professional Achievement

- “Awards of appreciation” referenced at ORS 244.020(6)(b)(C) renumbered ORS 244.020(7)(b)(C). *[HB 2020 (2015)]*

NEPOTISM

Does Oregon Government Ethics law prevent two or more relatives from being employees of the same public body?..... p. 14

- “Relative” and “member of household” definitions at ORS 244.175 removed (apply “relative” and “member of household” definitions at ORS 244.020(16) & (11)). *[HB 2079 (2013)]*

EMPLOYMENT OF FORMER PUBLIC OFFICIALS

What are the restrictions on employment after I resign, retire or leave my public official position?..... p. 18

ORS 244.045(3)

- “Chief” removed from title of “Chief Deputy State Treasurer” (now “Deputy State Treasurer”). *[SB 11 (2011)]*

CONFLICTS OF INTEREST

..... p. 21 - 24

- “Conflict of interest” definition referenced at ORS 244.020(12) (“potential conflict of interest”) renumbered ORS 244.020(13). *[HB 2020 (2015)]*

GIFTS

..... p. 26 - 32

- “Gift” definition referenced at ORS 244.020(6) (including the exceptions discussed with reference to ORS 244.020(6)(b)(A)-(P)) renumbered ORS 244.020(7). *[HB 2020 (2015)]*
- “Legislative or administrative interest” definition referenced at ORS 244.020(9) renumbered ORS 244.020(10). *[HB 2020 (2015)]*

What does a public official need to know about a “Legislative or Administrative Interest”?..... p. 31

- “Relative” added to listed persons permitted to accompany a public official at a reception, meal or meeting excluded from the definition of “gift” under ORS 244.020(6)(b)(E) (renumbered ORS 244.020(7)(b)(E)). *[SB 293 (2015)]*

GIFTS AS AN EXCEPTION TO THE USE OF OFFICE PROHIBITION IN ORS 244.040

..... p. 33 - 37

- “Gift” definition referenced at ORS 244.020(6) (including the exceptions discussed with reference to ORS 244.020(6)(b)(A)-(P)) renumbered ORS 244.020(7). *[HB 2020 (2015)]*

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

..... p. 38 - 39

- NOTE: Annual Verified Statements of Economic Interest (SEI) will be filed online beginning April 2016. As a result of the Commission’s new electronic filing system, paper copies of the form will no longer be mailed directly to each public official required to file. Rather, notifications and instructions for e-filing will primarily be sent to SEI filers electronically via email. The Commission will now require the contact person for each jurisdiction to maintain and provide email addresses for each SEI filer in addition to the other relevant contact information.

SEI Form..... p. 40

- Reportable expenses paid for attending event specified in ORS 244.020(6)(b)(F) & (H) renumbered ORS 244.020(7)(b)(F) & (H). *[HB 2020 (2015)]*

OREGON GOVERNMENT ETHICS COMMISSION

..... p. 41

- Voting members of the Commission is increased to 9 (was 7). *[HB 2019 (2015)]*
- 2 recommended by Senate Democratic leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by Senate Republican leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by House Democratic leadership (was 1). *[HB 2019 (2015)]*
- 2 recommended by House Republican leadership (was 1). *[HB 2019 (2015)]*
- 1 recommended by the Governor (was 3). *[HB 2019 (2015)]*
- No more than 3 commissioners in the same political party may be appointed to the Commission to serve at the same time (was 4). *[HB 2019 (2015)]*

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as “safe harbor” protection from becoming a respondent to a complaint filed with or initiated by the Commission?..... p. 44 - 46

Complaint Review Procedures

- Preliminary Review Phase shortened from 135 days to 30. *[HB 2019 (2015)]*
- If a pending criminal matter is related to the same circumstances or actions to be addressed in Preliminary Review, suspension is no longer required unless a court has enjoined the Commission from continuing its inquiry. *[HB 2019 (2015)]*
- Commission may no longer consent to respondents’ requests for waiver of the Preliminary Review Phase time limit (except for complaints against candidates within 61 days of an election). *[HB 2019 (2015)]*
- Preliminary Review now technically ends when Executive Director completes the statement of facts determined; the Commission meets in executive session to conduct deliberations and vote on complaints following the close of Preliminary Review. *[HB 2019 (2015)]*
- The Investigatory Phase “may” be suspended during pending criminal investigation if the Commission determines that its own investigation cannot be adequately completed until criminal investigation in complete, or if a court enjoins the Commission from investigation. *[HB 2019 (2015)]*
- The maximum civil penalty that can be imposed for any Government Ethics violation is \$5,000, except for “willful” violation of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum is increased to \$10,000 (does not affect \$1,000 maximum on civil penalties for executive session violations). *[HB 2020 (2015)]*

Chapter 4: Sample Event Waiver

Sample Waiver

I, (insert name), hereby request permission of the (insert name of district) Soil and Water Conservation District (SWCD) to allow me to accompany the district as a participant in its (insert event name) on (insert date of event). I have been made aware and I understand that, by participating in this (insert event name), I am not protected by the SWCD's Tort liability insurance coverage. I knowingly and voluntarily assume any and all risk associated with my participation in this (insert event name). I also agree that in the event of any accident, illness, or incapacity, or death associated with my participation in the (insert event name), I or my estate will assume and pay for all of my medical and emergency care expenses and any other costs arising from any damage, loss, or injury to my property or person.

In exchange for permission to participate in this (insert event name), I hereby release and hold harmless the State of Oregon and its agencies, officers, employees, and agents, including the (insert name of district) SWCD, from any or all actions, claims, or demands whatsoever that may arise out of my participating in the field trip. I intend this release and hold harmless agreement to forever bind myself as well as my estate, personal representatives, guardians, conservators, parents, heirs, executors, administrators, or assigns. I hereby agree to the terms and conditions set forth above for this (insert event name).

By my signature below, I hereby represent that I understand and consent to the terms, conditions, and release from liability pertaining to the (insert event name) sponsored by the (insert name of district) Soil and Water Conservation District.

Signature (Guest)

Date

District Witness

Date

Risk: The probability that a loss will occur

Type of Loss: Financial or Economic (Business Interruptions), Property (Including Vehicles and Animals), Bodily Injury (Bodily Injury to Third Parties), Personal Injury (Reputation, Slander)

Perils: Natural (Earthquake, Flood, Hail, Erosion), Man Made (Arson, Chemical Leakage, Crime), Economic (Recession, Economy Fluctuations)

Identifying Loss: Previous Contracts, Loss Reports, Personal Inspections

Risk Control Methods: Avoidance (Avoid Risk Entirely), Loss Prevention (Reduce the Likelihood of a Particular Loss), Loss Reduction (Reduce the Severity or Cost of a Particular Loss), Segregation (Separate Assets or Activities, Duplicate), Transfer (Contract Management), Insurance

Risk Control Measures: Personal Protective Equipment, Housekeeping, Inspections, Maintenance, Policies and Procedures, Supervision, Contract Management, Performance Expectations, and Training

Assessment Table

Determine the Risk rating/Level of Risk for each Potential loss exposure.

Probability/Frequency		Severity				
		Insignificant	Minor	Moderate	Major	Critical
Almost Certain	91-100%	M	H	E	E	E
Likely	76-90%	M	M	H	E	E
Possible	26-75%	L	M	H	E	E
Unlikely	11-25%	L	L	M	H	E
Rare	1-10%	L	L	M	H	H

L= Low M= Moderate H=High E=Extreme

Pollution and related environmental coverages must be called out in insurance requirements specifically because commercial General Liability coverage specifically excludes these special coverages.

Chapter 6: Notice of ORS 260.432(3)

ATTENTION ALL PUBLIC EMPLOYEES:

The restrictions imposed by the law of the State of Oregon on your political activities are that “No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.”

It is therefore the policy of the state and of your public employer that you may engage in political activity except to the extent prohibited by state law when on the job during working hours. (ORS 260.432)

Rev 2/2008

Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

Chapter 7: Executive Session Checklist

EXECUTIVE SESSION CHECKLIST

ORS	PERMISSIBLE GROUNDS TO HOLD EXECUTIVE SESSION	DOES NOT INCLUDE
192.660(2)(a) 192.660(7)	To consider the employment of an officer, employee, staff member or agen.t	<input type="checkbox"/> Not for establishing hiring criteria <input type="checkbox"/> Not for filling vacancies on the board or committees <input type="checkbox"/> Not to discuss general employment policies
192.660(2)(b)	To consider dismissal or discipline of or complaints against an officer, employee, staff or agent.	Only if the individual does not request an open meeting.
192.660(2)(d)	To conduct deliberations with persons you have designated to carry on labor negotiations.	
192.660(2)(e)	To conduct deliberations with persons you have designated to negotiate real property transactions.	
192.660(2)(f)	To consider information or records that are exempt from disclosure by law, including written advice from your attorney.	
192.660(2)(h)	To consult with your attorney regarding current litigation or litigation that is more likely than not to be filed.	
192.660(2)(i) 192.660(8)	To evaluate the performance of an officer, employee or staff member.	<input type="checkbox"/> Only if the individual does not request an open meeting <input type="checkbox"/> Not to review a district goal, operation or policy directive.
192.660(2)(i)	To negotiate under ORS Chapter 293 with private persons or businesses to acquire, exchange or liquidate public investments.	
192.660(2)(c) 192.660(2)(g) 192.660(2)(k) 192.660(2)(l) 192.660(2)(m) 192.660(3)	Pertains to medical staff Pertains to interstate and international trade negotiations Pertains to health professional regulatory boards Pertains to State Landscape Architect Board Pertains to security of public utility installations Pertains to labor negotiations with union represented employees	USUALLY NOT APPLICABLE TO SWCDS

Notice: Provide notice of an executive session in the same manner you give notice of a public meeting. The notice must cite the specific statutory provision(s) authorizing the executive session.

Voting: All final decisions must be made outside of the executive session. The public must have a chance to be aware of the final decision. A vote of the district board relating to information discussed in the executive session can satisfy this requirement. However, executive sessions may not be held for the purpose of taking any final action or making any final decision.

When to call: Executive sessions may be called during regular meetings, special, or emergency meetings, for which proper notice has been given. Also, a meeting may be called which is only an executive session.

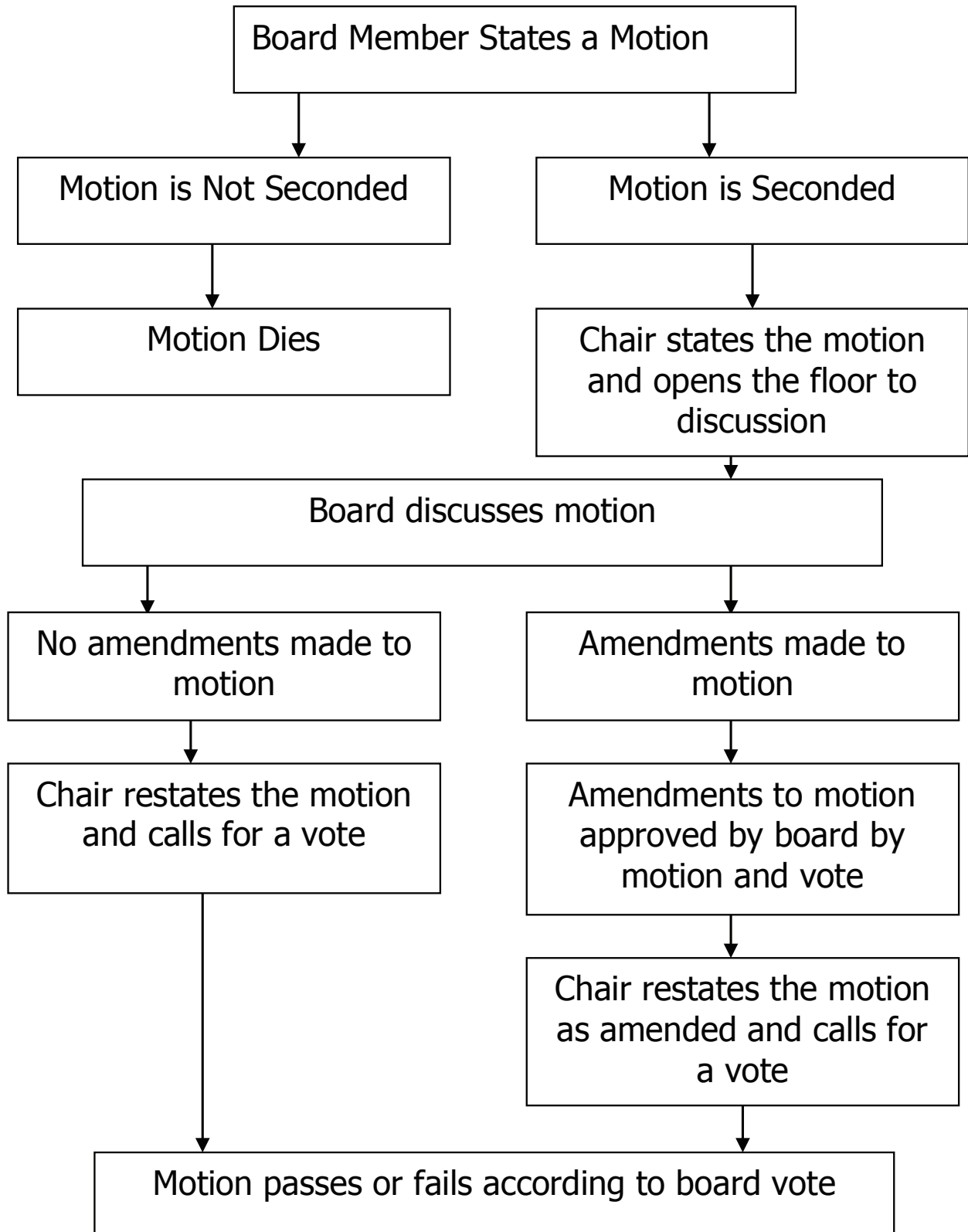
Citing the statute: The presiding officer must first announce the statutory authority for the executive session before going into session.

Media Representatives: The media cannot be excluded from an executive session, except for sessions regarding labor negotiations. Media representatives in attendance at an executive session should be instructed not to report or disclose matters discussed at the session; if such instruction is not given, the media may disclose the discussions. The presiding officer may prohibit the media from recording an executive session. The media includes news-gathering representatives (i.e., reporters) of news media that ordinarily reports activities of the public body, or ordinarily report matters of the nature under consideration by the public body.

Other participants: Even though certain persons can be excluded from executive sessions, it does not restrict the authority of the governing body to invite persons not part of the board to attend executive sessions.

Chapter 7: Sample Meeting Motion Policy

Sample District Meeting Motion Policy



Chapter 8: Basic Checklist for Hiring New Employees

EMPLOYER'S CHECKLIST

Hiring employees requires a great deal of preparation. The following is a basic checklist of recommendations to help you when hiring the first employee for your business.

- 1. Starting Out - Determine Employer Status**
 - Employer Employee
 - Independent Contractor

- 2. Obtain Federal Tax ID Number**

- 3. Obtain Workers' Compensation Insurance**
 - Who Needs Coverage? How Do I Get Coverage?
 - What it Provides Compliance
 - Workers' Compensation Assessments

- 4. File Combined Employer Registration Forms**
 - Who is an Employee? Due Dates
 - Requirements Get a Business Identification Number (BIN)

- 5. State and Federal Withholding Tax**
 - Who must Withhold? Requirements

- 6. State and Federal Unemployment Tax**
 - Who pays State Unemployment Tax? Requirements
 - Who Pays Federal Unemployment Tax?

- 7. Obtain Immigration & Naturalization I-9 Forms for Each Employee**

- 8. Report New Hires to Department of Justice, Division of Child Support**

- 9. Contact BOLI for Employer Information**
 - Required Employer Compliance Posters

- 10. Determine If You Comply With ADA**

- 11. Contact Oregon-OSHA About Safety & Health Regulations**

Chapter 8: List of Recommended Personnel Policies

Recommended Personnel Policies

Personnel policies and procedures

- Purpose of the policies
- Personnel administration

Appointments, qualifications and separations

- Job announcements
- Applications
- Eligibility
- Interview and Selection
- Orientation
- Employee Status
- Driving record
- Layoffs
- Voluntary resignations
- Personnel record

Payroll, scheduling and overtime

- Work week and working hours
- Wage Compensation
- Overtime
- Rest periods
- Meal periods
- Payday
- Payroll deductions
- Time records
- Pay upon separation

Employee travel authorization and reimbursement

- Mileage, per diem, meals and other travel rates
- Documentation requirements
- Approval procedures
- Travel settlement

Time off policy for employees

- Holidays
- Primary occupational leave: unpaid
- Other leave

Safety and accidents

- Safety policy statement
- Unsafe conditions
- Accident reporting
- Employee injury report
- Workers' Compensation
- Insurance
- Return-to-work policy
- Violence in the work place

What the district expects from employees

- Teamwork and excellence
- Personal conduct
- Code of ethics for district employees
- Political activities of district employees
- Cost consciousness
- Attendance and punctuality
- Personal appearance
- Appearance in work areas
- Personal telephone calls
- Smoking in the work place
- Drug and alcohol use

Non-discrimination and harassment

- Equal Employment Opportunity
- Harassment prevention
- Civil rights

Performance evaluation

- Employee performance reviews
- The evaluation process
- Evaluation form

Problem-solving process

- District policy
- Steps to solution

Discipline

- General guidelines
- Discharge procedure

This is a rather extensive list of items that might be included in a district personnel policy document, but if the district develops its policies "up front," and everyone understands what they are, the district and the employee(s) will have a greater awareness of the board-employee relationship, and everyone will be better able to work as a team.

