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Chapter 35

2003 EDITION

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PROCEDURE

35.205 Short title. This chapter may be cited as the General Condemnation Procedure Act. [1971 c.741 §2]

35.215 Definitions for chapter. As used in this chapter, unless the context otherwise requires:

(1) "Condemner" means the state, any city, county, school district, municipal or public corporation, political subdivision or any instrumentality or any agency thereof or a private corporation that has the power to exercise the right of eminent domain.

(2) "Owner" or "owner of the property" means the owner of property.

(3) "Person" means person as defined by ORS 174.100 and also includes the state, any city, county, school district, municipal or public corporation, political subdivision or any instrumentality or any agency thereof.

(4) "Private condemner" means a private corporation that has the power to exercise the right of eminent domain.

(5) "Property" means real or personal property or any interest therein of any kind or nature that is subject to condemnation.

(6) "Public condemner" means condemner other than private condemner. [1971 c.741 §4; 1983 c.327 §10; 2003 c.14 §18]

35.220 Precondemnation entry on real property. (1) Subject to the requirements of this section, a condemner may enter upon, examine, survey, conduct tests upon and take samples from any real property that is subject to condemnation by the condemner. A condemner may not enter upon any land under the provisions of this section without first attempting to provide actual notice to the owner or occupant of the property. If the condemner has not provided actual notice, written notice must be posted in a conspicuous place where the notice is most likely to be seen. The posted notice must give the condemner's name, address and telephone number and the purpose of the entry. A condemner may conduct tests upon or take samples from real property only with the consent of the owner or pursuant to an order entered under subsection (2) of this section. All testing and sampling must be done in conformity with applicable laws and regulations. Testing and sampling results shall be provided to the owner upon request.

(2) If the owner of property objects to examination or survey of the property under this section, or does not consent to the terms and conditions for testing or sampling of the property, the condemner may file a petition with the court seeking an order providing for entry upon the property and allowing such examination, survey, testing or sampling as may be requested by the condemner. The court may enter an order establishing reasonable terms and conditions for entry and for any examination, survey, testing or sampling of the property requested by the condemner. Reasonable compensation for damage or interference under subsection (3) of this section may be established in the proceeding either before or after entry is made upon the property by the condemner.

(3) An owner is entitled to reasonable compensation for:

(a) Any physical damage caused to the property by the entry upon or examination, survey, testing or sampling of the property, including any damage attributable to the diffusion of hazardous substances found on the property; and

(b) Any substantial interference with the property's possession or use caused by the entry upon or examination, survey, testing or sampling of the property.

(4) If a condemner is required to pay compensation to an owner in a proceeding under subsection (2) of this section, and the condemner thereafter seeks condemnation of the same property, the owner is not entitled to any payment of compensation in the condemnation action that would result in the owner receiving a second recovery for the same damage or interference.

(5) Nothing in this section affects any liability under any other provision of law that a condemner may have to an owner or occupant of property by reason of entry upon or examination, survey, testing or sampling of property. [2003 c.477 §2]

Note: Section 3, chapter 477, Oregon Laws 2003, provides:

Sec. 3. Section 2 of this 2003 Act [35.220] applies only to the entry upon or examination, survey, testing or sampling of the property by a condemner that occurs

on or after the effective date of this 2003 Act [January 1, 2004]. [2003 c.477 §3]

35.225 [1971 c.741 §5; repealed by 1979 c.284 §199]

35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite. (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.

(2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

(3) The commencement of an action to condemn property by a private condemner creates a disputable presumption of the necessity of the proposed use, that the property is necessary therefor and that the proposed use, improvement or project is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

(4) The question of the validity of the disputable presumptions created in subsection (3) of this section, if raised, shall be determined by the court in a summary proceeding prior to trial.

(5) It is not a prerequisite to the exercise of the right of eminent domain by the condemner to attempt first to agree with an owner or to allege or prove any effort to agree with such owner as to reasonable value, when such owner is at the time concealed within the state or, after reasonable effort by condemner, cannot be found within the state. [1971 c.741 §6; 1973 c.579 §1]

35.245 Commencement of action; jurisdiction; parties. (1) If the condemner is unable to agree with or locate the owner of the property under ORS 35.235, then an action to condemn property may be commenced in the circuit court of the county in which the property proposed to be condemned, or the greater portion thereof, is located.

(2) An action may be commenced against the person in whose name the record title appears. There may be included as defendants any lessee or other person in possession and all other persons having or claiming an interest in the property. [1971 c.741 §7]

35.255 Content of complaint. The complaint shall describe the property sought to be condemned and shall allege the true value of the property sought and the damage, if any, resulting from the appropriation thereof. [1971 c.741 §8; 1979 c.284 §75]

35.265 Advance deposit by public condemner requiring immediate possession; effect on interest otherwise allowable. (1) When a public condemner commences an action for the condemnation of property and immediate possession of the property is considered necessary by the public condemner, a fund shall be created in the amount estimated to be the just compensation for the property and placed in the hands of the treasurer of the public condemner for deposit with the clerk of the court wherein the action was commenced, for the use of the defendants in the action.

(2) When the public condemner is a state agency and immediate possession of property is considered necessary by the agency, the agency shall certify to such facts and authorize an advancement out of funds available to the agency of the amount estimated by the agency to be just compensation for the property. Upon such certification and authorization, a warrant shall be drawn in favor of the clerk of the court in the amount authorized.

(3) Upon the deposit in court by the public condemner of the estimated amount of just compensation as provided by subsections (1) and (2) of this section, no interest shall be allowed thereon in the judgment. [1971 c.741 §10; 2003 c.576 §236]

35.275 Advance occupancy by private condemner; hearing; deposit or bond; effect of size of bond or deposit on amount of just compensation. (1) At any time after an action is commenced to acquire any property, a private condemner may apply to the court for an order to occupy the property to be condemned and to make use of the property for the purposes for which it is being appropriated.

(2) At the hearing on the motion, the court shall determine the reasons for requiring a speedy occupation. The court shall grant the motion if, giving consideration to the public interest involved, it finds that the interests of the owners will be adequately protected. The court may make such provisions or orders as necessary, so that the advance taking or an advance payment, as provided by subsection (3) of this section, will not be prejudicial to either party.

(3)(a) If an order to occupy the property is granted, it may also require the private

condemner to deposit with the court either such sum as the court finds reasonable on account of just compensation to be awarded or to deposit a surety bond in an amount and with such surety as the court may approve. The surety bond shall be conditioned to the effect that the private condemner shall pay to the owners of the property just compensation for the property taken or restitution, if any, and costs, disbursements and reasonable attorney fees as finally determined.

(b) After an order to occupy is entered, if it appears necessary in order to protect the interests of the owners of the property, the court at any time may require the private condemner to deposit with the court an additional bond or sum on account of just compensation to be awarded.

(c) Evidence as to the finding of the court regarding the amount of such bond or deposit shall not be admissible at the trial of just compensation. [1971 c.741 §11]

35.285 Distribution of deposits; effect of withdrawal on appeal. (1) The court may distribute all or any part of the funds deposited by a condemner to the persons entitled thereto for or on account of the just compensation to be awarded in the action, upon such terms and conditions as may appear just and reasonable.

(2) Any persons entitled to withdraw any or all of the deposit, as provided by subsection (1) of this section, may do so at any time without waiving rights of appeal provided by ORS 35.355. [1971 c.741 §12]

35.295 Defendant's answer. The defendant in answer may set forth any legal defense the defendant may have to the condemnation. The defendant shall also allege the true value of the property and the damage, if any, resulting from the appropriation thereof. [1971 c.741 §13]

35.305 Conduct of trial; defendant's option; jury argument; neither side has burden of proof of just compensation. (1) Evidence shall be received and the trial conducted in the order and manner prescribed for a civil action in the circuit court, except that the defendant shall have the option of proceeding first or last in the presentation of evidence, if notice of such election is filed with the court and served on the condemner at least seven days prior to the date set for trial. If no notice of election is filed, the condemner shall proceed first in the presentation of evidence. Unless the case is submitted by both sides to the jury without argument, the party who presents evidence first shall also open and close the argument to the jury.

(2) Condemner and defendant may offer evidence of just compensation, but neither party shall have the burden of proof of just compensation. [1971 c.741 §14; 1979 c.284 §76]

35.315 View of property by order of court. If motion is made by either party before the formation of the jury, the court shall order a view of the property in question; and, upon the return of the jury, the evidence of the parties may be heard and the verdict of the jury given. [1971 c.741 §15]

35.325 Effect of judgment; effect of payment under judgment. Upon the assessment of the compensation by the jury, the court shall give judgment appropriating the property in question to the condemner, conditioned upon the condemner's paying into court the compensation assessed by the jury; and, after the making of such payment, the judgment shall become effective to convey the property, and the right of possession thereof to the condemner if not previously acquired. [1971 c.741 §16]

35.335 Effect of condemner's abandonment of action. (1) If an action is abandoned by the condemner, the court shall enter judgment in favor of the defendant for costs and disbursements in the action and for reasonable attorney fees and reasonable expenses as determined by the court.

(2) Expenses mean costs of appraisals and fees for experts incurred in preparing and conducting the defense to the action.

(3) An action is considered abandoned if, at any time after filing a complaint, the case is dismissed or terminated or the condemner files an election not to take the property. If an election is not filed within 60 days after the verdict, the condemner is considered to have elected to take the property. [1971 c.741 §17]

35.345 [1971 c.741 §18; repealed by 1973 c.617 §1 (35.346 enacted in lieu of 35.345)]

35.346 Offer to purchase required before filing action for condemnation; appraisal; arbitration; when costs and disbursements allowed. (1) At least 40 days before the filing of any action for condemnation of property or any interest in property, the condemner shall make an initial written offer to the owner or party having an interest to purchase the property or interest, and to pay just compensation therefor and for any compensable damages to remaining property.

(2) The offer shall be accompanied by any written appraisal upon which the condemner relied in establishing the amount of compensation offered. If the condemner determines that the amount of just compensation due is less than $20,000, the condemner, in lieu of a written appraisal, may provide to the owner or other person having an interest in the property a written explanation of the

bases and method by which the condemner arrived at the specific valuation of the property. The amount of just compensation offered shall not be reduced by amendment or otherwise before or during trial except on order of the court entered not less than 60 days prior to trial. An order for reduction of just compensation offered, pleaded by the condemner in the complaint or deposited with the court for the use and benefit of the owner pending outcome of the condemnation action, may be entered only upon motion of the condemner and a finding by clear and convincing evidence that the appraisal upon which the original offer is based was the result of a mistake of material fact that was not known and could not reasonably have been known at the time of the original appraisal or was based on a mistake of law.

(3) Unless otherwise agreed to by the condemner and the owner, prior to appraising the property the condemner shall provide not less than 15 days' written notice to the owner of the planned appraisal inspection. The property owner and designated representative, if any, shall be invited to accompany the condemner's appraiser on any inspection of the property for appraisal purposes.

(4) The owner has not less than 40 days from the date the owner receives the initial written offer required by subsection (1) of this section, accompanied by the appraisal or written explanation required by subsection (2) of this section, to accept or reject the offer. If the owner rejects the condemner's offer and obtains a separate appraisal, the owner shall provide the condemner with a copy of the owner's appraisal not less than 60 days prior to trial or arbitration.

(5)(a) Failure to provide the opposing party with a copy of the appropriate appraisal as provided in subsections (2) and (4) of this section shall prohibit the use of the appraisal in arbitration or at trial.

(b) In the event the owner and condemner are unable to reach agreement and proceed to trial or arbitration as provided in subsection (6) of this section, each party to the proceeding shall provide to every other party a copy of every appraisal obtained by the party as part of the condemnation action.

(6)(a) If an action based on the condemnation is filed, the owner may elect to have compensation determined by binding arbitration if the total amount of compensation claimed by any party does not exceed $20,000. Notice of an election of binding arbitration must be given to the condemner at least 90 days prior to the date on which an arbitration hearing is scheduled under ORS 36.420.

(b) Notwithstanding the amounts established under ORS 36.400, if the owner elects to proceed with binding arbitration, the arbitration shall be conducted according to the mandatory arbitration program established under ORS 36.400 to 36.425. Notwithstanding ORS 36.425, no party may request a trial de novo after the filing of the decision and award of the arbitrator. Within 20 days after the filing of the decision and award of the arbitrator under ORS 36.425, any party may file a motion with the court for the vacation, modification or correction of the award. The court may vacate an award only if there is a basis to vacate the award described in ORS 36.705 (1)(a) to (d). The court may modify or correct an award only for the grounds given in ORS 36.710. Except as provided in this subsection, no party may appeal from the decision and award of an arbitrator if the owner elects binding arbitration in lieu of trial.

(c) If the total amount of compensation claimed exceeds $20,000 but is less than $50,000, the owner may elect to have compensation determined by nonbinding arbitration under the applicable provisions of ORS 36.400 to 36.425.

(7) If a trial is held or arbitration conducted for the fixing of the amount of compensation to be awarded to the defendant owner or party having an interest in the property being condemned, the court or arbitrator shall award said defendant costs and disbursements including reasonable attorney fees and reasonable expenses as defined in ORS 35.335 (2) in the following cases, and no other:

(a) If the amount of just compensation assessed by the verdict in the trial exceeds the highest written offer in settlement submitted by condemner to those defendants appearing in the action at least 30 days prior to commencement of said trial; or

(b) If the court finds that the first written offer made by condemner to defendant in settlement prior to filing of the action did not constitute a good faith offer of an amount reasonably believed by condemner to be just compensation.

(8) Costs and disbursements other than reasonable attorney fees and expenses as defined in ORS 35.335 (2) shall be awarded to condemner in all cases other than those in which defendant is entitled to costs and disbursements under subsection (7) of this section. [1973 c.617 §2 (enacted in lieu of 35.345); 1997 c.797 §1; 2003 c.476 §1; 2003 c.598 §33]

Note: Section 2, chapter 476, Oregon Laws 2003, provides:

Sec. 2. The amendments to ORS 35.346 by section 1 of this 2003 Act apply only to actions for condemna-

tion filed on or after the effective date of this 2003 Act [January 1, 2004]. [2003 c.476 §2]

35.348 Immediate possession of property. Notwithstanding ORS 35.346, if a condemner determines that an emergency that poses a threat to persons or property exists and that immediate possession of the property is necessary, the condemner may immediately file a condemnation action after making an initial written offer under ORS 35.346 (1) accompanied by the appraisal or explanation required by ORS 35.346 (2). [1997 c.797 §3; 2003 c.476 §3]

35.355 Appeal. Either party to the action may appeal from the judgment in like manner and with like effect as in ordinary cases, but the appeal shall not stay the proceedings so as to prevent the condemner from taking possession of the property and using it for the purposes for which it is being appropriated. In the event the defendant prevails on an appeal, the costs and disbursements of the defendant, including a reasonable attorney fee to be fixed by the court, shall be taxed by the clerk and recovered from the condemner. [1971 c.741 §19]

35.365 Effect of withdrawal of award; disposition of award. If the defendant withdraws the compensation awarded by the court or jury, the defendant waives the right of appeal; and, if the defendant does not, such sum shall remain in the control of the court, to abide the event of the appeal. If an unknown owner of the property or other defendant does not appear and claim the sum, it shall be invested for the benefit of whom it may concern, as in case of unclaimed moneys in the sale and partition of lands. [1971 c.741 §20]

35.375 Chapter as exclusive condemnation proceeding; exception. Except for procedures provided in ORS chapter 368, any action for the condemnation of property under the power of eminent domain shall be conducted according to this chapter. [1971 c.741 §3; 1979 c.873 §3; 1981 c.153 §52]

35.385 Public purpose use required of condemner; right of repurchase; specification of duration of public purpose use; effect. (1) If real property is acquired by a condemner by agreement with the owner of such property after commencement of an action under ORS 35.245 for the appropriation of such property but prior to judgment in such action, the condemner and the owner shall:

(a) Specify in such agreement for the real property a reasonable period within which the real property must be used by the condemner for a public purpose or specify a 10-year period for such use and provide that the right of repurchase of the real property or any portion thereof may be exercised as provided in ORS 35.385 to 35.415; or

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(2) If real property is acquired by a condemner under this chapter by judgment given in a condemnation action under ORS 35.325, the court shall:

(a) Specify in the judgment a reasonable period within which the real property must be used by the condemner for a public purpose or specify a 10-year period, and provide that the right of repurchase may be exercised with respect to the real property as provided in ORS 35.385 to 35.415; or

(b) Specify that the right of repurchase of the real property has been waived by the owner and, in such case, not specify a period within which the real property must be used by the condemner for a public purpose.

(3) For the purposes of subsection (2)(a) of this section, the resolution or ordinance of the condemner is presumptive evidence that the period of time that is proposed by the condemner is a reasonable period in which the real property must be used by the condemner for a public purpose; provided, however, that if the resolution or ordinance specifies a 10-year period or less, neither the owner nor a designated beneficiary of the owner can contest the reasonableness of the period specified. [1973 c.720 §2]

35.390 Effect of failure of condemner to use property as required; price of repurchase; form of offer of repurchase. (1) If a condemner fails to use the real property or any portion thereof acquired under this chapter within the time specified in an agreement entered into under ORS 35.385 (1) or with the terms of a judgment given under ORS 35.325 and 35.385 (2), whichever applies, and the prior owner of the real property has not waived the right to repurchase the real property, the condemner shall offer such property or any portion thereof, that has not been used for a public purpose within the specified period, to the prior owner or the beneficiary of the prior owner designated as provided in ORS 35.400. The condemner shall, at its expense, insure the title to any property or portion thereof conveyed or vested in the owner or beneficiary under any provision of ORS 35.385 to 35.415, free and clear of any and all encumbrances except those subject to which the condemner originally took such property.

(2) The prior owner or beneficiary described in subsection (1) of this section may repurchase from the condemner the real

property that is subject to the right of repurchase for a price equal to the sum of the compensation and damages paid by the condemner for the real property plus interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(3) If only a portion of the real property acquired by a condemner is subject to the right of repurchase under ORS 35.385 to 35.415, the prior owner or beneficiary may acquire such portion for a price equal to the sum of:

(a) The fair cash market value of the portion subject to the right of repurchase, as of the date of the commencement of any action subject to ORS 35.385;

(b) The damages for diminution in value of the remainder, if any, of the former owner's property not so acquired, as of the date of the commencement of any action subject to ORS 35.385; and

(c) Interest at the rate of seven percent per year from the date of the conveyance of the real property by the prior owner to the condemner.

(4) The offer to repurchase only a portion of real property as provided in subsection (1) of this section and ORS 35.400 (3), shall be in writing and shall include the price for repurchase as determined by the condemner, including an itemization of the components thereof, pursuant to subsection (3) of this section. [1973 c.720 §3; 2003 c.14 §19]

35.395 Change in period of use; notice; effect of failure to agree on change; review by court. (1) The period specified in an agreement or judgment as provided in ORS 35.385 may be changed as provided in this section, if the prior owner of the real property has not waived the right of repurchase and the condemner finds that it will be unable to use all or a portion of the real property for such purpose within the specified period and requires a reasonable extension of such period for the completion of its project on the real property.

(2) Upon a finding under subsection (1) of this section, a condemner shall notify the prior owner or designated beneficiary of the requested change in period. The condemner shall negotiate with the prior owner or beneficiary on the requested change.

(a) Notification under this subsection shall consist of mailing a letter by certified mail to the last address of the prior owner or the designated beneficiary of the owner as shown in the agreement or judgment whereby the real property was acquired or the address subsequently supplied by such owner or beneficiary. If no response has been received by the condemner within 60 days after receipt of notice by the owner or designated beneficiary, all the rights of the owner or designated beneficiary under ORS 35.385 to 35.415 shall be considered waived.

(b) If the condemner cannot locate the prior owner or the designated beneficiary of the owner at the last-known address of the owner or the designated beneficiary, notice may be effected by publication. The publication shall be made in a newspaper published in the county where the property is located, or if no newspaper is published in the county, then in a newspaper designated as being most likely to give notice to the prior owner or the beneficiary of the prior owner. The newspaper utilized shall meet the requirements of ORS 193.020. The notice shall contain the name of the public project, a general description of the location of the property, the change in purpose or extension of time desired by the condemner and a time within which the owner or the beneficiary of the owner must respond to the notice. The notice shall be published not less than once each week for four weeks. The publication of notice may be directed to one or more owners or beneficiaries affected by the same project. If no response is received by the condemner within 10 days after the date of the last publication of notice, all rights of the prior owner or designated beneficiary shall be considered waived.

(3) If, after negotiation, the prior owner or beneficiary and the condemner agree on the proposed change in period, the period as changed shall, for the purposes of ORS 35.385 to 35.415, be considered the period as specified in the agreement or judgment under ORS 35.385. In the case of real property acquired by a condemner by judgment under ORS 35.325, the condemner shall notify the court by which the judgment was given of the agreed upon change in period and the court shall modify such judgment accordingly.

(4) If the prior owner or beneficiary and the condemner cannot, after negotiation, agree on the proposed change in period, the condemner may:

(a) In the case of real property acquired by an agreement under ORS 35.235 (1), petition the circuit court for the county within which such real property is situated for a hearing to determine whether the proposed change in period is reasonable and necessary in the public interest; or

(b) In the case of real property acquired by a judgment given under ORS 35.325, petition the court by which such judgment was given for a hearing to determine whether it is reasonable and necessary in the public interest to modify such judgment to permit the proposed change in period. The condemner in

its petition may include as parties and serve all or any owners and designated beneficiaries whose property is affected by the same project.

(5) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is reasonable and necessary in the public interest, the court shall grant such change. For the purposes of ORS 35.385 to 35.415, a period as changed by the court shall be considered the period specified in the agreement or judgment described in ORS 35.385. For the purposes of this subsection, the resolution or ordinance of the condemner is presumptive evidence that the change in period proposed by the condemner is reasonable and necessary in the public interest.

(6) If, after a hearing under subsection (4) of this section, the court finds that the proposed change in period is unreasonable or not necessary in the public interest, the court shall deny the requested change. In such case, the terms of the original agreement or judgment shall control for the purpose of the exercise of the right of repurchase under ORS 35.385 to 35.415. [1973 c.720 §4]

35.400 Designation of person to exercise right of repurchase; effect of failure to designate; offer to repurchase; acceptance; notice; determination of price. (1) At the time of entering into an agreement pursuant to ORS 35.385 (1) for the acquisition of real property by a condemner or prior to the time of giving judgment for the acquisition of real property by a condemner under ORS 35.325, the owner of the real property to be acquired may, if such owner has not waived the right of repurchase under ORS 35.385 to 35.415, designate a person to exercise such right of repurchase. Such designation shall constitute an assignment of the right of the owner of such property to exercise the right of repurchase otherwise available under ORS 35.385 to 35.415. The name and address of the person so designated shall be included in such agreement or judgment. Such owners and designated beneficiaries shall also notify the condemner in writing of any change of address so that their respective current addresses shall be of record with the condemner. The person so designated may not assign or transfer the right of repurchase.

(2) If an owner of real property to be acquired by a condemner does not designate a person to exercise the right of repurchase under ORS 35.385 to 35.415 and such owner has not waived such right of repurchase, only the owner may exercise the right of repurchase under ORS 35.385 to 35.415. If such owner dies while real property is still subject to a right of repurchase by the owner, the personal representative of such owner's estate may act as the owner to exercise the right of repurchase with respect to such property on behalf of the estate of the owner at any time prior to the discharge of the personal representative under ORS 116.213.

(3) Upon receipt from a condemner of an offer to repurchase any real property or portion thereof in accordance with ORS 35.385 to 35.415:

(a) In the case of an offer to repurchase the entire parcel of real property to which ORS 35.385 applies, if the owner or beneficiary of such right of repurchase does not accept such offer within 30 days, the right of repurchase is terminated and the condemner may use and dispose of such property or portion as otherwise provided by law.

(b) In the case of an offer to repurchase only a portion of a parcel of real property to which ORS 35.385 applies, the owner or beneficiary of such right of repurchase may:

(A) Accept such offer within 30 days; or

(B) Notify the condemner within 30 days of the desire of the owner or beneficiary to exercise such right, but refuse to accept the price established by the condemner in the offer to repurchase made pursuant to ORS 35.390 (4).

(c) If the owner or beneficiary of the right of repurchase fails to timely notify the condemner pursuant to either paragraph (b)(A) or (B) of this subsection, the right of repurchase is terminated and the condemner may use or dispose of such portion of property as otherwise provided by law.

(d) If timely notice of intent to exercise the right of repurchase is given by the owner or beneficiary as provided by paragraph (b)(B) of this subsection, the owner or beneficiary must within 60 days thereafter commence an action, in the court in which the original action by the condemner to acquire such real property was commenced, to determine the sole issue of the price to be paid upon such repurchase, pursuant to the provisions of ORS 35.390 (3). Failure to commence such an action within such 60-day period shall void such notice of intention to exercise repurchase for the purposes of paragraph (c) of this subsection.

(A) Upon the determination of the price for repurchase by the court or jury, the court shall give judgment vesting title to the property in the owner or the beneficiary, conditioned upon payment into court of the assessed price by the owner or beneficiary within 90 days after the date of the judgment; and upon the making of such payment, the judgment shall become effective to convey the property and the right of possession

thereof to the owner or beneficiary. Failure to make such payment into court within 90 days of the date of the judgment shall void the notice of intent to exercise the right of repurchase for the purposes of paragraph (c) of this subsection, and the judgment shall be withdrawn by the court.

(B) If the price determined pursuant to the provisions of this paragraph is less than the price established by the condemner in its written offer to repurchase, the costs and disbursements of the owner or beneficiary, as specified in ORS 35.335 and 35.346, shall be taxed by the clerk; and the judgment rendered shall reflect such costs and disbursements only as an offset against the price to be paid into court by the owner or beneficiary. [1973 c.720 §5]

35.405 Designation of person to exercise right of repurchase by multiple owners. Notwithstanding any other provision of ORS 35.385 to 35.415, in any instance in which ORS 35.385 applies, where the agreement by which the condemner acquired the property is executed by more than one person exclusive of the condemner, or where the judgment given in a condemnation action by which the condemner acquired the property includes more than one named defendant, all such persons executing such agreement, or all such named defendants must designate one person to act as beneficiary in the exercise of the right of repurchase, unless all such persons executing such agreement, or all such named defendants, waive such right of repurchase as provided in ORS 35.385 to 35.415. Such designated beneficiary thereafter shall exclusively have and exclusively may exercise all rights, remedies and obligations provided in ORS 35.385 to 35.415. [1973 c.720 §6]

35.410 Right to contest change in public purpose use; notice of proposed change. A prior owner of real property acquired pursuant to an agreement entered into under ORS 35.385 (1) or a judgment given under ORS 35.235 and 35.385 (2), whichever applies, or the designated beneficiary of such owner, may contest any proposed change by the condemner in the public purpose for which such real property was acquired in the manner provided for contesting a change in the period specified for the use of such real property by the condemner under ORS 35.395 (4). The resolution or ordinance of the condemner is presumptive evidence that a proposed change of use proposed by the condemner is reasonable and necessary in the public interest. Each condemner proposing any such change in public purpose shall notify each such owner or designated beneficiary of such proposed change and the reasons therefor in the manner provided in ORS 35.395 (2) for notification of a proposed change in the period specified for use of such real property by the condemner. Each such notice shall be mailed to the most recent address of the owner or designated beneficiary of record with the condemner. [1973 c.720 §7]

35.415 Application of ORS 35.385 to 35.415. (1) ORS 35.385 to 35.415 applies only to property acquired after the filing of a complaint pursuant to a resolution or ordinance adopted as provided in ORS 35.235 (1) on or after October 5, 1973, and for which a condemnation action is commenced on or after October 5, 1973.

(2) Notwithstanding ORS 35.375, ORS 35.385 to 35.415 applies to real property acquired by a county pursuant to ORS chapter 368.

(3) ORS 35.385 to 35.415 shall not apply to any real property acquired under ORS 35.385 (1) and (2) after the date the real property is used for the purpose for which it was acquired nor shall ORS 35.385 to 35.415 apply to any tract of real property where the compensation and damages paid to the owner is less than $1,000. [1973 c.720 §8; 1981 c.153 §53]

RELOCATION OF DISPLACED PERSONS

35.500 Definitions for ORS 35.500 to 35.530. As used in ORS 35.500 to 35.530:

(1) "Displaced person" means any person who moves, or is required to move the person's residence and personal property incident thereto, or the person's business or farm operation as a result of:

(a) Acquisition of the real property, in whole or in part, by a public entity; or

(b) Receipt of a written order by such person from a public entity to vacate the property for public use.

(2) "Federal Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646, 42 U.S.C. 4601 et seq.) as in effect on January 1, 2003.

(3) "Public entity" includes the state, a county, a city, a consolidated city-county as defined in ORS 199.705 (1), a district, public authority, public agency and any other political subdivision or public corporation in the state when acquiring real property or any interest therein for public use. "Public entity" also includes a private corporation that has the power to exercise the right of eminent domain.

(4) "Public use" means a use for which real property may be acquired by a public entity as provided by law.

(5) "Real property" or any interest therein includes tenements and hereditaments, and includes every interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in such tenements and hereditaments. [Formerly 281.045]

35.505 Relocation within neighborhood; notice prior to move; costs and allowances. (1) A public entity undertaking urban renewal or neighborhood development shall make all reasonable efforts to insure that all displaced persons shall have the option to relocate within their urban renewal or development neighborhood or area and shall not be displaced, except temporarily as required by emergency, until appropriate residential units shall become available to them within their neighborhood or area and within their financial means.

(2) Except as required by emergency, no displaced person shall be required to move from any real property without first having written notice from the public entity at least 90 days prior to the date by which the move is required. In no case shall any displaced person be required to move until the public entity notifies the person in writing of all costs and allowances to which such person may become entitled under federal, state or local law. [Formerly 281.055]

35.510 Duties of public entities acquiring real property. Whenever any program or project is undertaken by a public entity which program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204 and 206 of the Federal Act;

(2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired the services described in section 205 of the Federal Act on the conditions prescribed therein;

(3) In acquiring the real property, be guided by the land acquisition policies in sections 301 and 302 of the Federal Act;

(4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the Federal Act;

(5) Share costs of providing payments and assistance with the federal government in the manner and to the extent required by sections 211 (a) and (b) of the Federal Act; and

(6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing and take such other actions as may be necessary to comply with the conditions and requirements of the Federal Act. [Formerly 281.060]

35.515 Required disclosures for business and farm operations. To be eligible for the payment authorized by ORS 35.510, a business or farm operation must make its state income tax returns and its financial statements and accounting records available for audit for confidential use to determine the payment authorized. [Formerly 281.070]

35.520 Decision on benefits; hearing; review. Any person who applies for relocation benefits or assistance under ORS 35.510 shall receive the public entity's written decision on the application which shall include the statement of the amount awarded, if any, the statutory basis for the award, and the statement of any finding of fact that the public entity made in arriving at its decision. A person aggrieved by said written decision shall be entitled to a hearing substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470, unless federal, state or local law provides otherwise. Notice required by ORS 183.415 must be served within 180 days of the receipt of the written decision by the aggrieved party. The decision of the public entity shall be reviewable pursuant to ORS 183.480. [Formerly 281.085]

35.525 Construction. Nothing in ORS 35.510, 35.515 or 35.520 shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to May 7, 1971. [Formerly 281.090]

35.530 Federal law controls. If a public entity is receiving federal financial assistance and is thereby required to comply with applicable federal laws and regulations relating to relocation assistance, such federal laws and regulations shall control should there be any conflict with ORS 35.500 to 35.530. [Formerly 281.105]

CONDEMNATION BY STATE

35.550 Definitions for ORS 35.550 to 35.575. As used in ORS 35.550 to 35.575:

(1) "Property" means real property, water, watercourses, and water and riparian rights, or any right or interest therein.

(2) "Board" means:

(a) The state board of commissioners, trustees, or other state board, having direction of the state department or institution for which the property is desired; or

(b) The Department of State Lands, if there is no other state board for the depart-

ment or institution for which the property is sought to be acquired. [Formerly 281.210]

35.555 Determination of necessity; suit by Attorney General. Whenever the state requires property for any public use, the necessity for the acquisition to be decided and declared in the first instance by the board, if the board and the owner of such property cannot agree upon the price to be paid for the amount of or interest in the property required for such public use, and the damages for the taking thereof, the board may request the Attorney General to, and the Attorney General shall when so requested, commence and prosecute in any court of competent jurisdiction in the name of the State of Oregon any necessary or appropriate suit, action or proceeding for the condemnation of the amount of or interest in the property required for such purposes and for the assessment of the damages for the taking thereof. [Formerly 281.220]

35.560 Action by district attorney. The district attorney of the judicial district in which the property to be condemned lies shall:

(1) Commence and prosecute the suit, action or proceeding in the circuit court of such district, when requested by the board; or

(2) Aid the Attorney General in so doing in any manner requested by the Attorney General. [Formerly 281.230]

35.565 Procedure for condemnation. The procedure in the suit, action or proceeding referred to in ORS 35.555 or 35.560 shall be, as far as applicable, the procedure prescribed by law for the condemnation of lands or rights of way by public corporations or quasi-public corporations for public use or for corporate purposes. [Formerly 281.240]

35.570 Payment of expenses of proceeding, value and damages. The expenses of the condemnation proceeding, the value of the property, and the damages for the taking thereof, shall be paid out of the funds provided for the department or institution for which the property is acquired in the same manner as other expenses for like purposes of such department or institution are paid. If no funds have been provided out of which the same can be paid, payment shall be made out of any funds in the treasury not otherwise appropriated, and the Oregon Department of Administrative Services is authorized to draw a warrant on the treasurer therefor. [Formerly 281.250]

35.575 Precondemnation compensation not required. ORS 35.550 to 35.575 do not require the state to make or tender compensation prior to condemning and taking possession of the lands or property. [Formerly 281.260]

CONDEMNATION OF PROPERTY ADJOINING PROPOSED ROADWAYS

35.600 Application. ORS 35.600 to 35.625 apply to all condemners other than the state. [Formerly 281.505]

35.605 Authorization to acquire adjoining property for roadways. (1) Every condemner having the right to purchase, acquire, enter upon and appropriate land and property for establishing, laying out, widening, enlarging or extending roads, streets or highways, may purchase, acquire, enter upon and appropriate, in or in connection with establishing, laying out, widening, enlarging or extending roads, streets or highways, land and property immediately adjoining the proposed boundaries of such roads, streets or highways.

(2) The authority conferred by subsection (1) of this section does not extend to the purchase, acquisition, entering upon or appropriation of any adjoining land or property situate more than 100 feet distant from or beyond the proposed boundaries of any such road, street or highway, or of any such adjoining land or property that constitutes the whole or any part of a platted lot or tract of rectangular shape and having an area of 5,000 square feet or more and its shorter dimension not less than 50 feet in length, or that constitutes the whole or any part of any tract of land in common ownership of like shape and having like minimum area and dimensions. [Formerly 281.510]

35.610 Ordinance or resolution required. Before the right to purchase, acquire, enter upon and appropriate any adjoining land or property under ORS 35.605 is exercised by any condemner, the governing body shall by appropriate ordinance or resolution describe the land to be purchased, acquired, entered upon or appropriated, and shall further determine that the appropriation of such land is reasonably necessary to protect the full use and enjoyment by the public of the road, street or highway. [Formerly 281.520]

35.615 Restrictions on future use of property acquired adjacent to roadway. After an appropriation of land and property authorized by ORS 35.605 has been made, the land and property so appropriated adjoining the boundaries of any road, street or highway and not actually occupied by the road, street or highway, may, by appropriate ordinance or resolution, be declared subject to and burdened with the restrictions upon the future use and occupation thereof that are considered necessary for protecting the full use and enjoyment by the public of the road,

street or highway. Such land and property may thereafter be sold by the condemner subject to the declared restrictions and the proceeds of the sale applied and accounted for as may be provided by the charter, charter ordinances or ordinances of, or law governing the condemner. The deed or other conveyance of such land and property shall contain the restrictions and all such land and property shall be sold, burdened with and subject to the restrictions. [Formerly 281.530]

35.620 Acquisition of land adjoining road boundaries declared necessary. The purchase, acquisition, entering upon and appropriation of lands and property immediately adjoining the boundaries of roads, streets or highways, as defined and limited in, and to the extent authorized by, ORS 35.600 to 35.625 is declared to be necessary for the development and welfare of the state and its inhabitants and to be a public use. [Formerly 281.540]

35.625 Procedure to ascertain compensation and damages. If private property is appropriated for the public use as authorized by ORS 35.605, and the compensation and damages arising from the appropriation cannot be agreed upon, the appropriation shall be made and the compensation and damages shall be considered, ascertained, determined, awarded and paid in the manner provided by this chapter. [Formerly 281.550]

Chapter 98
(Partial)

2003 EDITION

Lost, Unordered and Unclaimed Property; Unlawfully Parked Vehicles

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98.640 Owner's duty to remove trees, logs, poles or piling deposited on state highways

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REMOVAL OF TREES OR LOGS FROM COUNTY ROADS OR STATE HIGHWAYS

98.640 Owner's duty to remove trees, logs, poles or piling deposited on state highways. (1) No person shall place or deposit any trees, timber, logs, poles or piling upon the right of way of any state highway or upon any real property adjacent thereto which is owned by the state, by and through its Department of Transportation, except with permission of any duly authorized weighmaster, motor carrier enforcement officer or peace officer given in connection with the removal of portions of loads, which removal is pursuant to ORS 810.490.

(2) Any trees, timber, logs, poles or piling so placed or deposited whether pursuant to said permission of a weighmaster, motor carrier enforcement officer or peace officer or accidentally or in violation of this section, or which have fallen, dropped or been blown upon said right of way or said adjacent property, shall be removed by the owner thereof within a period of not more than 30 days. [1953 c.312 §1; 1983 c.338 §884; 1993 c.741 §103]

98.642 Effect of failure to remove trees, logs, poles or piling. Any trees, timber, logs, poles or piling which remain for a period of more than 30 days upon the right of way of any state highway or upon real property adjacent thereto which is owned by the state, by and through its Department of Transportation, shall be conclusively presumed abandoned, and title thereto shall vest in the state, by and through its Department of Transportation, and the department is hereby authorized to remove, destroy, sell or otherwise dispose of the same. [1953 c.312 §2]

98.644 ORS 98.640 and 98.642 inapplicable to certain trees, logs, poles or piling. The provisions of ORS 98.640 and 98.642 shall not apply to trees, timber, logs, poles or piling which have been placed or deposited or allowed to remain upon the right of way of a state highway or real property adjacent thereto under the provisions of a permit granted by the Department of Transportation, nor to poles erected upon the right of way of a state highway for the purpose of carrying telegraph, telephone or electric lines or wires. [1953 c.312 §3]

98.650 Owner's duty to remove trees, logs, poles or piling deposited on county roads. (1) No person shall place or deposit any trees, timber, logs, poles or piling upon the right of way of any county road, except with permission of any duly authorized weighmaster or peace officer given in connection with the removal of portions of loads, which removal is pursuant to ORS 810.490.

(2) Any trees, timber, logs, poles or piling so placed or deposited, accidentally or in violation of this section, or which have fallen, dropped or been blown upon said right of way, shall be removed by the owner thereof within a period of not more than 30 days. [1953 c.339 §1; 1983 c.338 §885]

98.652 Effect of failure to remove trees, logs, poles or piling. Any trees, timber, logs, poles or piling which remain for a period of more than 30 days upon the right of way of any county road shall be conclusively presumed abandoned, and title thereto shall vest in the county having jurisdiction over such county road, and the county court or board of county commissioners of said county may remove, destroy, sell or otherwise dispose of the same. [1953 c.339 §2]

98.654 ORS 98.650 and 98.652 inapplicable to certain trees, logs, poles or piling and to certain county roads. The provisions of ORS 98.650 and 98.652 shall not apply to trees, timber, logs, poles or piling which have been placed or deposited or allowed to remain upon the right of way of a county road under the provisions of a permit granted by the county court or board of county commissioners having jurisdiction over said county road, nor to poles placed upon the right of way of a county road under authority of ORS 758.010 or 758.020, nor to any county road which is not maintained for public travel by the county court or board of county commissioners of the county in which the road is located. [1953 c.339 §3]

DISPOSITION OF UNLAWFULLY PARKED VEHICLES

98.805 Definitions for ORS 98.810 to 98.818. As used in ORS 98.810 to 98.818:

(1) "Owner of a parking facility" means:

(a) The owner, lessee or person in lawful possession of a private parking facility; or

(b) Any officer or agency of this state with authority to control or operate a parking facility.

(2) "Owner of proscribed property" means the owner, lessee or person in lawful possession of proscribed property.

(3) "Parking facility" means any property used for motor vehicle parking.

(4) "Proscribed property" means any part of private property:

(a) Where parking is not normally permitted at all; or

(b) That is used primarily for residences, including but not limited to houses and apartments, where there is designated parking for not more than 10 vehicles. [1979 c.100 §2; 1981 c.861 §23; 1983 c.436 §2]

98.810 Unauthorized parking of vehicle at proscribed property prohibited. No person, without the permission of:

(1) The owner of a parking facility, shall leave or park any vehicle on the parking facility if there is a sign displayed in plain view at the parking facility prohibiting public parking thereon or restricting parking thereon.

(2) The owner of proscribed property, shall leave or park any vehicle on the proscribed property whether or not there is a sign prohibiting or restricting parking on the proscribed property. [1953 c.575 §1; 1979 c.100 §3; 1981 c.861 §24; 1983 c.436 §3]

98.812 Storage of unlawfully parked vehicle; lien for storage charges; notice requirements. (1) If a motor vehicle has been left or parked in violation of ORS 98.810, the owner of the parking facility or the owner of the proscribed property, after notice to the local law enforcement agency, may have the motor vehicle towed from the parking facility or the proscribed property and placed in storage at a public garage or public parking lot.

(2) The garagekeeper or public parking operator is entitled to a lien on the vehicle and its contents for the garagekeeper's or operator's just and reasonable charges and may retain possession thereof until the just and reasonable charges for the towage, care and storage of the vehicle have been paid if the garagekeeper or public parking operator complies with the following requirements:

(a) The garagekeeper or public parking operator shall notify the local law enforcement agency of the location of the vehicle within one hour after the vehicle is placed in storage;

(b) If the unclaimed vehicle is registered in Oregon, the garagekeeper or public parking operator shall give notice, within 15 days after the vehicle is placed in storage, to the vehicle owner or any other person with an interest in the vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the garagekeeper or public parking operator fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the vehicle; and

(c) If the unclaimed vehicle is not registered in Oregon, the garagekeeper or public parking operator shall, within 15 days after the vehicle is placed in storage, notify and request the title information and the name, address and telephone number of the vehicle owner from the motor vehicle agency for the state in which the vehicle is registered. The garagekeeper or public parking operator shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the vehicle owner or any other person with an interest in the vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received within that period, but within a reasonable time. If the garagekeeper or public parking operator fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the vehicle.

(3) The lien created by subsection (2) of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152. [1953 c.575 §2; 1977 c.634 §1; 1979 c.100 §4; 1981 c.861 §25; 1983 c.436 §4; 1993 c.385 §2; 2001 c.424 §1]

98.818 Preference of lien. The lien created by ORS 98.812 shall have preference over any and all other liens or encumbrances upon such motor vehicle. [1953 c.575 §3]

98.830 Towing abandoned vehicle from private property; conditions. A person who is the owner, or is in lawful possession, of private property on which a motor vehicle has been abandoned may have the motor vehicle towed from the property if:

(1) The person affixes a notice to the vehicle stating that the vehicle will be towed if it is not removed. The notice required by this subsection must remain on the vehicle for 72 hours before the vehicle may be removed.

(2) The person notifies the local law enforcement agency of the intent to have the vehicle towed.

(3) The person fills out and signs a form that includes:

(a) A description of the vehicle to be towed;

(b) The location of the property from which the vehicle will be towed; and

(c) A statement that the person has complied with subsections (1) and (2) of this section. [1995 c.758 §1]

98.835 Immunity from civil liability for towing abandoned vehicle; lien for towing, storage and care. (1) A person who tows a vehicle pursuant to ORS 98.830 is immune from civil liability for towing the vehicle if the person has a form described in ORS 98.830 (3), filled out by a person purporting to be the owner or a person in lawful possession of the private property from which the vehicle is towed. This subsection does not grant immunity for any loss, damage or injury arising out of any negligent or willful damage to, or destruction of, the vehicle that occurs during the course of the towing.

(2) The person who tows a vehicle pursuant to ORS 98.830 is entitled to a lien on the vehicle and its contents for the person's just and reasonable charges and may retain possession thereof until the just and reasonable charges for the towage, care and storage of the vehicle have been paid if the person complies with the following requirements:

(a) The person shall notify the local law enforcement agency of the location of the vehicle within one hour after the vehicle is placed in storage;

(b) If the unclaimed vehicle is registered in Oregon, the person shall give notice by certified mail, within 15 days after the vehicle is placed in storage, to the vehicle owner and any other person with an interest in the vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the person who tows the vehicle fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the vehicle; and

(c) If the unclaimed vehicle is not registered in Oregon, the person shall, within 15 days after the vehicle is placed in storage, notify and request the title information and the name, address and telephone number of the vehicle owner from the motor vehicle agency for the state in which the vehicle is registered. The person shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the vehicle owner or any other person with an interest in the vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received within that period, but within a reasonable time. If the person fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the vehicle.

(3) The lien created by subsection (2) of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152. [1995 c.758 §2; 2001 c.424 §2]

98.840 Towing vehicle alternative to procedure in ORS 98.810 to 98.818. The procedure authorized by ORS 98.830 and 98.835 for removal of abandoned motor vehicles from private property may be used by persons described in ORS 98.805 as an alternative to the procedures described in ORS 98.810 to 98.818. [1995 c.758 §4]

Chapter 171
(Partial)

2003 EDITION

State Legislature

TRANSPORTATION COMMITTEE

171.595 Joint Legislative Committee on Transportation

171.600 Authority of committee

TRANSPORTATION COMMITTEE

171.595 Joint Legislative Committee on Transportation. (1) The Legislative Committee on Transportation is established as a joint committee of the Legislative Assembly.

(2) The committee shall consist of five members of the House of Representatives appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the President of the Senate. If possible, at least one of the members appointed by each appointing authority shall have served on the committee in the preceding interim between legislative sessions.

(3) The appointing authorities shall appoint members of a new committee within 30 days after the convening of the Legislative Assembly in regular session.

(4) If the Speaker of the House of Representatives or the President of the Senate is a member of the committee, either may designate an alternate from among the members of the respective house from time to time to exercise powers as a member of the committee when the Speaker or the President is not in attendance at a meeting of the committee. The alternate shall not preside if the Speaker or President is a cochairperson of the committee.

(5) The term of a member of the committee shall expire upon the convening of the Legislative Assembly in regular session next following the member's appointment. Vacancies occurring in the membership of the committee shall be filled by the appointing authority.

(6) The committee has a continuing existence and may meet, act and conduct its business during the sessions of the Legislative Assembly, or any recess thereof, and in the interim period between sessions. During the sessions of the Legislative Assembly, the committee shall conduct its business as a joint committee.

(7) Each appointing authority shall designate a cochairperson for the committee. The cochairpersons shall preside alternately over meetings of the committee when the committee meets as a joint committee.

(8) The committee may appoint advisory committees or subcommittees, which may include individuals other than members of the Legislative Assembly. A member of an advisory committee or subcommittee appointed under this subsection who is not a member of the Legislative Assembly shall be compensated and reimbursed in the manner provided in ORS 292.495.

(9) The Legislative Administration Committee shall provide staff necessary to the performance of the functions of the Legislative Committee on Transportation. The committee shall use the services of permanent legislative staff to the greatest extent practicable. [1999 c.1039 §1]

171.600 Authority of committee. The Legislative Committee on Transportation may:

(1) Review policies, laws and regulations related to administration, operation, planning, design, construction and maintenance of highways.

(2) Review policies, laws and regulations related to motor vehicles and other modes of transportation.

(3) Study any other issue or policy related to transportation as authorized by the Speaker of the House of Representatives or the President of the Senate.

(4) Make recommendations to the Legislative Assembly on any subject the committee is authorized to review or study. [1999 c.1039 §2]

Chapter 183

2003 EDITION

Administrative Procedures Act; Legislative Review of Rules; Civil Penalties

ADMINISTRATIVE PROCEDURES ACT

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183.025 [Formerly 182.065; 1993 c.729 §4; 2003 c.749 §8; renumbered 183.750 in 2003]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

183.090 [1991 c.734 §2; 1997 c.387 §3; 2001 c.621 §71; renumbered 183.745 in 2003]

ADMINISTRATIVE PROCEDURES ACT

(General Provisions)

183.310 Definitions for this chapter. As used in this chapter:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "Hearing officer" includes an administrative law judge.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency. "Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state; and

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1; 2003 c.75 §71]

183.315 Application of provisions of Administrative Procedures Act to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240.

(3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to the Public Utility Commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190. [1971 c.734 §19; 1973 c.612 §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §45; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §21; 1989 c.90 §1; 1997 c.26 §1; 1999 c.448 §6; 1999 c.679 §1; 2003 c.64 §8]

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

(Adoption of Rules)

183.325 Delegation of rulemaking authority to named officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of this chapter. [1979 c.593 §10; 1993 c.729 §1]

183.330 Description of organization; service of order; rules coordinator; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

(c) Keep and make available the mailing list required by ORS 183.335 (8).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8; 1993 c.729 §2; 2001 c.220 §3]

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 §2]

183.333 Policy statement; public involvement in development of policy and drafting of rules. (1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue. [2003 c.749 §4]

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize

available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under the provisions of subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by bracketing material to be deleted and showing all new material in boldfaced type.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Comments of the committees submitted under subsection (16) of this section.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Correcting spelling;

(c) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule; or

(d) Correcting statutory references.

(8) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.025 to 279.031 and 279.310 to 279.990 relating to public contracts and purchasing.

(11)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who

would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2; 1993 c.729 §3; 1995 c.652 §5; 1997 c.602 §3; 1999 c.123 §1; 1999 c.334 §1; 2001 c.220 §1; 2001 c.563 §1; 2003 c.749 §5]

Note: The amendments to 183.335 by section 206, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section shall state the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under the provisions of subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by bracketing material to be deleted and showing all new material in boldfaced type.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Comments of the committees submitted under subsection (16) of this section.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Correcting spelling;

(c) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule; or

(d) Correcting statutory references.

(8) Any person may request in writing that an agency mail to the person copies of its notices of intended action given pursuant to subsection (1) of this section. Upon receipt of any request the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing and maintaining the mailing lists current and, by rule, establish fees necessary to defray the costs of mailings and maintenance of the lists.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) No rule is valid unless adopted in substantial compliance with the provisions of this section in effect on the date the rule is adopted.

(b) In addition to all other requirements with which rule adoptions must comply, no rule adopted after October 3, 1979, is valid unless submitted to the Legislative Counsel under ORS 183.715.

(12) Notwithstanding the provisions of subsection (11) of this section, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, so long as the noncompliance did not substantially prejudice the interests of persons to be affected by the rule. However, this subsection does not authorize correction of a failure to comply with subsection (2)(b)(E) of this section requiring inclusion of a fiscal impact statement with the notice required by subsection (1) of this section.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal.

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an

agency of the federal government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in ORS 183.630, any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) Except as provided in ORS 183.630, all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12; 1997 c.837 §1; 1999 c.849 §§24,25; 2003 c.75 §28]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like na-

ture the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279.833. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13; 1991 c.169 §2]

Note: The amendments to 183.355 by section 207, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

183.355. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection, and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule;

(c) Contains executive orders of the Governor; and

(d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157 extending tax statutes of limitation.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications. [1957 c.717 §4 (1),(2),(3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16; 1993 c.729 §13; 1995 c.79 §62; 2001 c.104 §63; 2003 c.168 §3]

183.362 Program for biennial publication of Oregon Administrative Rules. (1) Notwithstanding ORS 183.360, the Secretary of State may implement a program for the publication of the Oregon Administrative Rules not less than once every two years with annual supplements. The Secretary of State may implement a program under this section only if the Secretary of State publishes the full text of proposed administrative rules in the manner specified by this section.

(2) Except as provided in subsection (3) of this section, upon implementing a program under this section the Secretary of State shall require that an agency submit the full text of the proposed rule in addition to information required to be published under the provisions of ORS 183.335 (1). Except as provided in subsection (3) of this section, the Secretary of State shall publish the full text of the proposed rule in the bulletin referred to in ORS 183.360.

(3) The Secretary of State may waive the submission of the full text of a proposed administrative rule and decline to publish the full text of the proposed rule in the bulletin referred to in ORS 183.360 if:

(a) The proposed rule is unusually voluminous; and

(b) In addition to the information provided by the agency under the provisions of ORS 183.335 (2) the agency identifies a location where the rule is available for inspection and copying.

(4) If the adopted rule submitted to the Secretary of State under the provisions of ORS 183.355 is different from the proposed rule submitted to the Secretary of State under a program implemented under this section, the Secretary of State shall publish in the bulletin referred to in ORS 183.360 either the full text of the rule as adopted or a list of the changes made in the proposed rule before the agency adopted the rule. [1993 c.729 §12]

Note: 183.362 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.365 Publication of administrative rules in electronic form. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of Oregon relative to any of the information made available pursuant to subsection (1) of this section. [1995 c.614 §5]

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile

and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4 (4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. (1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule. [1957 c.717 §5; 1971 c.734 §8; 2003 c.749 §6]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the manner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

(a) The rule under review;

(b) The statutory provisions authorizing the rule; and

(c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

(a) Violates constitutional provisions;

(b) Exceeds the statutory authority of the agency; or

(c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact. The court's review of the master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pur-

suant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

(Contested Cases)

183.413 Notice to party before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) to (4) of this section to set forth certain requirements of state agencies so that citizens shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall inform each party to the hearing of the following matters:

(a) If a party is not represented by an attorney, a general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(b) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(c) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(d) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(e) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(f) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(g) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(h) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(i) A description of the appeal process from the determination or order of the agency.

(3) The information required to be given to a party to a hearing under subsection (2) of this section may be given in writing or orally before commencement of the hearing.

(4) The failure of an agency to give notice of any item specified in subsection (2) of this section, shall not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37, 38,39; 1995 c.79 §63]

183.415 Notice, hearing and record in contested case; informal disposition; hearing officer; ex parte communications. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved; and

(d) A short and plain statement of the matters asserted or charged.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) Agencies may adopt rules of procedure governing participation in contested cases by persons appearing as limited parties.

(5)(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the agency. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the agency may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested.

(7) At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(9) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605, the administrative law judge must comply with ORS 183.685.

(10) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.

(11) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.

(12) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. However, upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1; 1997 c.837 §2; 1999 c.849 §§27,28; 2003 c.75 §29]

183.418 [1973 c.386 §6; 1989 c.224 §11; 1991 c.750 §5; repealed by 1999 c.1041 §9]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.421 [1991 c.750 §4; repealed by 1999 c.1041 §9]

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, or upon the agency's own motion, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19; 1997 c.837 §6]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by this chapter before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases. (1) An agency may issue subpoenas on its own motion in a contested case. In addition, an agency or hearing officer in a contested case may issue subpoenas upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the hearing officer, the agency or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4; 1989 c.980 §10a; 1997 c.837 §3; 1999 c.849 §30]

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440. (1) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency.

(2) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued by the agency to compel the appearance of witnesses on behalf of the party, the agency may issue subpoenas on its own motion. [1981 c.174 §6; 1997 c.837 §4; 1999 c.849 §32]

183.450 Evidence in contested cases. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by in-

corporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1; 1995 c.272 §5; 1997 c.391 §1; 1997 c.801 §76; 1999 c.448 §5; 1999 c.849 §34]

183.452 Representation of agencies at contested case hearings. (1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 §3]

Note: 183.452 was made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.455 [1987 c.259 §3; repealed by 1999 c.448 §10]

183.457 Representation of persons other than agencies participating in contested case hearings. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The State Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The State Fire Marshal in the Department of State Police.

(g) The Department of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The Land Conservation and Development Commission and the Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency. [1987 c.833 §3; 1989 c.453 §2; 1993 c.186 §4; 1995 c.102 §1; 1999 c.448 §1; 1999 c.599 §1]

Note: 183.457 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.458 Nonattorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support or public assistance as defined in ORS 411.010, a party may be represented by any of the following persons:

(a) An authorized representative who is an employee of a nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(b) An authorized representative who is an employee of the system designated to protect and advocate the rights of individuals with developmental disabilities under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10801 et seq.). The authorized representative must be supervised by an attorney also employed by the system.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding. [1999 c.448 §4; 2003 c.14 §86]

Note: 183.458 was made a part of 183.413 to 183.470 by legislative action but was not added to any other

series. See Preface to Oregon Revised Statutes for further explanation.

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearing officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearing officer is authorized or required by law or agency rule to issue a final order, the hearing officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption. [1979 c.593 §§36,36b; 1995 c.79 §64; 2001 c.104 §64]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

(Judicial Review)

183.480 Judicial review of agency orders. (1) Except as provided in ORS 183.415 (5)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4; 1997 c.837 §5]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute.

If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not

shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2; 1989 c.453 §1; 1991 c.331 §44]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support

a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3; 1999 c.113 §1]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's register.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment in the register of the court pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39; 2003 c.576 §193]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Appeals From Circuit Courts)

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the judgment of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76; 2003 c.576 §394]

(Alternative Dispute Resolution)

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemak-

ing proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(7) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §27]

Note: The amendments to 183.502 by section 27a, chapter 791, Oregon Laws 2003, become operative January 2, 2006. See section 27b, chapter 791, Oregon Laws 2003. The text that is operative on and after January 2, 2006, is set forth for the user's convenience.

183.502. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(7) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

Note: 183.502 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

(Housing Cost Impact Statement)

183.530 Housing cost impact statement required for certain proposed rules. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The State Department of Energy. [1995 c.652 §2]

Note: 183.530 to 183.538 were added to and made a part of ORS chapter 183 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The State Housing Council shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 §3; 1997 c.249 §54]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (12), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repealing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 §4; 2001 c.220 §4]

Note: See note under 183.530.

(Effects of Rules on Small Business)

183.540 Reduction of economic impact on small business. If the economic effect analysis shows that the rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards;

(4) Exempting small businesses from any or all requirements of the rule; or

(5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7]

183.545 [1981 c.755 §5; repealed by 2003 c.749 §17]

183.550 [1981 c.755 §6; repealed by 2003 c.749 §17]

183.560 [2001 c.374 §1; 2003 c.740 §1; renumbered 183.700 in 2003]

183.562 [2001 c.374 §2; renumbered 183.702 in 2003]

(Office of Administrative Hearings)

183.600 Definitions. For the purposes of ORS 183.600 to 183.690:

(1) "Chief administrative law judge" means the person employed under ORS 183.610 to organize and manage the Office of Administrative Hearings.

(2) "Office" means the Office of Administrative Hearings established under ORS 183.605. [1999 c.849 §2; 2003 c.75 §1]

183.605 Office of Administrative Hearings. (1) The Office of Administrative Hearings is established within the Employment Department. The office shall be managed by the chief administrative law judge employed under ORS 183.610. The office shall make administrative law judges available to agencies under ORS 183.600 to 183.690. Administrative law judges assigned from the office under ORS 183.600 to 183.690 may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by ORS 183.600 to 183.690;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under ORS 183.600 to 183.690.

(2) All persons serving as administrative law judges in the office must meet the standards and training requirements of ORS 183.680. [1999 c.849 §3; 2003 c.75 §2]

183.610 Chief administrative law judge. (1) The Director of the Employment Department shall employ a person to serve as chief administrative law judge for the Office of Administrative Hearings. The director shall consider recommendations by the Office of Administrative Hearings Oversight Committee in hiring a chief administrative law judge. The person employed to serve as chief administrative law judge must be an active member of the Oregon State Bar. The chief administrative law judge has all the powers necessary and convenient to organize and manage the office. Subject to the State Personnel Relations Law, the chief administrative law judge shall employ all persons necessary for the administration of the office, prescribe the duties of those employees and fix their compensation. The chief administrative law judge shall serve for a term of four years. Notwithstanding ORS 236.140, the chief administrative law judge may be removed during a term only for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria for appointment.

(2) The chief administrative law judge shall employ administrative law judges. The chief administrative law judge shall ensure that administrative law judges employed for the office receive all training necessary to meet the standards required under the program created under ORS 183.680.

(3) The chief administrative law judge shall take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office. [1999 c.849 §4; 2003 c.75 §3]

183.615 Administrative law judges; duties; qualifications; rules. (1) An administrative law judge employed by or contracting with the chief administrative law judge shall conduct hearings on behalf of agencies as assigned by the chief administrative law judge. An administrative law judge shall be impartial in the performance of the administrative law judge's duties and shall remain fair in all hearings conducted by the administrative law judge.

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office. [1999 c.849 §5; 2003 c.75 §4]

183.620 Contract administrative law judges. (1) The chief administrative law judge for the Office of Administrative Hearings may contract for the services of persons to act as administrative law judges.

(2) Contract administrative law judges shall meet the same qualifications as administrative law judges regularly employed by the chief administrative law judge and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for administrative law judges regularly employed by the chief administrative law judge and conducting similar hearings. [1999 c.849 §6; 2003 c.75 §5]

183.625 Assignment of administrative law judges; conduct of hearings. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use administrative law judges assigned from the Office of Administrative Hearings to conduct hearings must delegate responsibility for the conduct of the hearing to an administrative law judge assigned from the

Office of Administrative Hearings, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use administrative law judges assigned from the office may contract with the chief administrative law judge for the assignment of an administrative law judge from the office for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 §7; 2003 c.75 §6]

183.630 Model rules of procedure; exemptions; depositions. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief administrative law judge, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) Except as may be expressly granted by the agency to an administrative law judge assigned from the office, or as may be expressly provided for by law, an administrative law judge conducting a hearing for an agency under ORS 183.600 to 183.690 may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 §8; 2003 c.75 §7]

183.635 Agencies required to use administrative law judges from Office of Administrative Hearings; exceptions. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) The Department of Education, the State Board of Education and the Superintendent of Public Instruction.

(b) Employment Appeals Board.

(c) Employment Relations Board.

(d) Public Utility Commission.

(e) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(f) Land Conservation and Development Commission.

(g) Land Use Board of Appeals.

(h) Department of Revenue.

(i) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.

(j) State Accident Insurance Fund Corporation.

(k) Psychiatric Security Review Board.

(L) State Board of Parole and Post-Prison Supervision.

(m) Department of Corrections.

(n) Energy Facility Siting Council.

(o) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(p) Secretary of State.

(q) State Treasurer.

(r) Attorney General.

(s) Fair Dismissal Appeals Board.

(t) Department of State Police.

(u) Oregon Youth Authority.

(v) Boards of stewards appointed by the Oregon Racing Commission.

(w) The Department of Higher Education and the institutions of higher education listed in ORS 352.002.

(x) The Governor.

(y) State Land Board.

(z) Wage and Hour Commission.

(aa) State Apprenticeship and Training Council.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. The Director of the Department of Consumer and Business Services must use administrative law judges assigned from the office for all contested case hearings regarding matters other than those concerning a claim under ORS chapter 656, as provided in ORS 656.704 (2). Except as specifically provided in this subsection, the Department of Consumer and Business Services must use

administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS chapter 59;

(b) ORS 200.005 to 200.075;

(c) ORS chapter 455;

(d) ORS chapter 674;

(e) ORS chapters 706 to 716;

(f) ORS chapter 717;

(g) ORS chapters 722, 723, 725 and 726; and

(h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 §9; 2001 c.900 §46; 2003 c.75 §8]

183.640 Use of Office of Administrative Hearings by exempt agencies and by political subdivisions. (1) Upon request of an agency, the chief administrative law judge for the Office of Administrative Hearings may assign administrative law judges from the office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of administrative law judges assigned from the office under ORS 183.635.

(2) The chief administrative law judge may contract with any political subdivision of this state to provide the services of administrative law judges to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c. 849 §10; 2003 c.75 §9]

183.645 Request for change of administrative law judge; rules. (1) After assignment of an administrative law judge from the Office of Administrative Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall assign a different administrative law judge for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief administrative law judge may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of administrative law judge under subsection (1) of this section may be granted by the chief administrative law judge without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to an administrative law judge assigned after a request for a different administrative law judge has been granted under subsection (1) of this section, the chief administrative law judge shall assign a different administrative law judge only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause. [1999 c.849 §11; 2001 c.294 §8; 2003 c.75 §10]

183.650 Form of order; modification of form of order by agency; finding of historical fact. (1) In any contested case hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that the finding of historical fact made by the administrative law judge is not supported by a preponderance of the evidence in the record. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not

occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the administrative law judge, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 §12; 2003 c.75 §11]

183.655 Fees. The chief administrative law judge for the Office of Administrative Hearings shall establish a schedule of fees for services rendered by administrative law judges assigned from the office. The fee charged shall be in an amount calculated to recover the cost of providing the administrative law judge, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief administrative law judge under this section shall be paid into the Office of Administrative Hearings Operating Account created under ORS 183.660. [1999 c.849 §13; 2003 c.75 §12]

183.660 Office of Administrative Hearings Operating Account. (1) The Office of Administrative Hearings Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under ORS 183.655. Moneys credited to the account are continuously appropriated to the chief administrative law judge for the Office of Administrative Hearings created under ORS 183.605 for the purpose of paying expenses incurred in the administration of the office.

(2) At the discretion of the chief administrative law judge, petty cash funds may be established and maintained for the purpose of administering the duties of the office. [1999 c.849 §14; 2003 c.75 §13]

183.665 Estimates of office expenses. The chief administrative law judge for the Office of Administrative Hearings shall estimate in advance the expenses that the office will incur during each biennium and shall notify each agency required to use the office's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 §15; 2003 c.75 §14]

183.670 Rules. Subject to the provisions of the State Personnel Relations Law, the chief administrative law judge for the Office of Administrative Hearings may adopt rules to:

(1) Organize and manage the Office of Administrative Hearings established under ORS 183.605.

(2) Facilitate the performance of the duties of administrative law judges assigned from the office.

(3) Establish qualifications for persons employed as administrative law judges by the office.

(4) Establish standards and procedures for the evaluation and training of administrative law judges employed by the office, consistent with standards and training requirements established under ORS 183.680. [1999 c.849 §16; 2003 c.75 §15]

183.675 Alternative dispute resolution. ORS 183.600 to 183.690 do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of an administrative law judge from the Office of Administrative Hearings. [1999 c.849 §16a; 2003 c.75 §16]

183.680 Standards and training program. (1) The chief administrative law judge for the Office of Administrative Hearings, working in coordination with the Attorney General, shall design and implement a standards and training program for administrative law judges employed by the office and for persons seeking to be employed as administrative law judges by the office. The program shall include:

(a) The establishment of an ethical code for persons employed as administrative law judges by the office.

(b) Training for administrative law judges employed by the office that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief administrative law judge under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief administrative law judge for administrative law judges employed by the office.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief administrative law judge for administrative law judges employed by the office.

(c) The provision of specialized training for administrative law judges in subject mat-

ter areas affecting particular agencies required to use administrative law judges assigned from the office.

(3) The chief administrative law judge is bound by the ethical code established under this section and must satisfactorily complete training required of administrative law judges employed by the office other than specialized training in subject matter areas affecting particular agencies. [1999 c.849 §19; 2003 c.75 §17]

183.685 Ex parte communications. (1) An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A copy of any written response to the communication made by the administrative law judge;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of the agency that is using the administrative law judge to conduct the hearing.

(5) The provisions of this section do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges;

(b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge; or

(c) Communications made to an administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency that is conducting the hearing. [1999 c.849 §20; 2003 c.75 §18]

183.690 Office of Administrative Hearings Oversight Committee. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings employed under ORS 183.610 shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the per-

son's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study operation of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose. [1999 c.849 §21; 2003 c.75 §19]

PERMITS

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

Note: 183.700 and 183.702 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying the criteria. The documentation required under this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign orders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

Note: See note under 183.700.

LEGISLATIVE REVIEW OF RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Committee" means the Legislative Counsel Committee.

(2) "Rule" has the meaning given in ORS 183.310.

(3) "State agency" has the meaning given to "agency" in ORS 183.310. [Formerly 171.705]

Note: 183.710 to 183.725 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.715 Submission of adopted rule to Legislative Counsel required; exception. (1) A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of the adopted rule that is submitted to the Legislative Counsel must show new matter in boldfaced type and omitted matter in italic type within brackets or in any manner approved by the Legislative Counsel that clearly delineates new and omitted matter.

(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:

(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and

(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel. [Formerly 171.707; 1991 c.94 §1; 1999 c.167 §1]

Note: See note under 183.710.

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting. (1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the committee, and if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. If the Legislative Counsel determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Counsel shall also send a copy of the determination to the state agency. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the committee at which the committee will consider the determinations. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule adopted by a federal agency. Upon receipt of the written request, the Legislative Counsel shall

prepare a report to the committee that contains:

(a) A copy of the request, including copies of the two rules that the requester asserts are conflicting or duplicative; and

(b) Legislative Counsel's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7) of this section, the committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned and to the person requesting the review. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 §7; 1997 c.602 §4; 2001 c.156 §1]

Note: See note under 183.710.

183.722 Required agency response to Legislative Counsel determination. (1) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the state agency shall either make a written response to the determination or appear at the meeting of the Legislative Counsel Committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel Committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the state agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the state agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services, the state agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the agency to the determinations. [1997 c.602 §7; 1999 c.31 §2]

Note: See note under 183.710.

183.725 Report of Legislative Counsel Committee to agencies and Legislative Assembly. (1) The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

(2) The committee shall report to the Legislative Assembly at each regular session on its review of state agency rules. [Formerly 171.713; 1993 c.729 §8; 1997 c.602 §5; 1999 c.31 §1]

Note: See note under 183.710.

CIVIL PENALTIES

183.745 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

(a) "Agency" has that meaning given in ORS 183.310.

(b) "Civil penalty" includes only those monetary penalties that are specifically denominated as civil penalties by statute. [Formerly 183.090]

Note: 183.745 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

READABILITY OF PUBLIC WRITINGS

183.750 State agency required to prepare public writings in readable form. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 184
(Partial)

2003 EDITION

Department of Transportation

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184.610 Definitions for ORS 184.610 to 184.666. As used in ORS 184.610 to 184.666, unless the context requires otherwise:

(1) "Commission" means the Oregon Transportation Commission.

(2) "Department" means the Department of Transportation.

(3) "Director" means the Director of Transportation.

(4) "Highway Construction Plan" or "plan" means the plan described in ORS 184.658.

(5) "STIP" means the Statewide Transportation Improvement Program, which is a list of transportation projects that:

(a) Are to be implemented within four years following adoption or modification of the list;

(b) Are consistent with the long-range transportation plan developed pursuant to ORS 184.618 and with metropolitan plans; and

(c) Can be implemented with resources reasonably expected to be available. [1969 c.599 §1; 1973 c.249 §1; 1999 c.939 §2]

184.611 Freight mobility projects; priority. (1) As used in this section, "freight mobility project" means a project that supports the safe, reliable and efficient movement of goods between and among local, national and international markets.

(2) The Legislative Assembly finds that investment in freight mobility projects will yield a return on the state's investment in terms of improved economic opportunity and safety.

(3) In developing the STIP, the Department of Transportation shall give priority to freight mobility projects that:

(a) Are located on identified freight routes of statewide or regional significance;

(b) Remove identified barriers to the safe, reliable and efficient movement of goods; and

(c) Facilitate public and private investment that creates or sustains jobs. [2003 c.618 §37]

184.612 Oregon Transportation Commission; confirmation; qualifications; term; compensation and expenses. (1) There is established the Oregon Transportation Commission consisting of five members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution. The Governor shall appoint members of the commission in compliance with all of the following:

(a) Members shall be appointed with consideration of the different geographic regions of the state with one member being a resident of the area east of the Cascade Range.

(b) Not more than three members shall belong to one political party. Party affiliation shall be determined by the appropriate entry on official election registration cards.

(2) The term of office of each member is four years. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. In case of a vacancy for any cause, the Governor shall appoint a person to fill the office for the unexpired term.

(3) A member of the commission is entitled to compensation and expenses as provided by ORS 292.495. [1973 c.249 §3; 1981 c.545 §3; 1983 c.428 §1]

184.613 Officers; quorum; meetings; effect of vacancy; seal. (1) The Governor shall appoint one of the commissioners as chairperson, and another as vice chairperson. The chairperson and vice chairperson shall have such terms, duties and powers as the Oregon Transportation Commission determines are necessary for the performance of such offices.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once a month, at a time and place determined by the commission. The commission shall also meet at such other times and places as are specified by the call of the chairperson or of a majority of the commission.

(4) No vacancy shall impair the right of the remaining commissioners to exercise all the powers of the commission, except that three members of the commission must agree in the selection, vacation or abandonment of state highways, and in case the commissioners are unable to agree the Governor shall have the right to vote as a member of the commission.

(5) The commission may provide an official seal. [1973 c.249 §§4,9; 1979 c.293 §1]

184.615 Department of Transportation; organization; duties; director; managers. (1) The Department of Transportation is established.

(2) The Department of Transportation shall consist of the Director of Transportation and all personnel employed in the department. Except as otherwise provided in subsections (4) and (5) of this section, for purposes of administration, subject to the approval of the Oregon Transportation Commission, the director may organize and reor-

ganize the department as the director considers necessary to properly conduct the work of the department.

(3) The department shall carry out policies adopted by the commission and all duties and responsibilities vested in it by law including, but not necessarily limited to, duties and responsibilities concerning drivers and motor vehicles, highways, motor carriers, public transit, rail, transportation safety and the Oregon Board of Maritime Pilots.

(4) The director shall appoint a manager for each area of critical concern to the department. The manager shall be responsible for planning and operations in that area, for relationships between the department and persons affected by the operations of the area, for advocacy of the area within the department planning and operations processes and for such other duties as may be provided by law. For purposes of this subsection, "area of critical concern" includes, but is not necessarily limited to, driver and motor vehicle services, highways, motor carriers, public transit, rail, transportation safety and maritime pilotage. In appointing managers under this subsection, the director shall consider recommendations of any advisory committee interested in the area of responsibility.

(5) Whenever a duty or function is specifically given by statute to the director, and that duty or function involves day-to-day operations of an area of critical concern to the department, the director shall delegate the duty or function to the manager of the area of critical concern. [1969 c.599 §2; 1973 c.249 §15; 1975 c.371 §5; 1979 c.186 §4; subsection (4) enacted as 1981 c.700 §2; 1983 c.324 §13; 1987 c.414 §88; 1989 c.904 §28; 1991 c.453 §1; 1993 c.741 §3; 1999 c.935 §15; 2003 c.27 §1]

184.616 Department powers given commission; service of summons. (1) Notwithstanding any other provisions of law, the Oregon Transportation Commission has the power to adopt any rules, establish any policy or exercise any other duty, function or power where a statute gives such power to the Department of Transportation.

(2) Where service of summons or other process is required by statute to be served on the Director of Transportation, the Department of Transportation or the Oregon Transportation Commission, such service shall be made upon the office of the director. [1979 c.186 §§2,3; 2003 c.14 §87]

184.617 Functions of commission and department. (1) It is the function of the Oregon Transportation Commission to establish the policies for the operation of the Department of Transportation in a manner consistent with the policies and purposes of ORS 184.610 to 184.666. In addition, the commission shall perform any other duty vested in it by law.

(2) The commission shall keep complete and accurate records of all the meetings, transactions and business of the commission at the office of the department.

(3) The commission shall have general power to coordinate and administer programs relating to highways, motor carriers, motor vehicles, public transit, rail, transportation safety and such other programs related to transportation as may be assigned by law to the department.

(4) The Department of Transportation shall be the recipient of all federal funds paid to or to be paid to the state to enable the state to provide the programs and services assigned to the department, except that the Oregon Department of Aviation shall be the recipient of all federal funds paid to or to be paid to the state to enable the state to provide aviation programs and services. [1973 c.249 §10; 1979 c.186 §5; 1989 c.904 §50; 1993 c.741 §6; 1999 c.935 §16; 2003 c.27 §2]

184.618 Duties of commission in preparing and implementing state transportation policy. (1) As its primary duty, the Oregon Transportation Commission shall develop and maintain a state transportation policy and a comprehensive, long-range plan for a safe, multimodal transportation system for the state which encompasses economic efficiency, orderly economic development and environmental quality. The plan shall include, but not be limited to, aviation, highways, mass transit, pipelines, ports, rails and waterways. The plan shall be used by all agencies and officers to guide and coordinate transportation activities and to insure transportation planning utilizes the potential of all existing and developing modes of transportation.

(2) As the plan is developed by the commission, the Director of Transportation shall prepare and submit to the commission for approval, implementation programs. Work approved by the commission to carry out the plan shall be assigned to the appropriate unit of the Department of Transportation.

(3) The director and members of the commission shall give safety, economic development and the provisions of industrial site services priority in fund allocation decisions. [1973 c.249 §12; 1983 c.362 §1; 1983 c.553 §1; 1993 c.741 §7; 1999 c.969 §3]

184.619 Rulemaking authority; orders. In accordance with the applicable provisions of ORS chapter 183, the Oregon Transportation Commission shall adopt such rules and orders as it considers necessary and proper in performing the functions vested by law in the commission. [1973 c.249 §11; 1981 c.418 §1]

184.620 Director of Transportation; confirmation; subordinates. (1) The Department of Transportation shall be under the supervision of a Director of Transportation who shall be appointed by and shall hold office at the pleasure of the Governor.

(2) The appointment of the director shall be subject to confirmation by the Senate in the manner provided by ORS 171.562 and 171.565.

(3) The director may appoint:

(a) Deputy directors with full authority to act for the director, but subject to the director's control. The appointment of a deputy director shall be by written order filed with the Secretary of State. A deputy director shall be in the unclassified services for purposes of the State Personnel Relations Law.

(b) Assistant directors as the director determines necessary to carry out the responsibilities of the department. The director may delegate to and assign to an assistant director any powers and responsibilities the director determines to be necessary. Assistant directors are in the unclassified services for purposes of the State Personnel Relations Law.

(c) All subordinate officers and employees of the department and may prescribe their duties, assignments and reassignments and fix their compensation, subject to any applicable provisions of the State Personnel Relations Law. [1969 c.599 §3; 1969 c.599 §3a; 1973 c.249 §16; 1979 c.186 §6; 1999 c.686 §1]

184.625 Compensation and expenses of director and subordinates. The Director of Transportation and any deputy directors shall receive such salary as may be provided by law or as fixed by the Governor. In addition to salaries, the director, deputy directors or assistant directors, subject to the limitations otherwise provided by law, shall be reimbursed for all reasonable expenses necessarily incurred in the performance of official duties. [1969 c.599 §4; 1973 c.249 §17; 1979 c.168 §7; 1999 c.686 §2]

184.628 Chief engineer; appointment; qualifications; staff engineers. (1) The Director of Transportation, with the approval of the Oregon Transportation Commission, shall appoint a chief engineer. The chief engineer shall be a registered civil engineer and shall be qualified by technical training as well as by practical experience.

(2) The chief engineer may designate persons within the Department of Transportation who have full authority to perform any duty required or permitted by law to be performed by the engineer.

(3) The director may authorize the employment by the chief engineer of such staff engineers, engineering and technical assistants and such other help that in the chief engineer's judgment may be necessary. Compensation, travel allowance and other expenses shall be fixed by the chief engineer with the approval of the director.

(4) This section is subject to any applicable provision of the State Personnel Relations Law. [1993 c.741 §5]

184.630 Research program. (1) Except as otherwise provided by law, the Department of Transportation shall provide a research program for divisions within the department, using the staffs of such divisions for development of solutions to such needs as might arise.

(2) The Director of Transportation may provide administrative facilities and services for the divisions within the department. [1969 c.599 §5; 1973 c.249 §19]

184.631 Public-private research and development program; rules. (1) The Department of Transportation shall establish a public-private partnership research and development program.

(2) As part of the program established under this section, the department may enter into joint research and development agreements for the purpose of developing products for market that may reduce the cost of maintenance and preservation or extend the useful life of the state's highways or that may improve highway safety. The department may enter into agreements with the following:

(a) Individuals.

(b) Businesses.

(c) Nonprofit organizations.

(d) The State Board of Higher Education.

(3) The department may enter into agreements under subsection (2) of this section that allow the department to obtain royalties or other financial benefits from the sale or use of products developed through the public-private partnership research and development program.

(4) Moneys that the department is authorized to spend on planning and research may be used for development of products under this section.

(5) The department shall adopt rules that govern the solicitation and selection of product development projects that will receive funding under the program established under this section. [2003 c.819 §18]

Note: 184.631 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 184 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

184.632 Legislative finding on ports; policy. (1) The Legislative Assembly finds that:

(a) The ports in Oregon provide effective local assistance to state transportation development efforts.

(b) The ports in this state develop and market facilities and services to support important existing industries in this state, such as aviation, maritime commerce, international trade, tourism, recreation and transportation.

(c) Port facilities, including roads, railroads, airports, harbors and navigation channels, are an integral element of the transportation infrastructure of this state.

(2) Therefore, the Legislative Assembly declares that it is the policy of this state to include Oregon's ports in planning and implementing transportation programs. To that end, the Department of Transportation and the Oregon Department of Aviation may work to:

(a) Coordinate with the Economic and Community Development Department and the Ports Division to facilitate port planning and development;

(b) Promote local cooperation in statewide planning and development of the ports;

(c) Promote long-term economic self-sufficiency of the ports;

(d) Encourage cost-effective investments with prudent financial consideration of port development projects; and

(e) Facilitate the efforts of the ports to expand and respond to greater domestic and international market opportunities. [1993 c.474 §3; 1999 c.935 §18]

184.633 Duties of director; delegation; bonds for employees; annual report; participation in land use matters. (1) Subject to policy direction by the Oregon Transportation Commission, the Director of Transportation shall:

(a) Be the administrative head of the Department of Transportation;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department and prescribe their duties and fix their compensation, subject to the State Personnel Relations Law;

(c) Administer the laws of the state concerning transportation; and

(d) Intervene, as authorized by the commission, pursuant to the rules of practice and procedure, in the proceedings of state and federal agencies which may substantially affect the interest of the consumers and providers of transportation within Oregon.

(2) In addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any of the employees of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director, including powers, duties or functions delegated to the director by the commission pursuant to ORS 184.635. The official act of any such person so acting in the director's name and by the authority of the director shall be considered to be an official act of the director.

(4) The director shall have authority to require a fidelity bond of any officer or employee of the department who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond. The amounts of the bond shall be fixed by the director, except as otherwise provided by law, and the sureties shall be approved by the director. The department shall pay the premiums on the bonds.

(5) The director shall prepare and submit to the commission on or about December 31 of each year an annual report for the 12 months ending the prior June 30. The annual report shall set forth all that the department has done during the year. The report shall contain a statement of the parts of the state transportation system that were constructed, reconstructed or improved during the period, together with a statement showing in a general way the status of the state transportation system and of programs for educating and licensing drivers.

(6)(a) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of a land use decision or limited land use decision as defined in ORS 197.015, or an expedited land division as defined in ORS 197.360. The director shall report to the commission on each case in which the department participates and on the positions taken by the director in each case.

(b) If a meeting of the commission is scheduled prior to the close of the period for seeking review of a land use decision, expedited land division or limited land use decision, the director shall obtain formal approval from the commission prior to seek-

ing review of the decision. However, if the land use decision, expedited land division or limited land use decision becomes final less than 15 days before a meeting of the commission, the director shall proceed as provided in paragraph (c) of this subsection. If the director requests approval from the commission, the applicant and the affected local government shall be notified in writing that the director is seeking commission approval. The director, the applicant and the affected local government shall be given reasonable time to address the commission regarding the director's request for approval to seek review. No other testimony shall be taken by the commission.

(c) If a meeting of the commission is not scheduled prior to the close of the period for seeking review of a land use decision, expedited land division or limited land use decision, at the next commission meeting the director shall report to the commission on each case for which the department has sought review. The director shall request formal approval to proceed with each appeal. The applicant and the affected local government shall be notified of the commission meeting in writing by the director. The director, the applicant and the affected local government shall be given reasonable time to address the commission regarding the director's request for approval to proceed with the appeal. No other testimony shall be taken by the commission. If the commission does not formally approve an appeal, the director shall file a motion with the appropriate tribunal to dismiss the appeal.

(d) A decision by the commission under this subsection is not subject to appeal.

(e) For purposes of this subsection, "applicant" means a person seeking approval of a permit, as defined in ORS 215.402 or 227.160, expedited land division or limited land use decision.

(7) The director may intervene in an appeal of a land use decision brought by another person in the manner provided for an appeal by the director under subsection (6) of this section. [1973 c.249 §18; 1993 c.741 §8; 1999 c.292 §2]

184.634 Disposition of real property by department; rules. Notwithstanding the provisions of ORS 270.100, 270.110, 270.130, 270.140, 270.150 and 273.426, the Oregon Transportation Commission may establish by rule procedures and criteria for:

(1) The advertisement for sale of real property by the Department of Transportation;

(2) The disposition of real property by the department after an auction at which no satisfactory bids were received; and

(3) The disposition by the department of real property that:

(a) Has minimal value and is useful only to adjacent property owners; or

(b) May not, because of local land use ordinances, be disposed of to anyone other than adjacent property owners. [1989 c.499 §2; 1991 c.816 §23]

184.635 Reports to Governor; delegation of powers; rules. (1) The Oregon Transportation Commission shall develop and report to the Governor on legislative, budgetary and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in the matters of public interest related to transportation. To accomplish this end, the commission may hold public hearings, consult with and use the services and cooperation of other state and federal agencies, employ consultants and appoint advisory and technical committees to assist in the work.

(2) Whenever a power is granted to the commission the power may be exercised by such officer or employee within the Department of Transportation as is designated in writing by the commission. Any such designation shall be filed in the office of the Secretary of State. The authority to delegate granted by this subsection includes, but is not limited to, authority to delegate the power to adopt rules for the department. [1969 c.599 §6; 1973 c.249 §14; 1993 c.741 §9]

184.636 Revolving funds; disbursements; payment of claims and expenses of other state agencies. (1) Upon approval of the State Treasurer and the Oregon Department of Administrative Services, the Department of Transportation may establish revolving funds in the State Treasury. These funds may be used as depository accounts.

(2) Disbursements may be made by check signed by such person as delegated by the Director of Transportation. Disbursements shall be made only in payment of claims authorized by law for the ordinary expenditures of the department incurred in the operation of the department. The department shall keep accurate account of which funds any expenditures are debited or credited to and of any interest income which may be due.

(3) Upon approval of the Oregon Department of Administrative Services and the State Treasurer, the department may write checks upon the State Treasury to pay for claims and expenditures of other state agencies not a part of the department. The Oregon Department of Administrative Services shall draw up warrants for the amounts paid separately or in aggregate.

(4) Moneys in the account established under subsection (1) of this section may be

held as petty cash or carried by the State Treasurer to be disbursed in accordance with subsection (3) of this section. [1989 c.345 §5; 1993 c.741 §10]

184.637 Departmental fiscal officer; reports. The Director of Transportation shall designate a fiscal officer for the Department of Transportation who shall:

(1) Provide for sound financial management systems, including all accounting, budgetary and financial control functions for the department.

(2) Prepare financial reports as required by statute or as required by the director.

(3) Act in an advisory capacity to the director in all financial matters and perform such other duties and responsibilities with respect to accounting procedures and other like duties and responsibilities as the director considers advisable.

(4) By the end of the calendar year, prepare and submit to all units of the department for which accounting services were performed a report of all funds received during the last completed fiscal year by each unit, the sources from which funds were received, the expenditures and disbursement of the funds and the purpose for which they were expended. [1973 c.249 §20; 1979 c.293 §2; 1989 c.345 §1; 1993 c.741 §11]

184.638 Functions provided by fiscal officer. The fiscal officer for the Department of Transportation may provide or contract for the provision of the following functions for the department:

(1) Operation of an adequate accounting system in order that all revenues and expenditures may be properly recorded and maintained.

(2) Partial payment on contracts based upon estimates of completion.

(3) Preparation of vouchers covering claims for all salaries and expenses and other expenditures which are authorized by the Director of Transportation. Claims approved by the director shall be indorsed by the director or the director's designee and presented for payment.

(4) Preparation of a monthly payroll in which the department shall record the name of each employee, the rate of salary or wages, the capacity in which each person is employed and the amount due each employee. The payroll shall be verified by the fiscal officer. After payment, payroll checks shall be retained by the department, and shall constitute a full receipt of the payment for services rendered. The department may draw payroll checks against appropriate departmental accounts.

(5) Such other functions as the director may deem necessary for the sound fiscal administration of the department. [1989 c.345 §3; 1993 c.741 §12]

184.639 Internal auditor. The Director of Transportation shall designate an internal auditor for the Department of Transportation who shall perform internal audits of the department and report findings to the director. [1989 c.345 §4; 1993 c.741 §13]

184.640 Transportation Administration Account; budget and payment for administrative expenses of department. (1) There is established, separate and distinct from the General Fund, the Transportation Administration Account.

(2) Notwithstanding any other law, such amounts as may be necessary to pay the administrative expenses of the Department of Transportation shall be continuously credited to the Transportation Administration Account from the biennial appropriations to, or transferred to such administration account from the accounts or funds of, units within the department that have separate appropriations, accounts or funds. Such amounts as may be requested quarterly by the Director of Transportation, with the approval of the Oregon Department of Administrative Services, shall be so credited or transferred to the Transportation Administration Account. The department is subject to the allotment system provided for in ORS 291.234 to 291.260.

(3) The amounts credited and transferred to the Transportation Administration Account shall not be greater than the total of any budget approved for the department by the Legislative Assembly and shall be determined by prorating the costs of the office of the director among the respective units within the department. All moneys appropriated, credited or transferred to the Transportation Administration Account are appropriated continuously to pay the administrative expenses of the department. Interest earned by the account shall be credited to the account. [1969 c.599 §7; 1973 c.249 §21; 1989 c.966 §5; 1993 c.741 §14]

184.642 Department of Transportation Operating Fund; sources; uses. (1) The Department of Transportation Operating Fund is established in the State Treasury separate and distinct from the General Fund and separate and distinct from the State Highway Fund. Except as otherwise provided in subsection (3)(e) of this section, moneys in the Department of Transportation Operating Fund are continuously appropriated to the Department of Transportation to pay expenses of the department that are incurred in the performance of functions the department is statutorily required or authorized to

perform and that may not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution.

(2) The operating fund shall consist of the following:

(a) Taxes paid on motor vehicle fuels or on the use of fuel in a motor vehicle for which a person is entitled to a refund under a provision described in this paragraph but for which no refund is claimed, in amounts determined under ORS 184.643. This paragraph applies to refund entitlements described in ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b).

(b) Fees collected under ORS 822.700 for issuance or renewal of:

(A) Wrecker certificates;

(B) Vehicle dealer certificates;

(C) Driver training certificates;

(D) Commercial driver training school certificates; and

(E) Appraiser certificates.

(c) Fees collected under ORS 822.705.

(d) Moneys from civil penalties imposed under ORS 822.009 or 822.075.

(e) Fees collected under ORS 807.410 for identification cards.

(f) Fees collected by the department for issuance of permits to engage in activities described in ORS 374.305 to 374.330 that are not directly connected to the construction, reconstruction, improvement, repair, maintenance, operation and use of a public highway, road, street or roadside rest area.

(g) Interest and other earnings on moneys in the operating fund.

(3) Moneys in the Department of Transportation Operating Fund established by subsections (1) and (2) of this section may be spent only as follows:

(a) Taxes described in subsection (2)(a) of this section may be used only for payment of expenses of the Department of Transportation that:

(A) May not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution;

(B) Are incurred in the performance of functions the department is statutorily required or authorized to perform; and

(C) Are not payable from moneys described in paragraphs (b) to (e) of this subsection.

(b) Fees collected under subsection (2)(b) of this section may be used only to carry out the regulatory functions of the department relating to the businesses that generate the fees.

(c) Fees collected under ORS 822.705 may be used only for the purposes described in ORS 822.705.

(d) Moneys collected from civil penalties imposed under ORS 822.009 or 822.075 may be used only for regulation of vehicle dealers.

(e) Moneys collected under ORS 807.410 from fees for identification cards shall be used first to pay the expenses of the department for performing the functions of the department relating to identification cards. After paying the expenses related to identification cards, the department shall transfer the remaining moneys collected under ORS 807.410 to the Elderly and Disabled Special Transportation Fund established in ORS 391.800.

(f) Moneys from the permits described in subsection (2)(f) of this section may be used for costs of issuing the permits and monitoring the activities that generate the fees.

(g) Moneys from interest and other earnings on moneys in the operating fund may be used for any purpose for which other moneys in the fund may be used. [2001 c.820 §§1,2; 2003 c.601 §1]

Note: The amendments to 184.642 by section 62, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

184.642. (1) The Department of Transportation Operating Fund is established in the State Treasury separate and distinct from the General Fund and separate and distinct from the State Highway Fund. Except as otherwise provided in subsection (3)(e) of this section, moneys in the Department of Transportation Operating Fund are continuously appropriated to the Department of Transportation to pay expenses of the department that are incurred in the performance of functions the department is statutorily required or authorized to perform and that may not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution.

(2) The operating fund shall consist of the following:

(a) Taxes paid on motor vehicle fuels or on the use of fuel in a motor vehicle for which a person is entitled to a refund under a provision described in this paragraph but for which no refund is claimed, in amounts determined under ORS 184.643. This paragraph applies to refund entitlements described in ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b).

(b) Fees collected under ORS 822.700 for issuance or renewal of:

(A) Wrecker certificates;

(B) Vehicle dealer certificates;

(C) Driver training certificates;

(D) Commercial driver training school certificates; and

(E) Appraiser certificates.

(c) Fees collected under ORS 822.705.

(d) Moneys from civil penalties imposed under ORS 822.009.

(e) Fees collected under ORS 807.410 for identification cards.

(f) Fees collected by the department for issuance of permits to engage in activities described in ORS 374.305 to 374.330 that are not directly connected to the construction, reconstruction, improvement, repair, maintenance, operation and use of a public highway, road, street or roadside rest area.

(g) Interest and other earnings on moneys in the operating fund.

(3) Moneys in the Department of Transportation Operating Fund established by subsections (1) and (2) of this section may be spent only as follows:

(a) Taxes described in subsection (2)(a) of this section may be used only for payment of expenses of the Department of Transportation that:

(A) May not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution;

(B) Are incurred in the performance of functions the department is statutorily required or authorized to perform; and

(C) Are not payable from moneys described in paragraphs (b) to (e) of this subsection.

(b) Fees collected under subsection (2)(b) of this section may be used only to carry out the regulatory functions of the department relating to the businesses that generate the fees.

(c) Fees collected under ORS 822.705 may be used only for the purposes described in ORS 822.705.

(d) Moneys collected from civil penalties imposed under ORS 822.009 may be used only for regulation of vehicle dealers.

(e) Moneys collected under ORS 807.410 from fees for identification cards shall be used first to pay the expenses of the department for performing the functions of the department relating to identification cards. After paying the expenses related to identification cards, the department shall transfer the remaining moneys collected under ORS 807.410 to the Elderly and Disabled Special Transportation Fund established in ORS 391.800.

(f) Moneys from the permits described in subsection (2)(f) of this section may be used for costs of issuing the permits and monitoring the activities that generate the fees.

(g) Moneys from interest and other earnings on moneys in the operating fund may be used for any purpose for which other moneys in the fund may be used.

Note: 184.642 and 184.643 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 184 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

184.643 Transfer of certain fuel tax moneys to operating fund. Once each year the Oregon Department of Administrative Services, after consultation with the Oregon Transportation Commission and the Department of Transportation, shall estimate the amount of taxes paid for which persons are entitled to refunds under ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b). After deducting the amount of any refunds actually paid, the Oregon Department of Administrative Services shall certify the remaining amount to the Department of Transportation. The Department of Transportation shall transfer the remaining amount from the Driver and Motor Vehicle Suspense Account to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2). [2001 c.820 §3; 2003 c.16 §1]

Note: See second note under 184.642.

184.645 Department of Transportation Working Capital Account; data processing and photocopy equipment and services. (1) There is hereby established an account, separate and distinct from the General Fund, to be known as the Department of Transportation Working Capital Account, which account is appropriated continuously for, and shall be used for, the purpose of acquiring data processing, word processing and photocopy equipment and services. Interest earned by the account shall be credited to the account.

(2) The cost to the Department of Transportation of providing data processing, word processing and photocopy services, including labor, facilities, materials, overhead, administrative cost, the lease or purchase cost of the equipment and depreciation, to any state agency, including itself, which is to be charged, in part or whole to the agency or unit served may be advanced out of the Department of Transportation Working Capital Account. The costs advanced from the account shall be reimbursed to the account from the charges paid to the department by the agency or unit served. [1979 c.380 §§2,3; 1981 c.306 §1; 1989 c.966 §6]

184.647 Transfer of funds to working capital account; retransfer; use of remainder. In order to facilitate financing the costs advanced under ORS 184.645 (2), the Department of Transportation may at any time during the biennium transfer to the Department of Transportation Working Capital Account such amounts as it considers necessary from funds available to the department for a biennial period. Funds transferred shall be retransferred from the Department of Transportation Working Capital Account by the department to the fund from which the original transfer was made prior to the last day of each biennial period. All or part of the funds remaining in the working capital account at the end of any biennium may remain in the account beyond the end of the biennium for the acquisition of data processing, word processing and photocopy equipment and services. [1979 c.380 §4; 1981 c.306 §2]

184.648 Revolving fund. The Central Services Division of the Department of Transportation may establish a revolving fund, separate and distinct from the General Fund, not to exceed the aggregate amount of $5,000. Interest earned by the fund shall be credited to the fund. [1983 c.136 §4; 1989 c.966 §7]

Note: 184.648 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 184 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

ACCOUNTING AND BUDGETING

184.651 Cost accounting system; requirements. (1) The Department of Transportation shall develop, operate and maintain a full cost accounting system that accurately and separately accounts for all direct, indirect and administrative costs incurred by each of the following units of the department:

(a) Oregon Board of Maritime Pilots.

(b) Central services.

(c) Driver and motor vehicle services.

(d) Highways.

(e) Motor carriers.

(f) Rail.

(g) Transit.

(h) Transportation development.

(i) Transportation safety.

(2) In addition to meeting the requirements of subsection (1) of this section, the cost accounting system shall accurately account for all direct, indirect and administrative costs allocated to the department's products and services, whether the moneys spent are from state or federal sources. For each product or service, the system shall show separately the amount of payments made to outside contractors. For each product or service for which lane miles are a relevant measurement, the system shall show the cost per lane mile of the product or service. As used in this subsection, products and services include, but are not limited to, the following:

(a) Bridges, which includes preservation of the bridges, tunnels and culverts on the state highway system.

(b) Emergency relief, which includes repair, as needed, of damage caused by disasters.

(c) Highway planning, which includes establishing long-range and short-range highway plans and designing and implementing highway plans with local governments.

(d) Highway safety, which includes providing engineering solutions to accident problems on state and local highways. Accounting in this category shall also include information about the safety priority indexing system maintained by the department.

(e) Maintenance, which includes keeping existing highways safe and usable for the traveling public through such means as repair, snow and ice removal, vegetation clearance, striping, signal repair and lighting.

(f) Modernization, which includes improvements that add capacity to highways, including but not limited to new or widened lanes and new bypasses.

(g) Operations, which includes improving the efficiency of existing highways through such means as traffic signaling systems, driver communication and ramp metering.

(h) Payments to local governments, which includes payments to cities, counties and metropolitan planning organizations.

(i) Preservation, which includes paving, striping and reconstruction designed to add useful life to existing highways.

(j) Special programs, which includes but is not limited to bicycle and pedestrian facility projects, environmental services and salmon and watershed projects. [1999 c.936 §2; 1999 c.936 §5]

184.654 Short title. ORS 184.656 to 184.666 shall be known and may be cited as the "Transportation Spending Accountability Act." [1999 c.939 §1]

184.656 Governor's program budget for department; requirements. (1) The Governor shall submit to the Legislative Assembly a proposed biennial program budget for the Department of Transportation that specifies how existing revenues from all sources will be spent in the following categories:

(a) Oregon Board of Maritime Pilots.

(b) Central services.

(c) Driver and motor vehicle services.

(d) Highways.

(e) Motor carriers.

(f) Rail.

(g) Transit.

(h) Transportation development.

(i) Transportation safety.

(j) Others, including:

(A) Capital construction.

(B) Capital improvements.

(C) Light rail debt service.

(D) Nonlimited.

(2) The budget presented for highways shall show projected expenditures in each of the following categories:

(a) Bridges.

(b) Emergency relief.

(c) Highway planning.

(d) Highway safety.

(e) Maintenance.

(f) Modernization, including but not limited to expenditures for reduction of acci-

dents in areas that are known to have a high incidence of accidents.

(g) Operations.

(h) Payments to local governments.

(i) Preservation.

(j) Special programs, including but not limited to bicycle and pedestrian facilities.

(3) The budget shall be accompanied by the Highway Construction Plan described in ORS 184.658. [1999 c.939 §4; 2001 c.104 §65]

184.658 Highway Construction Plan; recommendations for spending additional revenues. (1) The Highway Construction Plan shall be developed by the Department of Transportation on a biennial basis to accompany the Governor's proposed budget for the department. The plan shall include a list of projects from the STIP that the department intends to work on in the biennium for which the budget is submitted. The plan shall also include a list of projects that the department intends to pursue in the biennium that are not yet in the STIP because they are in planning stages. Each project included in the plan shall be shown in one of the sections listed in subsection (3) of this section.

(2) For the categories of bridges, highway safety, modernization, operations and preservation, the plan shall include a description of specific projects to be funded, how much money will be spent on each and the anticipated year of completion. For the categories of emergency relief, highway planning, maintenance, payments to local governments and special programs, the plan shall include a description of programs to be funded and projected expenditures.

(3) The department shall divide the plan into four sections, and each project shall be shown in the appropriate section. The sections shall be:

(a) Projects under construction;

(b) Projects for which funding is committed for construction or implementation, with the expected date on which the contract will be awarded;

(c) Projects being developed for construction for which funding is committed; and

(d) Projects in preliminary or planning phases.

(4) Projects shall be included in the plan only after a public process that includes consultation with cities, counties and metropolitan planning organizations.

(5) Projects included in the plan shall be listed for each region designated by the department.

(6) In accordance with the criteria and procedures described in this section, the plan shall be written by the department, approved by the Oregon Transportation Commission and reviewed by the Governor.

(7) Nothing in this section prevents the plan and the STIP from being the same document, as long as the document meets the requirements of this section.

(8) The Governor shall submit to the Legislative Assembly, with the plan, a document that provides a means to evaluate revenue proposals. The document shall show how the department would recommend spending additional revenue that might become available to the department, by showing the department's program priorities and a list of modernization needs. The document shall be based on increments in revenue equal to a one-cent increase in the motor vehicle fuel tax and equivalent increases in the weight-mile and related taxes. This subsection does not require the Governor or department to propose tax increases. [1999 c.939 §5]

184.660 Budget bill for department; budget categories for highways. (1) Unless otherwise recommended by the Joint Committee on Ways and Means, a budget bill enacted by the Legislative Assembly for the Department of Transportation shall show appropriations or expenditure limitations for highways in the following categories:

(a) Bridges.

(b) Emergency relief.

(c) Highway planning.

(d) Highway safety.

(e) Maintenance.

(f) Modernization.

(g) Operations.

(h) Payments to local governments.

(i) Preservation.

(j) Special programs, including but not limited to bicycle and pedestrian facilities.

(2) The Legislative Assembly may not commit moneys to a project not listed in the Highway Construction Plan nor adjust individual project funds or project priorities. [1999 c.939 §6]

184.662 Highway project spending; transfer of funds. (1) The Department of Transportation may only expend moneys for a highway project if the project is included in the Highway Construction Plan or if the department has provided notice to the Legislative Assembly of the project. When the Legislative Assembly is in session, notice shall be provided to the President of the Senate, the Speaker of the House of Representatives and the cochairs of the Joint

Committee on Ways and Means. When the Legislative Assembly is not in session, notice shall be provided to the Emergency Board.

(2) In an emergency, the department may transfer funds among expenditure limitation categories within the highway budget described in ORS 184.660 (1) without approval of the Legislative Assembly or the Emergency Board. The department shall notify the Legislative Assembly or the Emergency Board of the emergency and if the Legislative Assembly is not in session, shall report to the next meeting of the Emergency Board with a budget balancing proposal to fund the emergency activity.

(3) In situations other than those described in subsection (2) of this section, the department may transfer funds among expenditure limitation categories within the highway budget described in ORS 184.660 (1) without approval of the Legislative Assembly or the Emergency Board as long as the expenditure limitation for any one category is neither increased nor decreased by more than five percent in a biennium. [1999 c.939 §7]

184.664 Status report for projects in Highway Construction Plan; notification of legislators. (1) The Department of Transportation shall create a concise status report for the Legislative Assembly of projects listed in the Highway Construction Plan and in the previous status report. The department shall include all of the following in the status report:

(a) An identification of each project, with enough specificity to enable readers of the report to know where the project is located and what the project will accomplish.

(b) An indication of the total amount of moneys the department anticipates will be spent to complete the project and the amount spent on the project as of the date of the status report.

(c) An indication that the project is on schedule, or an explanation if it is not on schedule.

(d) The expected year of completion for the project.

(e) An explanation of any change in priority of a project within the plan or the STIP since the previous status report was issued.

(f) An explanation of any amendments to the STIP that have been made since the previous status report was issued.

(g) An explanation of any changes to the adopted budget made by the Emergency Board since the previous status report was issued.

(2) When a project has been completed or abandoned, that fact shall be shown in the first status report presented after the completion or abandonment, but need not appear in status reports thereafter.

(3) The status report shall be submitted quarterly to the Speaker of the House of Representatives and to the President of the Senate. The Speaker and the President shall forward the reports for review to the committees or task forces the Speaker and the President deem appropriate.

(4) When the department submits the report to the Speaker and the President, the department shall notify each member of the Legislative Assembly that the report is available. [1999 c.939 §8]

184.666 Summary of effect of mandates and regulations on costs; notification of legislators. The Department of Transportation shall develop a summary that shows, to the extent it can be determined, how the department's costs for maintenance, preservation and modernization are affected by state and federal mandates, environmental regulations or other factors that have a significant impact on cost. The summary shall be submitted to the Speaker of the House of Representatives and the President of the Senate at the beginning of each regular session of the Legislative Assembly and need include only mandates, regulations and other factors issued or occurring on or after October 23, 1999. When the department submits the summary to the Speaker and the President, the department shall notify each member of the Legislative Assembly that the summary is available. [1999 c.939 §9]

(Road User Fee Task Force and Pilot Project)

Note: Sections 1 to 6, chapter 862, Oregon Laws 2001, provide:

Sec. 1. The Legislative Assembly finds that:

(1) An efficient transportation system is critical for Oregon's economy and quality of life.

(2) The revenues currently available for highways and local roads are inadequate to preserve and maintain existing infrastructure and to provide funds for improvements that would reduce congestion and improve service.

(3) The gas tax will become a less effective mechanism for meeting Oregon's long-term revenue needs because:

(a) It will steadily generate less revenue as cars become more fuel-efficient and alternative sources of fuel are identified; and

(b) Bundling fees for roads and highways into the gas tax makes it difficult for users to understand the amount they are paying for roads and highways. [2001 c.862 §1]

Sec. 2. (1) There is created the Road User Fee Task Force.

(2) The purpose of the task force is to develop a design for revenue collection for Oregon's roads and highways that will replace the current system for revenue collection. The task force shall consider all potential revenue sources.

(3) The task force shall consist of 12 members, as follows:

(a) Two members shall be members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(b) Two members shall be members of the Senate, appointed by the President of the Senate.

(c) Four members shall be appointed by the Governor, the Speaker and the President acting jointly. In making appointments under this paragraph, the appointing authorities shall consider individuals who are representative of the telecommunications industry, of highway user groups, of the Oregon transportation research community and of national research and policymaking bodies such as the Transportation Research Board and the American Association of State Highway and Transportation Officials.

(d) One member shall be an elected city official, appointed by the Governor, the Speaker and the President acting jointly.

(e) One member shall be an elected county official, appointed by the Governor, the Speaker and the President acting jointly.

(f) Two members shall be members of the Oregon Transportation Commission, appointed by the chairperson of the commission.

(4)(a) The term of a legislator appointed to the task force is four years except that the legislator ceases to be a member of the task force when the legislator ceases to be a legislator. A legislator may be reappointed to the task force.

(b) The term of a member of the task force appointed under subsection (3)(c) of this section is four years and the member may be reappointed.

(c) The term of a member of the task force appointed under subsection (3)(d) or (e) of this section is four years except that the member ceases to be a member of the task force when the member ceases to be a city or county elected official. A city or county elected official may be reappointed to the task force.

(d) The term of a member of the Oregon Transportation Commission appointed to the task force is four years except that the member ceases to be a member of the task force when the member ceases to be a member of the commission. A member of the commission may be reappointed to the task force.

(5) A legislator appointed to the task force is entitled to per diem and other expense payments as authorized by ORS 171.072 from funds appropriated to the Legislative Assembly. Other members of the task force are entitled to compensation and expenses as provided in ORS 292.495.

(6) The Department of Transportation shall provide staff to the task force.

(7) The task force shall study alternatives to the current system of taxing highway use through motor vehicle fuel taxes. The task force shall gather public comment on alternative approaches and shall make recommendations to the Department of Transportation and the Oregon Transportation Commission on the design of pilot programs to be used to test alternative approaches. The task force may also make recommendations to the department and the commission on criteria to be used to evaluate pilot programs. The task force may evaluate any pilot program implemented by the department and report the results of the evaluation to the Legislative Assembly, the department and the commission.

(8) In addition to the requirements of subsection (9) of this section, the task force shall propose to the Seventy-second Legislative Assembly options for the design of a revenue collection system for Oregon's roads and highways that would replace the current system for revenue collection.

(9) The task force shall report to each regular session of the Legislative Assembly on the work of the task force, the department and the commission in designing, implementing and evaluating pilot programs.

(10) Official action by the task force requires the approval of a majority of the members of the task force.

(11) Notwithstanding ORS 171.130 and 171.133, the task force by official action may recommend legislation. Legislation recommended by the task force must indicate that it is introduced at the request of the task force. Legislative measures proposed by the task force shall be prepared in time for presession filing with the Legislative Counsel by December 15 of the year preceding a regular session of the Legislative Assembly. [2001 c.862 §2]

Sec. 3. (1) The Department of Transportation may develop one or more pilot programs to test alternatives to the current system of taxing highway use through motor vehicle fuel taxes. Pilot programs may include, but need not be limited to, programs testing technology and methods for:

(a) Identifying vehicles;

(b) Collecting and reporting the number of miles traveled by a particular vehicle; and

(c) Receiving payments from participants in pilot projects.

(2) Technology and methods tested under subsection (1) of this section shall be tested for:

(a) Reliability;

(b) Ease of use;

(c) Public acceptance;

(d) Cost of implementation and administration; and

(e) Potential for evasion of accurate reporting.

(3) The department may solicit volunteers for participation in pilot programs developed under this section. A participant must:

(a) Report the participant's use of the highway system in Oregon as required by the program;

(b) Pay the fee established for the program for use of the highway system; and

(c) Display in the participant's vehicle an emblem issued under subsection (6) of this section.

(4) The department shall establish a fee for each pilot program the department undertakes. The fee shall be a highway use fee and shall be paid by each participant in the program. The program may be designed so that the fee is imposed in lieu of any tax on motor vehicle fuel imposed under ORS 319.020 or any tax on the use of fuel in a vehicle under ORS 319.530 that would otherwise be paid by the participant.

(5) If a person who participates in a pilot program under this section pays the motor vehicle fuel tax under ORS 319.020, the department may refund the taxes paid.

(6) The department shall issue an emblem for each vehicle that will be used by a participant as part of a pilot program under this section. A seller of fuel for use in a motor vehicle may not collect the tax that would otherwise be due under ORS 319.530 from a person operating a vehicle for which an emblem has been issued under this subsection.

(7) If a person participating in a pilot program under this section ends the person's participation in the program prior to termination of the program, the person shall pay to the department any amount of the highway use fee established for the program under subsection (4) of this section that the person has not yet paid. The person shall return to the department any emblem issued to the person under subsection (6) of this section.

(8) The department may terminate a pilot program at any time and may terminate participation by any particular person at any time. When a program is ter-

minated or a person's participation is terminated by the department, the department shall collect any unpaid highway use fees established for the program under subsection (4) of this section.

(9) The department may adopt any rules the department deems necessary for the implementation of this section, including but not limited to rules establishing methods of collecting highway use fees from program participants and rules establishing reporting requirements for participants.

(10) The department may compensate participants in pilot programs established under this section.

(11) In designing, implementing and evaluating pilot programs under this section, the department shall consider the recommendations of the task force created by section 2 of this 2001 Act. [2001 c.862 §3]

Sec. 4. (1) The department may use moneys in the State Highway Fund for financing activities required to support the task force created by section 2 of this 2001 Act and the pilot programs established under section 3 of this 2001 Act.

(2) The department may solicit and accept grants and assistance from the United States Government and its agencies and from any other source, public or private.

(3) The department may accept gifts or donations of equipment necessary to carry out research and pilot programs under sections 2 and 3 of this 2001 Act. [2001 c.862 §4]

Sec. 5. (1) Notwithstanding section 2 (8) of this 2001 Act, not later than September 30, 2002, the task force created by section 2 of this 2001 Act shall present a preliminary report to the Legislative Assembly on possible alternatives to the current system of taxing highway use through motor vehicle fuel taxes.

(2) Not later than July 1, 2003, the Department of Transportation shall begin to implement pilot programs as authorized by section 3 of this 2001 Act. [2001 c.862 §5]

Sec. 6. Sections 1 to 5 of this 2001 Act are repealed on January 2, 2010. [2001 c.862 §6]

Note: Section 43, chapter 618, Oregon Laws 2003, provides:

Sec. 43. The Department of Transportation may vary any fee established under section 3, chapter 862, Oregon Laws 2001, to facilitate the maximum use of road capacity. [2003 c.618 §43]

COOPERATION AND ASSISTANCE ON TRANSPORTATION PROJECTS

184.668 Cooperation by other agencies issuing permits for transportation projects; technical assistance on land use decisions. (1) Each state agency that issues a permit or other governmental authorization necessary for the construction or siting of a transportation project undertaken by the Department of Transportation shall:

(a) Upon request from the department, provide a list of applicable standards and criteria for the permit or other governmental authorization;

(b) Upon request from the department, provide technical assistance concerning how to complete the permitting or other governmental authorization process in the most cost-effective and timely manner consistent with legal requirements administered by the agency; and

(c) Within the authority and discretion otherwise afforded the agency by law, expedite review of, and the final decision on, the permit or other governmental authorization.

(2) When a local land use decision concerning a transportation project undertaken by the department involves the application of statutes or rules that are administered by a state agency, upon request from the department the state agency shall provide technical assistance to the department concerning the application of the statute or rule to the transportation project. If a state agency provides technical assistance to the department under this subsection, upon request from the department the state agency shall participate in the local land use decision in order to place the substance of its assistance to the department on the record of the local proceeding. If the local land use decision is appealed, the department may request that the state agency participate in the appeal.

(3) As used in this section:

(a) "State agency" or "agency" means:

(A) The Department of Environmental Quality;

(B) The Department of Land Conservation and Development;

(C) The Department of State Lands;

(D) The State Department of Agriculture;

(E) The State Department of Fish and Wildlife;

(F) The State Department of Geology and Mineral Industries;

(G) The State Forestry Department; and

(H) The State Parks and Recreation Department.

(b) "Transportation project" has the meaning given that term in ORS 367.010. [2003 c.340 §1]

PUBLIC TRANSIT

184.670 Purpose of ORS 184.670 to 184.733. It is the purpose of ORS 184.675, 184.685 to 184.733 and this section:

(1) To provide a means of state financial assistance and coordination to meet the state's most pressing mobility needs and to make transportation an effective and responsive force in achieving goals for social, economic and environmental development, and conservation of critical resources.

(2) To foster the development of an integrated transportation system in which each component or mode, such as air, bus, rail or para-transit is encouraged to perform in a

coordinated and complementary manner with other components or modes, and in balance with the public need and economic and social constraints.

(3) To encourage more effective participation by the private sector in providing coordinated public transportation.

(4) To provide for optimum and broader uses of federal funds as they become available.

(5) To promote the continuation and development of privately owned intercity common carriers of passengers. [1977 c.230 §1]

184.675 Definitions for ORS 184.670 to 184.733. As used in ORS 184.670 to 184.733, unless the context requires otherwise:

(1) "Director" means Director of Transportation.

(2) "Department" means the Department of Transportation.

(3) "Operating agreement" means an agreement for the operation or maintenance on behalf of the Department of Transportation of all or part of a public transportation system, but does not include agreements by which the department provides only financial or technical assistance or transportation facilities or equipment and which do not control routes, rates or levels of service, or agreements under which such control is exercised by the federal government through the department.

(4) "Public transportation system" means any form of passenger transportation system, whether or not for hire, including but not limited to air, rail, other fixed guideway, bus, jitney, taxi and dial-a-ride passenger transportation systems within, between and outside of urban and urbanized areas, and including related passenger terminal facilities and motor vehicle parking facilities.

(5) "Person" means the United States or any state or any department or agency of any of the above, or any nonprofit corporation or entity or any other individual, corporation or entity, either public or private.

(6) "Bus" means a motor vehicle designed for carrying 15 or more passengers, exclusive of the driver, and used for the transportation of persons.

(7) "Public transportation entity" includes a city, county, transportation district, mass transit district, metropolitan service district, Indian tribe as defined in ORS 391.802 or private nonprofit corporation operating a public transportation system. [1969 c.599 §50; 1973 c.249 §23; 1977 c.230 §2; 1981 c.224 §1; 1989 c.171 §24; 1993 c.741 §15; 2003 c.751 §8]

184.685 Purpose of department. The Department of Transportation may conduct statewide coordinating, financing, planning, research and development of public transportation systems in this state to insure the most orderly, efficient and economical development of such systems. [1969 c.599 §57; 1973 c.249 §25; 1977 c.230 §7]

184.689 Powers and duties of department. In order to carry out the purposes set forth in ORS 184.685, the Department of Transportation may:

(1) Sue and be sued;

(2) Acquire by purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein, including access rights, and take, hold, possess and dispose of any such property or interest;

(3) Conduct or carry out, subject to any other provision of law, field research, planning, financing, design, construction, acquisition, lease, preservation, or improvement of any public transportation system or any portion thereof, or provide for such activity by entering into agreements with any person or persons principally responsible for the operations of such public transportation system and possessing authority to enter into such agreement;

(4) Enter into any other necessary agreements; employ agents, engineers, consultants and other persons as necessary and fix their compensation;

(5) Construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system;

(6) Advise and assist in the formulation of overall public transportation policies and plans;

(7) Make necessary studies and render technical assistance to local governments;

(8) Participate in regulatory proceedings affecting public transportation;

(9) Assist local government, private and nonprofit operators of passenger transportation systems in the planning, experimentation, financing, design, construction, acquisition, lease, preservation, improvement, operation and maintenance of public transportation systems. The assistance may include loans, grants, or the provision of equipment or facilities or any rights therein by sale, lease or grant, or special grants to the users of said systems;

(10) Subject to the provisions of ORS 184.705, enter into operating agreements with any person;

(11) Receive and disburse funds from or to any person under contractual terms or according to other authorized state or federal procedures. When more than one carrier provides similar services in the same or related areas or corridors pursuant to a certificate of public convenience and necessity, the department may select a provider of service on the basis of written proposals evaluated under criteria established by the Oregon Transportation Commission;

(12) Perform any necessary planning, administration, review or other functions required to be performed by the state or any agency thereof in connection with the allocation and distribution to any person of federal funds pursuant to the Urban Mass Transportation Act of 1964, as amended, or any other federal funding program for public transportation systems; and

(13) Negotiate with existing passenger carriers to preserve or coordinate transportation schedules to upgrade the existing system of intercity transportation. [1977 c.230 §9 (enacted in lieu of 184.700)]

184.691 Public Transit Account; use of moneys. The Public Transit Account is established in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the Department of Transportation for public transit purposes, from whatever source, shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the department and shall be used for public transit purposes authorized by law. [1975 c.522 §6; 1977 c.230 §5; 1993 c.741 §16]

184.705 Operating agreements. (1) The Department of Transportation, in a manner determined by the Oregon Transportation Commission, may enter into operating agreements with any person. The agreements may include, but are not limited to, provisions with respect to:

(a) Services to be rendered;

(b) Routes to be served;

(c) Schedules to be provided;

(d) Compensation to be paid;

(e) Equipment to be used;

(f) Points to be served;

(g) Terminals to be used;

(h) Qualifications of operating employees;

(i) Accounting and reporting procedures; and

(j) Termination dates.

(2) To the extent practicable the department shall enter into operating agreements with carriers authorized by the department to perform passenger transportation services pursuant to ORS 824.020 to 824.042 or ORS chapter 825. [1977 c.230 §13; 1989 c.171 §25; 1997 c.275 §1]

184.710 When operating agreements prohibited. The Department of Transportation shall not enter into operating agreements with any person for service in competition with service being provided by a mass transit district or transportation district formed under ORS chapter 267 without the consent of such district. [1977 c.230 §15]

184.720 Criteria and standards for evaluation of projects. For the purpose of aiding the development of public transportation systems, the Department of Transportation shall establish criteria and standards for the evaluation of transportation projects considered for assistance under ORS 184.670, 184.675 and 184.685 to 184.733. [1977 c.230 §11]

184.725 Rulemaking. The Department of Transportation shall adopt such rules as are necessary to carry out the provisions of ORS 184.670, 184.675 and 184.685 to 184.733. [1977 c.230 §12]

PUBLIC TRANSPORTATION DEVELOPMENT PROGRAM

184.730 Authority for public transportation development program. (1) In addition to the provisions of ORS 184.689, the Department of Transportation is authorized to institute a public transportation development program which may be financed by state, federal, local or other funds and may be operated in conjunction and cooperation with the federal government, metropolitan planning organizations, public and private employers, and public transportation entities.

(2) The department may apply to the Federal Transit Administration or Federal Highway Administration of the United States Department of Transportation or other federal or state government agency for participation in any public transportation system development project.

(3) The department may, with the assistance of the Oregon Department of Administrative Services or in cooperation with public transportation entities, or both, write specifications for and order public transportation equipment on behalf of any number of public transportation entities, to purchase real estate or to purchase, engineer, design, construct or lease public transportation structures and facilities under this program.

(4) If federal funds are being used to finance any project under this program, the department shall secure assurance from the federal government of the availability and amount of federal financial assistance. The department may also secure obligations by the participating public transportation entities that they will manage and operate such

public transportation equipment or facilities at the appropriate time and will supply local funding if such is being utilized.

(5) Funding for projects under this section and ORS 184.733 may be with whatever percentage of federal, state or local funds that the Oregon Transportation Commission deems proper. In the event that the federal percentage is changed by legislation, the state and local percentage may be changed by action of the Oregon Transportation Commission.

(6) In cooperation with metropolitan planning organizations, public and private employers, and public transportation entities, the department may develop transportation demand management projects, air quality improvement projects, demonstration projects, and planning and research projects. As used in this subsection:

(a) Transportation demand management projects are measures to reduce traffic congestion and travel by single occupant automobiles including but not limited to carpool, vanpool, buspool, park-and-ride facilities, parking management, high occupancy vehicle lanes, bus bypass lanes, flexible hours of employment, work trip reduction programs and incentives to use public transportation.

(b) Air quality improvement projects are measures to reduce vehicle emissions, including transportation demand management, development of alternative fuels including fueling stations, conversion of existing vehicles or replacement of existing vehicles with vehicles producing lower emissions, research into vehicles using alternative fuels and purchase of new vehicles by public transportation entities.

(c) Demonstration projects show the merits of products, projects, transportation service designs or management techniques. Demonstration projects are of a limited duration. [1981 c.224 §4; 1989 c.867 §2; 1991 c.752 §14f; 1993 c.741 §17; 1995 c.79 §65]

184.733 Department of Transportation Public Transportation Development Fund; use of fund; sources. (1) There is hereby established an account in the State Treasury, separate and distinct from the General Fund, to be known as the Department of Transportation Public Transportation Development Fund, which account is appropriated continuously for, and shall be used for, the purposes of ORS 184.730, developing and improving public transportation systems, acquiring transportation equipment and constructing facilities or participating with public transportation entities in the acquisition or construction of equipment or facilities. All interest, if any, shall inure to the benefit of the fund. In order to facilitate financing of the costs of transportation demand management projects, air quality improvement projects, demonstration projects, planning and research projects, acquisition or construction, the Department of Transportation may at any time, with Oregon Transportation Commission approval, draw on funds in this account for authorized purposes. The Director of Transportation may enter into written agreements with public transportation entities that commit the department to pay anticipated funds from the Department of Transportation Public Transportation Development Fund to public transportation entities for the purpose of financing the costs of acquisition and construction of transportation equipment and facilities, including servicing any obligations entered into by a public transportation entity to finance transportation equipment and facilities, which written agreements may provide for the remittance of such funds on such periodic basis, in such amounts, over such period of years and with such priority over other commitments of such funds as the director shall specify in the agreements. Any such written agreement or commitment when executed by the director and accepted by a public transportation entity shall be solely conditioned upon actual funds available in the Department of Transportation Public Transportation Development Fund and shall be valid, binding and irrevocable in accordance with its terms.

(2) The department may utilize moneys in the fund to purchase or lease new or rebuilt buses and other public transportation equipment, to purchase real estate or to purchase, lease or construct facilities for future sale to public transportation entities either for cash or by installment contract, but no installment contract shall be for more than five years and the balance shall bear interest at a rate indicated by the monthly earnings of the Oregon Short Term Investment Fund.

(3) The department may take title to and delivery of buses, other public transportation equipment or facilities acquired or built pursuant to this program for eventual transfer to public transportation entities.

(4) The department may from the amount appropriated to the Department of Transportation Public Transportation Development Fund deduct its costs of developing projects and administering the program authorized by this section and ORS 184.730.

(5) All moneys received by the department from the sale of buses, other public transportation equipment, real estate or facilities shall be placed in the Department of Transportation Public Transportation Development Fund and subject to budgetary limitations, may be used for the acquisition of additional transportation equipment or facili-

ties. [1981 c.224 §§5,6,7; 1989 c.867 §3; 1991 c.752 §14g; 1995 c.79 §66]

Chapter 190
(Partial)

2003 EDITION

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(Generally)

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190.620 Effect of corrected certificate on payments to cities or counties; adjustment of payments

INTERGOVERNMENTAL COOPERATION

(Generally)

190.003 Definitions for ORS 190.003 to 190.130. As used in ORS 190.003 to 190.130, "unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter. [1967 c.550 §2]

190.007 Policy; construction. In the interest of furthering economy and efficiency in local government, intergovernmental cooperation is declared a matter of statewide concern. The provisions of ORS 190.003 to 190.130 shall be liberally construed. [1967 c.550 §3]

190.010 Authority of local governments to make intergovernmental agreement. A unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. The agreement may provide for the performance of a function or activity:

(1) By a consolidated department;

(2) By jointly providing for administrative officers;

(3) By means of facilities or equipment jointly constructed, owned, leased or operated;

(4) By one of the parties for any other party;

(5) By an intergovernmental entity created by the agreement and governed by a board or commission appointed by, responsible to and acting on behalf of the units of local government that are parties to the agreement; or

(6) By a combination of the methods described in this section. [Amended by 1953 c.161 §2; 1963 c.189 §1; 1967 c.550 §4; 1991 c.583 §1]

190.020 Contents of agreement. (1) An agreement under ORS 190.010 shall specify the functions or activities to be performed and by what means they shall be performed. Where applicable, the agreement shall provide for:

(a) The apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities.

(b) The apportionment of fees or other revenue derived from the functions or activities and the manner in which such revenue shall be accounted for.

(c) The transfer of personnel and the preservation of their employment benefits.

(d) The transfer of possession of or title to real or personal property.

(e) The term or duration of the agreement, which may be perpetual.

(f) The rights of the parties to terminate the agreement.

(2) When the parties to an agreement are unable, upon termination of the agreement, to agree on the transfer of personnel or the division of assets and liabilities between the parties, the circuit court has jurisdiction to determine that transfer or division. [Amended by 1967 c.550 §5]

190.030 Effect of agreement. (1) When an agreement under ORS 190.010 has been entered into, the unit of local government, consolidated department, intergovernmental entity or administrative officer designated therein to perform specified functions or activities is vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement, its officers and agencies.

(2) An officer designated in an agreement to perform specified duties, functions or activities of two or more public officers shall be considered to be holding only one office.

(3) An elective office may not be terminated by an agreement under ORS 190.010. [Amended by 1967 c.550 §6; 1991 c.583 §2]

190.050 Fees for geographic data; uses. (1) An intergovernmental group may impose and collect reasonable fees based on market prices or competitive bids for geographic data that have commercial value and are an entire formula, pattern, compilation, program, device, method, technique, process, data base or system developed with a significant expenditure of public funds. An intergovernmental group may enter into agreements with private persons or entities to assist with marketing such products. Notwithstanding any other provision of law, intergovernmental group software product programming source codes, object codes and geographic data bases or systems are confidential and exempt from public disclosure under ORS 192.502. Nothing in this section authorizes an intergovernmental group to restrict access to public records through inclusion of such records in a geographic data base or system.

(2) Fees collected under subsection (1) of this section shall be used:

(a) For maintenance of the formula, pattern, compilation, program, device, method, technique, process, data base or system; and

(b) To provide services through the formula, pattern, compilation, program, device, method, technique, process, data base or system to public bodies paying a service charge to the intergovernmental group.

(3) As used in this section, "intergovernmental group" means two or more units of local government that have entered into a written agreement under ORS 190.010. [1991 c.335 §2]

190.070 Agreement changing service responsibilities requires changes in tax coordination resulting from change. (1) If any agreement entered into under ORS 190.010 to 190.030 or 190.110 between or among units of local government includes changes in service responsibility, that agreement shall set forth any changes in tax coordination resulting from the change in service responsibility.

(2) This section applies to agreements entered into after September 29, 1991, and before January 1, 1996. [1991 c.396 §9; 1993 c.424 §3]

Note: 190.070 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 190 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

190.080 Powers of intergovernmental entity created by intergovernmental agreement; limits; debts of entity are debts of parties to agreement; procedure for distribution of assets. (1) An intergovernmental entity created by an intergovernmental agreement under ORS 190.010 may, according to the terms of the agreement:

(a) Issue revenue bonds under ORS 288.805 to 288.945 or enter into financing agreements authorized under ORS 271.390 to accomplish the public purposes of the parties to the agreement, if after a public hearing the governing body of each of the units of local government that are parties to the agreement approves, by resolution or order, the issuance of the revenue bonds or entering into the financing agreement;

(b) Enter into agreements with vendors, trustees or escrow agents for the installment purchase or lease, with option to purchase, of real or personal property if the period of time allowed for payment under an agreement does not exceed 20 years; and

(c) Adopt all rules necessary to carry out its powers and duties under the intergovernmental agreement.

(2) Except as provided in ORS 190.083, an intergovernmental entity may not levy taxes or issue general obligation bonds.

(3) The debts, liabilities and obligations of an intergovernmental entity shall be, jointly and severally, the debts, liabilities and obligations of the parties to the intergovernmental agreement that created the entity, unless the agreement specifically provides otherwise.

(4) A party to an intergovernmental agreement creating an intergovernmental entity may assume responsibility for specific debts, liabilities or obligations of the intergovernmental entity.

(5) Any moneys collected by or credited to an intergovernmental entity shall not accrue to the benefit of private persons. Upon dissolution of the entity, title to all assets of the intergovernmental entity shall vest in the parties to the intergovernmental agreement. The agreement creating the entity shall provide a procedure for:

(a) The disposition, division and distribution of any assets acquired by the intergovernmental entity; and

(b) The assumption of any outstanding indebtedness or other liabilities of the entity by the parties to the intergovernmental agreement that created the entity.

(6) An intergovernmental entity created by intergovernmental agreement under ORS 190.010 may be terminated at any time by unanimous vote of all the parties to the intergovernmental agreement or as provided by the terms of the agreement. [1991 c.583 §4; 2001 c.840 §3; 2003 c.195 §7]

190.083 County agreements for transportation facilities. (1) Before a county enters into an intergovernmental agreement creating an intergovernmental entity to operate, maintain, repair and modernize transportation facilities, the county shall obtain approval of the terms and conditions of the agreement from the governing bodies of a majority of the cities within the county.

(2) Subject to the provisions of this section, an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may issue general obligation bonds and assess, levy and collect taxes in support of the purposes of the entity.

(3)(a) To carry out the purposes of an intergovernmental agreement under this section, and when authorized at an election described in paragraph (b) of this subsection, an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may borrow moneys and sell and dispose of general obligation bonds. Approval requires an affirmative vote of a majority of the electors within the intergovernmental entity voting in the election.

(b) If the bonds are not subject to the limitations under section 11 or 11b, Article XI of the Oregon Constitution:

(A) The proposition submitted to the electors shall provide that the intergovernmental entity shall assess, levy and collect taxes each year on the assessed value of all taxable property within the intergovernmental entity for the purposes of paying the principal and interest on the general obligation bonds;

(B) The election must comply with the voter participation requirements of section 11 (8), Article XI of the Oregon Constitution; and

(C) Outstanding bonds may never exceed in the aggregate two percent of the real market value of all taxable property within the entity.

(4) The governing body of an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities shall issue the bonds from time to time as authorized by the electors of the entity. The governing body shall issue the bonds according to the applicable provisions of ORS chapters 287 and 288.

(5) The electors of an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may establish a permanent rate limit for ad valorem property taxes for the entity pursuant to section 11 (3)(c), Article XI of the Oregon Constitution.

(6) An intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may exercise the powers necessary to carry out the purposes of the intergovernmental agreement, including but not limited to the authority to enter into agreements and to expend tax proceeds and other revenues the entity receives.

(7) An intergovernmental entity created to operate, maintain, repair and modernize transportation facilities is not a district as defined in ORS 198.010 and is not subject to the provisions of ORS chapter 451.

(8) An intergovernmental entity described in this section is subject to ORS 294.305 to 294.565 for each fiscal year or budget period in which the entity proposes to impose or imposes ad valorem property taxes. [2001 c.840 §2; 2003 c.14 §88; 2003 c.235 §3]

Note: The amendments to 190.083 by section 3, chapter 235, Oregon Laws 2003, apply to fiscal years and budget periods beginning on or after July 1, 2004. See section 4, chapter 235, Oregon Laws 2003. The text that applies until July 1, 2004, including amendments by section 88, chapter 14, Oregon Laws 2003, is set forth for the user's convenience.

190.083. (1) Before a county enters into an intergovernmental agreement creating an intergovernmental entity to operate, maintain, repair and modernize transportation facilities, the county shall obtain approval of the terms and conditions of the agreement from the governing bodies of a majority of the cities within the county.

(2) Subject to the provisions of this section, an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may issue general obligation bonds and assess, levy and collect taxes in support of the purposes of the entity.

(3)(a) To carry out the purposes of an intergovernmental agreement under this section, and when authorized at an election described in paragraph (b) of this subsection, an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may borrow moneys and sell and dispose of general obligation bonds. Approval requires an affirmative vote of a majority of the electors within the intergovernmental entity voting in the election.

(b) If the bonds are not subject to the limitations under section 11 or 11b, Article XI of the Oregon Constitution:

(A) The proposition submitted to the electors shall provide that the intergovernmental entity shall assess, levy and collect taxes each year on the assessed value of all taxable property within the intergovernmental entity for the purposes of paying the principal and interest on the general obligation bonds;

(B) The election must comply with the voter participation requirements of section 11 (8), Article XI of the Oregon Constitution; and

(C) Outstanding bonds may never exceed in the aggregate two percent of the real market value of all taxable property within the entity.

(4) The governing body of an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities shall issue the bonds from time to time as authorized by the electors of the entity. The governing body shall issue the bonds according to the applicable provisions of ORS chapters 287 and 288.

(5) The electors of an intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may establish a permanent rate limit for ad valorem property taxes for the entity pursuant to section 11 (3)(c), Article XI of the Oregon Constitution.

(6) An intergovernmental entity created to operate, maintain, repair and modernize transportation facilities may exercise the powers necessary to carry out the purposes of the intergovernmental agreement, including but not limited to the authority to enter into agreements and to expend tax proceeds and other revenues the entity receives.

(7) An intergovernmental entity created to operate, maintain, repair and modernize transportation facilities is not a district as defined in ORS 198.010 and is not subject to the provisions of ORS chapter 451.

190.085 Ordinance ratifying intergovernmental agreement creating entity. (1) Prior to the effective date of an intergovernmental agreement creating an intergovernmental entity, each of the parties to the intergovernmental agreement shall enact an ordinance ratifying the creation of the intergovernmental entity. An ordinance enacted under this subsection shall:

(a) Declare that it is the intent of the governing body enacting the ordinance to create an intergovernmental entity by intergovernmental agreement;

(b) Specify the effective date of the intergovernmental agreement;

(c) Set forth the public purposes for which the intergovernmental entity is created; and

(d) Describe the powers, duties and functions of the intergovernmental entity.

(2) Not later than 30 days after the effective date of an intergovernmental agreement creating an intergovernmental entity under ORS 190.010, the parties to the intergovernmental agreement shall file with the Secretary of State copies of the ordinances required under this section together with a statement containing the name of the intergovernmental entity created, the parties to the agreement, the purpose of the agreement and the effective date of the agreement. [1991 c.583 §5]

190.110 Authority of units of local government and state agencies to cooperate; agreements with American Indian tribes; exclusion of conditions for public contracts. (1) In performing a duty imposed upon it, in exercising a power conferred upon it or in administering a policy or program delegated to it, a unit of local government or a state agency of this state may cooperate for any lawful purpose, by agreement or otherwise, with a unit of local government or a state agency of this or another state, or with the United States, or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe. This power includes power to provide jointly for administrative officers.

(2) The power conferred by subsection (1) of this section to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe extends to any unit of local government or state agency that is not otherwise expressly authorized to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe.

(3) With regard to an American Indian tribe, the power described in subsections (1) and (2) of this section includes the power of the Governor or the designee of the Governor to enter into agreements to ensure that the state, a state agency or unit of local government does not interfere with or infringe on the exercise of any right or privilege of an American Indian tribe or members of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or any other authority. Nothing in this subsection shall be construed to modify the obligations of the United States to an American Indian tribe or its members concerning real or personal property, title to which is held in trust by the United States.

(4) A unit of local government or state agency of this state may exclude any clause or condition required by ORS 279.312, 279.313, 279.314, 279.316, 279.318, 279.319, 279.320 or 279.555 from an agreement under subsection (1) of this section if the agreement is with:

(a) A unit of local government of another state.

(b) A state agency of another state.

(c) The United States.

(d) A United States governmental agency.

(e) An American Indian tribe.

(f) An agency of an American Indian tribe. [Amended by 1963 c.189 §2; 1967 c.550 §7; 1985 c.267 §1; 1999 c.948 §3; 2001 c.611 §1]

Note: The amendments to 190.110 by section 208, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

190.110. (1) In performing a duty imposed upon it, in exercising a power conferred upon it or in administering a policy or program delegated to it, a unit of local government or a state agency of this state may cooperate for any lawful purpose, by agreement or otherwise, with a unit of local government or a state agency of this or another state, or with the United States, or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe. This power includes power to provide jointly for administrative officers.

(2) The power conferred by subsection (1) of this section to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe extends to any unit of local government or state agency that is not otherwise expressly authorized to enter into an agreement with an American Indian tribe or an agency of an American Indian tribe.

(3) With regard to an American Indian tribe, the power described in subsections (1) and (2) of this section includes the power of the Governor or the designee of the Governor to enter into agreements to ensure that the state, a state agency or unit of local government does not interfere with or infringe on the exercise of any right or privilege of an American Indian tribe or members of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or any other authority. Nothing in this subsection shall be construed to modify the obligations of the United States to an American Indian tribe or its members concerning real or personal property, title to which is held in trust by the United States.

(4) A unit of local government or state agency of this state may exclude any clause or condition required by ORS 279B.220, 279B.225, 279B.230, 279B.235, 279B.270 or 279C.500 to 279C.530 from an agreement under subsection (1) of this section if the agreement is with:

(a) A unit of local government of another state.

(b) A state agency of another state.

(c) The United States.

(d) A United States governmental agency.

(e) An American Indian tribe.

(f) An agency of an American Indian tribe.

190.112 Agreements with United States to perform security functions. A public body as defined in ORS 174.109 may enter into an agreement with the United States to perform security functions at a military installation or facility in the United

States and to receive payment for performing the functions. [2003 c.6 §1]

Note: 190.112 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 190 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

190.115 Summaries of agreements of state agencies; contents. (1) A state agency that enters into an agreement under ORS 190.110, 190.420 or 190.485 on or after August 16, 1999, or an agreement under ORS 190.112 or under ORS 660.342 shall submit a summary of the agreement to the Oregon Department of Administrative Services within the 30-day period immediately following the effective date of the agreement.

(2) The summary required by this section must include the following information:

(a) Names of the parties to the agreement.

(b) Date of the agreement.

(c) Subject matter of the agreement.

(d) The agency through which a person may obtain a copy of the agreement.

(3) A state agency that is required to submit a summary of an agreement to the department under this section shall submit the summary through electronic means. [1999 c.948 §1; 2003 c.6 §2; 2003 c.149 §2]

Note: 190.115 and 190.118 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 190 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

190.118 Index of summaries. (1) The Oregon Department of Administrative Services shall keep an index of summaries of agreements into which state agencies enter under ORS 190.110, 190.112, 190.420, 190.485 or 660.342. The department shall include in the index the information provided by state agencies under ORS 190.115.

(2) The department shall require state agencies to update information in the index through a secure website that is protected with a password.

(3) The department shall make the information in the index accessible to the public through a searchable public website on the Internet. [1999 c.948 §2; 2003 c.6 §3; 2003 c.149 §3]

Note: See note under 190.115.

(State Obligations)

190.210 Oregon Department of Administrative Services to maintain liaison with local governments providing services to state agencies. (1) The Legislative Assembly recognizes the need for intergovernmental cooperation between the state governmental agencies located in the various regions of the state and the local governmental agencies which provide the state agencies necessary services such as:

(a) Fire and police protection;

(b) Sewage, water and storm drainage;

(c) Traffic and transportation facilities;

(d) Refuse disposal; and

(e) Schools, parks and zoning.

(2) In meeting this need for intergovernmental cooperation, the Oregon Department of Administrative Services shall maintain liaison with the various local governmental agencies which provide services to the state agencies and may participate in the joint deliberations of the local governments in developing plans for services which are supported or utilized by these state agencies. [1961 c.591 §1; 1995 c.79 §69]

190.220 State to pay share of cost of intergovernmental and planning studies; limitation. (1) The Oregon Department of Administrative Services is authorized to pay out of the General Fund, to the extent that moneys are available therefor, its proportionate share of the cost of development and coordination of intergovernmental studies and plans prepared by tax supported intergovernmental planning groups, except that the state's financial participation shall be limited to the planning and coordinating of those activities and services which are supported or utilized by the state agencies located in the various regional areas.

(2) The department is authorized to pay, from moneys appropriated for such purposes, grants-in-aid to tax supported intergovernmental planning groups in support of planning activities conducted by such groups. [1961 c.591 §2; 1969 c.136 §5]

190.230 Public employment status under various federal programs. Persons who are recipients, beneficiaries or trainees in work training, work study and work experience programs authorized by the Economic Opportunity Act of 1964 (United States Public Law 88-452), as amended; persons who are volunteers under section 603 of that Act; and persons participating in the Work Incentive Program, Title IV of the Social Security Act (United States Public Law 90-248), as amended; and persons participating in programs of work experience and training during their participation in such programs:

(1) Are not serving in positions in the service of the state or any county or city for purposes of any merit system or civil service law or of any state, county or city retirement system.

(2) Are workers covered under the state system of workers' compensation if the recipient, beneficiary or trainee is not otherwise covered by a federal program of

insurance offering similar coverage. [1965 c.405 §1; 1969 c.227 §1; 1975 c.107 §1; 1977 c.294 §1; 1985 c.565 §23]

STATE CENSUS

190.510 Definitions for ORS 190.510 to 190.610. As used in ORS 190.510 to 190.610, unless the context requires otherwise:

(1) "Board" means the State Board of Higher Education established under ORS 351.010.

(2) "City" means any incorporated city or town. [Formerly 221.845; 1965 c.207 §1]

190.520 Annual estimate of population of cities and counties by State Board of Higher Education; actual count. (1) The State Board of Higher Education shall:

(a) Annually estimate the population as of July 1 of each city and county within the state and no later than December 15 of each year prepare a certificate of population showing the board's estimate of the population of each city and county within the state as of July 1. The board's estimate may be based upon statistical or other pertinent data or upon an actual count. The certificate shall also indicate the results of any enumeration of cities or annexed areas made after July 1.

(b) Annually estimate the number of persons between the ages of 4 and 20 who resided in each county as of October 25. The board shall certify such estimate to the Superintendent of Public Instruction and to the executive officer of the administrative office of each county, as defined in ORS 328.001, by January 1 of each year.

(c) Upon an official request from a city, county, political subdivision, public corporation or state agency, cause to be conducted at the expense of the requesting party an actual count of the population of the area specified in the request and prepare a certificate of population based upon such count.

(d) Upon the incorporation of a city, cause to be conducted at the expense of the city an actual count of the population of the city. The board shall prepare a certificate of population based upon such count. If the election of officers of the newly incorporated city is held 40 days or more before the end of the calendar quarter, the certificate shall be prepared before the end of the calendar quarter. If the election is held less than 40 days before the end of the calendar quarter, the certificate shall be prepared before the end of the calendar quarter next following the election.

(2) All certificates prepared under this section shall be filed with the Center for Population Research and Census. [Formerly 221.850; 1963 c.312 §1; 1971 c.294 §11; 1993 c.98 §12; 2003 c.14 §89]

190.530 Revision of certificate; effect. Upon petition from a city, county, political subdivision, public corporation or state agency for reconsideration, or upon its own motion, the State Board of Higher Education may revise its determination of the population of a city, county or other area. Payment of funds to a city, county or other area under ORS 323.455, 366.785 to 366.820 or 471.810 shall be affected by a subsequent filing of a corrected certificate under this section in the manner provided by ORS 190.620. [Formerly 221.855; 1963 c.312 §2; 1971 c.222 §2]

190.540 Effect of certificate of population; use in computing shares of state revenues. (1) The population shown in the certificate of population of the State Board of Higher Education filed pursuant to ORS 190.520 or 190.530 shall be the official population of the city, county or other area covered by the certificate until a later certificate covering such city, county or other area is filed by the board.

(2) After a certificate of population is filed pursuant to ORS 190.520 or 190.530, the population of a city, county or other area as shown in the certificate shall be the official and exclusive basis for determining per capita allocation and payment of funds to such city, county or other area under ORS 366.785 to 366.820 and 471.810 until the filing by the board of a later certificate for such city, county or other area. [Formerly 221.860; 1961 c.259 §1; 1963 c.312 §3; 1967 c.577 §6]

190.580 Rules and regulations. The State Board of Higher Education may adopt such rules and regulations as it considers desirable and expedient in the conduct of its duties under ORS 190.510 to 190.610. [Formerly 221.880]

190.590 Reporting information to board. Any state agency, or officer thereof, and any city, or department, officer or employee thereof, shall, upon request of the State Board of Higher Education, furnish such available information as may be required by the board in securing accurate data and information upon which to base its estimates. The board may prescribe the form for reporting such information. [Formerly 221.885]

190.610 Board to establish program at state institution of higher education. The State Board of Higher Education shall establish a program at one or more of the institutions under its control, designed to perform the duties imposed upon it by ORS 190.510 to 190.610. [1965 c.207 §6]

190.620 Effect of corrected certificate on payments to cities or counties; adjustment of payments. (1) Whenever a corrected certificate of census is filed and the correction is such that payment of funds under ORS 323.455, 366.785 to 366.820 or 471.810 was more or less than the city, county or other area would have been entitled, the payment shall be corrected in the distribution of funds next following the erroneous distribution. In computing the corrected distribution, the amount due any city or county or other area under the corrected certificate shall be distributed first, and the amounts payable that would otherwise be distributed shall be adjusted accordingly.

(2) The provisions of subsection (1) of this section shall apply to all distributions made after December 31, 1970, if a corrected certificate has been filed prior to the distribution next following the erroneous distribution. If the corrected certificate is not filed before the distribution next following the erroneous distribution, no adjustments are required and the corrected certificate shall affect only those distributions made after the corrected certificate is filed. [1971 c.222 §1]

Chapter 192
(Partial)

2003 EDITION

Records; Public Reports and Meetings

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PUBLIC RECORDS POLICY

192.001 Policy concerning public records. (1) The Legislative Assembly finds that:

(a) The records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of statewide public policy.

(b) The interest and concern of citizens in public records recognizes no jurisdictional boundaries, and extends to such records wherever they may be found in Oregon.

(c) As local programs become increasingly intergovernmental, the state and its political subdivisions have a responsibility to insure orderly retention and destruction of all public records, whether current or noncurrent, and to insure the preservation of public records of value for administrative, legal and research purposes.

(2) The purpose of ORS 192.005 to 192.170 and 357.805 to 357.895 is to provide direction for the retention or destruction of public records in Oregon in order to assure the retention of records essential to meet the needs of the Legislative Assembly, the state, its political subdivisions and its citizens, in so far as the records affect the administration of government, legal rights and responsibilities, and the accumulation of information of value for research purposes of all kinds, and in order to assure the prompt destruction of records without continuing value. All records not included in types described in this subsection shall be destroyed in accordance with the rules adopted by the Secretary of State. [1973 c.439 §1; 1991 c.671 §3]

ARCHIVING OF PUBLIC RECORDS

192.005 Definitions for ORS 192.005 to 192.170. As used in ORS 192.005 to 192.170, unless the context requires otherwise:

(1) "Archivist" means the State Archivist.

(2) "Photocopy" includes a photograph, microphotograph and any other reproduction on paper or film in any scale.

(3) "Photocopying" means the process of reproducing, in the form of a photocopy, a public record or writing.

(4) "Political subdivision" means a city, county, district or any other municipal or public corporation in this state.

(5) "Public record" includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. "Public record" does not include:

(a) Records of the Legislative Assembly, its committees, officers and employees.

(b) Library and museum materials made or acquired and preserved solely for reference or exhibition purposes.

(c) Records or information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905.

(d) Extra copies of a document, preserved only for convenience of reference.

(e) A stock of publications.

(f) Messages on voice mail or on other telephone message storage and retrieval systems.

(6) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state. However, "state agency" does not include the Legislative Assembly or its committees, officers and employees. [1961 c.160 §2; 1965 c.302 §1; 1983 c.620 §11; 1989 c.16 §1; 1999 c.55 §1; 1999 c.140 §1]

192.015 Secretary of State as public records administrator. The Secretary of State is the public records administrator of this state, and it is the responsibility of the secretary to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. [1973 c.439 §2]

192.040 Making, filing and recording records by photocopying. A state agency or political subdivision making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential pursuant to law, be made, assembled and indexed, in lieu of any other method provided by law, in such manner as the governing body of the state agency or political subdivision considers appropriate. [Amended by 1961 c.160 §5]

192.050 Copying records; evidentiary effect. A state agency or political subdivision may, with the approval of the proper budgetary authority, cause any public records in its official custody to be photocopied or captured by digital imaging system as in the case of original filings or recordings or recorded by means of analog or digital audio and video tape technology. Each photocopy, digital image and analog or digital audio and video tape shall be made in accordance with the appropriate standard as determined by the State Archivist. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript,

exemplification or certified copy, as the case may be, of the original. [Amended by 1961 c.160 §6; 1991 c.671 §4]

192.060 Indexing and filing copied records. All photocopies, digital images and analog or digital audio and video tapes made under ORS 192.040 and 192.050 shall be properly indexed and placed in conveniently accessible files. Each roll of microfilm shall be deemed a book or volume and shall be designated and numbered and provision shall be made for preserving, examining and using the same. [Amended by 1961 c.160 §7; 1991 c.671 §5]

192.070 Duplicate rolls of microfilm required; delivery to State Archivist. A duplicate of every roll of microfilm of documents recorded pursuant to law and the indexes therefor shall be made and kept safely. The State Archivist upon request may, pursuant to ORS 357.865, accept for safekeeping the duplicate microfilm. [Amended by 1961 c.160 §8]

192.072 State Archivist performing microfilm services for public body. Upon the request of a public body as defined by ORS 174.109, the State Archivist may perform microfilm services for the public body. The public body shall pay the cost of rendering the microfilm services to the State Archivist. The State Archivist shall deposit moneys received under this section with the State Treasurer, who shall give a receipt for the moneys. All moneys deposited under this section are continuously appropriated for the payment of expenses incurred by the Secretary of State in the administration of the office of the State Archivist. [1955 c.87 §1; 1961 c.172 §3; 1973 c.439 §8; 2003 c.803 §3]

192.105 State Archivist authorization for state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; limitations; records officer; standards for State Records Center. (1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(2)(a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c.244 §1; 1961 c.160 §10; subsection (3) enacted as 1961 c.150 §5; 1971 c.508 §1; 1977 c.146 §1; 1991 c.671 §6; 1993 c.660 §1; 1999 c.59 §43; 2003 c.255 §1; 2003 c.803 §10]

192.130 Disposition of valueless records in custody of State Archivist; notice prior to disposition. If the State Archivist determines that any public records of a state agency or political subdivision in the official custody of the State Archivist prove to have insufficient administrative, legal or research value to warrant permanent preservation, the State Archivist shall submit a statement or summary thereof to the records officer of the state agency or political subdivision, or successor agency or body, certifying the type and nature thereof and giving prior notification of the destruction. [Amended by 1961 c.160 §12; 1971 c.508 §2; 1991 c.671 §7]

192.170 Disposition of materials without authorization. The destruction or other disposal of the following materials do not require specific authorization:

(1) Inquiries and requests from the public and answers thereto not required by law to be preserved or not required as evidence of a public or private legal right or liability.

(2) Public records which are duplicates by reason of their having been photocopied.

(3) Letters of transmittal and acknowledgment, advertising, announcements and correspondence or notes pertaining to reservations of accommodations or scheduling of personal visits or appearances. [Amended by 1961 c.160 §16; 1971 c.508 §3]

192.190 Consular corps credentials as public records; duties of Secretary of State; fees. (1) Subject to such rules as the Secretary of State may adopt, the secretary may accept and file as a public record the credentials of a member of the consular corps if that member's jurisdiction includes the State of Oregon.

(2) The Secretary of State may certify as to the official character and the genuineness of the signature of a member of the consular corps whose credentials have been accepted and filed under subsection (1) of this section.

(3) Fees for the filing of credentials and the issuance of certificates under this section shall be established by the Secretary of State pursuant to ORS 177.130. [1983 c.232 §1]

PUBLIC REPORTS

(Standardized Form)

192.210 Definitions for ORS 192.210 and 192.220. As used in ORS 192.210 and 192.220, unless the context requires otherwise:

(1) "Issuing agency" means:

(a) Every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid from public funds and includes the Legislative Assembly, the officers and committees thereof, and the courts and the officers and committees thereof; or

(b) Any county, special district, school district or public or quasi-public corporation.

(2) "Printing" includes any form of reproducing written material.

(3) "Report" means any report or other publication of an issuing agency that is required by law to be submitted to the public or to a receiving agency.

(4) "Receiving agency" means any state officer or state board, commission, department, institution or agency or branch of government that is required by law to receive any report from an issuing agency. If the branch of government is the Legislative Assembly, the receiving agency is the Legislative Administration Committee and if the branch is the judicial branch, the receiving agency is the Supreme Court. [1969 c.456 §1; 1971 c.638 §11]

192.220 Standardized report forms; exemptions. (1) Except where form and frequency of reports are specified by law, every receiving agency shall prescribe by rule standardized forms for all reports and shall fix the frequency with which reports shall be submitted.

(2) Receiving agencies in the executive or administrative branch of government shall consult with the Oregon Department of Administrative Services in preparing rules under this section.

(3) With the consent of the Governor, a receiving agency in the executive or administrative branch may exempt any issuing agency from the requirements imposed under subsection (1) of this section. The Legislative Administration Committee may exempt any issuing agency from such requirements for any report required to be submitted to the Legislative Assembly. The Supreme Court may exempt any issuing agency from such requirements for any report required to be submitted to the courts. [1969 c.456 §2; 1971 c.638 §12]

(Policy; Compliance)

192.230 Definitions for ORS 192.235 to 192.245. As used in ORS 192.235 to 192.245:

(1) "Report" means informational matter that is published as an individual document at state expense or as required by law. "Report" does not include documents prepared strictly for agency administrative or operational purposes.

(2) "State agency" has the meaning given that term in ORS 192.410. [1991 c.842 §1; 2001 c.153 §1]

Note: 192.230 to 192.250 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.235 Policy for ORS 192.230 to 192.250. (1) The Legislative Assembly finds that:

(a) Many state agency reports are published for reasons that are historical and no longer based on the public's need to be informed.

(b) The format of many state agency reports is not economical or well suited to providing needed information in easily understandable form.

(c) State agency reports containing information that is useful but not to the general public should be placed on a self-supporting schedule.

(2) It is the policy of the Legislative Assembly to encourage state agencies to inform the public, the Legislative Assembly and the Governor of matters of public interest and concern. It is further the policy of this state to guarantee to its citizens the right to know about the activities of their government, to benefit from the information developed by state agencies at public expense and to enjoy equal access to the information services of state agencies. It is further state policy to encourage agencies to consider whether needed information is most effectively and economically presented by means of printed reports. [1991 c.842 §2]

Note: See note under 192.230.

192.240 Duties of state agency issuing report. To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

(1) Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

(2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper in accordance with ORS 279.545 to 279.650 and 279.729 and rules adopted pursuant thereto.

(3) Insure that public documents are furnished to the State Librarian, as required in ORS 357.090. [1991 c.842 §3; 1995 c.69 §10]

Note: The amendments to 192.240 by section 212, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

192.240. To comply with the state policy relating to reports outlined in ORS 192.235, a state agency shall do the following:

(1) Use electronic communications whenever the agency determines that such use reduces cost and still provides public access to information.

(2) Whenever possible, use standard 8-1/2-by-11-inch paper printed on both sides of the sheet and use recycled paper, as defined in ORS 279A.010 and rules adopted pursuant thereto.

(3) Insure that public documents are furnished to the State Librarian, as required in ORS 357.090.

Note: See note under 192.230.

192.243 Availability of report on Internet; rules. (1) In accordance with rules adopted by the Oregon Department of Administrative Services and to reduce the amount of paper used by state agencies, by June 30, 2005, each state agency shall make available on the Internet any report that the state agency is required by law to publish. If a statute or rule requires a state agency to issue a printed report, that requirement is satisfied if the state agency makes the report available on the Internet. A state agency may issue printed copies of a report upon request.

(2) The Oregon Department of Administrative Services shall adopt rules in accordance with subsection (1) of this section requiring each state agency to make available on the Internet any report that the state agency is required by law to publish.

(3) This section may not be construed to require the disclosure of a public record that is exempt from disclosure under ORS 192.410 to 192.505 or other law. [2001 c.153 §3]

Note: See note under 192.230.

192.245 Form of report to legislature. Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly and one copy of the report to the office of the Speaker of the House of Representatives, one copy to the office of the President of the Senate and five copies to the Legislative Administration Committee. This requirement does not preclude providing a copy of any report to a specific legislative committee if required by law. [1991 c.842 §4]

Note: See note under 192.230.

192.250 Director of Oregon Department of Administrative Services to report to legislature on ORS 192.230 to 192.250. The Director of the Oregon Department of Administrative Services shall report to the Legislative Assembly by appearing at least once during each biennium before the appropriate interim committees designated by the Speaker of the House of Representatives and the President of the Senate. The director shall testify as to the effectiveness of ORS 171.206, 192.230 to 192.250 and 292.956, including any cost savings realized or projected and any recommendations for further legislative action. [1991 c.842 §5; 2003 c.803 §4]

Note: See note under 192.230.

(Distribution)

192.270 Definitions for ORS 192.270 and 192.275. As used in ORS 192.270 and 192.275:

(1) "Public" does not include any state officer or board, commission, committee, department, institution, branch or agency of state government to which a report is specifically required by law to be submitted but does include any such to which a copy is

sent for general informational purposes or as a courtesy.

(2) "Report" means informational matter published as a report or other document by a state agency but does not include an order as defined in ORS 183.310.

(3) "State agency" means any state officer or board, commission, department, institution or agency of the executive, administrative or legislative branches of state government. [1993 c.181 §1]

Note: 192.270 and 192.275 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.275 Notice when report required; content; effect. Notwithstanding ORS 192.230 to 192.245, if any state or federal law requires a state agency to send, mail or submit a report to the public, the state agency may meet this requirement by mailing notice of the report to the public. The notice shall state that if the recipient returns an attached or enclosed postcard to the state agency, the state agency will supply a copy of the report. The postcard may contain a checkoff to indicate whether the person wants to continue receiving a copy of complete reports. [1993 c.181 §2]

Note: See note under 192.270.

RECORDS AND REPORTS IN ENGLISH

192.310 Records and reports required by law to be in English. (1) With the exception of physicians' prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class C misdemeanor. [1971 c.743 §294]

INSPECTION OF PUBLIC RECORDS

192.410 Definitions for ORS 192.410 to 192.505. As used in ORS 192.410 to 192.505:

(1) "Custodian" means:

(a) The person described in ORS 7.110 for purposes of court records; or

(b) A public body mandated, directly or indirectly, to create, maintain, care for or control a public record. "Custodian" does not include a public body that has custody of a public record as an agent of another public body that is the custodian unless the public record is not otherwise available.

(2) "Person" includes any natural person, corporation, partnership, firm, association or member or committee of the Legislative Assembly.

(3) "Public body" 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.

(4) "Public record" includes any writing containing 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.

(5) "State agency" means any state officer, department, board, commission or court created by the Constitution or statutes of this state but does not include the Legislative Assembly or its members, committees, officers or employees insofar as they are exempt under section 9, Article IV of the Oregon Constitution.

(6) "Writing" means 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. [1973 c.794 §2; 1989 c.377 §1; 1993 c.787 §4; 2001 c.237 §1]

192.420 Right to inspect public records; notice to public body attorney. (1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.501 to 192.505.

(2)(a) If a person who is a party to a civil judicial proceeding to which a public body is a party, or who has filed a notice under ORS 30.275 (5)(a), asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the attorney for the public body.

(b) For purposes of this subsection:

(A) The attorney for a state agency is the Attorney General in Salem.

(B) "Person" includes a representative or agent of the person. [1973 c.794 §3; 1999 c.574 §1; 2003 c.403 §1]

192.430 Functions of custodian of public records; rules. (1) The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having

occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access.

(2) The custodian of the records may adopt reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian. [1973 c.794 §4; 1989 c.546 §1]

192.440 Certified copies of public records; fees; waiver or reduction. (1) The custodian of any public record which a person has a right to inspect shall give the person, on demand, a certified copy of it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) If the public record is maintained in a machine readable or electronic form, the custodian shall provide copies of the public record in the form requested, if available. If the public record is not available in the form requested, it shall be made available in the form in which it is maintained.

(3) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making such records available including costs for summarizing, compiling or tailoring such record, either in organization or media, to meet the person's request. However, when the records are those filed with the Secretary of State under ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, summaries or compilations of such records are those established by the Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

(4) The custodian of any public record may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(5) 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 district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General, the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

(6) This section does not apply to signatures of individuals submitted under ORS chapter 247 for purposes of registering to vote as provided in ORS 247.973. [1973 c.794 §5; 1979 c.548 §4; 1989 c.111 §12; 1989 c.377 §2; 1989 c.546 §2; 1999 c.824 §5; 2001 c.445 §168]

Note: For transition provisions regarding secured transactions, see notes under 79.0628.

192.445 Nondisclosure on request of home address, home telephone number and electronic mail address; rules of procedure; duration of effect of request; liability; when not applicable. (1) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. A public body may not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.

(2) The Attorney General shall adopt rules describing:

(a) The procedures for submitting the written request described in subsection (1) of this section.

(b) The evidence an individual shall provide to the public body to establish that disclosure of the home address, telephone number or electronic mail address of the individual would constitute a danger to personal safety. The evidence may include but is not limited to evidence that the individual or a family member residing with the individual has:

(A) Been a victim of domestic violence;

(B) Obtained an order issued under ORS 133.055;

(C) Contacted a law enforcement officer involving domestic violence or other physical abuse;

(D) Obtained a temporary restraining order or other no contact order to protect the individual from future physical abuse; or

(E) Filed other criminal or civil legal proceedings regarding physical protection.

(c) The procedures for submitting the written notification from the individual that disclosure of the home address, personal telephone number or electronic mail address of the individual no longer constitutes a danger to personal safety.

(3) A request described in subsection (1) of this section remains effective:

(a) Until the public body receives a written request for termination but no later than five years after the date that a public body receives the request; or

(b) In the case of a voter registration record, until the individual must update the individual's voter registration, at which time

the individual may apply for another exemption from disclosure.

(4) A public body may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(5) A public body may not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address, personal telephone number or electronic mail address granted an exemption from disclosure under this section.

(6) This section does not apply to county property and lien records. [1993 c.787 §5; 1995 c.742 §12; 2003 c.807 §1]

Note: 192.445 was added to and made a part of 192.410 to 192.505 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.447 Nondisclosure of public employee identification badge or card. (1) As used in this section, "public body" has the meaning given that term in ORS 174.109.

(2) A public body may not disclose the identification badge or card of an employee of the public body without the written consent of the employee if:

(a) The badge or card contains the photograph of the employee; and

(b) The badge or card was prepared solely for internal use by the public body to identify employees of the public body.

(3) The public body may not disclose a duplicate of the photograph used on the badge or card. [2003 c.282 §1]

Note: 192.447 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.450 Petition to review denial of right to inspect state public record; appeal from decision of Attorney General denying inspection; records of health professional regulatory boards. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the public record to determine if it may be withheld from public inspection. Except as provided in subsection (5) of this section, the burden is on the agency to sustain its action. Except as provided in subsection (5) of this section, the Attorney General shall issue an order denying or granting the petition, or denying it in part and granting it in part, within seven days from the day the Attorney General receives the petition.

(2) If the Attorney General grants the petition and orders the state agency to disclose the record, or if the Attorney General grants the petition in part and orders the state agency to disclose a portion of the record, the state agency shall comply with the order in full within seven days after issuance of the order, unless within the seven-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as provided in subsection (6) of this section, in the circuit court of the county where the record is held. Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner at the address shown on the petition. The state agency shall institute the proceedings within seven days after it issues its notice of intention to do so. If the Attorney General denies the petition in whole or in part, or if the state agency continues to withhold the record or a part of it notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may institute such proceedings.

(3) The Attorney General shall serve as counsel for the state agency in a suit filed under subsection (2) of this section if the suit arises out of a determination by the Attorney General that the public record should not be disclosed, or that a part of the public record should not be disclosed if the state agency has fully complied with the order of the Attorney General requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Attorney General is prohibited from serving as counsel for the state agency, the agency may retain special counsel.

(4) A person denied the right to inspect or to receive a copy of any public record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, and petitioning the Attorney General to review the public record shall, on or before the date of filing the petition with the Attorney General, send a copy of the petition by first class mail to the health professional regulatory board. Not more than 48 hours after the board receives a copy of the petition, the board shall send a copy of the petition by first class mail to the licensee or applicant who is the subject of any record for which disclosure is sought. When sending a copy of the petition to the licensee or applicant, the board shall include a notice informing the licensee or applicant that a written response by the licensee or applicant may be filed with the Attorney General not later than

seven days after the date that the notice was sent by the board. Immediately upon receipt of any written response from the licensee or applicant, the Attorney General shall send a copy of the response to the petitioner by first class mail.

(5) The person seeking disclosure of a public record of a health professional regulatory board, as defined in ORS 676.160, that is confidential or exempt from disclosure under ORS 676.165 or 676.175, shall have the burden of demonstrating to the Attorney General by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure. The Attorney General shall issue an order denying or granting the petition, or denying or granting it in part, not later than the 15th day following the day that the Attorney General receives the petition. A copy of the Attorney General's order granting a petition or part of a petition shall be served by first class mail on the health professional regulatory board, the petitioner and the licensee or applicant who is the subject of any record ordered to be disclosed. The health professional regulatory board shall not disclose any record prior to the seventh day following the service of the Attorney General's order on a licensee or applicant entitled to receive notice under this subsection.

(6) If the Attorney General grants or denies the petition for a record of a health professional regulatory board, as defined in ORS 676.160, that contains information concerning a licensee or applicant, the board, a person denied the right to inspect or receive a copy of the record or the licensee or applicant who is the subject of the record may institute proceedings for injunctive or declaratory relief in the circuit court for the county where the public record is held. The party seeking disclosure of the record shall have the burden of demonstrating by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the public interest in nondisclosure.

(7) The Attorney General may comply with a request of a health professional regulatory board to be represented by independent counsel in any proceeding under subsection (6) of this section. [1973 c.794 §6; 1975 c.308 §2; 1997 c.791 §8; 1999 c.751 §4]

192.460 Procedure to review denial of right to inspect other public records. ORS 192.450 is equally applicable to the case of a person denied the right to inspect or receive a copy of any public record of a public body other than a state agency, except that in such case the district attorney of the county in which the public body is located, or if it is located in more than one county the district attorney of the county in which the administrative offices of the public body are located, shall carry out the functions of the Attorney General, and any suit filed shall be filed in the circuit court for such county, and except that the district attorney shall not serve as counsel for the public body, in the cases permitted under ORS 192.450 (3), unless the district attorney ordinarily serves as counsel for it. [1973 c.794 §7]

192.465 Effect of failure of Attorney General, district attorney or public official to take timely action on inspection petition. (1) The failure of the Attorney General or district attorney to issue an order under ORS 192.450 or 192.460 denying, granting, or denying in part and granting in part a petition to require disclosure within seven days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460.

(2) The failure of an elected official to deny, grant, or deny in part and grant in part a request to inspect or receive a copy of a public record within seven days from the day of receipt of the request shall be treated as a denial of the request for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief under ORS 192.450 or 192.460. [1975 c.308 §5]

192.470 Petition form; procedure when petition received. (1) A petition to the Attorney General or district attorney requesting the Attorney General or district attorney to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

_____

_____ (date)

I (we), _____ (name(s)), the undersigned, request the Attorney General (or District Attorney of _____ County) to order _____ (name of governmental body) and its employees to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)

2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person(s):

1. _____

(Name of public officer or employee; title or position, if known)

2. _____

(Name of public officer or employee; title or position, if known)

_____

(Signature(s))

This form should be delivered or mailed to the Attorney General's office in Salem, or the district attorney's office in the county courthouse.

(2) Promptly upon receipt of such a petition, the Attorney General or district attorney shall notify the public body involved. The public body shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Attorney General, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Attorney General, the public body may instead disclose the nature or substance of the public record to the Attorney General. [1973 c.794 §10]

192.480 Procedure to review denial by elected official of right to inspect public records. In any case in which a person is denied the right to inspect or to receive a copy of a public record in the custody of an elected official, or in the custody of any other person but as to which an elected official claims the right to withhold disclosure, no petition to require disclosure may be filed with the Attorney General or district attorney, or if a petition is filed it shall not be considered by the Attorney General or district attorney after a claim of right to withhold disclosure by an elected official. In such case a person denied the right to inspect or to receive a copy of a public record may institute proceedings for injunctive or declaratory relief in the appropriate circuit court, as specified in ORS 192.450 or 192.460, and the Attorney General or district attorney may upon request serve or decline to serve, in the discretion of the Attorney General or district attorney, as counsel in such suit for an elected official for which the Attorney General or district attorney ordinarily serves as counsel. Nothing in this section shall preclude an elected official from requesting advice from the Attorney General or a district attorney as to whether a public record should be disclosed. [1973 c.794 §8]

192.490 Court authority in reviewing action denying right to inspect public records; docketing; costs and attorney fees. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480, the court has jurisdiction to enjoin the public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(2) Except as to causes the court considers of greater importance, proceedings arising under ORS 192.450, 192.460, 192.470 or 192.480 take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(3) If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial and on appeal. If the person prevails in part, the court may in its discretion award the person costs and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion thereof. If the state agency failed to comply with the Attorney General's order in full and did not issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days after issuance of the order, or did not institute the proceedings within seven days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein. [1973 c.794 §9; 1975 c.308 §3; 1981 c.897 §40]

192.493 Health services costs. A record of an agency of the executive department as defined in ORS 174.112 that contains the following information is a public record subject to inspection under ORS 192.420 and is not exempt from disclosure under ORS 192.501 or 192.502 except to the extent that the record discloses information about an individual's health or is proprietary to a person:

(1) The amounts determined by an independent actuary retained by the agency to cover the costs of providing each of the following health services under ORS 414.705 to 414.750 for the six months preceding the report:

(a) Inpatient hospital services;

(b) Outpatient hospital services;

(c) Laboratory and X-ray services;

(d) Physician and other licensed practitioner services;

(e) Prescription drugs;

(f) Dental services;

(g) Vision services;

(h) Mental health services;

(i) Chemical dependency services;

(j) Durable medical equipment and supplies; and

(k) Other health services provided under a prepaid managed care health services contract under ORS 414.725;

(2) The amounts the agency and each contractor have paid under each prepaid managed care health services contract under ORS 414.725 for administrative costs and the provision of each of the health services described in subsection (1) of this section for the six months preceding the report;

(3) Any adjustments made to the amounts reported under this section to account for geographic or other differences in providing the health services; and

(4) The numbers of individuals served under each prepaid managed care health services contract, listed by category of individual. [2003 c.803 §27]

Note: 192.493 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.495 Inspection of records more than 25 years old. Notwithstanding ORS 192.501 to 192.505 and except as otherwise provided in ORS 192.496, public records that are more than 25 years old shall be available for inspection. [1979 c.301 §2]

192.496 Medical records; sealed records; records of individual in custody or under supervision; student records. The following public records are exempt from disclosure:

(1) Records less than 75 years old which contain information about the physical or mental health or psychiatric care or treatment of a living individual, if the public disclosure thereof would constitute an unreasonable invasion of privacy. The party seeking disclosure shall have the burden of showing by clear and convincing evidence that the public interest requires disclosure in the particular instance and that public disclosure would not constitute an unreasonable invasion of privacy.

(2) Records less than 75 years old which were sealed in compliance with statute or by court order. Such records may be disclosed upon order of a court of competent jurisdiction or as otherwise provided by law.

(3) Records of a person who is or has been in the custody or under the lawful supervision of a state agency, a court or a unit of local government, are exempt from disclosure for a period of 25 years after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing in this subsection, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.

(4) Student records required by state or federal law to be exempt from disclosure. [1979 c.301 §3]

192.501 Public records conditionally exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life

or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);

(24) Writings prepared by or under the direction of officials of Oregon Health and Science University about a person and the person's potential interest in donating money or property to the university or about the person's actual donation unless disclosure is authorized by the person;

(25) Personal information held by or under the direction of officials of the Oregon University System about a person who has or who is interested in donating money or property to the system or to a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;

(26) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;

(27) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

(28) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;

(29) Social Security numbers as provided in ORS 107.840;

(30) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University; and

(31) The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents. [1987 c.373 §§23c,23d; 1987 c.764 §2 (enacted in lieu of 192.500); 1989 c.70 §1; 1989 c.171 §26; 1989 c.967 §§11,13; 1989 c.1083 §10; 1991 c.636 §§1,2; 1991 c.678 §§1,2; 1993 c.616 §§4,5; 1993 c.787 §§1,2; 1995 c.604 §§2,3; 1999 c.155 §3; 1999 c.169 §§1,2; 1999 c.234 §§1,2; 1999 c.291 §§21,22; 1999 c.380 §§1,2; 1999 c.1093 §§3,4; 2001 c.104 §66; 2001 c.621 §85; 2001 c.915 §1; 2003 c.217 §1; 2003 c.380 §2; 2003 c.524 §1; 2003 c.604 §98; 2003 c.674 §26; 2003 c.803 §12; 2003 c.807 §2]

Note: The amendments to 192.501 by section 3, chapter 807, Oregon Laws 2003, become operative January 2, 2006. See section 12, chapter 807, Oregon Laws 2003. The text that is operative on and after January 2, 2006, is set forth for the user's convenience.

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.010, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

(22) Records or information that, if disclosed, would allow a person to:

(a) Gain unauthorized access to buildings or other property;

(b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or

(c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;

(23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(a) An individual;

(b) Buildings or other property;

(c) Information processing, communication or telecommunication systems, including the information contained in the systems; or

(d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);

(24) Writings prepared by or under the direction of officials of Oregon Health and Science University about a person and the person's potential interest in donating money or property to the university or about the person's actual donation unless disclosure is authorized by the person;

(25) Personal information held by or under the direction of officials of the Oregon University System about a person who has or who is interested in donating money or property to the system or to a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;

(26) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;

(27) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;

(28) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;

(29) Social Security numbers as provided in ORS 107.840; and

(30) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

192.502 Other public records exempt from disclosure. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking

disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(20) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(21) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.

(23) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(24) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(25) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related

to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(26) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Personally identifiable information about customers of a municipal electric utility or a people's utility district. The utility or district may, however, release such information to a third party if the customer consents in writing or electronically, if the disclosure is necessary to render utility or district services to the customer, or if the disclosure is required pursuant to a court order. The utility or district may charge as appropriate for the costs of providing such information. The utility or district may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(28) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(29) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(30) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS 646.380 to 646.396, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(31) A county elections security plan developed and filed under ORS 254.074.

(32) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

(E) Sewage; or

(F) Water.

(b) Telecommunication systems, including cellular, wireless or radio systems.

(c) Data transmissions by whatever means provided. [1987 c.373 §23e; 1987 c.764 §3; 1987 c.898 §27 (enacted in lieu of 192.500); 1989 c.6 §17; 1989 c.925 §1; 1991 c.825 §7; 1993 c.694 §27; 1993 c.817 §1; 1995 c.79 §70; 1995 c.162 §62a; 1995 c.604 §1; 1997 c.44 §1; 1997 c.559 §1; 1997 c.825 §1; 1999 c.274 §17; 1999 c.291 §24; 1999 c.379 §1; 1999 c.666 §1; 1999 c.683 §3; 1999 c.811 §2; 1999 c.855 §4; 1999 c.955 §23; 1999 c.1059 §§12,16; 2001 c.377 §§17,18; 2001 c.915 §3; 2001 c.922 §§12,13; 2001 c.962 §§80,81; 2001 c.965 §§62,63; 2003 c.14 §§90,91; 2003 c.524 §§2,3; 2003 c.733 §§49,50; 2003 c.803 §§5,6]

192.505 Exempt and nonexempt public record to be separated. If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination. [1987 c.764 §4 (enacted in lieu of 192.500)]

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make

decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening 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. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; disabled access; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) No quorum of a governing body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) 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 so 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.

(5)(a) It shall be considered discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to the disabled, or, upon request of a hearing impaired person, to fail to make a good faith effort to have an interpreter for hearing impaired persons 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 Disabilities Commission 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 Oregon Disabilities Commission or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more such persons to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95]

192.640 Public notice required; special notice for executive sessions, special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general

public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (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. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) By a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) By the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless both sides of the negotiators request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information subject of the executive session be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from 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.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4]

192.670 Meetings by means of telephonic or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other

electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where the public can listen to the communication at the time it occurs by means of speakers or other devices. The place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) 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.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c. 644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Standards and Practices Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Standards and Practices Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of state or local lawyers assistance committees operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS

36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26]

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was added to and made a part of ORS chapter 192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.710 Smoking in public meetings prohibited. (1) 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.

(2) As used in this section:

(a) "Public meeting" means any regular or special public meeting or hearing of a public body to exercise or advise in the exercise of any power of government in buildings or rooms rented, leased or owned by the State of Oregon or by any county, city or other political subdivision in the state regardless of whether a quorum is present or is required.

(b) "Public body" means the state or any department, agency, board or commission of the state or any county, city or other political subdivision in the state.

(c) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1973 c.168 §1; 1979 c.262 §1]

Chapter 200
(Partial)

2003 EDITION

Emerging Small Business Assistance Program

200.150 Definitions for ORS 200.150 to 200.200
200.160 Transportation Commission duties; report
200.170 Eligibility for assistance
200.180 Emerging Small Business Account; uses
200.190 Deposit of one percent of highway construction contract amount
200.200 Security for performance by emerging small business

200.150 Definitions for ORS 200.150 to 200.200. As used in ORS 200.150 to 200.200:

(1) "Emerging small business" means:

(a) A business with its principal place of business located in this state;

(b) A business with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms;

(c) A business which has fewer than 20 employees;

(d) An independent business; and

(e) A business properly licensed and legally registered in this state.

(2) "Emerging small business" does not mean a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have aggregate annual gross receipts in excess of $1 million for construction or $300,000 for nonconstruction firms over the last three years.

(3) A business may be certified under ORS 200.005 to 200.075 as an emerging small business for no more than seven years. [1991 c.517 §1]

200.160 Transportation Commission duties; report. The Oregon Transportation Commission shall appoint a committee to recommend plans whereby the Department of Transportation may assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects and shall report its recommendation to the commission and the Legislative Committee on Trade and Economic Development. [1991 c.517 §2]

200.170 Eligibility for assistance. (1) Subject to subsection (2) of this section, in order to be eligible for assistance under ORS 200.005 and 200.150 to 200.200, the applicant must:

(a) Be determined to be an emerging small business pursuant to ORS 200.150;

(b) Have not been found to be eligible for such assistance in more than seven calendar years;

(c) Show that the applicant's place of business and the work in which the applicant seeks to participate are located in this state; and

(d) Show that the applicant is in compliance with applicable licensing and registration requirements.

(2) The Department of Transportation may limit eligibility for assistance on a specific project or contract to emerging small businesses that are located in or draw a part of their workforce from economically depressed areas in this state, as designated by the Economic and Community Development Department in consultation with the Employment Department.

(3) The applicant for assistance under ORS 200.005 and 200.150 to 200.200 must perform at least 51 percent of the labor on any public improvement or maintenance project for which assistance is received using the applicant's own workforce. [1991 c.517 §§3, 6]

200.180 Emerging Small Business Account; uses. The Emerging Small Business Account is established within the Consumer and Business Services Fund. The Emerging Small Business Account is an investment fund for purposes of ORS 293.701 to 293.820. Moneys in the account and the interest thereon are continuously appropriated for the purposes of assisting emerging small businesses under the plans recommended under ORS 200.160. [1991 c.517 §4; 1993 c.744 §189b]

200.190 Deposit of one percent of highway construction contract amount. The Department of Transportation, when undertaking a public improvement highway construction contract, shall deposit with the State Treasurer an amount equal to not more than one percent of the contract award amount. The State Treasurer shall credit the amount reserved to the Emerging Small Business Account within the Consumer and Business Services Fund. The deposit shall be made within 30 days of the date on which the contract award is made. [1991 c.517 §5; 1993 c.744 §189c]

200.200 Security for performance by emerging small business. (1) When any requirement exists under ORS chapter 279 to provide a surety bond or other security for the faithful performance of a public contract, an emerging small business may provide:

(a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186;

(b) A stipulation or undertaking with one or more individual sureties; or

(c) Any other form of security specified in the statute requiring the security.

(2) When the security for the faithful performance of a public contract is in the form of a stipulation or undertaking with one or more individual sureties, the individual sureties must be residents of this state. The total net worth of all the individual sureties on the stipulation or undertaking must be at least twice the sum specified in the stipulation or undertaking. The public agency requiring the security shall determine if the sureties possess the qualifications prescribed by this subsection. [1991 c.517 §8]

Note: The amendments to 200.200 by section 217, chapter 794, Oregon Laws 2003, become operative March

1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

200.200. (1) When any requirement exists under ORS chapter 279, 279A, 279B or 279C to provide a surety bond or other security for the faithful performance of a public contract, an emerging small business may provide:

(a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186;

(b) A stipulation or undertaking with one or more individual sureties; or

(c) Any other form of security specified in the statute requiring the security.

(2) When the security for the faithful performance of a public contract is in the form of a stipulation or undertaking with one or more individual sureties, the individual sureties must be residents of this state. The total net worth of all the individual sureties on the stipulation or undertaking must be at least twice the sum specified in the stipulation or undertaking. The public agency requiring the security shall determine if the sureties possess the qualifications prescribed by this subsection.

Chapter 209

2003 EDITION

County Surveyors

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209.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Control point" means a horizontal or vertical survey position set within the stated precision of the survey.

(2) "County surveyor" means an individual appointed or elected to the office of county surveyor and who is responsible for performing the duties of such office as described by law.

(3) "Deputy county surveyor" means an individual appointed by the county surveyor to the office of deputy county surveyor.

(4) "Geodetic control" means horizontal or vertical survey positions that are primarily intended to be used as reference positions for other surveys or that serve to extend the national geodetic control network.

(5) "Mapping control" means horizontal or vertical survey positions that control maps made from aerial photography.

(6) "Monument" means any permanent material object or collection of objects, either natural or man-made, which indicates the position on the ground of a survey station, public land survey corner or accessories, or a land boundary corner established by a qualified surveyor.

(7) "Public land survey corner" means a section corner, one-quarter section corner, Donation Land Claim corner, meander corner, witness corner or any other corner established by the General Land Office or its successor.

(8) "Registered professional land surveyor" has the meaning given that term in ORS 672.002. [1989 c.394 §2; 1991 c.339 §1]

209.010 [Repealed by 1953 c.306 §18]

209.015 Authority to enter upon land; no unnecessary damage; notice. (1) Subject to subsection (3) of this section, the county surveyor, and employees and agents of the county surveyor, may enter upon any land for the purpose of surveying or performing any work necessary to carry out existing laws and may establish permanent survey monuments.

(2) Any person exercising the right of entry granted under subsection (1) of this section shall do so with no unnecessary damage to the land entered upon.

(3) A county surveyor or any employee or agent of the county surveyor shall not enter upon or establish any permanent survey monument upon any property without first providing notice to the landowner or landowners and the occupant of the property. [1993 c.219 §2]

209.020 Surveys on court order; fees. The county surveyor shall execute all orders directed to the surveyor by any court of record or county court for surveying roads, or surveying or resurveying any tract of land the title to which is in dispute before such court, and all orders of survey for the partition of real estate. The county surveyor may charge and collect a fee that will reimburse the county for work performed under this section. [Amended by 1979 c.653 §1; 1989 c.394 §4]

209.030 Surveys on court order of land divided by county line; fees. When lands the title to which is in dispute before any court are divided by a county line, the court making an order of survey may direct such order to the surveyor of any county in which any part of such land is situated. The county surveyor may charge and collect a fee that will reimburse the county for work performed under this section. [Amended by 1989 c.394 §5]

209.040 Substitution when county surveyor interested in land. When it appears that the county surveyor is interested in any tract of land, the title to which is in dispute before the court, the court shall direct the survey or resurvey to be made by a registered professional land surveyor, who is in nowise interested. The substitute surveyor shall be authorized to administer oaths in the same manner as the county surveyor, return the survey or resurvey on oath or affirmation and receive for the services the same fees that the county surveyor would receive for similar services. [Amended by 1979 c.653 §2; 1989 c.394 §6]

209.050 [Amended by 1979 c.653 §3; repealed by 1981 c.111 §2]

209.060 [Repealed by 1979 c.653 §18]

209.070 Duties in respect to surveys. The county surveyor of each county shall:

(1) Keep a fair and correct record of all surveys made by the county surveyor and deputies thereof and by the county road official, all surveys received pursuant to ORS 209.250 and all surveys under ORS 368.106 or 368.206.

(2) Number progressively all surveys received and state by whom and, if provided, for whom made.

(3) Provide a copy of any survey to any person or court requiring the same, on payment of the fee allowed by law.

(4) Make all surveys of legal subdivisions with reference to the current United States Manual of Surveying Instructions.

(5) Establish or reestablish and maintain all public land survey corners, where evidence of the corners can be found and the corners can be positively located, and keep a separate record of the corners, giving the

dates and names of persons present. When so established or reestablished such corner monuments shall be recognized as the legal and permanent corners.

(6) Establish or reestablish, upon order of the county court or board of county commissioners, all public land survey corners where all physical evidence is destroyed or cannot be found but where the official government notes are available, the corners to be reestablished in the manner provided in ORS 209.130 for establishing corners, and keep a separate record of the same, giving the date and names of persons present, and turn such record over to the surveyor's successor. When so established or reestablished such corner monuments shall be recognized as the legal and permanent corners.

(7) At the expiration of the term of office transfer all records to the successor. [Amended by 1979 c.653 §4; 1981 c.153 §56; 1985 c.582 §7; 1989 c.394 §7; 1997 c.489 §9]

209.080 Compensation of county surveyor. The compensation for the county surveyor shall be as determined by the county court or board of county commissioners, and paid out of the county treasury upon order of the county court. [Amended by 1979 c.653 §5; 1981 c.111 §1; 1989 c.394 §8]

209.090 Procuring and filing copies of plats and field notes of United States surveys; copies as evidence. (1) The county court shall procure from the Bureau of Land Management a copy of the field notes and plats of all surveys and resurveys of public lands of townships, sections, Donation Land Claims, mineral claims, homesteads, meander lines or other similar surveys lying within its county. These shall include copies of the official plats and field notes of the survey and shall be filed in the office of the county surveyor.

(2) Copies, certified by the county surveyor, of copies of such field notes or plats filed in the office of the county surveyor by the county court shall be prima facie evidence. [Amended by 1979 c.653 §6; 1989 c.394 §9]

209.100 Administering oaths. The county surveyor or a deputy may administer the oaths or affirmations necessary to the legal establishment of roads and other surveys, and to take the evidence of any person who may be produced to prove any point material to such survey. [Amended by 1979 c.653 §7]

209.110 [Repealed by 1979 c.653 §18]

209.115 Qualifications of county surveyor. An individual is not eligible to hold the office of county surveyor or deputy county surveyor unless the individual is a registered professional land surveyor. [1989 c.394 §3]

209.120 [Repealed by 1979 c.653 §18]

209.130 Establishment of corners; references; additional reference using coordinate system. (1) In the establishment or reestablishment of a public land survey corner, the county surveyor shall set a monument of durable quality. When a monument cannot be set at the exact corner position or it is not practicable to set a monument, then a witness corner monument shall be set.

(2) Section corners, Donation Land Claim corners, center corners and quarter-section corners shall be witnessed by at least four references. Meander corners, angle point corners or other approved public land survey corners shall be witnessed by at least two references. References shall be of durable quality. All references shall be carefully described, and their bearings and distances noted in the report or on the survey.

(3) For the purpose of providing an additional reference, the county surveyor may, when maintaining or reestablishing survey corners, establish coordinates on public land survey corners using an Oregon Coordinate System pursuant to ORS 93.320 or another coordinate system, adopted by the appropriate public agency, that can be referenced directly to a geodetic position. [Amended by 1979 c.653 §8; 1989 c.394 §10; 2001 c.391 §1]

209.140 Necessary interference with corners; prior notice to county surveyor required; exception for emergency; fees. (1) Any person or public agency that finds it necessary to interfere with or pave over any established public land survey corner or accessories for any reason, shall notify the county surveyor prior to the interference, who shall lower and witness the monument, or place another monument and witness over the existing monument or reference and replace or set a witness monument, as the case may demand, and record the proceedings in the record of permanent surveys. The county surveyor may charge a fee in an amount that will reimburse the county for the work performed.

(2) When an emergency exists and the county surveyor is unavailable, the person or public agency causing the interference shall cause a registered professional land surveyor to preserve the monument as required in subsection (1) of this section. The registered professional land surveyor referencing the monument shall notify the county surveyor of the references within two business days after the references or interference, whichever occurs first. [Amended by 1979 c.653 §9; 1985 c.582 §8; 1989 c.394 §11]

209.150 Removal or destruction of monument; notice to county surveyor; replacement of monument; exception. (1) Any person or public agency removing, disturbing or destroying any survey monument

of record in the office of the county surveyor or county clerk shall cause a registered professional land surveyor to reference and replace the monument within 90 days of the removal, disturbance or destruction. The registered professional land surveyor referencing and replacing the monument shall do so in the same manner that is provided for public land survey corners according to ORS 209.140 and shall notify the county surveyor of that action within two business days. The costs of referencing and replacing the survey monument shall be paid by the person or public agency causing the removal, disturbance or destruction.

(2) Notwithstanding subsection (1) of this section, a county surveyor may, upon written request and written notice to an affected property owner, provide written authorization to a registered professional land surveyor to remove a survey monument other than a public land survey corner as defined in ORS 209.005. A county surveyor may require that the position of the removed monument be referenced to another survey monument and noted on a survey map filed in accordance with ORS 209.250. [Amended by 1979 c.653 §10; 1989 c. 394 §12; 1991 c.339 §2; 1997 c.336 §3; 1997 c.489 §10]

209.155 Removal or destruction of monument during road construction; survey map in lieu of replacement; delineation of newly defined right of way. (1) Notwithstanding ORS 209.150, when a recorded survey monument, other than a public land survey corner, is removed, destroyed or disturbed as a result of construction or reconstruction of a public road, the survey monument does not have to be replaced if:

(a) The original location of the recorded survey monument is within the new right of way; and

(b) The person or public agency responsible for the construction or reconstruction causes a registered professional land surveyor to locate any survey monuments that are subject to removal, destruction or disturbance and to file a map, prior to the beginning of construction, with the county surveyor that identifies all existing recorded monuments, the existing right of way and controlling centerline and the survey control used to comply with this section.

(2) The newly defined right of way may be delineated by either of the following methods:

(a) All control points that define the right of way centerline are monumented or referenced with monuments. The right of way boundary is monumented at all angle points, points of curve, points of tangency and at least every 1,000 feet on long curves and tangents. A survey that identifies the survey control and the new right of way and controlling centerline shall be filed with the county surveyor within 180 days after completion of construction.

(b) A permanent survey control point network is established referencing the new right of way and controlling centerline. The network shall consist of at least three control monuments and must span the length of the project. Each control monument shall be intervisible with at least two other control monuments. At least two monuments on the network must be part of the original control used to locate the monuments described in subsection (1)(b) of this section. A map identifying the control network and the new right of way and controlling centerline shall be filed with the county surveyor within 180 days after completion of construction.

(3) The types of monuments shall be as described in ORS 92.060.

(4) The survey maps required by this section shall comply with ORS 209.250 and any other requirement of law.

(5) For the purpose of complying with subsection (1)(b) of this section, locating a survey monument may consist of establishing coordinates on the monument. These coordinates may be Oregon State Plane coordinates, Local Datum Plane coordinates or other coordinates compatible with those coordinates shown on the survey.

(6) For the purpose of complying with this section, the date of completion of construction shall be considered to be the date when all substantial road improvements are completed. [1997 c.336 §2]

209.160 [Amended by 1979 c.653 §11; repealed 1981 c.111 §2]

209.170 [Amended by 1979 c.653 §12; repealed by 1981 c.111 §2]

209.180 [Repealed by 1979 c.653 §18]

209.190 [Repealed by 1981 c.111 §2]

209.200 Resurvey of government-surveyed lands. In the resurvey of lands surveyed under the authority of the United States, the county surveyor or a registered professional land surveyor shall observe the following rules:

(1) Section and quarter-section corners, and all other corners established and approved by the General Land Office or its successors, must stand as the legal and permanent corners.

(2) They must be reestablished at the identical spot where the original corner was located by the government survey, when this can be determined.

(3) When this cannot be done, then such corners must be reestablished with reference to the current United States Manual of Sur-

veying Instructions. [Amended by 1979 c.653 §13; 1989 c.394 §13]

209.210 [Repealed by 1979 c.653 §18]

209.220 Oath taken by employees. Each person employed by the county surveyor or a deputy shall, before commencing the duty assigned, take an oath or affirmation faithfully and impartially to execute the duties of employment. The county surveyor or a deputy shall administer the oath or affirmation of each employee. [Amended by 1979 c.653 §14]

209.230 Materials and equipment for certain purposes. The county surveyor shall procure at the expense of the county the materials and requisites for carrying into effect ORS 209.100 to 209.230. The county court shall pay for the same and all expenses incurred therein out of the general fund of the county.

209.240 [Amended by 1979 c.653 §15; repealed by 1981 c.111 §2]

209.250 Survey by registered land surveyor; requirements for map, narrative or report of survey; effect of noncompliance. (1) Any registered professional land surveyor making a survey of lands within this state wherein the surveyor establishes or reestablishes a boundary monument shall, within 45 days thereafter, submit for filing a permanent map of the survey to the county surveyor for review. When filed, the map shall be a permanent public record in the office of the county surveyor. In establishing or reestablishing a public land survey corner, the surveyor shall comply with ORS 209.070 (4), 209.130 and 209.200. If the surveyor is unable to complete the survey and submit a permanent map within 45 days, the surveyor shall, within 45 days of establishing or reestablishing a boundary monument, provide written notice to the county surveyor containing the reasons for the delay, an estimate of the amount of time reasonably necessary to complete the survey but not exceeding 180 days, and a temporary map showing the position of any monuments established or reestablished.

(2) Such permanent map shall have a written narrative that may be on the face of the map. If the narrative is a separate document, the map and narrative shall be referenced to each other. The map and narrative shall be made on a suitable drafting material in such size as may be required by the county surveyor. The lettering on the map and narrative shall be of such size and clarity as to be clearly reproduced. The narrative shall explain the purpose of the survey and how the boundary lines or other lines were established or reestablished and shall state which deed records, deed elements, survey records, found survey monuments, plat records, road records or any other pertinent data were controlling when establishing or reestablishing the lines. If the narrative is a separate document, it shall also contain the following:

(a) Location of survey by one-fourth section, Township and Range.

(b) The date of survey.

(c) The surveyor's seal and original signature.

(d) The surveyor's business name and address.

(3) A permanent map shall show the following:

(a) Location of survey by one-fourth section, Township and Range.

(b) The date of survey.

(c) Scale of drawing and North Arrow.

(d) The distance and course of all lines traced or established, giving the basis of bearing and the measured distance and course to a monumented section corner, one-quarter corner, one-sixteenth corner or Donation Land Claim corner in Township and Range, or to a monumented lot or parcel corner or boundary corner of a recorded subdivision, partition or condominium.

(e) All measured bearings, angles and distances that are used as a basis for establishing or reestablishing lines or monuments separately indicated from those of record together with the recording reference. Metric measurements may be used if a conversion to feet is provided.

(f) All monuments set and their relation to older monuments found. A detailed description of monuments found and set shall be included and all monuments set shall be separately indicated from those found.

(g) The surveyor's seal and original signature.

(h) The surveyor's business name and address.

(4)(a) Within 30 days of receiving a permanent map under this section, the county surveyor shall review the map to determine if it complies with subsections (1), (2) and (3) of this section and any applicable local ordinances. A map shall be indexed by the county surveyor within 30 days following a determination that the map is in compliance with this section. Any survey prepared by the county surveyor in an official or private capacity shall comply with subsections (1), (2) and (3) of this section.

(b) Any survey map found not to be in compliance with subsection (1), (2) or (3) of this section shall be returned within 30 days of receipt for correction to the surveyor who prepared the map. The surveyor shall return

the corrected survey map to the county surveyor within 30 days of receipt of the survey map from the county surveyor.

(c) Any map that is not corrected within the specified time period shall be forwarded to the State Board of Examiners for Engineering and Land Surveying for action, as provided in subsection (11) of this section.

(d) No action may be maintained against the county surveyor for recording a survey map that does not comply with this section.

(e) No action may be maintained against the county surveyor for refusal to file a survey map that does not comply with this section.

(5)(a) When a survey within this state is funded entirely or in part by public funds and the survey results in the establishment of horizontal or vertical positions for geodetic control, the registered professional land surveyor performing the survey, within 45 days after completion of the survey, shall file a report of the survey with the county surveyors of those counties in which the newly established points are located.

(b) When a survey within this state is funded entirely or in part by public funds and the survey results in the establishment of horizontal or vertical positions for mapping control, the registered professional land surveyor performing the survey, within 45 days of completing the survey, shall file a report of the survey with the county surveyor of a county in which a newly established point is located.

(6) A report required by subsection (5)(a) of this section may include maps or diagrams. The maps or diagrams, if included, shall be referenced to each other. The report shall contain the following:

(a) The name and number of each newly established geodetic control point.

(b) Location of newly established geodetic control points by Section, Township and Range.

(c) Location of the horizontal component of geodetic control points by the Oregon Coordinate System as described in ORS 93.320 and 93.330, including the scale factor, combined scale factor, convergence and geographic or geodetic coordinates, indicating datum used.

(d) Location of the vertical component of geodetic control points by orthometric height, ellipsoidal height and geoidal separation, indicating datum used.

(e) The date of survey.

(f) The business name and address of the surveyor.

(g) A description of all monuments set or found, including narrative or graphic information sufficient to locate the monuments.

(h) A statement explaining the purpose of the survey, the equipment and procedures used, including the geoid model and reference ellipsoid used, and the names or numbers of the found record control stations used and their source.

(i) The scale of drawing and North Arrow if a map or diagram is included.

(j) The seal and original signature of the surveyor.

(k) For geodetic control, a statement regarding the network accuracy and local accuracy of the survey, categorized by horizontal position, ellipsoidal height and orthometric height, relative to the National Spatial Reference System. The statement shall include the accuracy classification at the 95 percent confidence level for both network and local classifications in accordance with Standards for Geodetic Control Networks, Part 2 of the federal Geospatial Positioning Accuracy Standards (FGDC 1998) for the newly established points.

(7) The county surveyor shall file and index reports that comply with subsections (5) and (6) of this section within 30 days of determining compliance.

(8) Any monument set by a registered professional land surveyor to mark or reference a point on a property or land line or to mark or reference a geodetic control survey point shall be durably and visibly marked or tagged with the registered business name or the letters "L.S." followed by the registration number of the surveyor in charge or, if the monument is set by a public officer, it shall be marked with the official title of the office.

(9) If, in the performance of a survey, any registered professional land surveyor finds or makes any changes in any public land survey corner or their accessories as they are described in an existing corner record or survey map in the office of the county surveyor, the surveyor shall complete and submit to the county surveyor a record of the changes found or made to any corner or accessories to the corner. The record shall be submitted within 45 days of the corner visits, and shall include the surveyor's seal and original signature, business name and address, and be on stable base reproducible material in the form required by the county surveyor.

(10) The signature and stamp of a registered professional land surveyor on any permanent survey map or plat constitutes certification that the map or plat complies with all applicable provisions of this chapter.

(11) Any registered professional land surveyor failing to comply with the provisions

of subsections (1) to (9) of this section, ORS 92.050 to 92.080 or any county ordinance establishing standards for surveys or plats shall be subject to disciplinary action by the State Board of Examiners for Engineering and Land Surveying.

(12) Any federal or state agency, board or commission, special district or municipal corporation making a survey of lands within this state shall comply with this section. [Amended by 1963 c.555 §1; 1965 c.542 §1; 1979 c.653 §16; 1981 c.113 §2; 1983 c.309 §11; 1989 c.394 §14; 1991 c.339 §3; 1993 c.219 §13; 1997 c.489 §11; 1999 c.710 §11; 1999 c.1018 §7]

209.255 Amendment of survey map or narrative by affidavit of correction; preparation, certification and recording of affidavit. (1) Any survey map or narrative filed and recorded under the provisions of this chapter may be amended by an affidavit of correction:

(a) To show any courses or distances omitted from the map or narrative;

(b) To correct an error in any courses or distances shown on the map or narrative;

(c) To correct an error in the description of the real property shown on the map or narrative; or

(d) To correct any other errors or omissions where the error or omission is ascertainable from the data shown on the map or narrative as recorded.

(2) Nothing in this section shall be construed to permit changes in courses or distances for the purpose of redesigning parcel configurations.

(3) The affidavit of correction shall be prepared by the registered professional land surveyor who filed the map or narrative. In the event of the death, disability or retirement from practice of the surveyor who filed the map or narrative, the county surveyor may prepare the affidavit of correction. The affidavit shall set forth in detail the corrections made. The seal and original signature of the registered professional land surveyor making the affidavit shall be affixed to the affidavit.

(4) The county surveyor having jurisdiction of the map or narrative shall certify that the affidavit of correction has been examined and that the changes shown on the map or narrative are changes permitted under this section.

(5) The surveyor who prepared the affidavit shall cause the affidavit to be recorded in the office of the county recorder of the county where the survey or narrative is recorded. The county clerk shall promptly return the recorded affidavit to the county surveyor who shall note the correction and the recorder's filing information with permanent ink, upon the original survey or narrative filed in accordance with ORS 209.250. The corrections and filing information shall be marked in such a manner so as not to obliterate any portion of the survey or narrative.

(6) In addition to the fees established by ORS 205.320 for recording the affidavit in the county deed records, the county clerk shall collect a fee set by the county governing body. The county clerk shall collect the fee as set by the county governing body to be paid to the county surveyor for services provided under this section. [1983 c.309 §10; 1989 c.394 §15; 1993 c.219 §14; 1999 c.654 §23]

209.260 Fee for filing and indexing maps or reports of surveys. The county governing body, by resolution or order, may establish the fee to be collected by the county surveyor for filing and indexing a map or report of a survey. [1981 c.429 §2; 1985 c.582 §9; 1991 c.339 §4; 1991 c.621 §2]

209.270 Records of county surveyor; location; accessibility. (1) The records of the county surveyor shall be located in county facilities designated by the county governing body.

(2) The county surveyor shall be provided reasonable facilities for the proper filing, indexing, copying, public inspection and examination and protection of public records as required under ORS 192.430 and 192.440. [1981 c.429 §3]

209.300 Abandonment of railroad line; notice to county surveyor; request for copies of plats. When a railroad gives notice of its intention to abandon a railroad line within this state, the Department of Transportation shall provide a copy of the notice to the county surveyor of each county in which the line to be abandoned is located. Upon written request from a county surveyor so notified, the railroad shall provide the county surveyor with a reproducible copy of the right of way plats for the line to be abandoned. The copy of the right of way plats shall be provided prior to abandonment at no cost to the county surveyor, and shall show the center line of trackage as originally constructed and currently existing, together with ties to monumented public land survey corners, as shown by the right of way plats. [1985 c.220 §2; 1989 c.394 §16; 1995 c.733 §43]

209.990 Penalties; civil remedies. (1) The costs of the reestablishment of the corner or witness monument may be recovered in a civil action together with costs and attorney fees for the prevailing party.

(2) A person may obtain injunctive relief to prevent further disturbance or destruction of survey monuments.

(3) Any county surveyor failing to perform the duties required of the surveyor by ORS 209.020 to 209.090 shall be fined not exceeding $100, to be recovered by an action brought by the injured party. [Amended by 1979 c.653 §17; 1989 c.394 §17]

Chapter 267

2003 EDITION

Mass Transit Districts; Transportation Districts

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MASS TRANSIT DISTRICTS

(Generally)

267.010 Definitions for ORS 267.010 to 267.390. As used in ORS 267.010 to 267.390, unless the context requires otherwise:

(1) "District" means a mass transit district established under ORS 267.010 to 267.390.

(2) "District board" or "board" means the board of directors of a district.

(3) "Mass transit system" or "transit system" means the property, equipment and improvements of whatever nature owned, used, constructed, maintained, controlled or operated to provide mass transportation for passengers or to provide for the movement of people, including park-and-ride stations, transfer stations, parking lots, malls, and skyways, provided that nothing contained herein shall limit the power of a city to exercise its general powers over or provide such stations, lots, malls, or skyways.

(4) "Standard metropolitan statistical area" means an area designated and published by the United States Bureau of the Budget as a standard metropolitan statistical area. [1969 c.643 §1; 1973 c.116 §1]

267.020 Transfer of transit system to metropolitan service district; effect of transfer order. When a metropolitan service district organized under ORS chapter 268 functions in a mass transit district organized under ORS 267.010 to 267.390, the governing body of the metropolitan district may at any time order transfer of the transit system of the transit district to the metropolitan district, whereupon:

(1) The governing body of the transit district shall transfer title to, and possession of, the transit system and of all books, records, files, documents, and other property of the transit district to the metropolitan district.

(2) The metropolitan district shall be responsible for all the liabilities and obligations imposed upon or assumed by the transit district.

(3) For purposes of mass transit the metropolitan district shall have all the rights, powers, privileges and immunities, and be subject to all the duties and obligations, of a mass transit district under ORS 267.010 to 267.390, insofar as they are consistent with ORS chapter 268.

(4) The boundaries of the metropolitan district shall, for purposes of mass transit, be extended to encompass all the territory of the transit district.

(5) The transit district shall be dissolved and the offices of its directors terminated. [1969 c.643 §40; 1997 c.833 §26]

267.030 Use of alternative fuels for certain district vehicles; exceptions; annual report; application to all district vehicles. (1) To the maximum extent possible, motor vehicles subject to the control of a district shall use alternative fuel for operation.

(2) To the extent that it is economically and technologically possible, all motor vehicles purchased or leased by the board of the district shall be capable of using alternative fuel. However, this subsection does not apply if the vehicle will be primarily used in an area that does not have and cannot reasonably be expected to establish an alternative fuel refueling station or if the district is unable to secure financing sufficient to cover additional costs resulting from the requirement of this subsection.

(3) Prior to July 1 of each year, the board of the district shall submit an annual report to the Department of Environmental Quality and the State Department of Energy. The report shall contain at a minimum:

(a) The number of purchases and leases of vehicles capable of using alternative fuel;

(b) The number of conversions of vehicles from the use of gasoline or diesel fuel to the use of alternative fuel;

(c) The quantity of each type of alternative fuel used; and

(d) Any other information required by the Department of Environmental Quality and the State Department of Energy to carry out their functions under subsection (4) of this section.

(4) If the Department of Environmental Quality and State Department of Energy determine that the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district, the motor vehicles subject to the control of the board of the district shall be capable of using alternative fuel, to the maximum extent possible.

(5) The board of the district shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(6) As used in this section, "alternative fuel" means any fuel determined by the Department of Environmental Quality to be less polluting than conventional gasoline, including but not necessarily limited to reformulated gasoline, low sulphur diesel fuel, natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity. [1991 c.730 §2; 2003 c.186 §12]

(Formation)

267.080 Creation of district; district jurisdiction. As provided by ORS 267.010 to 267.390, a mass transit district may be created in any standard metropolitan statistical area for the purpose of providing a mass transit system for the people of the district. Except as otherwise provided in ORS 267.107 (2)(c), the territorial jurisdiction of the district may include all territory within the geographic boundaries of every Oregon county in that standard metropolitan statistical area. [Formerly 267.100]

(Portland, Eugene Districts)

267.085 Resolution to form district; content; filing. (1) In addition to and not in lieu of other actions authorized for the initiation of proceedings to form a mass transit district, the governing body of the most populous city in a standard metropolitan statistical area may by resolution propose formation of a mass transit district, if that city has a local transit system and if the governing body finds that area-wide mass transit needs cannot be met by local transit operation. The resolution of the governing body shall be addressed to and filed with the county board of the principal county and proceedings conducted as provided by ORS 198.705 to 198.955.

(2) A certified copy of the order forming a mass transit district shall be filed with the Governor. [Formerly 267.105]

267.090 Directors; appointment; term; vacancies; Governor to fix time of first meeting. Except as provided in ORS 267.112:

(1) District board members shall not be elected at the time of formation, but if a district is formed, the Governor shall, within 60 days after receiving a certified copy of the formation order, appoint from subdistricts the members of the first board of directors of the district, designate one the temporary chairperson, and fix the time and place of the organizational meeting. If the district has formed before October 4, 1977, the Governor, within 60 days after October 4, 1977, shall appoint from subdistricts a new board of directors, designate one as temporary chairperson, and fix the time and place of the organizational meeting.

(2) The board of directors of a mass transit district shall consist of seven members. One director shall be appointed from each of seven subdistricts. The Governor shall appoint as one of the directors a person who regularly uses the services provided by a mass transit system. Directors shall reside in the subdistrict from which they are respectively appointed. The subdistricts shall be as nearly equal in population as possible based on the latest federal census, and shall be designed to assure representation of the most populous city, other cities and unincorporated territory in the proposed district proportionate to their respective populations provided that if less than the entire district is taxed by the district, the subdistricts shall be wholly within the taxed area. The district or, if the taxed area is less than the entire district, the taxed area shall be divided into subdistricts initially, and after each succeeding federal census, by the Secretary of State.

(3) The term of office of a director is four years, but each director shall serve at the pleasure of the Governor. Before the expiration of the term of a director, the director's successor shall be appointed. A director is eligible for reappointment. In case of a vacancy for any cause, the Governor shall appoint a person to serve for the unexpired term. A director whose term has expired shall continue to serve until the appointment of a successor unless discharged by the Governor.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. [Formerly 267.110]

267.095 Terms of directors first appointed. Except as provided in ORS 267.112:

(1) Notwithstanding ORS 267.090, the terms of three of the directors of the first board of a district expire on the first Tuesday in the second January after the date of their appointment.

(2) The terms of four of the directors so appointed expire on the first Tuesday in the fourth January after the date of their appointment.

(3) The respective terms of the directors of the first board shall be determined by the Governor. [Formerly 267.115]

267.097 Governor to solicit recommendations for director in standard metropolitan statistical area with population over 400,000. Before appointing a director to the board of a district situated in a standard metropolitan statistical area with a population exceeding 400,000, the Governor shall

solicit from each city and county located wholly or partly within the subdistrict for which the appointment will be made recommendations of qualified individuals for the position. [1985 c.678 §2]

267.100 [1969 c.643 §2; 1977 c.347 §3; 1979 c.877 §3; renumbered 267.080]

267.105 [1969 c.643 §3; 1971 c.727 §95; renumbered 267.085]

(Salem District)

267.107 Resolution to create certain districts; contents. Notwithstanding ORS 267.085:

(1) The governing body of the most populous city in a standard metropolitan statistical area may by resolution propose creation of a mass transit district if the governing body finds that area-wide mass transit needs cannot be met by local transit operation.

(2) The resolution of the governing body shall:

(a) Be considered at a public hearing only after notice as required for regular consideration of other resolutions by city charter or ordinance;

(b) Include findings of the need for creation of a mass transit district in the affected area;

(c) Describe the boundaries of the proposed district, which may be limited to a proposed service area but which may not extend beyond the limits of the city's urban growth boundary; and

(d) If approved, be addressed to and filed with the governing body of the county in which the proposed district is principally situated.

(3) Upon receipt of the resolution under subsection (2) of this section the county governing body shall commence district formation proceedings as provided in ORS 198.705 to 198.955 and 267.108. [1977 c.347 §2; 1979 c.585 §1; 1999 c.454 §3]

267.108 Director election and district formation election under ORS 267.107 held at same time; designation of subdistricts. (1) Notwithstanding the provisions of ORS 198.810 (2), the county governing body shall order an election within the proposed district for approval or disapproval by the electors voting on the question of formation of a district under ORS 267.107 and for election of seven district directors.

(2) In addition to the requirements of ORS 198.815 (2), the order calling an election for creation of a district initiated under ORS 267.107 shall describe the boundaries of the seven subdistricts of the proposed district from each of which a director is to be elected. The subdistricts shall be as nearly equal in population as possible based on the latest federal decennial census, shall, where practicable, follow election precinct boundaries and shall together encompass the entire area of the proposed district. [1979 c.585 §5; 1985 c.678 §4]

267.109 Costs of election under ORS 267.107. The expenses incurred for the election held under ORS 267.080, 267.107, 267.112 and this section shall be paid by:

(1) The district, if the resolution is approved by the people.

(2) Each county participating in the election in the proportion of the number of precincts in the county voting on the resolution to the total number of precincts voting on the resolution, if the resolution is rejected by the people. [1977 c.347 §5]

Note: 267.109 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 267 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

267.110 [1969 c.643 §4; 1971 c.727 §96; 1975 c.142 §1; 1975 c.632 §3; 1977 c.728 §1; 1981 c.496 §1; renumbered 267.090]

267.112 Directors for districts formed under ORS 267.107; terms; vacancies; compensation and expenses. (1) If formation of a district is initiated by resolution adopted and filed in accordance with ORS 267.107, upon the submitting of a formation order by the county governing body to the proposed district electors, one district director shall be elected from each of the seven subdistricts described in the order calling an election for district creation. A director shall reside in the subdistrict from which the director is nominated and elected.

(2) The board of directors of the district shall consist of the seven directors elected from subdistricts under subsection (1) of this section.

(3) After the initial formation of a district, the Secretary of State, after each decennial federal census, shall modify the boundaries of the subdistricts so that the subdistricts remain as nearly equal in population as possible based on the latest federal census.

(4) The term of office of a director shall be four years, provided, however, that three of the first elected directors shall initially have a term of office expiring June 30 of the next odd-numbered year following district formation and four of the first elected directors shall initially have a term of office expiring June 30 of the next odd-numbered year not less than two years following district formation. The first elected directors of the district, upon taking office, shall by lot, supervised by the board, determine which three directors shall have the shorter initial

terms and which four shall have the longer initial terms. When a vacancy occurs in the office of a director, the remaining members of the board shall appoint a resident of the affected subdistrict to serve until June 30 of the next odd-numbered year, in which year a director shall be elected to serve the remainder of the unexpired term. A director whose term has expired shall continue to serve until the election of a successor.

(5) Directors shall not be entitled to compensation for their services but shall be entitled to reimbursement for actual and necessary expenses incurred or paid in the performance of their duties as members of the board. [1975 c.632 §2; 1977 c.347 §4; 1977 c.728 §2a; 1979 c.585 §2; 1985 c.678 §5]

267.114 Minimum area of district. The territorial boundaries of a mass transit district whose formation was initiated under ORS 267.107 shall include, as a minimum area, all of the territory within the urban growth boundary, as the urban growth boundary may exist from time to time, of the city that proposed creation of the mass transit district. [1999 c.454 §2]

267.115 [1969 c.643 §5; 1975 c.632 §4; renumbered 267.095]

(Board; Ordinances)

267.120 Officers of board; terms; oath. (1) The board shall choose from among its members, by majority vote of the members, a president, vice president, treasurer and secretary, to serve for terms of two years.

(2) Each director, before entering upon the duties of office, shall take and subscribe to an oath that the director will honestly, faithfully and impartially perform duties as a director and disclose any conflict of interest the director may have in any matter to be acted upon by the board. A copy of the oath shall be filed with the secretary of the board. [1969 c.643 §6; 1971 c.23 §7; 1971 c.403 §4; 1975 c.605 §15]

267.125 Meetings of board; quorum. The district board shall hold regular monthly meetings at a time and place fixed by the rules of the board. Special meetings may be held when called by the president of the board or when called by a majority of the members. However, five days' notice of a special meeting shall be given by the secretary to each member not joining in the call. A majority of the members constitutes a quorum for the transaction of business. [1969 c.643 §7]

267.130 Additional compensation prohibited. No officer or employee of the district shall offer, solicit or accept money or any other thing of value as a consideration, in addition to the salary paid the officer or employee by the district, for services performed within the scope of the official duties of the officer or employee. [1969 c.643 §13; 1971 c.23 §8]

267.135 General manager; qualifications; term; removal. (1) The board shall appoint a general manager on the basis of the qualifications of the general manager with special reference to the actual experience in or knowledge of accepted practices in respect to the duties of the office of the general manager. A general manager shall hold office for an indefinite term and may be removed by the board only by an affirmative vote of a majority of the members.

(2) Before a general manager is removed, the general manager shall upon demand be given a written statement of the reasons for removal. If requested, the general manager shall be given an open hearing at a meeting of the board before the final vote for removal. However, the board may by resolution suspend the general manager from office pending a hearing. The action of the board in suspending or removing a general manager, if approved by a majority of the members of the board, may be reconsidered by the board but is otherwise final and not subject to appeal. [1969 c.643 §14]

267.140 Duties of general manager. A general manager of a district shall:

(1) Have full charge of the acquisition, construction, maintenance and operation of the transit system of the district.

(2) Have full charge of the administration of the business affairs of the district.

(3) Enforce all ordinances adopted by the board.

(4) Administer the personnel system adopted by the board and, except for officers appointed by the board, appoint, discipline or remove all officers and employees, subject to ORS 267.010 to 267.390 and the rules of the board.

(5) Prepare and submit to the board within 30 days after the end of each fiscal year a complete report of the finances and administrative activities of the district for that preceding fiscal year.

(6) Keep the board advised as to the needs of the district.

(7) Prepare all plans and specifications for acquisition of equipment or construction of improvements or facilities for the district.

(8) Cause to be installed and maintained a system of auditing and accounting which shows completely and at all times the financial condition of the district.

(9) Devote the entire working time of the general manager to the business of the district.

(10) Perform such other duties as the board requires by resolution. [1969 c.643 §15]

267.145 General manager's attendance at board meetings; pro tempore manager. (1) The general manager shall attend the meetings of the board and may participate in its deliberations, but has no vote.

(2) The board may appoint a general manager pro tempore during the absence or disability of the general manager. [1969 c.643 §16]

267.150 Ordinances; regulating use of facilities; public hearings; route, schedule changes. (1) The legislative authority of a district board shall be exercised by ordinance.

(2) The board may enact police ordinances relating to the protection, use and enjoyment of district property and facilities. A district may appoint peace officers who shall have the same authority as other peace officers, except that such authority shall be limited to the enforcement of police ordinances of the district and the enforcement, for purposes relating to the protection, use and enjoyment of district property and facilities, of state and local laws.

(3) The board may, by ordinance, provide a procedure for the conduct of public hearings on proposed changes in transit routes and schedules. The board may delegate to the general manager or other administrative officer the authority to conduct such hearings.

(4) An ordinance shall not be required for a mass transit district to adopt temporary or experimental changes in routes and schedules. [1969 c.643 §17; 1973 c.116 §2; 1975 c.392 §1]

267.155 [1969 c.643 §19; repealed by 1971 c.268 §24]

267.160 [1969 c.643 §36; repealed by 1971 c.268 §24]

267.165 [1969 c.643 §18(2), (3); repealed by 1971 c.268 §24]

267.170 Initiative and referendum. (1) The electors of a district may exercise the powers of the initiative and referendum with reference to legislation of the district, in accordance with ORS 255.135 to 255.205.

(2) A district board on its own resolution may call an election for the purpose of referring an ordinance to the electors of a district for their approval before the ordinance takes effect. [1969 c.643 §39; 1977 c.728 §3; 1979 c.190 §411; 1981 c.173 §39; 1983 c.350 §124]

(Powers)

267.200 Existence, status and general powers of districts. A mass transit district shall constitute a municipal corporation of this state, and a public body, corporate and politic, exercising public power. It shall be considered a unit of local government for the purposes of ORS 190.003 to 190.130, a public employer for the purposes of ORS 236.610 to 236.640, and a political subdivision for the purposes of ORS 305.620. A district and its contractors engaged in operating motor vehicles to provide mass transportation on behalf of the district shall be entitled to tax refunds as allowed under ORS 319.831 to incorporated cities. It shall have full power to carry out the objects of its formation and to that end may:

(1) Have and use a seal, have perpetual succession, and sue and be sued in its own name.

(2) Acquire by condemnation, purchase, lease, devise, gift or voluntary grant real and personal property or any interest therein, located inside the boundaries of the district and take, hold, possess and dispose of real and personal property purchased or leased from, or donated by, the United States, or any state, territory, county, city or other public body, nonprofit corporation or person for the purpose of providing or operating a mass transit system in the district and aiding in the objects of the district.

(3) Contract with the United States or with any county, city, state, or public body, or any of their departments or agencies, or a nonprofit corporation, or any person, for the construction, acquisition, purchase, lease, preservation, improvement, operation or maintenance of any mass transit system.

(4) Build, construct, purchase, lease, improve, operate and maintain, subject to other applicable provisions of law, all improvements, facilities or equipment necessary or desirable for the mass transit system of the district.

(5) Enter into contracts and employ agents, engineers, attorneys and other persons and fix their compensation.

(6) Fix and collect charges for the use of the transit system and other district facilities.

(7) Construct, acquire, maintain and operate and lease, rent and dispose of passenger terminal facilities, motor vehicle parking facilities and other facilities for the purpose of encouraging use of the mass transit system within the district.

(8) Enter into contracts or intergovernmental agreements under ORS chapter 190 with units of local government of the State of Oregon, whether within or without the

district, or with the State of Washington or with public agencies of the State of Washington, to act jointly or in cooperation with them or to provide mass transit services to areas under their jurisdictions, provided that the party contracting to receive the services shall pay to the mass transit district not less than the proportionate share of the cost of the services that the benefits to the contracting party bear to the total benefits from the service.

(9) Conduct programs and events and take other actions for the purpose of improving or maintaining employee relations.

(10) Improve, construct and maintain bridges over navigable streams subject only to ORS 382.125.

(11) Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to a district by ORS 267.010 to 267.390. [1969 c.643 §8; 1973 c.116 §3; 1975 c.170 §1; 1977 c.550 §1; 1979 c.344 §1; 1979 c.877 §2; 1987 c.689 §1; 2003 c.802 §92]

267.205 Classification and designation of service areas; determination of area financing. (1) A district board may by ordinance classify and designate as a service area the territory within the district that is benefited by the mass transit system beyond the general benefit to all territory within the district. The board may by ordinance amend the boundaries of the service area to conform to changes in the mass transit system service.

(2) Subject to restrictions in the Oregon Constitution, any of the methods of financing authorized under ORS 267.300 may, in the discretion of the board, be imposed in the service area rather than in the entire district. [1969 c.643 §24]

267.207 Change of district boundaries; elector approval; withdrawal of service from area; territorial jurisdiction of district; boundary commission exemption. (1) The board of directors of a mass transit district may alter the territorial boundaries of the district by a nonemergency ordinance adopted at any regular meeting.

(2) If an ordinance annexing territory to a district is initiated or referred by, or referred to, the electors of the district, it shall not take effect unless approved by a majority of the electors registered in the territory proposed to be annexed to the district voting on the question and by a majority of the electors of the district voting on the question.

(3)(a) The board of directors of a mass transit district, as a result of the continuing comprehensive transportation planning process required by the Federal Transit Administration, shall determine annually the territory in the district within which the transit system of the district will operate. When the board determines during such planning process for any fiscal year that it will not provide transit service during that fiscal year to an area presently within the district, the board shall by ordinance withdraw from that area on the date specified in the ordinance, and that area shall no longer be part of the district. The board shall by ordinance set forth the criteria to be used in making the determinations described in this subsection.

(b) Subject to paragraph (a) of this subsection, the territorial jurisdiction of a district shall include:

(A) All territory located within the boundaries of a metropolitan service district;

(B) Each census tract within which the transit system of the district operates, or such smaller portion of the tract as determined by the board; and

(C) If so determined by the board of directors, any territory located within two and one-half miles or less of the transit system of the district or any route used by that system for the transportation of passengers.

(4) If an ordinance withdrawing territory from a district is initiated or referred by, or referred to, the electors of the district it shall not take effect unless approved by a majority of the electors of the entire district voting on the question.

(5) Notwithstanding ORS 199.425, the alteration of the boundaries of a district under this section shall not be subject to the jurisdiction or review of a local government boundary commission. [1979 c.877 §5; 1981 c.907 §1; 1983 c.83 §45; 1993 c.741 §22]

267.208 Effective date of change of boundaries; filing boundary change with county assessor and Department of Revenue. (1) An alteration of the boundaries of a district under ORS 267.207 or 267.250 to 267.263 shall not become effective during the period:

(a) Beginning after the 90th day before a primary election or general election and ending on the day after the election; or

(b) Beginning after the deadline for filing the notice of election before any other election held by the district and ending on the day after the election.

(2) If the effective date established for the alteration of the boundaries is a date that is prohibited under this section, the alteration shall become effective on the day after the election.

(3) For the purposes of ORS 308.225 only, the effective date of an alteration of district boundaries shall be the date on which the

board adopts the ordinance altering the boundaries or, if such an ordinance is initiated or referred, the date on which the ordinance is approved by the electors as provided in ORS 267.207.

(4) For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [1985 c.808 §77; 1987 c.799 §9; 1989 c.923 §26; 1995 c.712 §100; 2001 c.138 §11]

267.210 Preparation of general plan for mass transit system; content; revision. (1) A district shall, within a reasonable time after formation, prepare a broad, general plan for a mass transit system for the district. The plan shall be prepared in cooperation with the Department of Transportation and cities and counties located within and adjacent to the district.

(2) The plan shall show existing and proposed transit systems of the district and of other public and private agencies relating to mass transit. It shall demonstrate a basis for the coordination and planning of future construction, improvement and equipment acquisition of the district, governmental agencies and private interests to assure maximum efficiency and use of mass transit in the district. The plans shall be based on the needs of the district and take into consideration the plans and programs, if any, developed by the Department of Transportation and cities and counties located within the district. The district may have access to all information, statistics, plans and data in the possession of or available to any state agency or public corporation which is pertinent to the preparation of the plan and may reimburse the agency or corporation for any expense incurred in cooperating with the board.

(3) The district board shall revise the plan as necessary for the proper control, utilization, development and improvement of the district transit system. [1969 c.643 §20; 1973 c.116 §4]

267.215 [1969 c.643 §§9,21; repealed by 1975 c.771 §33]

267.218 Feasibility reports and public bidding not required for construction and improvement projects costing less than $50,000. A district may plan and let contracts for and carry through to completion construction and improvement projects costing less than $50,000 without feasibility reports, publication of notice, public hearings, public inspection of plans, advertisement for bids or public bidding, if the district board has approved the expenditure after obtaining plans, cost estimates and bids as it may deem necessary. [1975 c.141 §2]

267.220 [1969 c.643 §22; repealed by 1975 c.771 §33]

267.225 Intergovernmental agreements; condemnation of authority; joint occupancy. (1) A mass transit district may cooperate with or enter into agreements with any city, county, port or state agency having jurisdiction or control over any right of way that is available for public travel for the joint use of such right of way. A city, county, port or state agency may cooperate with or enter agreements with a district for the joint use of any right of way open to public travel located within the district.

(2) For the purpose of providing a mass transit system, a district may commence a condemnation proceeding to acquire land or an interest in land for right of way for the system over any public right of way already located, condemned or occupied or that may be located, condemned or occupied by some other public agency for the purpose of travel by the public. The proceeding shall be conducted as provided by the laws of this state for the condemnation of land or an interest in land for right of way for highway purposes. At the time of rendering judgment for compensation or damages, the court shall enter a judgment authorizing the district to occupy and use the right of way, if necessary, in common with the public agency already occupying or owning the right of way, and defining the terms and conditions upon which the right of way shall be so occupied and used in common. [1969 c.643 §12; 2003 c.576 §410; 2003 c.802 §93]

267.227 Relationship with Oregon Mass Transportation Financing Authority. A mass transit district may enter into contracts, leases, subleases and agreements with the Oregon Mass Transportation Financing Authority. The obligation of a district to pay rentals to the Oregon Mass Transportation Financing Authority shall not be considered to be the incurring of bonded indebtedness by a district. A district shall reimburse the Oregon Mass Transportation Financing Authority for all expenses incurred by the authority in connection with any application by such district for financial assistance under the Oregon Mass Transportation Financing Act. [1977 c.662 §18]

267.230 Exemption from public utility or railroad regulation. (1) Except as provided in ORS 824.045 and subsection (2) of this section, a transit system operated by a district, including the rates and charges made by a district and the equipment operated by a district, shall not be subject to state laws or ordinances of any political subdivision regulating public utilities or railroads, including those laws administered by the Department of Transportation.

(2) ORS 824.200 to 824.256 apply to the transit system operated by a district except

for control and regulation of any crossing at which the light rail transit vehicles of a district's transit system cross a highway at separated grades or any grade crossing at which the light rail transit vehicles operate within and parallel to the right of way of a highway and where all conflicting vehicle movements are controlled by standard highway traffic devices. However, upon written request from the district and the public authority with jurisdiction over the highway at such a grade crossing, the department shall adjudicate any dispute that arises between the district and the public authority with regard to the grade crossing. [1969 c.643 §11; 1973 c.116 §5; 1977 c.420 §1; 1985 c.678 §7; 1995 c.733 §92; 2001 c.522 §10]

267.235 Protection of employees' rights when an operating transportation system is acquired. When the district acquires an operating public transportation system, it shall make fair and equitable arrangements to protect the interests of employees and retired employees of the system. Such protective arrangements shall include, but shall not be limited to:

(1) Preservation of rights, privileges and benefits, including continuation of pension rights and payment of benefits, existing under collective bargaining agreements, or otherwise;

(2) Continuation of collective bargaining rights;

(3) Protection of individual employees against a worsening of their positions with respect to their employment; and

(4) Assurance of employment to persons employed by the mass transportation system acquired and priority of reemployment to persons previously employed. [1969 c.643 §10]

267.237 Criminal offender information available to district and transportation district; fitness determinations; rules regarding dissemination. (1) As used in this section:

(a) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a transportation district organized under ORS 267.510 to 267.650.

(b) "Qualified entity" means an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that, under contract with a district, provides individuals to operate motor vehicles for the transportation of passengers in the public transportation system of the district.

(c) "Subject individual" means a person subject to a criminal records check as specified by resolution of a mass transit district or a transportation district.

(2) A mass transit district or a transportation district shall request from the Department of State Police criminal offender information on subject individuals if the information is required in order to protect vulnerable Oregonians:

(a) To implement a federal or state statute, executive order or rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct;

(b) For district employment purposes when hiring individuals to operate motor vehicles of the district; or

(c) For the purposes of employment decisions made by a district for qualified entities that, under contracts with the district, employ individuals to operate motor vehicles for the transportation of passengers in the public transportation system of the district.

(3) In order to determine the suitability of the subject individual, a district shall require the subject individual to furnish to the district a full set of fingerprints to enable a criminal records check to be conducted. The district shall submit the completed fingerprint cards to the Department of State Police along with the applicable Oregon and Federal Bureau of Investigation processing fees. If no disqualifying record is identified at the state level, the Department of State Police shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal records check.

(4) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, a district shall cease to cause the cards to be sent to the federal bureau but shall continue to process the information through other available resources.

(5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the department shall return the fingerprint cards to the district. The district shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(6) The district and the Department of State Police shall permit a subject individual to inspect the individual's own Oregon and Federal Bureau of Investigation criminal offender records after positive fingerprint identification has been made.

(7)(a) A district, using guidelines established by a resolution of the district, shall determine under this section whether a sub-

ject individual is fit to operate motor vehicles for the transportation of passengers in the public transportation system of the district, based on the criminal offender information obtained pursuant to this section, any false statements made by the individual regarding the criminal history of the individual and any refusal to submit or consent to a criminal records check including fingerprint identification. If a subject individual is determined to be unfit, then that person shall not be allowed to operate motor vehicles for the transportation of passengers in the public transportation system of the district.

(b) In making the fitness determination, the district shall consider:

(A) The nature of the crime;

(B) The facts that support the conviction or pending indictment or indicate the making of the false statement;

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position or employment; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position or employment. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(c) A district shall have immunity from any civil liability that might otherwise be incurred or imposed for determining pursuant to this subsection that a subject individual is not fit to hold a position or be employed. A district and an employer or employer's agent who in good faith comply with this section and the decision of the district are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the district's decision. No employee of the district, a business or an organization is liable for defamation, invasion of privacy, negligence or any other civil claim in connection with the lawful dissemination of information lawfully obtained under this section.

(8) A district shall establish by resolution a process by which a subject individual may appeal the determination that the subject individual is disqualified for a position or employment pursuant to this section. Challenges to the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the department or bureau must be made through the department, bureau or agency and not through the appeal process required by this subsection.

(9) A district shall develop a system that maintains information regarding criminal records checks in order to minimize the administrative burden that criminal records check requirements impose upon subject individuals and providers. Records maintained under this subsection for subject individuals are confidential and shall not be disseminated except for the purposes of this section and in accordance with the relevant resolutions of the district. Nothing in this subsection permits a district to retain fingerprint cards of subject individuals.

(10) A district, in consultation with the Department of State Police and affected provider groups, shall adopt resolutions to implement this section and other statutes relating to criminal offender information. The resolutions may include but are not limited to:

(a) Specifying which employees are authorized to make criminal record inquiries;

(b) Specifying categories of subject individuals who are subject to criminal records checks;

(c) Specifying the information, including fingerprints, that may be required from a subject individual to permit a criminal records check;

(d) Specifying which services or qualified entities are subject to this section;

(e) Specifying which crimes may be considered in reviewing criminal offender information for a subject individual;

(f) Specifying when a nationwide criminal records check shall be conducted on a subject individual through the Department of State Police. The additional cost of obtaining a nationwide criminal records check and the risk to vulnerable Oregonians should be taken into consideration when enacting resolutions under this subsection;

(g) Specifying when a district, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under this section using the information maintained by the district under subsection (9) of this section; and

(h) Determining when a subject individual may be hired on a probationary basis pending a criminal records check. At a minimum, if there is any indication of criminal behavior by the subject individual, the resolution must require that, if the individual is hired, the individual can be hired only on a probationary basis and must be actively supervised at all times when the individual is in contact with children, the elderly or persons with disabilities.

(11) Criminal offender information is confidential. The Department of State Police shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information. Any district receiving information pursuant to this section is bound by the rules of disclosure adopted by the department.

(12) For purposes of receiving the information described in this section, a mass transit district and a transportation district are each considered to be a "designated agency" under ORS 181.010 to 181.560 and 181.715 to 181.730 and the rules adopted under ORS 181.555.

(13) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the district or qualified entity shall deny or terminate the employment of the individual, or revoke or deny any applicable position, service or employment.

(14) A district shall define by resolution the conditions under which subject individuals may participate in training, orientation and work activities pending completion of a criminal records check through the Law Enforcement Data System or nationwide criminal records check. At a minimum, subject individuals shall be actively supervised at all times that they are in contact with children, the elderly and persons with disabilities during such periods of training, orientation and work. Subject individuals may continue probationary employment while awaiting the nationwide criminal records check as long as the individual's criminal records check through the Law Enforcement Data System did not result in disqualification and there are no other indications of criminal behavior.

(15) If a district or a qualified entity requires a criminal records check of employees or other persons, the application forms of the district or qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check as required by this section. [1999 c.1057 §3]

Note: 267.237 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 267 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

267.240 Accessibility of facilities and equipment to elderly and disabled. (1) In carrying out its duties under ORS 267.200, the district shall provide a program of transportation for persons who are elderly or disabled, which:

(a) Is devised in consultation with and after solicitation of the views of persons representative of the communities for which such transportation shall be provided; and

(b) Gives due regard to parity of service.

(2) In carrying out its duties under ORS 267.200 (4), the district shall cause its future facilities and new equipment to be of such types as to make such facilities and equipment accessible to, and usable by, persons who are elderly or disabled. However, contracts for equipment are exempt from this requirement until such equipment:

(a) Is available from not less than two manufacturers in mass producible quantities; and

(b) Conforms to designs approved by the Federal Transit Administration of the United States Department of Transportation as providing access to and being usable by persons who are elderly or disabled.

(3) Notwithstanding subsection (2) of this section or any other provision of the law of this state, a program for transportation of persons who are elderly or disabled shall be deemed to be in compliance with the laws of this state and rules promulgated thereunder if the program satisfies subsection (1) of this section and the federal regulations relating to transportation for persons who are elderly or disabled promulgated by the Federal Transit Administration of the United States Department of Transportation. [1974 c.50 §2; 1981 c.621 §1; 1989 c.224 §37; 1993 c.741 §23]

267.245 District exempt from right of way fencing requirements. The provisions of ORS 608.310 shall not apply in respect to property operated by a mass transit district as part of a mass transit system. [1977 c.420 §2]

Note: 267.245 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 267 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Withdrawal of Territory From District)

267.250 Definitions for ORS 267.250 to 267.263. As used in ORS 267.250 to 267.263:

(1) "Affected area" means a contiguous area of not less than one square mile in which 200 or more district electors reside and which is within the boundaries of a district, but is outside the boundaries of any city with a population exceeding 10,000. However, the term does not include an area if the withdrawal of that area from the district results in the district having two or more noncontiguous parts.

(2) "Direct service," with respect to an affected area described in a petition filed under ORS 267.253, means the location or placement of any of the facilities of the district or of any route used by the transit system of the district within one mile of any boundary of the affected area. [1987 c.799 §2; 1999 c.444 §§1,2]

267.253 Petition for withdrawal from district; filing period; number of signatures; contents of petition. (1) If the electors of an affected area wish to withdraw from a district, they may file a petition for withdrawal with the district board at the times and in the manner provided for in this section. However, if the formation of the district was initiated under ORS 267.107, the petition for withdrawal may not include any area within the urban growth boundary described in ORS 267.114.

(2) A petition for withdrawal under this section may be filed only during the period from January 1 to August 30 in calendar year 2001 and in every fifth calendar year thereafter.

(3) A petition for withdrawal under this section shall be signed by not less than 15 percent of the electors registered in the affected area described in the petition.

(4) A petition filed under this section shall contain substantially the following:

(a) A statement that the petition is filed pursuant to ORS 267.250 to 267.263;

(b) The names of the district and all affected counties; and

(c) A request that proceedings be commenced for the withdrawal of the affected area from the district.

(5) There shall be attached to the petition a map which clearly and precisely shows the exterior boundaries of the affected area by reference to prominent landmarks such as streets, highways, rivers or the boundaries of cities and counties. The map shall be used in lieu of a metes and bounds or legal description of the affected area.

(6) The district board, within five days after receiving a petition filed under this section which conforms to the requirements of this section, shall file the petition with the county clerk of each county in which any part of the affected area is located for signature verification. [1987 c.799 §3; 1999 c.444 §4; 1999 c.454 §4]

267.255 Hearing on petition; notice. (1) When a county clerk to whom a petition is submitted under ORS 267.253 certifies that the petition contains the number of valid signatures required under ORS 267.253, the district board shall schedule a public hearing on the petition. A district board may hold a single public hearing with respect to two or more petitions.

(2) The district board shall schedule the public hearing for a date which is not earlier than the 20th day after the date on which the study of the affected area required under ORS 267.257 is completed, but which is not later than the 90th day after the board receives certification from the county clerk under subsection (1) of this section.

(3) The district board shall have notice of the hearing printed once in a newspaper in general circulation within the district. The notice shall be published at least five days prior to the hearing. Notice of the published hearing shall also be posted in at least four different locations within the affected area that are customarily used for the purpose of posting public notice. The notice shall be posted not less than 15 days prior to the date specified in the notice for the hearing and shall be posted for not less than five consecutive days. The notice required under this section shall contain the time and place of the hearing, the purpose of the hearing, a description of the affected area, the extent to which taxes imposed by the district will be increased in the remaining portions of the district as a result of the withdrawal of the affected area, the date on which the district board intends to finally dispose of the petition under ORS 267.257 (2), a statement that the study of the affected area required under ORS 267.257 is on file at the district offices and available for copying and public inspection and a statement that the public may appear and be heard on the issue of withdrawal of the affected area from the district. The date of final disposition of the petition that appears in the notice may be subsequently changed to a later date by the district board without publishing another notice as required by this section.

(4) The hearing required under this section may be conducted by a hearings officer appointed by the district board. [1987 c.799 §4]

267.257 Study of area proposed to be withdrawn; approval or denial of withdrawal; judicial review. (1) After receiving certification by a county clerk under ORS 267.255 of a petition for withdrawal filed under ORS 267.253, the district board shall conduct a study of the affected area described in the petition. The district board may also conduct an overall study of several affected areas. The study shall consider:

(a) The extent to which residents of the affected area currently use the mass transit services and facilities of the district;

(b) The amount of district revenues raised within the affected area during the last three completed fiscal years of the district, separately identifying the amount of revenues derived from taxes imposed by the district and the amount of revenues derived from other sources;

(c) The history of the mass transit services provided to the affected area;

(d) Whether or when direct service will be provided to the affected area;

(e) The number of previous petitions filed under ORS 267.253 with respect to the affected area or portions thereof; and

(f) The effect of withdrawal of the affected area on the district, including the extent to which taxes imposed by the district in the remaining portions of the district will be increased under ORS 267.260 as a result of the withdrawal of the affected area.

(2) After completion of the study conducted under subsection (1) of this section and the public hearing required under ORS 267.255, but not later than the December 31 next following the date on which the petition was filed with the district board, the district board shall adopt an ordinance withdrawing the affected area from the district or shall adopt a resolution denying the petition for withdrawal.

(3) Notwithstanding ORS 267.207 (3)(b), the district board shall approve withdrawal if:

(a) The district board finds that the use of the mass transit system of the district by residents of the affected area is less than or equal to 30 percent of the system-wide average weekday boarding rides per vehicle hour;

(b) The district board determines that direct service to the affected area is not planned for at least five years;

(c) The residents and businesses within the affected area have demonstrated that district fees and taxes have adversely affected employment, population or commercial activity within the affected area; and

(d) The district board has not received a petition signed by not less than 15 percent of the electors within the affected area seeking continuation of the district's jurisdiction over the affected area.

(4) Notwithstanding ORS 267.207 (3)(b), the district board may withdraw the affected area from the district when the conditions of subsection (3) of this section are not satisfied if the board considers such withdrawal to be in the best interests of the district and the affected area.

(5) Any decision of the district board relating to withdrawal of an affected area under ORS 267.250 to 267.263 may be reviewed by a circuit court under ORS 34.010 to 34.100. [1987 c.799 §5]

267.260 Withdrawal ordinance; effective date; adjustment in district tax rate as result of withdrawal. (1) As used in this section, "withdrawal date" means the effective date of an ordinance approving withdrawal of an affected area under ORS 267.250 to 267.263.

(2) An ordinance approving the withdrawal of an affected area under ORS 267.250 to 267.263 shall take effect on the first day of January next following the date which is 30 days after the adoption of the ordinance.

(3) Commencing immediately upon the withdrawal date and notwithstanding any other provision of law, the rate of each tax imposed by the district shall automatically be increased to a rate equal to the rate determined by dividing the rate at which such tax was levied immediately prior to the withdrawal date by a fraction, not more than one, which is equal to the total revenue derived from such tax by the district for the calendar year preceding the year in which the withdrawal ordinance is adopted attributable to the area of the district other than the withdrawn affected area divided by the total revenue derived from such tax by the district for the same period.

(4) If the tax rates required under subsection (3) of this section do not produce tax revenues sufficient to enable the district to make the annual or semiannual payments, when due, and otherwise satisfy the requirements of the bonded or other indebtedness of the district incurred prior to the withdrawal, the district may increase the rate of each tax to a rate that produces revenues sufficient to enable the district to make the annual or semiannual payments, when due, and otherwise satisfy the requirements of such indebtedness.

(5) The district board shall determine rates in accordance with the formula prescribed by subsection (3) of this section and adopt the rates as part of the ordinance approving the withdrawal of the affected area. Any such determination and adoption shall be final and conclusive unless it is shown to be arbitrary and capricious.

(6) If a district adopts an ordinance that increases the rate of an excise tax described in ORS 267.385, the increase shall be adjusted as prescribed in subsection (3) of this section to take into account the withdrawal of an affected area that occurred or occurs at any time after the date the district first imposed any taxes pursuant to ORS 267.385. [1987 c.799 §6; 2003 c.739 §10]

267.263 Withdrawal of territory not subject to boundary commission review. Notwithstanding ORS 199.425, the alteration of the boundaries of a district under ORS 267.250 to 267.263 is not subject to the jurisdiction or review of a local government boundary commission. [1987 c.799 §7]

267.265 Use of moneys derived from withdrawal of territory from district. The savings derived from the cessation of service under an ordinance adopted under ORS 267.257 shall be used to improve service in the remaining portions of the district. Nothing in this section shall prevent the

district from exercising its normal budgetary authority to adjust service levels. [1987 c.799 §8]

Note: 267.265 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 267 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Finances)

267.300 Authority of district to finance system. (1) Subject to restrictions in the Oregon Constitution, a district board may finance construction, acquisition, purchase, lease, operation and maintenance of a mass transit system and related facilities for the purposes authorized under ORS 267.010 to 267.390 by:

(a) Levy of ad valorem taxes under ORS 267.305.

(b) Service charges and user fees collected under ORS 267.320.

(c) Use of the revolving fund authorized under ORS 267.310.

(d) Sale of bonds under ORS 267.330 to 267.345.

(e) Levy of business license fees under ORS 267.360.

(f) Levy of a tax measured by net income under ORS 267.370.

(g) Levy of a tax measured by employer payrolls under ORS 267.380, 267.385 and 267.420.

(h) Use of funds accepted under ORS 267.390.

(i) Short-term borrowings under ORS 267.400.

(j) Levy of a tax measured by net earnings from self-employment under ORS 267.380 and 267.385.

(k) Any combination of the provisions of paragraphs (a) to (j) of this subsection.

(2) All or any part of the funds raised or received by the district under subsection (1)(a) to (k) of this section may be expended by the district for the purpose of financing the construction, reconstruction, improvement, repair, maintenance, operation and use of the primary transit supportive system. However, only those funds raised or received by the district that are restricted by the Oregon Constitution for the purpose of financing the construction, reconstruction, operation and use of public highways, roads, streets and roadside rest areas may be expended by the district for the secondary transit supportive system. As used in this subsection:

(a) "Transit supportive system" means those facilities in any county in which a district operates that constitute the surface transportation system in the county, including highways, roads, streets, roadside rest areas, park-and-ride stations, transfer stations, parking lots, malls and skyways.

(b) "Primary transit supportive system" means those facilities upon which or adjacent to which the district physically operates.

(c) "Secondary transit supportive system" means the remainder of those facilities that constitute the surface transportation system, but over which the district's operation or facilities are not physically present. [1969 c.643 §23; 1975 c.752 §1; 1983 c.323 §1; 1983 c.749 §1; 1987 c.825 §1; 1989 c.869 §1]

267.302 Restrictions on financing for districts formed under ORS 267.107. If a mass transit district was initiated by a resolution pursuant to ORS 267.107, the district shall not use any method of financing under ORS 267.300 other than a method of financing authorized to be used under ORS 267.300 (1)(b), (h) to (j) without first obtaining authorization at a properly called election held for that purpose. [1975 c.632 §2a; 1979 c.585 §3; 1983 c.323 §2; 1983 c.749 §2; 1987 c.825 §2]

267.305 Levy, collection, enforcement of ad valorem taxes. (1) A district may assess, levy and collect taxes each year on the assessed value of all taxable property within the limits of the district or the service area of the district. The proceeds of the tax shall be applied in carrying out the purposes of ORS 267.010 to 267.390.

(2) The district may annually also assess, levy and collect a tax without limitation upon all such property in an amount sufficient to pay the yearly interest on bonds theretofore issued by the district and then outstanding, together with any portion of the principal of the bonds maturing within the year. The tax shall be applied only in payment of interest and principal of bonds issued by the district, but the district may apply any funds it may have toward payment of principal and interest of bonds.

(3) Any taxes needed shall be levied in each year and returned to the county officer, whose duty it is to extend the tax roll, by the time required by law for city taxes to be levied and returned.

(4) All taxes levied by a district shall become payable at the same time and be collected by the same officer who collects county taxes, and shall be turned over to the district according to law. The county officer whose duty it is to extend the county levy shall extend the levy of the district in the same manner as city taxes are extended.

(5) Property shall be subject to sale for nonpayment of taxes levied by a district in like manner and with like effect as in the

case of county and state taxes. [1969 c.643 §25; 1981 c.804 §77]

267.310 Revolving fund; authority to levy ad valorem taxes for fund. For the purpose of establishing a revolving fund to provide money to finance the planning and construction, acquisition, purchase or lease of a mass transit system, a district board may levy an ad valorem tax of not to exceed in any one year three-twentieth of one percent (0.0015) of real market value of all taxable property within the district. The revenue derived from such taxes shall be credited to a revolving fund, and shall be disbursed by the district board and used only for the purpose for which levied. [1969 c.643 §27; 1991 c.459 §364]

267.320 User charges, fees and tolls; persons over 65. (1) Except as otherwise provided in this section, to carry out the powers granted by ORS 267.010 to 267.390, the district board may by ordinance impose and may collect user charges, fees and tolls from those who are served by or use the transit system and other facilities and services of the district.

(2) The district shall not charge a person over 65 years of age a fee of more than 50 percent of the regular fee for transportation provided by the district. The maximum fee established by this subsection does not apply on any weekday, Monday through Friday, between the hours of 5 a.m. and 9 a.m. or between the hours of 3 p.m. and 7 p.m. [1969 c.643 §26; 1973 c.474 §1; 1975 c.124 §1; 1975 c.169 §1; 1981 c.634 §1; 2003 c.14 §131]

267.325 Lease purchase agreements. For the purpose of financing the design, engineering, acquisition, construction and installation of any mass transit system, a district may enter into lease purchase agreements for such term of years as the board may determine. The lease purchase payments payable by a district under any such lease purchase agreement may be payable out of any funds of the district, including without limitation any operating revenues, tax revenues or grants. [1989 c.899 §2]

267.330 General obligation bonds; conditions; interest rate; payment of principal and interest; pledge of net revenue. (1) To carry out any of the powers granted by ORS 267.010 to 267.390, a district, when authorized at any properly called election held for the purpose, may borrow money, and sell and dispose of general obligation bonds. Outstanding bonds shall never exceed in the aggregate two and one-half percent of the real market value of all taxable property within the district.

(2) The bonds shall be issued from time to time by the district board in behalf of the district as authorized by the electors thereof. The bonds shall mature serially within not to exceed 30 years from issue date. However, for an indebtedness to the federal government or this state, the district may issue one or more bonds of the denominations agreed upon. Bonds shall bear interest at a rate, payable semiannually, as the board shall determine. The bonds shall be so conditioned that the district shall promise and agree therein to pay to the bearer at a place named therein, the principal sum, with interest at the rate named therein, payable semiannually, in accordance with the tenor and terms of the interest coupons attached.

(3) For the purpose of additionally securing the payment of the principal and interest on general obligation bonds issued under this section, the district may by resolution of the board, which resolution shall constitute part of the contract with the holders of the bonds, pledge all or any part of the net revenue of the district. The district board may adopt such a resolution without submitting the question of the pledge to the electors of the district. [1969 c.643 §28; 1983 c.347 §19; 1991 c.459 §365]

267.334 Electoral approval for issuance of general obligation bonds by Tri-Met to fund extension of light rail. (1) If the line extending Tri-Met's regional light rail system north from Clackamas County, Oregon, is not part of a phased project that will serve both the Portland metropolitan region and Clark County, Washington, then prior to the issuance by Tri-Met of any general obligation bonds to fund its share of the line extending Tri-Met's regional light rail system north from Clackamas County, Oregon, Tri-Met shall submit to its electors the question of the issuance of such general obligation bonds.

(2) As used in this section:

(a) "Portland metropolitan region" means the area within the urban growth boundary established by Metro as that boundary existed on July 1, 1995.

(b) "Metro" means the metropolitan service district created under ORS chapter 268 and exercising home rule charter powers.

(c) "Tri-Met" means the Tri-County Metropolitan Transportation District of Oregon, a mass transit district created under ORS chapter 267. [Formerly 197.587]

Note: 267.334 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 267 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

267.335 Authority to issue revenue bonds; interest-bearing warrants. (1) In addition to the authority to issue general obligation bonds, after a vote of the people, a district may issue and sell revenue bonds and pledge as security therefor all or any

part of the unobligated net revenue of the district. Revenue bonds shall be issued in the same manner and form as are general obligation bonds of the district but they shall not be subject to the percentage limitation provided by ORS 267.330 applicable to issuance of general obligation bonds and shall not be a lien upon any property within the limits of the district. Such bonds shall be payable, both as to principal and interest, solely from the net revenues of the district remaining after payment of obligations having a priority and payment of all expenses of operation and maintenance of the district, including any taxes levied thereafter against the district. All revenue bonds shall contain a clause reciting that both the principal and interest are payable solely from net revenues of the district remaining after paying such obligations and expenses.

(2) In lieu of issuing bonds secured by unobligated net revenue under subsection (1) of this section, the treasurer, when authorized by the board, may execute and issue interest-bearing warrants drawn against funds created by and for operation and maintenance of the mass transit system in excess of current cash on hand, but not in an amount exceeding one-half of the estimated annual gross revenue for operation of the mass transit system for the next ensuing year. [1969 c.643 §29]

267.340 Refunding bonds. Refunding bonds of the same character and tenor as those replaced thereby may be issued pursuant to a resolution adopted by the district board without submitting to the electors the question of authorizing the issuance of the bonds. [1969 c.643 §30]

267.345 Advertisement and sale of bonds. All general obligation and revenue bonds, including refunding bonds, issued under ORS 267.330 to 267.345 shall be advertised and sold in the manner prescribed by ORS 287.014 to 287.022 for the sale of bonds of cities of this state. [1969 c.643 §31]

267.360 Business, trade, occupational and professional licenses and fees; exceptions. To carry out any of the powers granted by ORS 267.010 to 267.390, a district may by ordinance raise revenue by licensing and imposing a fee on any business, trade, occupation and profession carried on or practiced in the district. This section does not empower a district to require licenses of or impose fees on companies that are licensed by the state under ORS 731.358 or 731.362 to transact insurance, as defined in ORS 731.146, or to require licenses of or impose fees upon the representatives of such companies who are not residents of the district. [1969 c.643 §32]

267.370 District taxing authority. (1) To carry out any of the powers granted by ORS 267.010 to 267.390, a district may by ordinance impose a tax:

(a) Upon the entire taxable income of every resident of the district subject to tax under ORS chapter 316 and upon the taxable income of every nonresident that is derived from sources within the district which income is subject to tax under ORS chapter 316; and

(b) On or measured by the net income of a mercantile, manufacturing, business, financial, centrally assessed, investment, insurance or other corporation or entity taxable as a corporation doing business, located, or having a place of business or office within or having income derived from sources within the district which income is subject to tax under ORS chapter 317 or 318.

(2) The rate of the tax imposed by ordinance adopted under authority of subsection (1) of this section shall not exceed one percent. The tax may be imposed and collected as a surtax upon the state income or excise tax.

(3) Any ordinance adopted pursuant to subsection (1) of this section shall require a nonresident, corporation or other entity taxable as a corporation having income from activity both within and without the district taxable by the State of Oregon to allocate and apportion such net income to the district in the manner required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675.

(4) The district shall allow a credit against the tax imposed pursuant to this section, in an amount equal to the employer's payroll tax paid to the district by the taxpayer.

(5) If a district adopts an ordinance under this section, the ordinance shall be consistent with any state law relating to the same subject, and with rules and regulations of the Department of Revenue prescribed under ORS 305.620.

(6) An ordinance adopted under this section shall not declare an emergency. [1969 c.643 §33; 1971 c.600 §1; 1975 c.752 §2]

267.380 Definitions for ORS 267.380 and 267.385. (1) As used in ORS 267.380 and 267.385, unless the context requires otherwise:

(a) "Employer" means:

(A) A person who is in such relation to another person that the person may control the work of that other person and direct the manner in which it is to be done;

(B) An officer or employee of a corporation, or a member or employee of a part-

nership, who as such officer, employee or member is under a duty to perform the acts required of employers by ORS 316.162 to 316.219; or

(C) The State of Oregon or any political subdivision in this state, except for a school district as defined in ORS 255.005 (9), with respect to work performed within the district by an employee of the State of Oregon or of the political subdivision.

(b) "Employer" does not include an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as amended and in effect on December 31, 1996, except that "employer" does include hospitals.

(c) "Wages" means remuneration for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash.

(d) "Net earnings from self-employment" has the same meaning as in section 1402 of the Internal Revenue Code of 1986, as that section was in effect and operative on December 31, 1988. For the purposes of computing net earnings from self-employment, a district may by ordinance from time to time adopt definitions of the terms used in section 1402.

(e) "Individual" means any natural person.

(2) As used in this section and ORS 267.385, "wages" does not include remuneration paid:

(a) For services performed in the employ of the United States of America and institutions (excluding hospitals) exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as amended and in effect on December 31, 1996.

(b) For domestic service in a private home if the total amount paid to such employee is less than $1,000 a year.

(c) For casual labor not in the course of the employer's trade or business.

(d) For services performed wholly outside of the district.

(e) To an employee whose services to the employer consist solely of seasonal labor in connection with the planting, cultivating or harvesting of agricultural crops.

(f) To seamen who are exempt from garnishment, attachment or execution under title 46, United States Code.

(g) To individuals temporarily employed as emergency firefighters.

(h) If the remuneration is not subject to withholding under ORS chapter 316.

(i) To employees' trusts exempt from taxation under section 401 of the Internal Revenue Code, as amended and in effect on December 31, 1996.

(j) If the remuneration is not wages under section 3121(a)(5)(I) of the Internal Revenue Code, as amended and in effect on December 31, 1996.

(3) "Net earnings from self-employment" does not include income:

(a)(A) From activities wholly outside of the district.

(B) That is wages.

(C) That would be wages under section 3121 of the Internal Revenue Code, as amended and in effect on December 31, 1990, but for the provisions of section 3121(b)(8)(A) of the Internal Revenue Code.

(b) That is not net earnings from self-employment under section 1402(a)(8) of the Internal Revenue Code by reason of the amendments to section 1402 by section 1456 of the Small Business Job Protection Act of 1996 (P.L. 104-188).

(4) Notwithstanding any other provision of this section, "wages" includes:

(a) Any amount included in the definition of "wages" under section 3121 of the Internal Revenue Code, as defined in ORS 316.012, by reason of the provisions of section 3121(a)(5)(C), 3121(a)(5)(D), 3121(v)(1)(A), 3121(v)(1)(B), 3121(v)(3)(A), 3121(a)(5)(E) or 3121(a)(5)(H) of the Internal Revenue Code; or

(b) Any amount deferred under a nonqualified deferred compensation plan.

(5) Any amount taken into account as wages by reason of subsection (4) of this section and the income attributable thereto shall not afterwards be treated as wages under this section. [1969 c.643 §34; 1971 c.600 §2; 1973 c.573 §2; 1979 c.766 §1; 1981 c.907 §2; 1987 c.293 §69; 1989 c.869 §2; 1991 c.457 §23a; 1993 c.18 §47; 1997 c.839 §39]

267.385 Employer payroll tax; collection; enforcement. (1) To carry out the powers granted by ORS 267.010 to 267.390, a district may by ordinance impose an excise tax on every employer equal to not more than seven-tenths of one percent of the wages paid with respect to the employment of individuals. For the same purposes, a district may by ordinance impose a tax on each individual equal to not more than seven-tenths of one percent of the individual's net earnings from self-employment.

(2) No employer shall make a deduction from the wages of an employee to pay all or any portion of a tax imposed under this section.

(3) The provisions of ORS 305.620 are applicable to collection, enforcement, adminis-

tration and distribution of a tax imposed under this section.

(4) At any time an employer or individual fails to remit the amount of taxes when due under an ordinance of the district board imposing a tax under this section, the Department of Revenue may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued and may be enforced in the same manner and have the same force and effect as prescribed with respect to warrants for the collection of delinquent state income taxes.

(5) Any ordinance adopted under subsection (1) of this section shall require an individual having net earnings from self-employment from activity both within and without the district taxable by the State of Oregon to allocate and apportion such net earnings to the district in the manner required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675. Such ordinance shall give the individual the option of apportioning income based on a single factor designated by the ordinance.

(6) Any ordinance adopted under subsection (1) of this section with respect to net earnings from self-employment may impose a tax for a taxable year measured by each individual's net earnings from self-employment for the prior taxable year, whether such prior taxable year begins before or after November 1, 1981, or such ordinance.

(7) Any ordinance imposing a tax authorized by subsection (1) of this section shall not apply to any business, trade, occupation or profession upon which a tax is imposed under ORS 267.360.

(8) The district board may not adopt an ordinance increasing a tax authorized by subsection (1) of this section unless the board makes a finding that the economy in the district has recovered to an extent sufficient to warrant the increase in tax. In making the finding, the board shall consider regional employment and income growth. [1969 c.643 §35; 1981 c.907 §3; 2003 c.576 §197; 2003 c.739 §7]

Note: Sections 8 and 9, chapter 739, Oregon Laws 2003, provide:

Sec. 8. Notwithstanding ORS 267.385 (1) and subject to ORS 267.260 (3) and (6), an increase in any tax imposed on wages or on net earnings from self-employment that is authorized by a mass transit district under ORS 267.385 (1) on or after January 1, 2004, must be phased in over a 10-year period. The district shall by ordinance set forth the increments by which the increase in tax is phased in. Subject to ORS 267.260 (3) and (6), each increment may not increase the rate of tax by more than 0.02 percent. [2003 c.739 §8]

Sec. 9. Section 8 of this 2003 Act is repealed on January 2, 2014. [2003 c.739 §9]

267.390 Acceptance of funds from United States. The district may:

(1) Accept, without limitation by any other provision of ORS 267.010 to 267.390 requiring approval of indebtedness, any contributions or loans from the United States for the purpose of carrying out any provision of ORS 267.010 to 267.390; and

(2) Do anything that the board considers necessary in order to avail itself of aid, assistance or cooperation under this section under any federal law. [1969 c.643 §37]

267.395 [1969 c.643 §38; repealed by 1971 c.647 §149]

267.400 Authority to issue short-term obligations; conditions; manner of sale. (1) A district may borrow moneys by issuing notes, warrants or other obligations:

(a) In anticipation of taxes or other revenues, including but not limited to grants awarded by the state or federal government; or

(b) To refund obligations authorized under this section.

(2) To secure obligations authorized under this section a district may:

(a) Pledge as primary security for the obligations the taxes and other revenues in anticipation of which the obligations are issued, including but not limited to grants from the state or federal government;

(b) Pledge as secondary security for the obligations the taxes and other revenues of the district other than those in anticipation of which the obligations are issued;

(c) Segregate any pledged funds in separate accounts which may be held by the district or third parties;

(d) Establish any reserves deemed necessary by the district for the payment of the obligations; and

(e) Adopt resolutions containing covenants and provisions for protection and security of the holders of obligations, which shall constitute enforceable contracts with such holders.

(3) Each issue of obligations authorized by this section:

(a) If issued in anticipation of taxes, shall not be issued prior to, and shall mature not later than the end of, the fiscal year in which the taxes are expected to be received;

(b) If issued in anticipation of other revenues, including grants for operating purposes from the state or federal government, shall not be issued more than one year prior to the time at which the district expects to receive the last installment of the revenues or grants in anticipation of which the obligations are issued, and shall mature not more than one year after the date of issue;

(c) If issued in anticipation of capital improvement grants from the state or federal government, shall not be issued more than 30 months prior to the time at which the district expects to receive the last installment of the capital improvement grant in anticipation of which the obligations are issued, and shall mature no later than 30 months after the date of issue or six months after the time at which the district expects to receive the last installment of the capital improvement grant in anticipation of which the obligations are issued, whichever is earlier;

(d) If issued in anticipation of taxes or revenues other than grants from the state or federal government, shall not be issued in an amount greater than 80 percent of the amount of taxes or such other revenues budgeted to be received by the district and in anticipation of which such obligations are issued; and

(e) If issued in anticipation of grants from the state or federal government, shall not be issued in an amount greater than 80 percent of the amount of such grants.

(4) Except as this section otherwise specifically provides, obligations authorized by this section may be in any form and contain any terms, including provisions for the varying of interest rates in accordance with any index, bankers' loan rate or other standard. A district may issue and sell as part of a single offering obligations in anticipation of two or more grants from the state or federal government, in which event the obligations constituting a part of the offering shall be issued as separate series with one series corresponding to each grant in anticipation of which the obligations are issued. A district may only pledge as primary security for a series of obligations constituting part of a single offering the grant in anticipation of which such series is issued. For purposes of subsection (3) of this section, each series of obligations constituting part of a single offering shall be a separate issue of obligations.

(5) When the taxes or other revenues, including grants from the state or federal government, in anticipation of which the obligations authorized by this section are issued are not received by the district at such time or in such amounts as will enable the district to pay the obligations at maturity, the district shall, to the extent available, first apply to the payment of the obligations the taxes or other revenues in anticipation of which such obligations were issued, and the district may pay the balance owing under such obligations out of any other taxes or revenues available for such purpose.

(6) The district may contract with third parties to serve as issuing, paying and authenticating agents for any obligations authorized by this section.

(7) Obligations authorized by this section may be sold at public or private sale upon such terms as the district finds advantageous, with such disclosure as the district deems appropriate. ORS 287.014 to 287.022 shall not apply to obligations authorized by this section. ORS 287.040 shall apply to obligations authorized under this section.

(8) Any pledge made pursuant to subsection (2) of this section shall be valid and binding from and after the date of issue of the obligations secured by such pledge and the taxes or other revenues pledged shall be immediately subject to the lien of such pledge without the physical delivery thereof, the filing of any notice or any further act. The lien of any pledge made pursuant to subsection (2) of this section shall be valid and binding against all persons having claims of any kind against the district whether in tort, contract or otherwise, irrespective of whether such persons have notice thereof.

(9) The district shall deposit, when received, a portion of the taxes or other revenues in anticipation of which the obligations authorized by this section are issued in a separate account. Deposits to the account shall be made according to a schedule which requires that not less than 100 percent of such taxes or other revenues received by the district after the estimated date of the district's maximum cumulative cash flow deficit be placed in the account until sufficient amounts are in the account to pay principal and interest due on the obligations at maturity. The schedule shall be established by the district in its proceedings to issue the obligations. Moneys in the account shall be used only to pay principal and interest on the obligations, and may be pledged by the district for such purpose. [1983 c.323 §4; 1985 c.433 §1]

267.410 Certain districts authorized to impose employer payroll tax on state agencies and political subdivisions. ORS 267.300, 267.380 and 267.410 to 267.430 apply only to a mass transit district situated in a standard metropolitan statistical area with a population exceeding 400,000. [1989 c.869 §7]

267.420 Employer payroll tax on State of Oregon and political subdivisions; requirements for tax ordinance. (1) Any ordinance imposing an employer payroll tax on an entity described in ORS 267.380 (1)(a)(C) shall be adopted not less than six months prior to the beginning of the fiscal year of the mass transit district within which the employer payroll tax becomes effective.

(2)(a) Any ordinance imposing an employer payroll tax on an entity described in ORS 267.380 (1)(a)(C) shall provide that for each of the four fiscal years after the fiscal year in which the employer payroll tax was first imposed, the entity shall pay the applicable percentage of the amount of employer payroll tax which, without regard to this section, it would have been required to pay under the law.

(b) The applicable percentage shall be determined in accordance with the following table:

Number of fiscal years after the fiscal year in which the employer payroll tax is first imposed:	The applicable percentage is:
One	20
Two	40
Three	60
Four	80

(c) In the fifth fiscal year after the fiscal year in which the employer payroll tax is first imposed on an entity described in ORS 267.380 (1)(a)(C) and in any subsequent fiscal year, the applicable percentage shall be 100 percent. [1989 c.869 §4]

267.430 Certain state agencies exempt from employer payroll tax. ORS 267.300, 267.380, 267.410 to 267.430 do not apply to entities described in ORS 267.380 (1)(a)(C) that made, and that continue to make, payments under the provisions of ORS 291.405 and 291.407 equivalent to the rate in effect on January 1, 1989. If a mass transit district or transportation district does not collect a tax under ORS 267.300 (1)(g) or 267.615 (1)(g), ORS 267.300, 267.380 and 267.410 to 267.430 do not affect payment under ORS 291.405 and 291.407. [1989 c.869 §6]

TRANSPORTATION DISTRICTS

(Generally)

267.510 Definitions for ORS 267.510 to 267.650. As used in ORS 267.510 to 267.650:

(1) "District" means a transportation district established under ORS 267.510 to 267.650.

(2) "System" means the equipment, facilities and other property constructed, erected or acquired by the district and to be used in the transport of passengers. [1974 c.9 §1]

267.515 Application of ORS chapter 255 to district. (1) ORS chapter 255 governs the following:

(a) The nomination and election of board members.

(b) The conduct of district elections.

(2) The electors of a district may exercise the powers of the initiative and referendum regarding a district measure, in accordance with ORS 255.135 to 255.205. [Amended by 1983 c.350 §128]

267.517 Use of alternative fuels for certain district vehicles; exceptions; annual report; application to all district vehicles. (1) To the maximum extent possible, motor vehicles subject to the control of a transportation district established under ORS 267.510 to 267.650 having a city within the district with a population exceeding 30,000 shall use alternative fuel for operation.

(2) To the extent that it is economically and technologically possible, all motor vehicles purchased or leased by the board of the district shall be capable of using alternative fuel. However, this subsection does not apply if the vehicle will be primarily used in an area that does not have and cannot reasonably be expected to establish an alternative fuel refueling station or if the district is unable to secure financing sufficient to cover additional costs resulting from the requirement of this subsection.

(3) Prior to July 1 of each year, the board of the district shall submit an annual report to the Department of Environmental Quality and the State Department of Energy. The report shall contain at a minimum:

(a) The number of purchases and leases of vehicles capable of using alternative fuel;

(b) The number of conversions of vehicles from the use of gasoline or diesel fuel to the use of alternative fuel;

(c) The quantity of each type of alternative fuel used; and

(d) Any other information required by the Department of Environmental Quality and the State Department of Energy to carry out their functions under subsection (4) of this section.

(4) If the Department of Environmental Quality and State Department of Energy determine that the use of alternative fuel required by this section has been effective in reducing total annual motor vehicle emissions in the district, the motor vehicles subject to the control of the board of the district shall be capable of using alternative fuel, to the maximum extent possible.

(5) The board of the district shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

(6) As used in this section, "alternative fuel" means any fuel determined by the Department of Environmental Quality to be less

polluting than conventional gasoline, including but not necessarily limited to reformulated gasoline, low sulphur diesel fuel, natural gas, liquified petroleum gas, methanol, ethanol, any fuel mixture containing at least 85 percent methanol or ethanol and electricity. [1991 c.730 §4; 2003 c.186 §13]

(Formation)

267.520 Method of forming district. (1) In addition to initiatory action authorized by ORS 198.705 to 198.955, proceedings to establish a district may be initiated by a resolution adopted by the governing body of the most populous city in the proposed district and filed with the county governing body, petitioning that body to call the election; or

(2) The petition or resolution initiating formation shall request, if the district is to impose operating taxes, that the election to establish the district include a proposed permanent rate limit for operating taxes for the district within the meaning of section 11 (3), Article XI of the Oregon Constitution. If the petition or resolution does so, the proposition to be voted on at the election shall include a proposed permanent rate limit for the district, in accordance with the petition or resolution. [1974 c.9 §4; 1997 c.541 §360]

267.530 Establishment of permanent tax rate limit at time of formation. If a district is to impose operating taxes, a permanent rate limit on operating taxes within the meaning of section 11 (3), Article XI of the Oregon Constitution, shall be established for a district at the same election at which the district is established. If the petition or resolution for initiating proceedings to establish the district contains a proposed permanent rate limit, the county governing body that calls the election shall confer about the rate limit with the governing bodies of all counties and cities having territory in the proposed district and shall then determine the rate limit to be proposed for the district. The proposition submitted to the electors of the district for the purpose of establishing the district shall propose the rate limit specified by the county governing body. The rate limit so proposed shall be the permanent rate limit for operating taxes for the district within the meaning of section 11 (3), Article XI of the Oregon Constitution, if the district is established in an election that is in compliance with section 11 (8), Article XI of the Oregon Constitution. [1974 c.9 §5; 1997 c.541 §361]

(Withdrawal)

Note: Sections 1, 2 and 3, chapter 611, Oregon Laws 2003, provide:

Sec. 1. Section 2 of this 2003 Act is added to and made a part of ORS 267.510 to 267.650. [2003 c.611 §1]

Sec. 2. (1) Notwithstanding the limitations under ORS 198.870 on withdrawal from a district, if all or part of a city with a population of fewer than 10,000 individuals is located within the territorial boundaries of a transportation district in southwestern Oregon, but does not receive regularly scheduled direct transportation services from the district, the governing body of the city may petition the governing body of the district for a resolution approving the withdrawal from the district of the part of the city that does not receive regularly scheduled direct transportation services.

(2) The governing body of the district and the governing body of any affected county shall approve a petition for withdrawal under this section.

(3) As used in this section, "southwestern Oregon" means that portion of the State of Oregon located south of the City of Roseburg, west of the summit of the Cascade Range, north of the southern boundary of the state and east of the Pacific Ocean. [2003 c.611 §2]

Sec. 3. Section 2 of this 2003 Act is repealed January 2, 2006. [2003 c.611 §3]

(Board)

267.540 Governing body; term; vacancies; chairperson; rules of procedure; report to legislature. (1) The governing body of a district shall consist of seven members elected from the district at large for four-year terms. Vacancies shall be filled by the governing body under ORS 198.320.

(2) The chairperson of the county governing body that calls the election on establishing the district shall convene the first meeting of the district governing body and shall serve as chairperson of the first meeting until the members choose a permanent chairperson.

(3) At its first meeting after July 1 each year the district governing body shall choose a chairperson for the ensuing year. The chairperson shall be the presiding officer of the governing body and have whatever additional functions the governing body prescribes.

(4) The governing body may adopt and enforce rules of procedure governing its proceedings.

(5) The district board shall report biennially to the Legislative Assembly the activities of the district. [1974 c.9 §6; 1975 c.737 §4; 1983 c.350 §125]

Note: Sections 1 and 2, chapter 124, Oregon Laws 2003, provide:

Sec. 1. (1) If a transportation district has been established under ORS 267.510 to 267.650 in a manner that requires all members of the governing body of the district to be elected at the same election, the governing body of the transportation district may take action as provided in subsection (2) of this section to stagger the election of members.

(2) Notwithstanding the term of office specified in ORS 267.540, the governing body of a transportation district may provide that at the next election of members to the governing body occurring at least 90 days after the effective date of this 2003 Act [January 1, 2004], the individuals elected to serve as the second, fourth and sixth members of the governing body shall serve a term of two years. [2003 c.124 §1]

Sec. 2. Section 1 of this 2003 Act is repealed June 30, 2005. [2003 c.124 §2]

(Powers)

267.550 Status of district. (1) A transportation district has full power to carry out the objectives of its formation and to that end may have and use a seal, have perpetual succession, sue and be sued in its own name, and enter into contracts.

(2) Except as ORS 267.510 to 267.650 provides to the contrary, the powers of the district shall be vested in the governing body of the district.

(3) A transportation district formed under ORS 267.510 to 267.650 shall be considered a district for all purposes in ORS chapter 198. [1974 c.9 §8; 1975 c.737 §5; 1983 c.350 §126; 2003 c.802 §95]

267.560 General powers. A transportation district may provide public transportation and terminal facilities for public transportation including local aspects thereof transferred to the district by one or more other public bodies as defined in ORS 174.109, through agreements in accordance with ORS 267.510 to 267.650. [1974 c.9 §9; 2003 c.802 §96]

267.570 Powers relating to public transportation. (1) For purposes of public transportation, a district may:

(a) Contract with the United States or with any county, city or state, or any of their departments or agencies, for the construction, preservation, improvement, operation or maintenance of any system.

(b) Build, construct, purchase, improve, operate and maintain, subject to other applicable provisions of law, all improvements, facilities or equipment necessary or desirable for the system of the district.

(c) Enter into contracts and employ agents, engineers, attorneys and other persons and fix their compensation.

(d) Fix and collect charges for the use of the system.

(e) Construct, acquire, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with the system within or outside the district.

(f) Use a public thoroughfare in a manner mutually agreed to by the governing bodies of the district and of the thoroughfare or, if they cannot so agree upon how the district may use the thoroughfare, in a manner determined by an arbitrator appointed by the Governor.

(g) Do such other acts or things as may be necessary or convenient for the proper exercise of the powers granted to a district by ORS 267.510 to 267.650.

(2) A district shall be entitled to tax refunds under ORS 319.831, as if the district were a city. [1974 c.9 §10; 1979 c.344 §2]

267.575 Preparation of public transit system plan; contents; revision. (1) A district shall, within a reasonable time after formation, prepare a broad, general plan for a public transit system for the district. The plan shall be prepared in cooperation with the Department of Transportation and cities and counties located within and adjacent to the district.

(2) The plan shall show existing and proposed transit systems of the district and of other public and private agencies relating to public transit. It shall demonstrate a basis for the coordination and planning of future construction, improvement and equipment acquisition of the district, governmental agencies and private interests to assure maximum efficiency and use of public transit in the district. The plans shall be based on the needs of the district and take into consideration the plans and programs, if any, developed by the Department of Transportation and cities and counties located within and adjacent to the district. The district may have access to all information, statistics, plans and data in the possession of or available to any state agency or public corporation which is pertinent to the preparation of the plan and may reimburse the agency or corporation for any expense incurred in cooperating with the board.

(3) The district board shall revise the plan as necessary for the proper control, utilization, development and improvement of the district transit system. [1975 c.737 §3]

267.580 Employees. The governing body of a district may employ whatever administrative, clerical, technical and other assistance is necessary for the proper functioning of the district, on whatever terms the governing body considers in the best interests of the district. [1974 c.9 §7]

267.590 Interagency agreements. A district may contract with any public or private agency for the agency to operate any facility or perform any function that the district is authorized to operate or perform. By contract the district may assume any function of any public corporation, city or county in the district that the district has power to assume under ORS 267.510 to 267.650. [1974 c.9 §11]

267.600 [1974 c.9 §3; repealed by 1983 c.350 §331a]

267.610 Exemption from public utility regulation. Transportation facilities operated by a district, including the rates and charges made by the district and the equipment operated by the district, and transportation facilities operated for a district by a

private operator pursuant to a contract between the operator and the district, including the rates and charges made by the operator pursuant to the contract, and the equipment operated pursuant to the contract, shall not be subject to the laws of this state regulating public utilities, including those laws administered by the Public Utility Commission of Oregon. [1974 c.9 §2]

(Finances)

267.615 Financing methods. (1) For the purpose of performing any of the powers conferred by ORS 267.510 to 267.650, a transportation district may use any of the following methods of financing:

(a) Service charges and user fees collected under ORS 267.570 (1)(d).

(b) Levy ad valorem taxes under ORS 267.620.

(c) Use of a revolving fund as authorized for mass transit districts under ORS 267.310.

(d) Sale of bonds under ORS 267.630 and 267.640.

(e) Levy of business license fees as authorized for mass transit districts under ORS 267.360.

(f) Levy of a tax measured by net income as authorized for mass transit districts under ORS 267.370.

(g) Levy of a tax measured by employer payrolls as authorized for mass transit districts under ORS 267.380 and 267.385.

(h) Acceptance and use of any contributions or loans from the United States, without limitation by any other provision of ORS 267.510 to 267.650 requiring approval of indebtedness.

(i) Any combination of the provisions of paragraphs (a) to (h) of this subsection.

(2) A district shall not use any method of financing authorized under subsection (1)(c) to (g) of this section without first obtaining authorization at a properly called election held for that purpose. [1975 c.737 §2; 1981 c.512 §1]

267.620 Power to levy taxes. (1) A district may levy annually an ad valorem tax on all taxable property within its boundaries not to exceed in any one year one-half percent (.005) of the real market value of all taxable property within the boundaries of such district, computed in accordance with ORS 308.207. The district may also annually assess, levy and collect a special tax upon all such property in an amount sufficient to pay the yearly interest on bonds previously issued by the district and then outstanding, together with any portion of the principal of such bonds maturing within the year. The special tax shall be applied only in payment of the interest and principal of bonds issued by the corporation, but the corporation may apply any funds it may have towards the payment of principal and interest of any such bonds.

(2) Such taxes shall be levied in each year and returned to the county officer whose duty it is to extend the tax levy by the time required by law for city taxes to be levied and returned. All taxes levied by the district shall become payable at the same time and be collected by the same officer who collects county taxes and shall be turned over to the district according to law. The county officer whose duty it is to extend the county levy shall extend the levy of the district in the same manner as city taxes are extended. Property shall be subject to sale for nonpayment of taxes levied by the corporation in like manner and with like effect as in the case of county and state taxes.

(3) In taxation a district may classify property on the basis of services received from the district and prescribe different tax rates for the different classes of property. [1974 c.9 §12; 1991 c.459 §366]

267.622 Filing boundary change with county assessor and Department of Revenue. For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [2001 c.138 §13]

267.630 Issuance of bonds. (1) For the purpose of performing any service that the district has power to perform, the district, when authorized at any properly called election held for such purpose, shall have the power to borrow money by the issuance and sale of general obligation bonds. Such bonds shall never exceed in the aggregate 10 percent of the real market value of all taxable property within the district computed in accordance with ORS 308.207. The bonds shall be so conditioned that the district shall promise and agree therein to pay the bearer at a place named therein payable semiannually in accordance with the tenor and terms of the interest coupons attached. The bonds shall mature serially not to exceed 30 years from the date of issue.

(2) For the purpose of performing any of the powers conferred by ORS 267.510 to 267.650 a district, when authorized at any properly called election held for such purpose, shall have the power to borrow money by the issuance and sale also of revenue bonds and to pledge as security therefor, all or any part of the unobligated net income or revenue of the district. The revenue bonds shall be issued in the same manner and form as are general obligation bonds of the district but they shall be payable both as to principal

and interest from revenues only. The revenue bonds shall not be subject to the percentage limitation applicable to general obligation bonds and shall not be a lien on any of the taxable property within the corporate limits of the district and shall be payable solely from such part of revenues of the corporation as remains after the payment of obligations having a priority and of all expenses of operation and maintenance of the corporation. All revenue bonds shall contain a provision that both the principal and interest are payable solely from the operating revenues of the district remaining after paying such obligations and expenses.

(3) All general obligation bonds and revenue bonds shall be advertised for sale and sold in the manner prescribed in ORS 287.014 to 287.022 for the sale of bonds of cities. [1974 c.9 §13; 1983 c.347 §20; 1991 c.459 §367]

267.640 Refunding bonds. Refunding bonds of the same character and tenor as those replaced thereby may be issued pursuant to a resolution adopted by the district governing body without submitting to the electors the question of authorizing the issuance of the bonds. [1974 c.9 §14]

267.650 Finance elections. Elections for the purpose of voting on the question of borrowing funds by issuance and sale of general obligation bonds or revenue bonds shall be called by the governing body. [1974 c.9 §15]

PENALTIES

267.990 Penalties. Any person violating a police ordinance of a mass transit district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $250. [1969 c.643 §18(1)]

Chapter 279
(Partial)

2003 EDITION

Public Contracts and Purchasing

Note Repeals, renumberings and applicability

Note Applicability--2003 c.794 §334

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Note: Repeals, renumberings and applicability. 279.005 to 279.833 and 279.990 are repealed or renumbered March 1, 2005. The repeal or renumbering of 279.005 to 279.833 and 279.990 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 185, 186, 187, 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: Section 334, chapter 794, Oregon Laws 2003, provides:

Sec. 334. Applicability. Rules and exemptions adopted under statutes repealed by section 332 of this 2003 Act expire on March 1, 2005. However, nothing in this 2003 Act operates to invalidate or terminate any public contract that is entered into pursuant to a rule or an exemption that expires on March 1, 2005. [2003 c.794 §334]

PURCHASING AND BIDDING GENERALLY

279.005 Policy of competition in public contracts. (1) It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible.

(2) The Legislative Assembly finds that:

(a) Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition;

(b) The nature of effective competition varies with the product or service being procured and that while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection; and

(c) Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

(A) Price competition as represented by the initial or acquisition price;

(B) Competition as represented by price and performance evaluations of the competing items and suppliers;

(C) Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;

(D) Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or

(E) Competition as represented by another method of procurement that is reasonably calculated to satisfy the public contracting agency's need. [1993 c.724 §19]

Note: 279.005 is repealed March 1, 2005. The repeal of 279.005 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.007 Methods of fostering competition. (1) All public contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

(a) Writing specifications and procurement documents in a simple and easy to read format;

(b) Searching for new sources of supply;

(c) Attempting to make solicitation documents simple and inviting;

(d) Everyday courtesy shown to prospective suppliers and contractors; and

(e) The way information on contracting opportunities is provided to suppliers, including but not limited to advertisement in publications of general circulation or the Oregon Department of Administrative Services' electronic bulletin board services, and any other reasonable methods that encourage competition and that are consistent with ORS 279.025.

(2) A public contracting agency may evaluate every aspect of competition in its effort to purchase products or services, choose the appropriate solicitation process in accordance with the criteria described in ORS 279.005 and arrive at offers that represent optimal value to the state. [1993 c.724 §20]

Note: 279.007 is repealed March 1, 2005. The repeal of 279.007 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.009 Exemption of public improvement contracts from ORS 279.005 and 279.007. Any contract of public improvement, as defined in ORS 279.011, shall not be subject to the requirements of ORS 279.005 and 279.007. [1993 c.724 §39]

Note: 279.009 is repealed March 1, 2005. The repeal of 279.009 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.009 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.011 Definitions for ORS 279.005 to 279.111. As used in ORS 279.005 to 279.111:

(1) "Board" means a local contract review board created pursuant to ORS 279.055.

(2) "Department" means the Oregon Department of Administrative Services.

(3) "Director" means the Director of the Oregon Department of Administrative Services.

(4) "Emergency" means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

(5) "Energy savings performance contract" means a public contract between a public agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(6) "Findings" means the justification for an agency conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data.

(b) Public benefits.

(c) Value engineering.

(d) Specialized expertise required.

(e) Public safety.

(f) Market conditions.

(g) Technical complexity.

(h) Funding sources.

(7) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.

(8) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts and any public body created by intergovernmental agreement.

(9) "Public improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement. [1975 c.771 §1; 1979 c.196 §1; 1979 c.869 §1a; 1981 c.54 §1; 1983 c.690 §2; 1991 c.20 §1; 1993 c.500 §29; 1997 c.685 §1; 2003 c.562 §1]

Note: 279.011 is repealed March 1, 2005. The repeal of 279.011 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.015 Competitive bidding; exceptions; exemptions; rules. (1) Subject to the policies and provisions of ORS 279.005 and 279.007, all public contracts shall be based upon competitive bids or proposals except:

(a) Contracts made with other public agencies or the federal government.

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.

(c) A public contract exempt under subsection (2) of this section.

(d) A contract for products, services or supplies if the value of the contract is less than $5,000.

(e) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

(f) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(g) Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

(A) The original contract met the requirements of this chapter;

(B) The contract allows other public agency usage of the contract; and

(C) The original contracting public agency concurs.

(h) If a project is competitively bid and all responsive bids from responsible bidders exceed the public agency's cost estimate, the public agency, in accordance with rules adopted by the public agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project within the agency's cost estimate. A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

(2) Subject to subsection (6)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279.712 (2)(c), the Director of Transportation may exempt certain public contracts or classes of public contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the pub-

lic contracting agency seeking the exemption:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency or, if the contracts are for public improvements described in ORS 279.712 (2)(c), to the agency or the public. In making such finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

(3)(a) Before final adoption of the findings required by subsection (2) of this section exempting a contract for a public improvement, or a class of contracts for public improvements described in ORS 279.712 (2)(c), from the requirement of competitive bidding, a public agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the public agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the public agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a public agency is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with the agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(4) A public contract also may be exempted from the requirements of subsection (1) of this section if:

(a) Emergency conditions require prompt execution of the contract;

(b) In case of sale of surplus property by a public agency, the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bidding will be such that a liquidation sale will result in substantially greater net revenue to the public agency;

(c) The procedures for entering into an energy savings performance contract under subsection (8) of this section apply; or

(d)(A) The public contract is made between regularly organized fire departments, as defined in ORS 652.050, for fire protection equipment, as defined in ORS 476.005, and:

(i) The recipient regularly organized fire department makes a written request for the fire protection equipment to the transferor regularly organized fire department;

(ii) The fire protection equipment is surplus to or unusable by the transferor;

(iii) The total fair market value of fire protection equipment received by the recipient does not exceed $50,000 per calendar year; and

(iv) The transferor holds a public hearing, with notice given as outlined in subsection (3)(b) of this section, and finds that the public contract is in the public's interest.

(B) As used in subparagraph (A) of this paragraph, "public contract" includes a sale at no cost.

(5) The Director of the Oregon Department of Administrative Services or the local contract review board shall adopt rules allowing the governing body of a public agency and the officer of a public agency for contracts under $50,000 to declare that an emergency exists and establishing procedures for determining when the conditions in subsection (4)(a) of this section are present. The rules shall prescribe that if an emergency is declared, any contract awarded under this subsection and subsection (4)(a) of this section must be awarded within 60 days following declaration of the emergency, unless the director or board grants an extension.

(6) In granting exemptions pursuant to subsection (2)(a) and (b) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) Where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the public contracting

agency that support the awarding of a particular public contract or a class of public contracts, without the competitive requirements of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2)(a) and (b) of this section.

(7) A written agreement under ORS chapter 190 is not necessary under subsection (1)(g) of this section if the arrangement is between or among units of local government.

(8) In accordance with ORS 279.049, the Attorney General shall adopt model rules appropriate for use by all public contracting agencies to govern the procedures for entering into energy savings performance contracts. Before adopting or amending a rule under this subsection, the Attorney General shall consult with the Oregon Department of Administrative Services, the State Department of Energy, the Oregon University System, local public agencies and other knowledgeable persons. The Attorney General may develop standard contract forms for use with energy savings performance contracts. [1975 c.771 §3; 1977 c.304 §6; 1983 c.244 §1; 1983 c.590 §10; 1983 c.690 §3a; 1987 c.538 §1; 1987 c.777 §1; 1989 c.224 §40; 1989 c.454 §1; 1993 c.724 §21; 1995 c.612 §17; 1997 c.685 §2; 1997 c.802 §8a; 1999 c.59 §72; 2001 c.113 §1; 2002 s.s.1 c.3 §5; 2003 c.562 §2]

Note: 279.015 is repealed March 1, 2005. The repeal of 279.015 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.017 Specifications for contracts; exemptions. (1) Specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

(2) The Director of the Oregon Department of Administrative Services or a local contract review board may exempt certain products or classes of products from subsection (1) of this section upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the public agency;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [1975 c.771 §4; 1983 c.690 §4; 1997 c.802 §9]

Note: 279.017 is repealed March 1, 2005. The repeal of 279.017 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.019 Exemption procedure; appeal. (1) Exemptions granted by the Director of the Oregon Department of Administrative Services pursuant to ORS 279.015 (2) or 279.017 (2) constitute rulemaking and not contested cases under ORS chapter 183. However, an exemption granted with regard to a specific contract by the Director of the Oregon Department of Administrative Services, or an exemption granted by the Director of Transportation with regard to a specific contract or class of contracts for public improvements described in ORS 279.712 (2)(c), shall be granted by order, which order shall set forth findings supporting the decision to grant or deny the request for exemption. Such order shall be reviewable pursuant to ORS 183.484 and shall not constitute a contested case order. Jurisdiction for review of the order shall be with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(2) Any person except the public contracting agency or anyone representing it may bring a petition for a declaratory judgment to test the validity of any rule adopted by the Director of the Oregon Department of Administrative Services under ORS 279.015 and 279.017 in the manner provided in ORS 183.400.

(3) Any person except the public contracting agency or anyone representing it may bring an action for writ of review pursuant to ORS chapter 34 to test the validity of any exemption granted pursuant to ORS 279.015, 279.017 and 279.055 by a board. [1975 c.771 §6; 1983 c.690 §5; 2002 s.s.1 c.3 §6]

Note: 279.019 is repealed March 1, 2005. The repeal of 279.019 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.021 Preferences; foreign contractor. (1) In all public contracts, the public contracting agency shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal.

(2)(a) Where a public contract is awarded to a foreign contractor and the contract price exceeds $10,000, the contractor shall promptly report to the Department of Re-

venue on forms to be provided by the Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Department of Revenue may require before final payment can be received on the public contract. The public contracting agency shall satisfy itself that the requirement of this subsection has been complied with before it issues a final payment on a public contract.

(b) For purposes of this subsection, a foreign contractor is one who is not domiciled in or registered to do business in the State of Oregon. [1975 c.771 §5]

Note: 279.021 is repealed March 1, 2005. The repeal of 279.021 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.023 Least cost policy for public improvements; costs estimates in budget process; record of costs. (1) It is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency.

(2) Not less than 30 days prior to adoption of its budget for the subsequent budget period, each public agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the agency that the agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether the agency intends to perform the construction by a private contractor. If the agency intends to perform construction work using the agency's own equipment and personnel on a project estimated to cost more than $125,000, then the agency shall also show that its decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.

(3) Before a public agency constructs a public improvement with its own equipment or personnel:

(a) If the estimated cost exceeds $125,000, the public agency shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work shall include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, "adequate" means sufficient to control the performance of the work and to assure satisfactory quality of construction by the public agency personnel.

(b) The public agency shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs shall be a public record.

(4) Subsections (2) and (3) of this section do not apply to any public agency when the public improvement is to be used for the distribution or transmission of electric power.

(5) For purposes of this section, resurfacing of highways, roads or streets at a depth of two or more inches and at an estimated cost that exceeds $125,000 is a public improvement. [1975 c.771 §7; 1979 c.869 §2; 1981 c.281 §1; 1987 c.776 §2; 1997 c.239 §1]

Note: 279.023 is repealed March 1, 2005. The repeal of 279.023 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.025 Requirements for advertisement for bids. (1) An advertisement for bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the public contracting agency may determine. The Director of the Oregon Department of Administrative Services or a local contract review board, by rule or order, may authorize advertisements for bids to be published electronically instead of in a newspaper of general circulation if the director or board determines that electronic advertisements for bids are likely to be cost effective. If the contract is for a public improvement with an estimated cost in excess of $125,000, the advertisement for bids shall be published in at least one trade newspaper of general statewide circulation. The director or board may, by rule, require an advertisement for bids to be published more than once or in one or more additional publications.

(2) All advertisements for bids shall state:

(a) If the contract is for a public work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a);

(b) The date and time after which bids will not be received, which shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be reviewed;

(f) The name and title of the person designated for receipt of bids; and

(g) The date, time and place that the public contracting agency will publicly open the bids. [Formerly 279.065; 1977 c.289 §1; 1979 c.282 §1; 1983 c.690 §6; 1985 c.724 §1; 1987 c.741 §18; 1987 c.776 §1; 1987 c.865 §2; 1991 c.197 §1; 1997 c.239 §2; 1997 c.802 §11; 1999 c.88 §1]

Note: 279.025 is repealed March 1, 2005. The repeal of 279.025 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.027 Requirements for bid documents and bids; disclosure of first-tier subcontractors. (1) A public contracting agency preparing bid documents for a public contract shall, at a minimum, include:

(a) A statement that, if the contract is for a public work subject to ORS 279.348 to 279.380 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the public contracting agency unless the bid contains a statement by the bidder as a part of its bid that the provisions of ORS 279.350 or 40 U.S.C. 276a are to be complied with;

(b) The date and time after which bids will not be received, which shall be not less than five days after the date of the last publication of the advertisement;

(c) The date that prequalification applications must be filed under ORS 279.039 (1) and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The character of the work to be done or the material or things to be purchased;

(e) The office where the specifications for the work, material or things may be reviewed;

(f) The name and title of the person designated for receipt of bids;

(g) The date, time and place that the public contracting agency will publicly open the bids;

(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279.029;

(i) A statement that the public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all bids upon a finding of the agency that it is in the public interest to do so;

(j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that no bid for a construction contract shall be received or considered by the public contracting agency unless the bidder is licensed by the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.

(2) All bids made to the public contracting agency pursuant to ORS 279.015 and 279.025 shall be:

(a) In writing.

(b) Filed with the person designated for receipt of bids by the public contracting agency.

(c) Opened publicly by the public contracting agency immediately after the deadline for submission of bids.

(3)(a) Within two working hours after the date and time of the deadline when the bids are due to the public contracting agency for a public improvement, a bidder shall submit to the public contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the public contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection shall apply only to public improvements with a contract value of more than $100,000.

(d) This subsection does not apply to public contracts for public improvements that have been exempted from competitive bidding requirements under ORS 279.015 (2).

(4) The disclosure of first-tier subcontractors under subsection (3) of this section shall include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR
DISCLOSURE FORM

PROJECT NAME: _____
BID #: _____
BID CLOSING: Date: _____ Time: _____
This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1) _____	$ _____	_____
2) _____	$ _____	_____
3) _____	$ _____	_____
4) _____	$ _____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name):
_____
Contact name: _____
Phone no.: _____

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(5) A public contracting agency shall accept the subcontractor disclosure. The public contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the public contracting agency to be a nonresponsive bid and may not award the contract to the contractor. A public contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(6) After having been opened, the bids and the subcontractor disclosures shall be filed for public inspection.

(7) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check of each bidder shall be attached to all bids as bid security unless the contract for which a bid is submitted has been exempted from this requirement pursuant to ORS 279.033. Such security shall not exceed 10 percent of the amount bid for the contract. [Formerly 279.070; 1997 c.351 §2; 1999 c.88 §2; 1999 c.689 §3; 2001 c.104 §86; 2001 c.507 §1; 2003 c.14 §139; 2003 c.535 §1; 2003 c.794 §229a]

Note: 279.027 is repealed March 1, 2005. The repeal of 279.027 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.029 Award of contract; bond; waiver of bond in case of emergency. (1) After the bids are opened as required by ORS 279.027, and after a determination is made that a contract is to be awarded, the public contracting agency shall award the contract to the lowest responsible bidder.

(2) In determining the lowest responsible bidder, a public contracting agency shall:

(a) If the contract is for a public improvement, check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a contract for a public improvement; and

(b) For the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.

(3) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each such state. The public contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder.

(4) The successful bidder shall:

(a) Promptly execute a formal contract.

(b) If the contract is for a public improvement, execute and deliver to the public contracting agency a good and sufficient bond, to be approved by the public contracting agency, in a sum equal to the contract price for the faithful performance of the contract. In lieu of a surety bond, the public contracting agency may permit the successful bidder to submit a cashier's check or certified check in an amount equal to 100 percent of the contract price. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the surety bond, or the obligation of the bidder on the cashier's check or certified check, for the faithful performance of the contract required by this paragraph, shall be also for the preparation and completion of the design

and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety or the bidder on the cashier's check or certified check shall not be liable after final completion of the contract, or longer if defined in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

(5) In cases of emergency, or where the interest or property of the public contracting agency probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient bond for the faithful performance of any public contract may be excused, if a declaration of such emergency is made and concurred in by all members of the governing board of the public contracting agency.

(6) As used in this section:

(a) "Lowest responsible bidder" means the lowest bidder who is not on the list established by the Construction Contractors Board pursuant to ORS 701.227 and who has:

(A) Substantially complied with all prescribed public bidding procedures and requirements;

(B) Met the standards of responsibility. In determining if a prospective bidder has met the standards of responsibility, the public contracting agency shall consider whether a prospective bidder has:

(i) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;

(ii) A satisfactory record of performance. The public contracting agency shall document the record of performance of a prospective bidder if the public contracting agency finds the prospective bidder not to be responsible under this sub-subparagraph;

(iii) A satisfactory record of integrity. The public contracting agency shall document the record of integrity of a prospective bidder if the public contracting agency finds the prospective bidder not to be responsible under this sub-subparagraph;

(iv) Qualified legally to contract with the public contracting agency; and

(v) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder fails to promptly supply information requested by the public contracting agency concerning responsibility, the public contracting agency shall base the determination of responsibility upon any available information, or may find the prospective bidder not to be responsible; and

(C) Not been disqualified by the public contracting agency under ORS 279.037.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" pursuant to this subsection.

(c) "Nonresident bidder" means a bidder who is not a "resident bidder" as defined by paragraph (b) of this subsection. [Formerly 279.075; 1981 c.466 §2; 1987 c.865 §1; 1999 c.462 §1; 1999 c.647 §§1,1a]

Note: 279.029 is repealed March 1, 2005. The repeal of 279.029 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.031 Return or retention of bid security. Upon the execution of the contract and bond by the successful bidder, the bid security of the successful bidder shall be returned to the bidder. The bidder who is awarded a contract and who fails promptly and properly to execute the contract or bond shall forfeit the bid security that accompanied the successful bid. The bid security shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bond. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and shall not be retained by the public body after the contract has been duly signed. [Formerly 279.080; 1981 c.712 §2]

Note: 279.031 is repealed March 1, 2005. The repeal of 279.031 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.033 Exemption of contracts from bid security and bond. (1) The Director of the Oregon Department of Administrative Services or a local contract review board may exempt certain contracts or classes of contracts from the requirement for bid security and from the requirement that a good and sufficient bond be furnished to assure performance of the contract and payment of obligations incurred in the performance; provided, however, the public contracting agency may require bid security and a good and sufficient performance and payment bond even though the contract is of a class exempted by the director or board.

(2) The Director of Transportation may:

(a) Exempt contracts or classes of contracts financed from the proceeds of bonds issued under ORS 367.620 (3)(a) from the requirement for bid security and from the requirement that a good and sufficient bond be furnished to ensure performance of the contract; or

(b) Reduce the amount of the required performance bond for contracts or classes of contracts financed from the proceeds of the bonds issued under ORS 367.620 (3)(a) to less than 100 percent of the contract price.

(3) Any recoverable damages that exceed the amount of the performance bond required under subsection (2) of this section shall be the sole responsibility of the Department of Transportation. [1975 c.771 §11; 1983 c.690 §7; 2003 c.618 §33]

Note: 279.033 is repealed March 1, 2005. The repeal of 279.033 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.035 Rejection of bids. The public contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids upon a finding of the agency it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance. [1975 c.771 §12; 1985 c.724 §2]

Note: 279.035 is repealed March 1, 2005. The repeal of 279.035 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.037 Disqualification from consideration for award of contracts; written decision required. (1)(a) A public contracting agency may disqualify a person from consideration for award of that agency's contracts for the reasons listed in subsection (2) of this section after providing the person with notice and a reasonable opportunity to be heard.

(b) In lieu of the disqualification process described in paragraph (a) of this subsection, a public contracting agency contracting for a public improvement may petition the Construction Contractors Board to disqualify a person from consideration for award of that agency's public improvement contracts for the reasons listed in subsection (2) of this section. The Construction Contractors Board shall provide the person with notice and a reasonable opportunity to be heard.

(c) A public contracting agency or the Construction Contractors Board may not disqualify a person under this section for a period of more than three years.

(2) A person may be disqualified from consideration for award of an agency's contracts for any of the following reasons:

(a) The person has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor.

(c) The person has been convicted under state or federal antitrust statutes.

(d) The person has committed a violation of a contract provision that is regarded by the public contracting agency or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for disqualification.

(e) The person does not carry workers' compensation or unemployment insurance as required by statute.

(3) A public contracting agency or the Construction Contractors Board shall issue a written decision to disqualify a person pursuant to this section. The decision shall:

(a) State the reasons for the action taken; and

(b) Inform the disqualified person of the appeal right of the person under:

(A) ORS 279.043 and 279.045 if the decision to disqualify was issued by a public contracting agency; or

(B) ORS chapter 183 if the decision to disqualify was issued by the Construction Contractors Board.

(4) A copy of the decision issued under subsection (3) of this section shall be mailed or otherwise furnished immediately to the disqualified person. [1975 c.771 §13; 1977 c.289 §7; 1999 c.647 §2; 2001 c.546 §1]

Note: 279.037 is repealed March 1, 2005. The repeal of 279.037 applies only to public contracts first advertised, but if not advertised then entered into, on or after

March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.039 Prequalification of bidders; notification. (1) Any public contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section shall include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application shall be in writing on a standard form prescribed by the Director of the Oregon Department of Administrative Services or a local contract review board.

(2) The public contracting agency shall within 30 days of the receipt of the prequalification application submitted pursuant to subsection (1) of this section, notify the prospective bidder if the prospective bidder is qualified or not based on the standards of responsibility listed in ORS 279.029 (6)(a)(B), the nature and type of contracts that the prospective bidder is qualified to bid on and the time period for which the prequalification is valid. If the public contracting agency does not prequalify the prospective bidder as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify which of the standards of responsibility listed in ORS 279.029 (6)(a)(B) the prospective bidder failed to meet. Unless the reasons are specified, the bidder shall be deemed to have been prequalified in accordance with the application.

(3) If a public contracting agency subsequently discovers that a person heretofore prequalified under subsections (1) and (2) of this section is no longer qualified, the agency may revoke the prequalification upon reasonable notice to the prospective bidder; provided, however, that such revocation shall be invalid as to any contract for which an advertisement for bids has already been made under ORS 279.025. [1975 c.771 §14; 1977 c.289 §2; 1981 c.712 §3; 1983 c.690 §8; 1999 c.647 §3]

Note: 279.039 is repealed March 1, 2005. The repeal of 279.039 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.041 Application for prequalification; notification; investigation, revocation or revision. (1) When a public contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the agency on a standard form prescribed by the Director of the Oregon Department of Administrative Services or a local contract review board. Within 30 days after receipt of a prequalification application, the public contracting officer shall investigate the prospective bidder as necessary to determine if the prospective bidder is qualified. The determination shall be made in less than 30 days, if practical, if the prospective bidder requests an early decision to allow the bidder as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the agency shall consider only the applicable standards of responsibility listed in ORS 279.029 (6)(a)(B). The agency shall promptly notify the person whether or not that person is qualified.

(2) If the agency finds that a prospective bidder is qualified, the notice shall state the nature and type of contracts that the person is qualified to bid on and the period of time for which the qualification is valid under the rule, resolution, ordinance or other regulation. If the agency finds the prospective bidder is not qualified as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice shall specify the reasons found under ORS 279.029 (6)(a)(B) for not prequalifying the prospective bidder and inform the person of the right to a hearing under ORS 279.043 and 279.045.

(3) If a public contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279.029 (6)(a)(B) for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279.043 and 279.045. A revocation or revision does not apply to any contract for which publication of advertisement for bids, in accordance with ORS 279.025, commenced prior to the date the notice of revocation or revision was received by the prequalified person. [1975 c.771 §15; 1977 c.289 §3; 1981 c.712 §4; 1983 c.690 §9; 1999 c.647 §4]

Note: 279.041 is repealed March 1, 2005. The repeal of 279.041 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.043 Appeal of disqualification. Any person who wishes to appeal disqualification as a bidder shall, within three business days after receipt of notice of disqualification, notify the public contracting agency that the person appeals the disqualification. Immediately upon receipt of such notice of appeal, a public contracting agency which is an

agency of the State of Oregon shall notify the Director of the Oregon Department of Administrative Services. If the public contracting agency is a political subdivision of the state or a public body created by intergovernmental agreement, it shall notify the appropriate board. [1975 c.771 §17; 1977 c.289 §4; 1983 c.690 §10]

Note: 279.043 is repealed March 1, 2005. The repeal of 279.043 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.045 Appeal procedure; hearing; costs; judicial review. (1) The procedure for appeal from a disqualification or denial, revocation or revision of a prequalification by a public contracting agency shall be in accordance with this section and is not subject to ORS chapter 183 except where specifically provided by this section.

(2) Promptly upon receipt of notice of appeal from a public contracting agency as provided for by ORS 279.043, the Director of the Oregon Department of Administrative Services or the local contract review board shall notify the person appealing and the public contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notification from the public contracting agency. The director or board shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or denial, revocation or revision of a prequalification, the reasons listed in ORS 279.037 (2) on which the public contracting agency based the disqualification or the standards of responsibility listed in ORS 279.029 (6)(a)(B) on which the public contracting agency based the denial, revocation or revision of the prequalification and any evidence provided by the parties. In all other respects, hearings before the director shall be conducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425, 183.440, 183.450 and 183.452.

(4) The director may allocate the director's cost for the hearing between the person appealing and the public contracting agency whose disqualification or prequalification decision is being appealed. The allocation shall be based upon facts found by the director and stated in the final order which, in the director's opinion, warrant such allocation of the costs. If the final order does not allocate the director's costs for the hearing, such costs shall be paid as follows:

(a) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a bidder is upheld, the director's costs shall be paid by the person appealing the disqualification or prequalification decision.

(b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a bidder is reversed by the director, the director's costs shall be paid by the public contracting agency whose disqualification or prequalification decision is the subject of the appeal.

(5) The decision of the director or board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the director or board has its principal office. The circuit court shall reverse or modify the decision only if it finds:

(a) The decision was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the director or board or any of its members.

(c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

(6) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies are not available.

(7) The circuit court may, in its discretion, stay the letting of the contract which is the subject of the petition in the same manner as a suit in equity. In the event the court determines that there has been an improper disqualification or denial, revocation or revision of a prequalification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party. [1975 c.771 §18; 1977 c.289 §5; 1983 c.690 §11; 1985 c.757 §6; 1997 c.802 §12; 1999 c.448 §8; 1999 c.647 §5; 1999 c.849 §§60,61; 2001 c.104 §§87,88; 2003 c.75 §32]

Note: 279.045 is repealed March 1, 2005. The repeal of 279.045 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.047 Effect of prequalification by Department of Transportation or Oregon Department of Administrative Services; personal service contract selection process for local government public improvements; rules. (1) If a person is prequalified with the Department of Transportation to

perform contracts, or with the Oregon Department of Administrative Services to perform contracts, that person is rebuttably presumed qualified with any other public contracting agency for the same kind of work. When qualifying for the same kind of work with another public contracting agency, that person may submit proof of such prequalification in lieu of a prequalification application as required by ORS 279.039 (1) or as a request for prequalification under ORS 279.041 (1).

(2)(a) The Department of Transportation, the Oregon Department of Administrative Services or any other state public contracting agency shall adopt rules establishing a two-tiered selection process for when the department or agency executes contracts with engineers, architects and land surveyors to perform personal service contracts. This process shall apply only if:

(A) A public improvement is owned and maintained by a local government; and

(B) The Department of Transportation, the Oregon Department of Administrative Services or other state public contracting agency will serve as the lead state public contracting agency and will execute personal service contracts with engineers, architects and land surveyors for work on the public improvement project.

(b) The selection process required by paragraph (a) of this subsection shall require the lead state public contracting agency to select no fewer than the three most qualified consultants where feasible in accordance with ORS 279.057.

(c) The local government shall be responsible for the final selection of the consultant from the list of qualified consultants selected by the lead state public contracting agency or through an alternative process adopted by the local government.

(d) Nothing in this subsection applies to the selection process used by a local public contracting agency when the agency executes a contract directly with engineers, architects or land surveyors. [1975 c.771 §16; 1977 c.289 §6; 2001 c.712 §1]

Note: 279.047 is repealed March 1, 2005. The repeal of 279.047 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.049 Model rules generally; applicability to agencies. (1) The Attorney General shall prepare and maintain model rules of procedure appropriate for use by all public contracting agencies governing bid procedures, advertisements, the awarding of bids, retainage, claims, liens, bid security, payment and performance bonds and other matters involving public contracts, and may devise and publish forms for use therewith. The model rules prepared by the Attorney General under this section must be adopted by the Attorney General in the manner provided by ORS chapter 183. Before adopting or amending any such rule, the Attorney General shall consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons.

(2)(a) The Attorney General shall add to the model rules described in subsection (1) of this section a provision for procedures for the screening and selection of persons to perform architectural, engineering and land surveying personal service contracts. In developing such procedures, the Attorney General shall use the least restrictive processes allowed under ORS 183.341.

(b) The Attorney General shall add to the model rules described in subsection (1) of this section a two-tiered selection process for contracts executed with engineers, architects and land surveyors to perform personal service contracts as required by ORS 279.047.

(3) After each legislative session, the Attorney General shall review all laws passed by the Legislative Assembly that affect public contracting to determine if the model rules prepared under this section should be modified by the adoption of a new rule or by the amendment or repeal of an existing rule. If the Attorney General determines that a modification to the model rules is necessary, the Attorney General shall prepare the modification within such time as to allow the modification to take effect no later than 120 days after the effective date of the legislation that caused the rule to be modified. However, the Attorney General may prepare a modification to take effect 121 days or more after the effective date of the legislation if the Attorney General provides notice designating the time period within which the modification will take effect to the state agencies and persons listed in subsection (1) of this section.

(4) All public contracting agencies that have not established their own rules of procedure under subsection (5) of this section are subject to the model rules adopted by the Attorney General under this section, including all modifications to the model rules that the Attorney General may adopt.

(5)(a) A public contracting agency may elect to establish its own rules of procedure for public contracts that:

(A) Specifically state that the model rules adopted by the Attorney General under this section do not apply to the agency; and

(B) Prescribe the rules of procedure that the agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General.

(b) A public contracting agency that has adopted its own rules under paragraph (a) of this subsection shall review those rules each time the Attorney General adopts a modification to the model rules under subsection (3) of this section to determine whether any modifications need to be adopted by the agency to ensure compliance with statutory changes. [1975 c.771 §26; 1983 c.690 §12; 1991 c.414 §1; 1999 c.29 §1; 2001 c.712 §2]

Note: 279.049 is repealed March 1, 2005. The repeal of 279.049 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.051 Personal services contracts; procedures. (1) Except as provided in ORS 279.712, public agencies may enter into contracts for personal services. The Oregon Department of Administrative Services shall enter into contracts for personal services on behalf of state agencies that are subject to ORS 279.712. The provisions of this section do not relieve the agency of the duty to comply with ORS 279.712, any other law applicable to state agencies or applicable city or county charter provisions. Each public agency authorized to enter into personal service contracts shall create procedures for the screening and selection of persons to perform personal services.

(2) The Director of the Oregon Department of Administrative Services or a local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal service contracts. [1975 c.771 §27; 1979 c.196 §2; 1981 c.766 §1; 1983 c.690 §13; 1997 c.802 §1]

Note: 279.051 is repealed March 1, 2005. The repeal of 279.051 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.053 Laws not to prohibit participation in affirmative action projects; authority to limit bidding for affirmative action purposes. (1) No provision contained in chapter 771, Oregon Laws 1975, shall be construed to prohibit any public contracting body from engaging in bidding and contracting practices designed to accomplish affirmative action goals for disadvantaged or minority groups.

(2) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or administrative rule, a public contracting body may limit competitive bidding on any public contract for procurement of goods and services or on any other public contract estimated to cost $50,000 or less to contracting entities owned or controlled by persons described in subsection (3) of this section.

(3) As used in this section "affirmative action" is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability. [1975 c.771 §32; 1981 c.325 §4; 1985 c.724 §3; 1989 c.224 §41]

Note: 279.053 is repealed March 1, 2005. The repeal of 279.053 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.055 Local contract review board; creation; power; rules. (1) Every county by ordinance may create a local contract review board for the county. The board so created may consist of the governing body of the county or at least three persons appointed by and serving at the pleasure of that governing body.

(2) Any other local public agency having a governing body may adopt a resolution or ordinance creating its governing body as a local contract review board for that public agency. The local public agency shall file a copy of the resolution or ordinance with the county governing body. The board created by the local public agency shall not exercise its powers under subsection (4) of this section until the resolution or ordinance has been filed pursuant to this subsection.

(3) A county board created pursuant to subsection (1) of this section shall serve as the local contract review board for local public agencies that do not create their own boards pursuant to subsection (2) of this section, and that have their principal administrative offices within the county. The county board may impose fees on local public agencies that it serves under this subsection if the ordinance creating the county board authorized such fees. The fees shall be prescribed by rule adopted under subsection (5) of this section and shall be calculated to reimburse the county for its costs in serving the local public agencies.

(4) Except as provided in ORS 279.019 (1) and (2) and the authority to prescribe the standard prequalification application forms in ORS 279.039 (1), boards created under this section shall have all the powers granted the Oregon Department of Administrative Ser-

vices and the Director of the Oregon Department of Administrative Services under ORS 279.011 to 279.063. The board shall exercise such powers only after it has adopted rules pursuant to the requirements of subsection (5) of this section.

(5) Each board created under this section shall have rulemaking authority to carry out the powers and duties of the board under ORS 279.011 to 279.063. The rules shall be adopted in the manner prescribed in the resolution or ordinance creating the board.

(6) A local public agency, other than a county, by resolution or ordinance may rescind its action to create a local contract review board. The rescission shall take effect on the date a copy of the resolution or ordinance is filed with the county governing body or on the date stated therein, whichever is the later date. After the date of filing or the date specified, the county board, created pursuant to subsection (1) of this section, shall serve as the local contract review board for the public agency.

(7) Notwithstanding subsection (3) of this section, a local public agency may contract with another public agency to serve as its local contract review board with the powers and duties the local board has over contracts of its own local public agency. Notice of the contract and of its termination shall be given to the county in the same manner as notice is given to the county under subsections (2) and (6) of this section. [1975 c.771 §34(2); 1979 c.647 §1; 1979 c.804 §6; 1983 c.690 §14]

Note: 279.055 is repealed March 1, 2005. The repeal of 279.055 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.056 When federal law and rules prevail over ORS 279.011 to 279.063. Notwithstanding any provision of ORS 279.011 to 279.063, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of ORS 279.011 to 279.063 or require additional conditions in public contracts not authorized by ORS 279.011 to 279.063. [1979 c.504 §2]

Note: 279.056 is repealed March 1, 2005. The repeal of 279.056 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.057 Contracts for services of engineers, architects and land surveyors; selection procedure; compensation; applicability only to state agencies. (1) A contract entered into by a public agency for the consulting services of registered professional engineers, registered architects or registered professional land surveyors is a personal service contract.

(2) A public agency shall select consultants described in subsection (1) of this section on the basis of qualifications for the type of professional service required. A public agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the public agency has selected a candidate under subsection (3) or (4) of this section.

(3) Subject to the requirements of subsection (2) of this section, the procedures that a public agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the public agency and may be adjusted to accommodate the public agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) If the screening and selection procedures created by a public agency under subsection (3) of this section result in the determination by the public agency that two or more candidates are equally qualified, the public agency may select a candidate

through any process adopted by the public agency.

(5) It is the goal of this state to promote a sustainable economy in the rural areas of the state. In order to monitor progress toward this goal, a state agency to which this section applies shall keep a record of the locations for the personal service contracts to be performed throughout the state that are entered into on or after January 1, 2002, the locations of the selected consultants and the direct expenses on each contract. This record shall include the total number of contracts over a 10-year period for each consultant firm. The record of direct expenses shall include all personnel travel expenses as a separate and identifiable expense on the contract. Upon request, the state agency shall make these records available to the public.

(6) The public agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the public agency as determined solely by the public agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279.316 or 279.712.

(7) If the public agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the public agency, the public agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The public agency may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the agency terminates the consultant contracting process.

(8) Notwithstanding ORS 279.011, this section applies only if the public agency personal service contract is issued by an agency of the State of Oregon and not by an agency of any political subdivision thereof or any public body created by intergovernmental agreement.

(9) Notwithstanding subsection (8) of this section, this section applies to the selection of consultants by an agency of any political subdivision of this state or any public body created by intergovernmental agreement if the agency or public body receives moneys from the State Highway Fund under ORS 366.762 or 366.800 or a grant or loan from this state that will be used to pay for any portion of the design and construction of the project and:

(a) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 35 percent of the value of the project; and

(b) The value of the project exceeds $400,000. [1997 c.861 §2; 1999 c.59 §73; 2001 c.712 §3; 2001 c.948 §1]

Note: 279.057 is repealed March 1, 2005. The repeal of 279.057 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

Note: If the repeal of 279.057 does not become operative by July 1, 2008, the amendments to 279.057 by section 3, chapter 948, Oregon Laws 2001, become operative July 1, 2008, and first apply to public contracts for personal services advertised or solicited on or after July 1, 2008. See sections 4 and 5, chapter 948, Oregon Laws 2001. The text that is operative on and after July 1, 2008, is set forth for the user's convenience.

279.057. (1) A contract entered into by a public agency for the consulting services of registered professional engineers, registered architects or registered professional land surveyors is a personal service contract.

(2) A public agency shall select consultants described in subsection (1) of this section on the basis of qualifications for the type of professional service required. A public agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the public agency has selected a candidate under subsection (3) or (4) of this section.

(3) Subject to the requirements of subsection (2) of this section, the procedures that a public agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the public agency and may be adjusted to accommodate the public agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate an agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work, including any specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) If the screening and selection procedures created by a public agency under subsection (3) of this section result in the determination by the public agency that two or more candidates are equally qualified, the public agency may select a candidate through any process adopted by the public agency.

(5) It is the goal of this state to promote a sustainable economy in the rural areas of the state. In order to monitor progress toward this goal, a state agency to which this section applies shall keep a record of the locations for the personal service contracts to be performed throughout the state that are entered into on or after January 1, 2002, the locations of the selected consultants and the direct expenses on each contract. This record shall include the total number of contracts over a 10-year period for each consultant firm. The record of direct expenses shall include all personnel travel expenses as a separate and identifiable expense on the contract. Upon request, the state agency shall make these records available to the public.

(6) The public agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the public agency as determined solely by the public agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279.316 or 279.712.

(7) If the public agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the public agency, the public agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The public agency may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the agency terminates the consultant contracting process.

(8) Notwithstanding ORS 279.011, this section applies only if the public agency personal service contract is issued by an agency of the State of Oregon and not by an agency of any political subdivision thereof or any public body created by intergovernmental agreement.

279.058 Direct contracts allowed for services of engineers, architects and land surveyors. (1) As used in this section, "consultant" means a registered professional engineer, registered architect or registered professional land surveyor.

(2) An agency of any political subdivision of this state may enter into a personal service contract directly with a consultant if the project described in the personal service contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded pursuant to rules adopted under ORS 279.049 and the new contract is a continuation of that project.

(3) A political subdivision may adopt criteria for determining when this section shall apply to a personal service contract. [2001 c.712 §5]

Note: 279.058 is repealed March 1, 2005. The repeal of 279.058 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.059 Subcontracting to emerging small businesses. (1) A public contracting agency may require a bidder to subcontract some part of the contract to, or obtain materials to be used in performing the contract from, a business enterprise that is a certified emerging small business.

(2) A public contracting agency may require that a contract be awarded to a responsible bidder as defined in ORS 200.005 and 200.045 (3). [1985 c.769 §§2,3; 1987 c.893 §6; 1989 c.1043 §7]

Note: 279.059 is repealed March 1, 2005. The repeal of 279.059 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.061 Limitation on public agency constructing public improvement. If a public agency fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services pursuant to section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555 (Municipal Audit Law), the public agency shall not construct a public improvement with its own equipment or personnel if the cost is in excess of $5,000. [1981 c.281 §2]

Note: 279.061 is repealed March 1, 2005. The repeal of 279.061 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.063 Waiver of unreasonable delay of public agency against public policy. (1) Any clause in a public contract for a public improvement that purports to waive, release or extinguish the rights of a contractor to damages or an equitable adjustment arising out of unreasonable delay in performing the contract, if the delay is caused by acts or omissions of the public contracting agency or persons acting therefor, is against public policy and is void and unenforceable.

(2) Subsection (1) of this section is not intended to render void any contract provision that:

(a) Requires notice of any delay;

(b) Provides for arbitration or other procedures for settlement of contract disputes; or

(c) Provides for reasonable liquidated damages. [1985 c.285 §2]

Note: 279.063 is repealed March 1, 2005. The repeal of 279.063 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.067 Suit by or on behalf of adversely affected bidder or proposer; exception for personal service contract. (1) Any bidder or proposer adversely affected or any trade association of construction contractors acting on behalf of a member of the association to protect interests common to construction contractor members may commence a suit in the circuit court for the county in which are located the principal offices of the public contracting agency, for the purpose of requiring compliance with, or prevention of violations of, ORS 279.011 to 279.063, or to determine the applicability of ORS 279.011 to 279.063 to matters or decisions of the agency.

(2) The court may order such equitable relief as it considers appropriate in the circumstances. In addition to or in lieu of any equitable relief, the court may award an aggrieved bidder or proposer any damages suffered by the bidder or proposer as a result of violations of ORS 279.011 to 279.063 for the reasonable cost of preparing and submitting a bid or proposal. A decision of the public contracting agency shall not be voided if other equitable relief is available.

(3) If the public agency is successful in defending its actions against claims of violation or potential violation of ORS 279.011 to 279.063, then the court may award to the aggrieved public agency any damages suffered as a result of the suit.

(4) The court may order payment of reasonable attorney fees and costs on trial and on appeal to a successful party in a suit brought under this section.

(5) This section does not apply to personal service contracts under ORS 279.057.

(6) As used in this section:

(a) "Bidder" means any person who submitted a bid to a public agency.

(b) "Proposer" means any person who submitted a proposal to a public agency. [1983 c.690 §27; 1990 c.6 §1; 1997 c.685 §6; 1997 c.861 §3; 2001 c.104 §89]

Note: 279.067 is repealed March 1, 2005. The repeal of 279.067 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.073 Action against successful bidder; amount of damages; when action to be commenced; defenses. (1) Any person that loses a competitive bid for a contract involving the construction, repair, remodeling, alteration, conversion, modernization, replacement or renovation of a building or structure may bring an action for damages against another person who is awarded the contract for which the bid was made if the person making the losing bid can establish that the other person knowingly violates the provisions of ORS 279.350, 656.017, 657.505 or 701.055 while performing the work under the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) A person bringing an action under this section must establish a violation of ORS 279.350, 316.167, 656.017, 657.505 or 701.055 by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover, as liquidated damages, 10 percent of the total amount bid, by the person bringing the action, on the contract, or $5,000, whichever is greater.

(4) In any action under this section, the prevailing party shall be entitled to an award of reasonable attorney fees.

(5) An action under this section shall be commenced within two years of the substantial completion of the construction, repair, remodeling, conversion, modernization, improvement, rehabilitation, replacement or renovation. For the purposes of this subsection, "substantial completion" has the meaning given in ORS 12.135.

(6) No person shall be allowed to recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of ORS 701.055 at the time of making the bid on the contract;

(b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the plaintiff as of the time of making the bid on the contract; or

(c) Was in violation of ORS 279.350 with respect to any contract performed by the plaintiff within one year prior to making the bid on the contract. [1991 c.323 §1]

Note: 279.073 is repealed March 1, 2005. The repeal of 279.073 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.073 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.095 Arrangements for use, operation, maintenance or disposition of personal property allowed. (1) Notwithstanding the public bidding requirements of this chapter, a local public body may negotiate with one or more private or public entities to establish contracts, agreements and other cooperative arrangements for the use, operation, maintenance or ultimate lawful disposition of personal property owned by or under the control of the local

public body, including property acquired under ORS 279.820. Prior to approving such a contract, agreement or cooperative arrangement, the governing body of the public body must make a finding that the contract, agreement or arrangement will promote the economic development of the public body, of the geographical area in which the public body is situated or of other public bodies that perform similar functions.

(2) For the purposes of this section, "local public body" includes any city, county, port district, school district, special district or other political subdivision or municipal or public corporation and any instrumentality thereof, and any public body created by an intergovernmental agreement to which a local public body is a party. [1987 c.777 §2]

Note: 279.095 is repealed March 1, 2005. The repeal of 279.095 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.101 Districts authorized to enter into property purchase contracts with payment period less than 30 years; county authority to enter into property purchase contracts; effect on other powers. (1) A district, as defined in ORS 198.010, may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when the period of time allowed for payment under the contract does not exceed 30 years. A district entering into a contract authorized by this subsection and subsection (2) of this section may budget funds annually for payment of amounts due under the contract in each year during the term of the contract, unless the contract is terminated sooner in accordance with its terms.

(2) A county may enter into a contract for the purchase or for the lease with option to purchase of real or personal property when:

(a) The period of time allowed for payment under the contract does not exceed 30 years; and

(b) The county is not obligated to make payments under the contract in any fiscal year unless the county governing body includes such payments in the county's budget for that fiscal year and makes an appropriation therefor.

(3) The powers granted to districts and counties by subsections (1) and (2) of this section are in addition to any other powers possessed by districts and counties in this state and subsections (1) and (2) of this section shall not be construed to limit such powers. [1989 c.407 §§1,2; 1995 c.333 §26]

Note: 279.101 is repealed March 1, 2005. The repeal of 279.101 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.101 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.103 Evaluation of certain public improvement projects not contracted by competitive bidding. (1) Upon completion of and final payment for any public improvement contract, or class of contracts for public improvements described in ORS 279.712 (2)(c), in excess of $100,000 for which the public agency did not use the competitive bidding process, the public agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the local contract review board or, for a class of contracts for public improvements described in ORS 279.712 (2)(c), the Director of Transportation an evaluation of the public improvement project or the class of contracts.

(2) The evaluation shall include but not be limited to the following matters:

(a) The actual project cost as compared with original project estimates.

(b) The amount of any guaranteed maximum price.

(c) The number of project change orders issued by the public agency.

(d) A narrative description of successes and failures during the design, engineering and construction of the project.

(e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279.015.

(3) Evaluations required by this section shall be made available for public inspection.

(4) The evaluations required by this section must be completed within 30 days of the date that the public agency accepts:

(a) The public improvement project; or

(b) The last public improvement project if the project falls within a class of contracts for public improvements described in ORS 279.712 (2)(c). [1997 c.685 §4; 2002 s.s.1 c.3 §7]

Note: 279.103 is repealed March 1, 2005. The repeal of 279.103 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.106 Requirement to subcontract with emerging small business. A public contracting agency may require a bidder to subcontract some part of the contract to, or obtain materials to be used in performing the contract from, certified emerging small businesses that are, as identified by the public contracting agency, located in, or draw their workforces from within, economically depressed areas, as designated by the Economic and Community Development Department in cooperation with the Employment Department. [1989 c.1043 §9]

Note: 279.106 is repealed March 1, 2005. The repeal of 279.106 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.106 and 279.111 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.111 Discrimination in subcontracting prohibited; disqualification; appeal. (1) A contractor who contracts with a public contracting agency shall not discriminate against minority, women or emerging small business enterprises in the awarding of subcontracts. The contractor shall certify as part of the bid documents accompanying the bid on a public contract that the contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

(2) The public contracting agency may disqualify any person as a bidder on a public contract if the agency finds that the person has violated subsection (1) of this section in a contract between the person and the agency.

(3) If the person desires to appeal the disqualification, the appeal procedure shall be subject to ORS 279.043 and 279.045. [1989 c.1043 §11]

Note: 279.111 is repealed March 1, 2005. The repeal of 279.111 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

Note: See second note under 279.106.

279.116 Forest products sale contracts exempt from bidding requirements. (1) Contracts for the sale of forest products from lands owned or managed by the State Board of Forestry and the State Forestry Department shall be exempt from the provisions of ORS 279.011 to 279.542.

(2) Contracts for the sale of forest products from lands owned or managed by the State Board of Forestry and the State Forestry Department shall be conducted according to the relevant provisions of ORS 273.522 to 273.541 and ORS chapter 530.

(3) As used in this section, "forest products" has the meaning for that term given in ORS 321.005. [1995 c.375 §2]

Note: 279.116 is repealed March 1, 2005. The repeal of 279.116 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.116 was added to and made a part of ORS chapter 279 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

PUBLIC CONTRACTS GENERALLY

(Conditions)

279.310 Definitions for ORS 279.310 to 279.323. When used in ORS 279.310 to 279.323, unless the context otherwise requires:

(1) "Person" includes the State Accident Insurance Fund Corporation and the Department of Revenue.

(2) "Public contract" means a contract made with the state, county, school district, municipality, municipal corporation or subdivision thereof.

(3) "Public improvement" has the meaning given that term by ORS 279.011. [Amended by 1953 c.131 §3; 1973 c.523 §1; 1983 c.740 §76; 2001 c.104 §90]

Note: 279.310 is repealed March 1, 2005. The repeal of 279.310 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.312 Conditions of public contracts concerning payment of laborers and suppliers of materials, contributions to Industrial Accident Fund, liens, withholding taxes and employee drug testing. (1) Every public contract shall contain a condition that the contractor shall:

(a) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) In addition to the conditions specified in subsection (1) of this section, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. [Amended by 1953 c.131 §3; 1957 c.586 §14; 1965 c.26 §1; 1969 c.493 §76; 1999 c.588 §1]

Note: 279.312 is repealed March 1, 2005. The repeal of 279.312 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.313 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching. (1) Every public contract for demolition shall contain a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective.

(2) Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective. [1997 c.552 §20]

Note: 279.313 is repealed March 1, 2005. The repeal of 279.313 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.313 was added to and made a part of 279.310 to 279.323 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.314 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. (1) Every public contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract.

(2) Every public contract for a public improvement shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

(3) Every public contract for a public improvement and every contract related to the public contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445.

(4) The payment of a claim in the manner authorized in this section shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims. [Amended by 1981 c.712 §5; 1999 c.689 §1]

Note: 279.314 is repealed March 1, 2005. The repeal of 279.314 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.316 Condition concerning hours of labor. (1)(a) Every public contract shall also contain a condition that no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279.051, the employee shall be paid at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on any legal holiday specified in ORS 279.334.

(b) An employer must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(2) In the case of contracts for personal services as described in ORS 279.051, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(3) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract shall contain a provision that the labor performed on the contract shall be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer must give notice to employees who work on such a contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(4)(a) Except as provided in subsection (3) of this section, contracts for services shall contain a provision that requires that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279.334 (1)(a)(C)(ii) to (vii) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater.

(b) An employer must give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [Amended by 1967 c.167 §1; 1979 c.5 §1; 1989 c.572 §1; 1993 c.279 §1; 1995 c.739 §2; 1997 c.265 §1; 1997 c.793 §1; 2001 c.104 §91; 2003 c.14 §140]

Note: 279.316 is repealed March 1, 2005. The repeal of 279.316 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.318 Provisions relating to environmental and natural resources laws and rules; remedies when requirements change. (1) Bid documents for a public contract for a public improvement shall make specific reference to federal, state and local agencies that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. If the successful bidder awarded the project is delayed or must undertake additional work by reason of existing regulations or ordinances of agencies not cited in the public contract or due to the enactment of new or the amendment of existing statutes, ordinances or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the public contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the public contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Go out to bid for a new contractor to provide the necessary services under the competitive bid requirements of ORS 279.015; or

(f) Issue the successful bidder a change order setting forth the additional work that must be undertaken.

(2) In addition to the obligation imposed under subsection (1) of this section to refer to federal, state and local agencies with regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a public bid document must also make specific reference to known conditions at the construction site that may require the successful bidder to comply with the statutes, ordinances or regulations identified under subsection (1) of this section.

(3) If the successful bidder encounters a condition not referred to in the bid documents and not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection and the condition requires compliance with the regulations referred to under subsection (1) of this section, the successful bidder shall immediately give notice of the condition to the public contracting agency.

(4) Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource regulation, the successful bidder shall not commence work nor incur any additional job site costs in regard to the condition encountered

and described in subsection (3) of this section without written direction from the public contracting agency.

(5) Upon request by the public contracting agency, the successful bidder shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the public contracting agency for resolution.

(6) Within a reasonable period of time, the public contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the public contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Go out to bid for a new contractor to provide the necessary services under the competitive bid requirements of ORS 279.015; or

(f) Issue the successful bidder a change order setting forth the additional work that must be undertaken.

(7)(a) If the public contracting agency chooses to terminate the contract under subsection (6)(a) of this section, the successful bidder shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The awarding agency shall have access to the successful bidder's bid documents when making its determination of the additional compensation due to the successful bidder.

(b) If the public contracting agency causes work to be done by another contractor under subsection (1)(c) or (e) of this section or under subsection (6)(c) or (e) of this section, the successful bidder shall not be held liable for actions or omissions of the other contractor.

(c) The change order under subsection (1)(f) of this section or under subsection (6)(f) of this section shall include the appropriate extension of contract time and compensate the successful bidder for all additional costs, including overhead and profit, reasonably incurred as a result of complying with the applicable regulations. The awarding agency shall have access to the successful bidder's bid documents when making its determination of the additional compensation due to the successful bidder.

(8) Notwithstanding the provisions of this section, an awarding agency:

(a) May allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the bid documents; and

(b) In a local improvement district, may allocate all or a portion of the known and unknown environmental and natural resource risks to a contractor by so stating in the bid documents. [Amended by 1973 c.523 §2; 1975 c.771 §19; 1991 c.638 §1]

Note: 279.318 is repealed March 1, 2005. The repeal of 279.318 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.319 Condition concerning use of inmate labor for removal, abatement or demolition of asbestos in state buildings. (1) Every public contract for the removal, abatement or demolition of asbestos in a state building shall contain a condition requiring the contractor to use a certified inmate workforce, if available, of:

(a) Thirty percent, not to exceed 30 inmates the first year.

(b) Twenty-five percent, not to exceed 50 inmates the second year.

(c) Twenty percent, not to exceed 100 inmates the third year.

(2) As used in this section:

(a) "Inmate" means an inmate of a Department of Corrections institution.

(b) "Certified inmate" means an inmate certified pursuant to ORS 468A.730. [1989 c.1092 §5]

Note: 279.319 is repealed March 1, 2005. The repeal of 279.319 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.320 Condition concerning payment for medical care and providing workers' compensation. (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) Every public contract also shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under

ORS 656.126. [Amended by 1967 c.359 §687; 1981 c.712 §6; subsection (2) enacted as 1989 c.684 §3; 2001 c.104 §92; 2001 c.190 §1]

Note: 279.320 is repealed March 1, 2005. The repeal of 279.320 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.321 Compensation for contractor on contracts declared void by court; exceptions; applicability. (1) If a court determines that a public improvement contract is void because the public agency letting the contract failed to comply with any statutory or regulatory competitive bidding or other procurement requirements, and the contractor entered into the contract without intentionally violating the laws regulating public improvement contracts, then, unless the court determines that substantial injustice would result, the contractor is entitled to reimbursement for work performed under the contract as follows:

(a) If the work under the public improvement contract is substantially complete, the public agency shall ratify the contract.

(b) If the work under the public improvement contract is not substantially complete, then the public agency shall ratify the contract and the contract shall be deemed terminated. Upon termination, the contractor shall be paid in accordance with ORS 279.330, unless the court determines that payment pursuant to ORS 279.330 would be a substantial injustice either to the public agency or the contractor, in which case the contractor shall be paid as the court deems equitable.

(c) For the purposes of this section, a ratified contract shall be deemed valid, binding and legally enforceable, and the contractor's payment and performance bonds shall remain in full force and effect.

(2) Notwithstanding subsection (1) of this section, if a court determines that a public contract is void as a result of fraudulent or criminal acts or omissions of either the contractor, or both the public agency letting the contract together with the contractor, the contractor is not entitled to reimbursement for work performed under the contract.

(3) This section shall not apply to any public improvement contract if:

(a) The public agency's employee that awarded the public improvement contract did not have the authority to do so under law, ordinance, charter, contract or agency rule; or

(b) Payment is otherwise prohibited by Oregon law.

(4) The contractor and all subcontractors under a public improvement contract are prohibited from asserting that the public improvement contract is void for any reason described in this section. [1997 c.828 §2]

Note: 279.321 is repealed March 1, 2005. The repeal of 279.321 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.322 Authority to substitute nondisclosed first-tier subcontractor; circumstances; rules. A prime contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279.027 (3) by submitting the name of the new subcontractor and the reason for the substitution in writing to the public contracting agency. A prime contractor may substitute a first-tier subcontractor pursuant to this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279.027 (3) fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the prime contractor that had been identified prior to the bid submittal.

(5) When the prime contractor demonstrates to the public contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board.

(7) When the prime contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board

shall define "good cause" by rule. "Good cause" shall include, but not be limited to, the financial instability of a subcontractor. The definition of "good cause" shall reflect the least cost policy for public improvements established in ORS 279.023 (1).

(10) When the substitution is reasonably based on the contract alternates chosen by the public contracting agency. [1999 c.689 §6; 2001 c.104 §93; 2001 c.507 §2]

Note: 279.322 is repealed March 1, 2005. The repeal of 279.322 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.323 Complaint process for substitutions of subcontractors; civil penalties. (1)(a) A subcontractor disclosed under ORS 279.027 may file a complaint based on the subcontractor disclosure requirements under ORS 279.027 (3) with the Construction Contractors Board about a contractor if the contractor has substituted another subcontractor for the complaining subcontractor.

(b) If more than one subcontractor files a complaint with the board under paragraph (a) of this subsection relating to a single subcontractor disclosure, the board shall consolidate the complaints into one proceeding. If the board imposes a civil penalty under this section against a contractor, the amount collected by the board shall be divided evenly among all of the complaining subcontractors.

(c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a deposit of $500 with the board upon filing the complaint.

(d) If the board determines that a contractor's substitution was not in compliance with ORS 279.322, the board shall return the full amount of the deposit posted under paragraph (c) of this subsection to the complaining subcontractor.

(e) If the board determines that a contractor has not substituted a subcontractor or that the contractor's substitution was in compliance with ORS 279.322, the board shall award the contractor $250 of the deposit and shall retain the other $250, which may be expended by the board.

(2) Upon receipt of a complaint under subsection (1) of this section, the board shall investigate the complaint. If the board determines that a contractor has substituted a subcontractor in a manner not in compliance with ORS 279.322, the board may impose a civil penalty against the contractor pursuant to subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

(3) If the board imposes a civil penalty under subsection (2) of this section and it is the first time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board shall:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(4) If the board imposes a civil penalty under subsection (2) of this section and it is the second time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to six months. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(5) If the board imposes a civil penalty under subsection (2) of this section and the board has imposed a civil penalty under subsection (2) of this section against the contractor three or more times during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to one year. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(6) Within 10 working days after receiving a complaint under subsection (1) of this section, the board shall notify, in writing, any public contracting agency that is a party to the contract for which the complaint has been filed that the complaint has been filed under this section. [2001 c.507 §4]

Note: 279.323 is repealed March 1, 2005. The repeal of 279.323 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

(Termination for Public Interest Reasons)

279.324 Definition for ORS 279.324 to 279.332. As used in ORS 279.324 to 279.332 "labor dispute" means a labor dispute as defined in ORS 662.010. [Amended by 1973 c.738 §1; 1975 c.771 §20]

Note: 279.324 is repealed March 1, 2005. The repeal of 279.324 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.326 Agreement to terminate contract. The public body and the contractor that are parties to a public contract may agree to terminate the contract:

(1) If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and

(2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works. [Amended by 1973 c.738 §2]

Note: 279.326 is repealed March 1, 2005. The repeal of 279.326 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.328 Extension and compensation when work suspended in certain cases. If work under a contract is suspended pursuant to ORS 279.326 (1), and is not the result of a labor dispute but the contract is not terminated, the contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. [Amended by 1973 c.738 §3]

Note: 279.328 is repealed March 1, 2005. The repeal of 279.328 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.330 Compensation when contract terminated. In the event of termination of a public contract pursuant to ORS 279.326, provision shall be made for the payment of compensation to the contractor. In addition to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of termination, the amount to be paid to the contractor:

(1) Shall be determined on the basis of the contract price in the case of any fully completed separate item or portion of the work for which there is a separate or unit contract price; and

(2) May, with respect to any other work, be a percent of the contract price equal to the percentage of the work completed. [Amended by 1973 c.738 §4]

Note: 279.330 is repealed March 1, 2005. The repeal of 279.330 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.332 Contractual provisions for compensation when contract terminated due to public interest. Any public body may provide in any public works contract detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason considered to be in the public interest. [Amended by 1973 c.738 §5]

Note: 279.332 is repealed March 1, 2005. The repeal of 279.332 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.333 Application of ORS 279.324 to 279.330. ORS 279.324 to 279.330 shall not apply to suspension of the work or termination of the contract which occur as a result of the contractor's violation of federal, state or local statutes, ordinances, rules or regulations in existence at the time the contract was executed or as a result of violations of the terms of the contract. [1973 c.738 §6]

Note: 279.333 is repealed March 1, 2005. The repeal of 279.333 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

(Hours)

279.334 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules. (1)(a) In all cases where labor is employed by the state, county, school district, municipality, municipal corporation, or subdivision, through a contractor, no person shall be required or permitted to labor more than 10 hours in any one day,

or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, in which event, the person or persons so employed for excessive hours shall receive at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(C) For all work performed on Saturday and on the following legal holidays:

(i) Each Sunday.

(ii) New Year's Day on January 1.

(iii) Memorial Day on the last Monday in May.

(iv) Independence Day on July 4.

(v) Labor Day on the first Monday in September.

(vi) Thanksgiving Day on the fourth Thursday in November.

(vii) Christmas Day on December 25.

(b) An employer must give notice to employees who perform work under paragraph (a) of this subsection in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(2) For the purpose of this section, each time a holiday, other than Sunday, listed in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a holiday listed in subsection (1) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

(3) Subsections (1) and (2) of this section do not apply to a contract for a public improvement or for services if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

(4) When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

(5) This section shall not apply to labor performed in the prevention or suppression of fire under contracts and agreements made pursuant to the authority of the State Forester or the State Board of Forestry, under ORS 477.406.

(6) This section shall not apply to contracts for personal services as described in ORS 279.051, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (1)(a)(C)(ii) to (vii) of this section and for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.

(7) Subsection (1) of this section does not apply to contracts for services at a county fair or for other events authorized by a county fair board if persons employed under the contract receive at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week.

(8)(a) Subsection (1) of this section does not apply to contracts for services. However, persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in subsection (1)(a)(C)(ii) to (vii) of this section and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater.

(b) An employer must give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(9) Any contractor or subcontractor or contractor's or subcontractor's surety who violates the provisions of this section shall be liable to the employees affected in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation resulted from willful falsification of payroll records, the contractor or subcontractor or contractor's or subcontractor's surety shall be liable to the employees affected in the amount of their unpaid overtime wages and in additional amount equal to twice the unpaid overtime wages as liquidated damages.

(10) An action to enforce liability to employees under subsection (9) of this section may be brought as an action on the contractor's bond as provided for in ORS 279.536.

(11) In accordance with any applicable provision of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt rules to carry out the provisions of this section. [Amended by 1963 c.241 §1; 1967 c.167 §2; 1979 c.5 §2; 1981 c.281 §4; 1983 c.264 §1; 1989 c.572

§2; 1993 c.279 §2; 1995 c.739 §1; 1997 c.265 §2; 1997 c.793 §2; 2003 c.14 §141]

Note: 279.334 is repealed March 1, 2005. The repeal of 279.334 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.335 Nonapplication of ORS 279.334 to financial institutions. ORS 279.334 does not apply to financial institutions as defined in ORS 706.008. [1993 c.394 §2; 1997 c.631 §432]

Note: 279.335 is repealed March 1, 2005. The repeal of 279.335 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.336 Time limitation on claim for overtime; posting of circular by contractor. Where labor is employed by the state, county, school district, municipality, municipal corporation or subdivision, through another as a contractor, any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279.334 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:

(1) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the work.

(2) Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed. [Amended by 1981 c.712 §7]

Note: 279.336 is repealed March 1, 2005. The repeal of 279.336 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.338 Length of day's labor on public works. (1) Eight hours shall constitute a day's labor in all cases where the state, county, school district, or any municipality, municipal corporation or subdivision is the employer of labor, either directly or indirectly, by contract with another.

(2) This section does not apply to the employment by any contractor of work for the state, county, school district, or any municipality, municipal corporation, or subdivision thereof, of lead persons, security personnel and timekeepers paid on monthly rate. [Amended by 1981 c.712 §8]

Note: 279.338 is repealed March 1, 2005. The repeal of 279.338 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.340 [Amended by 1973 c.418 §1; 1995 c.286 §26; renumbered 653.268 in 2003]

Note: Operative March 1, 2005, 279.340 and 279.342 are added to and made a part of 653.010 to 653.545. See sections 186 and 337, chapter 794, Oregon Laws 2003. See Preface to Oregon Revised Statutes for further explanation.

279.342 [Amended by 1953 c.579 §3; 1955 c.510 §1; 1967 c.67 §1; 1973 c.460 §1; 1975 c.770 §1; 1977 c.388 §1; 1981 c.361 §3; 1983 c.699 §4; 1995 c.286 §27; 1995 c.635 §2; 1997 c.793 §3; renumbered 653.269 in 2003]

Note: See note under 279.340.

(Prevailing Wage Rate)

279.348 Definitions for ORS 279.348 to 279.380. As used in ORS 279.348 to 279.380, unless the context requires otherwise:

(1) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits under subsection (4) of this section, paid in the locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. In making such determinations, the commissioner shall rely on an independent wage survey to be conducted once each year. However, if it appears to the commissioner that the data derived from the survey alone are insufficient to establish the rate, the commissioner also shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing wage rates determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits under subsection (4) of this section, paid in the locality to workers in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to workers on any public work is based on some period of time other than an hour, the hourly wage shall be mathematically determined by the number of hours worked in that period of time.

(2) "Locality" means the following district in which the public work, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(3) "Public works" includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(4) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits.

(5) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter. [1959 c.627 §1; 1969 c.369 §1; subsection (4) enacted as 1969 c.369 §3; subsection (5) enacted as 1969 c.369 §4; 1977 c.797 §1; 1979 c.282 §2; 1981 c.712 §9; 1983 c.710 §1; 1989 c.752 §1; 1997 c.810 §1]

Note: 279.348 is repealed March 1, 2005. The repeal of 279.348 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.349 Policy. The Legislative Assembly declares that the purposes of the prevailing wage law are:

(1) To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community established compensation standards.

(2) To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.

(3) To encourage training and education of workers to industry skills standards.

(4) To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits. [1995 c.594 §2]

Note: 279.349 is repealed March 1, 2005. The repeal of 279.349 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.349 was added to and made a part of 279.348 to 279.380 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.350 Workers on public works to be paid not less than prevailing rate of wage; posting of rates and health and welfare plan provisions. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279.348 (4)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279.348 (4)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.

(2) After a contract for a public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage shall not be subject to attack in any legal pro-

ceeding by any contractor or subcontractor in connection with that contract.

(3) It shall not be a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the specifications of a contract for public works, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public work shall keep the prevailing wage rates for that project posted in a conspicuous and accessible place in or about the project. Contractors and subcontractors shall be furnished copies of these wage rates by the commissioner without charge.

(5) Every contractor or subcontractor engaged on a project for which there is a contract for a public work to which the prevailing wage requirements apply that also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the project shall post notice describing such plans in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information.

(6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor or subcontractor shall pay or contribute any portion of the prevailing rate of wage paid by the contractor or subcontractor to workers employed in the performance of a public works contract.

(b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage specified in the contract.

(c) This subsection is not intended to prohibit payments to a worker who is enrolled in any government-subsidized training or retraining program.

(7) No person shall take any action that circumvents the payment of the prevailing rate of wage to workers employed on a public works contract, including, but not limited to, reducing an employee's regular rate of pay on any project not subject to ORS 279.348 to 279.380 in a manner that has the effect of offsetting the prevailing wage on a public works project. [1959 c.627 §2; 1977 c.797 §2; 1981 c.712 §19; 1983 c.264 §2; 1983 c.710 §2; 1989 c.286 §1; 1995 c.594 §10]

Note: 279.350 is repealed March 1, 2005. The repeal of 279.350 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.352 Provision in contract for minimum rate of wage; fee for administration of law. (1) The specifications for every contract for a public work shall contain a provision stating the existing prevailing rate of wage which may be paid to workers in each trade or occupation required for such public work employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a provision that such workers shall be paid not less than such specified minimum hourly rate of wage.

(2) The specifications for every contract for a public work shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375 (1), and the contract shall contain a provision that the fee shall be paid to the commissioner pursuant to the administrative rule of the commissioner. [1959 c.627 §§3, 4; 1965 c.449 §1; 1977 c.797 §3; 1979 c.282 §3; 1983 c.710 §3; 1995 c.594 §15]

Note: 279.352 is repealed March 1, 2005. The repeal of 279.352 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.354 Certification of rate of wage by contractor or subcontractor. (1) The contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with the public contracting agency in writing in form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly

number of hours worked, deductions made and actual wages paid.

(2) Each certified statement required by subsection (1) of this section shall be delivered or mailed by the contractor or subcontractor to the public contracting agency. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279.348 to 279.380.

(3) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

(4) Certified statements received by a public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505. [1959 c.627 §5; 1967 c.207 §1; 1977 c.797 §4; 1981 c.712 §12; 1983 c.710 §4; 1995 c.594 §16; 2001 c.337 §1]

Note: 279.354 is repealed March 1, 2005. The repeal of 279.354 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.355 Inspection to determine whether prevailing rate of wage being paid; proceedings to require payment of prevailing rate or overtime. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries may enter the office or business establishment of any contractor or subcontractor performing public works, and gather facts and information necessary to determine if the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(2) Every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours and, upon request made a reasonable time in advance, any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine if the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section shall not be open to inspection by the public.

(4) The Commissioner of the Bureau of Labor and Industries may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing wages or overtime pay and to require the payment of prevailing wages or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may adjudge reasonable as attorney fees. If the commissioner does not prevail in such action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account. [1969 c.369 §5; 1981 c.712 §13]

Note: 279.355 is repealed March 1, 2005. The repeal of 279.355 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.356 Liability for violations. (1) Any contractor or subcontractor or contractor's or subcontractor's surety who violates the provisions of ORS 279.350 shall be liable to the workers affected in the amount of their unpaid minimum wages, including all fringe benefits under ORS 279.348 (4), and in an additional amount equal to said unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279.536.

(3) If the public agency fails to include a provision that the contractor and any subcontractor shall comply with ORS 279.350 in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, shall be joint and several with any contractor or subcontractor that had notice of the requirement to comply with ORS 279.350. The Commissioner of the Bureau of Labor and Industries may enforce the provisions of this subsection by a civil action under ORS 279.355 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332. [1959 c.627 §§6,7; 1969 c.369 §6; 1981 c.712 §14; 1983 c.264 §4; 1983 c.711 §3; 1997 c.255 §1]

Note: 279.356 is repealed March 1, 2005. The repeal of 279.356 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.357 Exemptions; rules. (1) ORS 279.348 to 279.380 do not apply to:

(a) Projects for which the contract price does not exceed $25,000.

(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such regulation, contractors and subcontractors shall pay individuals employed as flaggers on such projects not less than the

prevailing rate of wage as determined by the Commissioner of the Bureau of Labor and Industries for that classification of work. As used in this paragraph, a "flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(c)(A) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS chapter 183, the commissioner shall adopt rules to carry out the provisions of this paragraph.

(B) As used in this paragraph:

(i) "Funds of a public agency" does not include funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction.

(ii) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2)(a) A public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279.348 to 279.380.

(b) When the commissioner determines that a public agency has divided a public works project for the purpose of avoiding compliance with ORS 279.348 to 279.380, the commissioner shall issue an order compelling compliance.

(c) In making determinations under this subsection, the commissioner shall consider:

(A) The physical separation of the project structures.

(B) The timing of the work on project phases or structures.

(C) The continuity of project contractors and subcontractors working on project parts or phases.

(D) The manner in which the public agency and the contractors administer and implement the project. [1977 c.797 §8; 1981 c.712 §15; 1983 c.710 §5; 1985 c.766 §1; 1995 c.594 §3; 2001 c.628 §1]

Note: 279.357 is repealed March 1, 2005. The repeal of 279.357 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.357 was added to and made a part of 279.348 to 279.380 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

279.359 Determination of prevailing rate of wage; providing commissioner with information. (1) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing rate of wage for workers in each trade or occupation in each locality under ORS 279.348 at least once each year by means of an independent wage survey and make this information available at least twice each year. The commissioner may amend the rate at any time.

(2) A person shall make such reports and returns to the Bureau of Labor and Industries as the commissioner may require to determine the prevailing rates of wage. The reports and returns shall be made upon forms furnished by the bureau and within the time prescribed therefor by the commissioner. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(3) Notwithstanding ORS 192.410 to 192.505, all information or records provided to the commissioner under this section are confidential and not available for inspection by the public.

(4) In order to assist the commissioner in making determinations of the prevailing wage, the commissioner may enter into contracts with public or private parties to obtain relevant data and information. Any such contract may include provisions for the manner and extent of the market review of affected trades and occupations and such other requirements regarding timelines of reports, accuracy of data and information and supervision and review as the commissioner may prescribe.

(5) As used in this section, "person" includes any employer, labor organization or any official representative of an employee or employer association. [1977 c.797 §7; 1983 c.710 §6; 1995 c.594 §8; 1997 c.810 §2]

Note: 279.359 is repealed March 1, 2005. The repeal of 279.359 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.361 Ineligibility for public contracts for failure to pay or post prevailing rate of wage; payroll reports to commissioner. (1) When the Commissioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS chapter 183, determines that a contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works, a subcontractor has failed to pay to its employees amounts required by ORS 279.350 and the contractor has paid those amounts on the subcontractor's behalf, or a contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279.350 (4), the contractor, subcontractor or any firm, corporation, partnership or associ-

ation in which the contractor or subcontractor has a financial interest shall be ineligible for a period not to exceed three years from the date of publication of the name of the contractor or subcontractor on the ineligible list as provided in this section to receive any contract or subcontract for public works. The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be ineligible under this section and the period of time for which they are ineligible. A copy of the list shall be published, furnished upon request and made available to contracting agencies.

(2) When the contractor or subcontractor is a corporation, the provisions of subsection (1) of this section shall apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing rate of wage or the failure to pay to a subcontractor's employees amounts required by ORS 279.350 that are paid by the contractor on the subcontractor's behalf.

(3) For good cause shown, the Commissioner of the Bureau of Labor and Industries may direct the removal of the name of that contractor or subcontractor from the ineligible list.

(4) To assist the Commissioner of the Bureau of Labor and Industries in determining if the contractor or subcontractor is paying the prevailing rate of wage, when a prevailing wage rate claim is filed, or evidence indicating a violation has occurred, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under this chapter shall send a certified copy of the payroll for those workers when the commissioner requests the certified copy. [1977 c.797 §6; 1983 c.710 §7; 1995 c.594 §9]

Note: 279.361 is repealed March 1, 2005. The repeal of 279.361 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.363 Notifying commissioner of contract. Public contracting agencies shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions of ORS 279.348 to 279.380 has been awarded. The notification shall be made within 30 days of the date that such contract is awarded. The notification shall include a copy of the disclosure of first-tier subcontractors that was submitted under ORS 279.027. [1981 c.712 §11; 2001 c.746 §1]

Note: 279.363 is repealed March 1, 2005. The repeal of 279.363 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.365 Civil action to enforce payment of prevailing wage. (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin any such contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all civil actions brought under this section. In addition to other costs, the court may award the prevailing party a reasonable attorney fee at the trial and on appeal. However, no attorney fee may be awarded against the Commissioner of the Bureau of Labor and Industries under this section.

(2) The court shall require any party, other than the Commissioner of the Bureau of Labor and Industries, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the Commissioner of the Bureau of Labor and Industries would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279.361 (1). If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279.361 (2).

(4) "Public agency" has the meaning given the term in ORS 279.011. [1983 c.711 §2]

Note: 279.365 is repealed March 1, 2005. The repeal of 279.365 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.370 Civil penalty for prevailing wage law violations. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $5,000 for each violation of any provision of ORS 279.348 to 279.380 or any rule of the commissioner adopted pursuant thereto.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of costs incurred in determining violations, conducting hearings and assessing the collecting of such penalties. The remainder, if any, of sums collected as penalties pursuant to this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1995 c.594 §14]

Note: 279.370 is repealed March 1, 2005. The repeal of 279.370 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.375 Fee for costs of administering law and educational programs; rules; Prevailing Wage Education and Enforcement Account. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish a fee to be paid by the contractor to whom the contract for a public work subject to ORS 279.348 to 279.380 has been awarded. The fee shall be used to pay the costs of:

(A) Surveys to determine the prevailing wage;

(B) Administering and providing investigations under and enforcement of ORS 279.348 to 279.380; and

(C) Providing educational programs on public contracting and purchasing law under this chapter.

(b) The fee shall be 0.1 percent of the contract price. However, in no event shall a fee be charged and collected that is more than $5,000 nor less than $100.

(2) Moneys received by the commissioner pursuant to this section shall be paid into the State Treasury and credited to the Prevailing Wage Education and Enforcement Account created by ORS 651.185.

(3) The fee to be paid pursuant to this section shall be paid at the time of the first progress payment or 60 days after work on the contract has begun, whichever date is earlier.

(4) Failure to make timely payment pursuant to subsection (3) of this section shall subject the contractor to a civil penalty under ORS 279.370, in such amount as the commissioner, by rule, shall specify. [1995 c.594 §5; 1999 c.152 §1]

Note: 279.375 is repealed March 1, 2005. The repeal of 279.375 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.380 Advisory committee to assist in administration of laws. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee to assist the commissioner in the administering of ORS 279.348 to 279.380.

(2) The advisory committee shall include equal representation of members from management and labor in the building and construction industry who perform work on public works contracts and such other interested parties as the commissioner shall appoint. [1995 c.594 §12]

Note: 279.380 is repealed March 1, 2005. The repeal of 279.380 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

(Retainage)

279.400 Withholding of retainage. (1) The withholding of retainage by a contractor or subcontractor on public contracts for public improvements shall be in accordance with ORS 701.420 and 701.430 except when the charter of the public agency that is a party to a public contract contains provisions requiring retainage by the public agency of more than five percent of the contract price of the work completed.

(2) As used in this section:

(a) "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.

(b) "Public agency" or "public contracting agency" means any agency of the State of Oregon or any political subdivision thereof authorized by law to enter into public contracts.

(c) "Public improvement" means any construction of improvements on real property by or for a public agency. [Formerly 279.358; 1979 c.196 §3]

Note: 279.400 is repealed March 1, 2005. The repeal of 279.400 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.410 "Retainage" defined for ORS 279.011 to 279.542. As used in ORS 279.011 to 279.542, unless the context otherwise re-

quires, "retainage" means the difference between the amount earned by the contractor on a public contract and the amount paid on the contract by the public contracting agency. [1977 c.727 §3]

Note: 279.410 is repealed March 1, 2005. The repeal of 279.410 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.420 Form of retainage. (1) Money retained by a public contracting agency under ORS 279.435 (7) shall be:

(a) Retained in a fund by the public contracting agency and paid to the contractor in accordance with ORS 279.435; or

(b) At the option of the contractor, paid to the contractor in accordance with subsection (3) or (4) of this section and in a manner authorized by the Director of the Oregon Department of Administrative Services.

(2) If the public agency incurs additional costs as a result of the exercise of the options described in subsection (1) of this section, the agency may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the agency shall, upon demand, inform the contractor of all accrued costs.

(3) The contractor may deposit bonds or securities with the public contracting agency or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the public contracting agency. In such event the public agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with ORS 279.435. Interest on such bonds or securities shall accrue to the contractor.

(4) If the contractor elects, the retainage as accumulated shall be deposited by the public contracting agency in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the public contracting agency. When the public contracting agency is an agency of the State of Oregon, the account shall be established through the State Treasurer. Earnings on such an account shall accrue to the contractor.

(5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

(6) The contractor, with the approval of the public contracting agency, may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the public contracting agency in a form acceptable to the public contracting agency. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279.400 to 279.542. The public contracting agency shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279.435. Whenever a public contracting agency accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier. [1977 c.727 §4; 1983 c.690 §15; 1989 c.106 §1; 1991 c.516 §3; 1999 c.689 §11]

Note: 279.420 is repealed March 1, 2005. The repeal of 279.420 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.430 Limitation on retainage requirements. Unless otherwise specifically included by statute, the provisions of ORS 279.420 or 279.542 shall only apply as between the public contracting agency and the party with whom it contracts. [1977 c.727 §5]

Note: 279.430 is repealed March 1, 2005. The repeal of 279.430 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

(Payments)

279.435 Prompt payment policy; progress payments on public contracts; retainage; interest; exception; settlement of compensation disputes. (1) It is the policy of this state that all payments due on a public contract for a public improvement and owed by a public contracting agency shall be paid promptly. No public contracting agency shall be exempt from the provisions of this section.

(2) Public contracting agencies shall make progress payments on the contract

monthly as work progresses on a public contract for a public improvement. Payments shall be based upon estimates of work completed that are approved by the public contracting agency. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein. The public contracting agency shall pay to the contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the agency, whichever is the earlier date. The rate of interest charged to the public contracting agency on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the agency, whichever is the earlier date, but the rate of interest shall not exceed 30 percent.

(3) Interest shall be paid automatically when payments become overdue. The public contracting agency shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on public contracts. The public contracting agency shall not require the contractor to petition, invoice, bill or wait additional days to receive interest due.

(4) In instances when an invoice is filled out incorrectly, or when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the public contracting agency shall so notify the contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven days of being notified by the agency, shall not cause a payment to be made later than specified in this section unless interest is also paid.

(5) If requested in writing by a first-tier subcontractor, the contractor, within 10 calendar days after receiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to the public contracting agency or pay document provided by the public contracting agency to the contractor specifically related to any labor or materials supplied by the first-tier subcontractor.

(6) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between the public contracting agency and the contractor. Whenever a contractor brings formal administrative or judicial action to collect interest due under this section, the prevailing party shall be entitled to costs and reasonable attorney fees.

(7) A public contracting agency may reserve as retainage from any progress payment on a public contract an amount not to exceed five percent of the payment. As work progresses, an agency may reduce the amount of the retainage and the agency may eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the agency's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the contractor, which application shall include written approval of the contractor's surety; except that when the contract work is 97-1/2 percent completed the agency may, at its discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the contractor, the agency shall respond in writing within a reasonable time.

(8) The retainage held by a public contracting agency shall be included in and paid to the contractor as part of the final payment of the contract price. The public contracting agency shall pay to the contractor interest at the rate of one and one-half percent per month on the final payment due the contractor, interest to commence 30 days after the work under the contract has been completed and accepted and to run until the date when the final payment is tendered to the contractor. The contractor shall notify the public contracting agency in writing when the contractor considers the work complete and the public contracting agency shall, within 15 days after receiving the written notice, either accept the work or notify the contractor of work yet to be performed on the contract. If the public contracting agency does not within the time allowed notify the contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

(9)(a) The public contracting agency shall pay, upon settlement or judgment in favor of the contractor regarding any dispute as to the compensation due a contractor for work performed under the terms of a public contract, the amount due plus interest at the rate of two times the discount rate, but not to exceed 30 percent, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date and accruing from the later of:

(A) The due date of any progress payment received under the contract for the period in which such work was performed; or

(B) Thirty days after the date on which the claim for the payment under dispute was presented to the public contracting agency by the contractor in writing or in accordance with applicable provisions of the contract.

(b) Such interest shall be added to and not made a part of the settlement or judgment. [Formerly 279.575; 1991 c.516 §1; 1999 c.689 §2]

Note: 279.435 is repealed March 1, 2005. The repeal of 279.435 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

(Subcontractors)

279.445 Contractor's relations with subcontractors. (1) This section applies to contracts for contractors of public improvements.

(2) A contractor shall not request payment from the public contracting agency of any amount withheld or retained in accordance with subsection (6) of this section until such time as the contractor has determined and certified to the public contracting agency that the subcontractor has determined and certified to the public contracting agency that the subcontractor is entitled to the payment of such amount.

(3) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (4) or (5) of this section does not constitute a dispute to which the public contracting agency is a party. The public contracting agency shall not be included as a party in any administrative or judicial proceeding involving such a dispute.

(4) Each contract awarded by a public contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the public contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. A contractor or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the public contracting agency or contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in ORS 279.314 (2).

(5) The contract awarded by the public contracting agency shall further require the contractor to include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (4) of this section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(6)(a) The clauses required by subsections (4) and (5) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (9) of this section has been

previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor pursuant to sub-subparagraph (i) of this subparagraph has been furnished to the public contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(7) If, after making application to a public contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the prime contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (9) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the public contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (a) of this subsection;

(c) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the public contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers such funds from the public contracting agency;

(f) Notify the public contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates that such withholding began and ended; and

(g) Be obligated to pay to the public contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279.435 from the 11th day after receipt of the withheld amounts from the public contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(8)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor's performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (7)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (9) of this section as soon as practicable upon making such determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified in ORS 279.435.

(9) A written notice of any withholding shall be issued to a subcontractor, with a copy to the public contracting agency of any such notice issued by a prime contractor, specifying:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(10) Except as provided in subsection (3) of this section, this section shall not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontractor performance or nonperformance by a subcontractor.

(11) A contractor's obligation to pay a late payment interest penalty to a subcontractor pursuant to the clause included in a subcontract under subsection (4) or (5) of this section is not intended to be an obligation of the public contracting agency for such late payment interest penalty. A contract modification shall not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim shall not include any amount for reimbursement of such late payment interest penalty. [1991 c.516 §2; 1999 c.689 §2a]

Note: 279.445 is repealed March 1, 2005. The repeal of 279.445 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: 279.445 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See notes preceding 279.005.

BONDS; ACTION ON BONDS

279.526 Right of action against bond of contractor or subcontractor; notice of claim. (1) A person claiming to have supplied labor or materials for the prosecution of the work provided for in the contract, including any person having direct contractual relationship with the contractor furnishing the bond or direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the State Department of Employment Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's bond, cashier's check or certified check as provided for in ORS 279.029 only if:

(a) The person or the assignee of the person has not been paid in full; and

(b) The person gives written notice of claim, as prescribed in ORS 279.528, to the contractor and the state agency, if the contract is with a state agency, or the clerk or auditor of the public body that let the contract if the public body is other than a state agency.

(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has received information indicating that one or more workers providing labor on a public work have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action on the contractor's bond, cashier's check or certified check as provided in ORS 279.029. The commissioner's right of action exists without necessity of an assignment and extends to workers on the project who are not identified when the written notice of claim is given, but for whom the commissioner has received information indicating that the workers have provided labor on the public work and have not been paid in full. The commissioner shall give written notice of the claim, as prescribed in ORS 279.528, to the contractor and the state agency, if the contract is with a state agency, or to the clerk or auditor of the public body that let the contract if the public body is other than a state agency. [Amended by 1953 c.131 §3; 1957 c.650 §6; 1969 c.689 §1; 1975 c.771 §21; 1981 c.712 §16; 1983 c.264 §3; 1985 c.526 §1; 1993 c.98 §6; 1999 c.521 §1]

Note: 279.526 is repealed March 1, 2005. The repeal of 279.526 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.528 Notice of claim. (1) The notice of claim required by ORS 279.526 shall be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business or at the residence of the contractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279.526 shall be sent or delivered within 150 days after the employee last provided labor or materials.

(3) The notice shall be in writing substantially as follows:

_____

To (here insert the name of the contractor and the name of the state agency or public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the bond taken from (here insert the name of the principal and, if known, the surety or sureties upon the bond) for the work of (here insert a brief description of the work concerning which the bond was taken). Such material or labor was supplied to (here insert the name of the contractor or subcontractor).

_____ (here to be signed)

_____

(4) When notice of claim is given by the commissioner and if the claim includes a worker who is then unidentified, the commissioner shall include in the notice a statement that the claim includes an unidentified worker for whom the commissioner has received information indicating that the worker has not been paid in full at the prevailing rate of wage required by ORS 279.350 or overtime wages required by ORS 279.334.

(5) The notice shall be signed by the person making the claim or giving the notice. [Amended by 1957 c.650 §7; 1969 c.689 §2; 1975 c.771 §22; 1985 c.526 §2; 1993 c.98 §7; 1999 c.521 §2]

Note: 279.528 is repealed March 1, 2005. The repeal of 279.528 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.536 Action on contractor's bond; limitation. (1) The Commissioner of the Bureau of Labor and Industries or a person who has a right of action on the bond under ORS 279.526 and, where required, who has filed and served the notice or notices of claim, as required under ORS 279.526 and 279.528, or that person's assignee, may institute an action on the contractor's bond, cashier's check or certified check as provided for in ORS 279.029 in the circuit court of this state or the federal district court of this district.

(2) The action shall be on the relation of the commissioner, the claimant, or that person's assignee, as the case may be, and shall be in the name of the public body that let the contract. It may be prosecuted to final judgment and execution for the use and benefit of the commissioner, the claimant, or that person's assignee, as the fact may appear.

(3) The action shall be instituted no later than the expiration of two years after the person last provided labor or materials or two years after the worker listed in the commissioner's notice of claim last provided labor. [1957 c.650 §8; 1969 c.689 §3; 1975 c.771 §23; 1981 c.712 §17; 1985 c.526 §3; 1999 c.521 §3]

Note: 279.536 is repealed March 1, 2005. The repeal of 279.536 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.538 Preference of labor and material liens. All labor and material liens shall have preference and be superior to all other liens and claims of whatsoever kind or nature created by ORS 279.310 to 279.318 and 279.526 to 279.542. [Formerly 279.518]

Note: 279.538 is repealed March 1, 2005. The repeal of 279.538 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.540 Rights of persons furnishing medical care and attention to employees of contractor. A person furnishing or providing medical, surgical or hospital care or other needed care and attention, incident to sickness or injury, to the employees of a contractor of a contract made with a public body, or to the employees of the subcontractor, shall be deemed to have performed labor for prosecution of the work provided in the contract for the purposes of ORS 279.526 to 279.542. [Formerly 279.530]

Note: 279.540 is repealed March 1, 2005. The repeal of 279.540 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

279.542 Joint liability where bond not executed. If the contract is one for which a bond, cashier's check or certified check as provided for in ORS 279.029 is required and the contractor fails to pay for labor or materials or to pay claims due the State Industrial Accident Fund, the Unemployment Compensation Trust Fund or the Department of Revenue and the officers of the public body that let the contract fail or neglect to require the person entering into the contract to execute the bond, cashier's check or certified check:

(1) The State of Oregon and the officers authorizing the contract shall be jointly liable for the labor and materials used in the prosecution of any work under the contract, and for claims due the State Industrial Acci-

dent Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into with the State of Oregon.

(2) The public body and the officers authorizing the contract shall be jointly liable for the labor and materials used in the prosecution of any work under the contract and for claims due the State Industrial Accident Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into on behalf of a public body other than the state. [Formerly 279.532; 1975 c.771 §23a; 2001 c.104 §94]

Note: 279.542 is repealed March 1, 2005. The repeal of 279.542 applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 332, 336 and 337, chapter 794, Oregon Laws 2003.

Note: See notes preceding 279.005.

Chapter 279A
(Partial)

2003 EDITION

Public Contracting - General Provisions

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GENERAL PROVISIONS

279A.005 Short title. ORS chapters 279A, 279B and 279C may be cited as the Public Contracting Code. [2003 c.794 §1]

Note: ORS chapter 279A, except 279A.180, becomes operative March 1, 2005, and applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003.

279A.010 Definitions for Public Contracting Code. (1) As used in the Public Contracting Code, unless the context or a specifically applicable definition requires otherwise:

(a) "Bidder" means a person that submits a bid in response to an invitation to bid.

(b) "Contracting agency" means a public body authorized by law to conduct a procurement. "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf. "Contracting agency" does not include the judicial department or the legislative department.

(c) "Days" means calendar days.

(d) "Department" means the Oregon Department of Administrative Services.

(e) "Director" means the Director of the Oregon Department of Administrative Services or a person designated by the director to carry out the authority of the director under the Public Contracting Code.

(f) "Emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

(B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(C) Require prompt execution of a contract to remedy the condition.

(g) "Energy savings performance contract" means a public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(h) "Executive department" has the meaning given that term in ORS 174.112.

(i)(A) "Grant" means:

(i) An agreement under which a contracting agency receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or

(ii) An agreement under which a contracting agency provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the contracting agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(B) "Grant" does not include a public contract for a public improvement, for public works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a public improvement, when under the public contract a contracting agency pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the contracting agency, moneys that the contracting agency has received under a grant.

(j) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metalworking oil or refrigeration oil.

(k) "Judicial department" has the meaning given that term in ORS 174.113.

(L) "Legislative department" has the meaning given that term in ORS 174.114.

(m) "Local contract review board" means a local contract review board described in ORS 279A.060.

(n) "Local contracting agency" means a local government or special government body authorized by law to conduct a procurement. "Local contracting agency" includes any person authorized by a local contracting agency to conduct a procurement on behalf of the local contracting agency.

(o) "Local government" has the meaning given that term in ORS 174.116.

(p) "Lowest responsible bidder" means the lowest bidder who:

(A) Has substantially complied with all prescribed public contracting procedures and requirements;

(B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and

(D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

(q) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(r) "Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

(s) "Post-consumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(t) "Price agreement" means a public contract for the procurement of goods or services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services in which the contracting agency does not guarantee a minimum or maximum additional purchase.

(u) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring goods or services. "Procurement" includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a public contract, administer a public contract and obtain the performance of a public contract under the Public Contracting Code.

(v) "Proposer" means a person that submits a proposal in response to a request for proposals.

(w) "Public body" has the meaning given that term in ORS 174.109.

(x) "Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.

(y) "Public contracting" means procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering public contracts or price agreements.

(z) "Public Contracting Code" or "code" means ORS chapters 279A, 279B and 279C.

(aa) "Public improvement" means a project for construction, reconstruction or major renovation on real property by or for a contracting agency. "Public improvement" does not include:

(A) Projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

(bb) "Public improvement contract" means a public contract for a public improvement. "Public improvement contract" does not include a public contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

(cc) "Recycled material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(dd) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(ee) "Recycled paper" means a paper product with not less than:

(A) Fifty percent of its fiber weight consisting of secondary waste materials; or

(B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(ff) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(gg) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recy-

cled product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(hh) "Secondary waste materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(ii) "Special government body" has the meaning given that term in ORS 174.117.

(jj) "State agency" means the executive department, except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(kk) "State contracting agency" means an executive department entity authorized by law to conduct a procurement.

(LL) "State government" has the meaning given that term in ORS 174.111.

(mm) "Used oil" has the meaning given that term in ORS 459A.555.

(nn) "Virgin oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(2) Other definitions appearing in the Public Contracting Code and the sections in which they appear are:

"Adequate"	ORS 279C.305
"Administering contracting agency"	ORS 279A.200
"Affirmative action"	ORS 279A.100
"Architect"	ORS 279C.100
"Architectural, engineering and land surveying services"	ORS 279C.100
"Bid documents"	ORS 279C.400
"Bidder"	ORS 279B.415
"Bids"	ORS 279C.400
"Brand name"	ORS 279B.405
"Brand name or equal specification"	ORS 279B.200
"Brand name specification"	ORS 279B.200
"Class special procurement"	ORS 279B.085
"Consultant"	ORS 279C.115
"Contract-specific special procurement"	ORS 279B.085
"Cooperative procurement"	ORS 279A.200
"Cooperative procurement group"	ORS 279A.200
"Donee"	ORS 279A.250
"Engineer"	ORS 279C.100
"Established catalog price"	ORS 279B.005
"Findings"	ORS 279C.330
"Fire protection equipment"	ORS 279A.190
"Flagger"	ORS 279C.810
"Fringe benefits"	ORS 279C.800
"Funds of a public agency"	ORS 279C.810
"Good cause"	ORS 279C.585
"Good faith dispute"	ORS 279C.580
"Goods"	ORS 279B.115
"Goods and services" or "goods or services"	ORS 279B.005
"Interstate cooperative procurement"	ORS 279A.200
"Invitation to bid"	ORS 279B.005 and 279C.400
"Joint cooperative procurement"	ORS 279A.200
"Labor dispute"	ORS 279C.650
"Land surveyor"	ORS 279C.100
"Legally flawed"	ORS 279B.405
"Locality"	ORS 279C.800
"Nonprofit organization"	ORS 279C.810
"Nonresident bidder"	ORS 279A.120
"Not-for-profit organization"	ORS 279A.250
"Original contract"	ORS 279A.200
"Permissive cooperative procurement"	ORS 279A.200
"Person"	ORS 279C.500 and 279C.815
"Personal services"	ORS 279C.100
"Prevailing rate of wage"	ORS 279C.800
"Procurement description"	ORS 279B.005
"Property"	ORS 279A.250
"Public agency"	ORS 279C.800
"Public contract"	ORS 279A.190
"Public contract for goods or services"	ORS 279B.005
"Public works"	ORS 279C.800
"Purchasing contracting agency"	ORS 279A.200
"Regularly organized fire department"	ORS 279A.190
"Related services"	ORS 279C.100
"Request for proposals"	ORS 279B.005
"Resident bidder"	ORS 279A.120
"Responsible bidder"	ORS 279A.105 and 279B.005
"Responsible proposer"	ORS 279B.005
"Responsive bid"	ORS 279B.005
"Responsive proposal"	ORS 279B.005
"Retainage"	ORS 279C.550
"Special procurement"	ORS 279B.085
"Specification"	ORS 279B.200
"State agency"	ORS 279A.250
"Substantial completion"	ORS 279C.465
"Surplus property"	ORS 279A.250
"Unnecessarily restrictive"	ORS 279B.405

[2003 c.794 §2; 2003 c.794 §2a]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.015 Policy. It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:

(1) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards.

(2) Instill public confidence through ethical and fair dealing, honesty and good faith

on the part of government officials and those who do business with the government.

(3) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.

(4) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds.

(5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.

(6) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted. [2003 c.794 §3]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.020 Organization of Public Contracting Code. (1) Except as otherwise provided in the Public Contracting Code, all public contracting by a contracting agency is subject to this chapter.

(2) Public contracting involving public improvements and other construction services is subject to this chapter and ORS chapter 279C, but not ORS chapter 279B.

(3) Public contracting involving architects, engineers, land surveyors and related services is subject to this chapter and ORS chapter 279C, but not ORS chapter 279B.

(4) All other public contracting is subject to this chapter and ORS 279B, but not ORS chapter 279C. [2003 c.794 §4]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.025 Application of Public Contracting Code. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(c) Grants;

(d) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(e) Acquisitions or disposals of real property or interest in real property;

(f) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(g) Contracts for the procurement or distribution of textbooks;

(h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

(j) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(k) Contracts for the sale of forest products, as defined in ORS 321.005, from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(L) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(m) Sponsorship agreements entered into by the Director of the Oregon State Fair and Exposition Center in accordance with ORS 565.080 (4);

(n) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(o) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS chapters 178, 286, 287, 288, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services, as

defined in ORS 279B.005, is subject to ORS chapter 279B;

(p) Energy savings performance contracts;

(q) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565; or

(s) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the public contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The Oregon University System and member institutions, except as provided in ORS 351.086;

(c) The legislative department;

(d) The judicial department;

(e) Semi-independent state agencies listed in ORS 182.451, 182.452 and 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(f) Oregon Corrections Enterprises;

(g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(i) The Appraiser Certification and Licensure Board, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290; or

(j) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. [2003 c.794 §5; 2003 c.794 §5a]

Note: See note under 279A.005 for operative date and applicability provisions.

Note: 182.452 was repealed by section 56, chapter 1084, Oregon Laws 1999, and section 3, chapter 206, Oregon Laws 2003. The text of 279A.025 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 279A.025 for the repeal of 182.452 has not been made.

279A.030 Federal law prevails in case of conflict. Except as otherwise expressly provided in ORS 279C.800 to 279C.870, and notwithstanding ORS 279C.005 to 279C.670 and this chapter and ORS chapter 279B, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B, or require additional conditions in public contracts not authorized by ORS 279C.005 to 279C.670 or this chapter or ORS chapter 279B. [2003 c.794 §6]

Note: See note under 279A.005 for operative date and applicability provisions.

AUTHORITY

279A.050 Procurement authority. (1) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all rights, powers and authority in accordance with the provisions of the Public Contracting Code.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all of the rights, powers and authority necessary to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all of the rights, powers and authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements

and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all of the rights, powers and authority to procure or supervise the procurement of goods, services and personal services related to programs under the direct authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all of the rights, powers and authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The following specific limited authorities are subject to the provisions of the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing:

(A) For the chronically mentally ill, subject to applicable provisions of ORS 426.504; and

(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;

(b) The State Department of Fish and Wildlife to procure or supervise the procurement of all goods, services, public improvements and personal services relating to dams, fishways, ponds and related fish and game propagation facilities;

(c) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;

(d) The Oregon Department of Aviation to procure or supervise the procurement of all goods, services, public improvements and personal services related to airports owned or operated by the state;

(e) The Economic and Community Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;

(f) The Attorney General to enter into contracts as necessary to exercise the authority granted in ORS chapter 180;

(g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services;

(h) The Department of Corrections to procure or supervise the procurement of goods, services and personal services for the construction of all new buildings or additions for its institutions;

(i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods for its institutions;

(j) The Director of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the director's authority; and

(k) Any state agency to make procurements when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract. [2003 c.794 §7]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.055 Personal services contracts. (1) Except as provided in ORS 279A.140, a contracting agency may enter into personal services contracts. The provisions of this section do not relieve a contracting agency of the duty to comply with ORS 279A.140, any other law applicable to state agencies or applicable city or county charter provisions.

(2) A local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain service contracts or classes of service contracts as personal services contracts. [2003 c.794 §8]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.060 Local contract review boards. If the governing body of a local contracting agency takes no action to provide otherwise, the governing body is the local contract review board of that local contracting agency. However, the governing body of a local contracting agency may, by charter, ordinance or other local legislation, authorize a body, board or commission other than the governing body to serve as the local contract review board of the local contracting agency. The governing body of a local contracting agency also may enter into intergovernmental agreements under ORS chapter 190 to permit the local contract re-

view board of another local contracting agency or the Director of the Oregon Department of Administrative Services to exercise authority under ORS 279B.085. [2003 c.794 §9]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.065 Model rules generally; applicability to contracting agencies. (1) The Attorney General shall prepare and maintain model rules of procedure appropriate for use by all contracting agencies governing public contracting under the Public Contracting Code and may devise and publish forms for use therewith. The Attorney General shall adopt the model rules in the manner provided by ORS chapter 183. Before adopting or amending a model rule, the Attorney General shall consult with the Director of the Oregon Department of Administrative Services, the Director of Transportation, representatives of county governments, representatives of city governments, representatives of school boards and other knowledgeable persons.

(2) The Attorney General shall adopt model rules appropriate for use by all contracting agencies to govern the procedures for entering into energy savings performance contracts. Before adopting or amending a rule under this subsection, the Attorney General shall consult with the Oregon Department of Administrative Services, the State Department of Energy, the Oregon University System, local contracting agencies and other knowledgeable persons. The Attorney General may develop standard contract forms for use with energy savings performance contracts.

(3) After each legislative session, the Attorney General shall review all laws passed by the Legislative Assembly that affect public contracting to determine if the model rules prepared under this section should be modified by the adoption of a new rule or by the amendment or repeal of an existing rule. If the Attorney General determines that a modification of the model rules is necessary, the Attorney General shall prepare the modification within such time as to allow the modification to take effect no later than 120 days after the effective date of the legislation that caused the rule to be modified. However, the Attorney General may prepare a modification to take effect 121 or more days after the effective date of the legislation if the Attorney General provides notice designating the time period within which the modification will take effect to the state agencies and persons listed in subsection (1) of this section.

(4) A contracting agency that has not adopted its own rules of procedure in accordance with subsection (5) of this section is subject to the model rules adopted by the Attorney General under this section, including all modifications to the model rules that the Attorney General may adopt. This subsection does not apply to personal services contracts of local contracting agencies except for contracts for architectural, engineering and land surveying services and related services.

(5)(a) A contracting agency may adopt its own rules of procedure for public contracts that:

(A) Specifically state that the model rules adopted by the Attorney General under this section do not apply to the contracting agency; and

(B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General.

(b) A contracting agency that adopts rules under this section shall review the rules each time the Attorney General modifies the model rules under this section to determine whether the contracting agency should modify its rules to ensure compliance with statutory changes. [2003 c.794 §10; 2003 c.794 §10a]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.070 Rules. In addition to rules adopted under ORS 279A.065 (5), a contracting agency may, in the exercise of authority granted under ORS 279A.050, adopt rules necessary to carry out the provisions of the Public Contracting Code, including but not limited to rules for the procurement, management, disposal and control of goods, services, personal services and public improvements under the Public Contracting Code. Each contracting agency authorized to enter into personal services contracts shall create procedures for the screening and selection of persons to perform personal services. [2003 c.794 §11; 2003 c.794 §11a]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.075 Delegation. (1) Unless otherwise provided in the Public Contracting Code, the exercise of all authorities in the code may be delegated and subdelegated in whole or in part. Notwithstanding delegations of authority under this section, a person's or agency's exercise of the delegated authority is governed by the code and rules adopted under the code.

(2) The Secretary of State, State Treasurer, Director of the Oregon Department of Administrative Services and Director of Transportation and other heads of state

agencies with specific limited authority identified in ORS 279A.050 (6) may delegate their authority to contract for and manage public contracts for their offices or agencies. [2003 c.794 §12]

Note: See note under 279A.005 for operative date and applicability provisions.

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

279A.100 Affirmative action; limited competition permitted. (1) As used in this section, "affirmative action" means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(2) The provisions of the Public Contracting Code may not be construed to prohibit a contracting agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs for disadvantaged or minority groups.

(3) In carrying out the policy of affirmative action, by appropriate ordinance, resolution or rule, a contracting agency may limit competition for a public contract for goods and services, or for any other public contract estimated to cost $50,000 or less, to contracting entities owned or controlled by persons described in subsection (1) of this section. [2003 c.794 §13]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.105 Subcontracting to emerging small businesses. (1) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business.

(2) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting agency, is located in or draws its workforce from economically depressed areas, as designated by the Economic and Community Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3). [2003 c.794 §14]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.110 Discrimination in subcontracting prohibited; remedies. (1) A bidder or proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

(2) A contracting agency may debar or disqualify, under ORS 279B.130 or 279C.440, as appropriate, a bidder or proposer if the contracting agency finds that the bidder or proposer has violated subsection (1) of this section in the awarding of a subcontract in connection with a contract advertised by the contracting agency or a contract between the contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer may appeal the debarment or disqualification under ORS 279B.425 or ORS 279C.445 and 279C.450, as appropriate.

(3) A contracting agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this section more than three years after the alleged discriminatory conduct occurred or more than three years after the contracting agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(4) A bidder or proposer shall certify in the documents accompanying the bidder's or proposer's offer to enter into a public contract that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against any minority, women or emerging small business enterprise in obtaining any required subcontract.

(5) After a contractor is awarded a public contract, if the contractor violates the certification made under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits:

(a) Termination of the contract; or

(b) The contracting agency to exercise any remedies for breach of contract that are reserved in the contract. [2003 c.794 §15]

Note: See note under 279A.005 for operative date and applicability provisions.

CONTRACT PREFERENCES

279A.120 Preference for Oregon goods and services; nonresident bidders. (1) As used in this section:

(a) "Nonresident bidder" means a bidder who is not a resident bidder.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

(2) For the purposes of awarding a public contract, a contracting agency shall:

(a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and

(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

(3) When a public contract is awarded to a nonresident bidder and the contract price exceeds $10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

(4) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each state. A contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder. [2003 c.794 §16]

Note: See note under 279A.005 for operative date and applicability provisions.

279A.125 Preference for recycled materials. (1) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation and subject to subsection (2) of this section, a contracting agency charged with the procurement of goods for any public use shall give preference to the procurement of goods manufactured from recycled materials.

(2) A contracting agency shall give preference to goods that are certified to be made from recycled materials if:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable nonrecycled product; and

(d) The recycled product's costs do not exceed the costs of nonrecycled products by more than five percent, or a higher percentage if a written determination is made by the contracting agency. [2003 c.794 §17]

Note: See note under 279A.005 for operative date and applicability provisions.

Chapter 279C

2003 EDITION

Public Contracting - Public Improvements and Related Contracts

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GENERAL PROVISIONS

279C.005 Definitions. ORS 279A.010 (1) contains general definitions applicable throughout this chapter. [2003 c.794 §88]

Note: ORS chapter 279C becomes operative March 1, 2005, and applies only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003.

279C.010 Applicability. As provided in ORS 279A.020, public contracting under this chapter is subject to ORS chapter 279A, but not ORS chapter 279B. [2003 c.794 §88a]

Note: See note under 279C.005 for operative date and applicability provisions.

ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED SERVICES

279C.100 Definitions for ORS 279C.100 to 279C.125. As used in ORS 279C.100 to 279C.125:

(1) "Architect" means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect."

(2) "Architectural, engineering and land surveying services" means professional services that are required to be performed by an architect, engineer or land surveyor.

(3) "Engineer" means a person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (2).

(4) "Land surveyor" means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002 (4).

(5) "Personal services" mean the services of a person or persons that are designated by the Oregon Department of Administrative Services or a local contract review board as personal services under ORS 279A.055. "Personal services" includes architectural, engineering and land surveying services procured under ORS 279C.105 or 279C.110 and related services procured under ORS 279C.120.

(6) "Related services" means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services. [2003 c.794 §89]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.105 Contracts for architectural, engineering, land surveying and related services; procedures. (1) Except as provided in ORS 279A.140, contracting agencies may enter into contracts for architectural, engineering and land surveying services and related services. The Oregon Department of Administrative Services shall enter into contracts for architectural, engineering and land surveying services and related services on behalf of state contracting agencies that are subject to ORS 279A.140. The provisions of this section do not relieve the contracting agency of the duty to comply with ORS 279A.140, any other law applicable to state contracting agencies, or any applicable city or county charter provisions. Each contracting agency authorized to enter into contracts for architectural, engineering and land surveying services and related services shall adopt procedures for the screening and selection of persons to perform those services under ORS 279C.110 or 279C.120.

(2) The Director of the Oregon Department of Administrative Services or a local contract review board by ordinance, resolution, administrative rule or other regulation may designate certain personal services contracts or classes of personal services contracts as contracts for architectural, engineering and land surveying services or related services. [2003 c.794 §90]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.110 Selection procedure for architects, engineers and land surveyors; compensation; applicability. (1) A state contracting agency shall select consultants to provide architectural, engineering or land surveying services on the basis of qualifications for the type of professional service required. A state contracting agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has selected a candidate pursuant to subsection (3) of this section.

(2) This section applies only if the architectural, engineering or land surveying services contract is issued by a state contracting agency and does not apply to any such contract issued by a local contracting agency unless the following conditions apply:

(a) The local contracting agency receives moneys from the State Highway Fund under ORS 366.762 or 366.800 or a grant or loan from the state that will be used to pay for any portion of the design and construction of the project;

(b) The total amount of any grants, loans or moneys from the State Highway Fund and from the state for the project exceeds 35 percent of the value of the project; and

(c) The value of the project exceeds $400,000.

(3) Subject to the requirements of subsections (1) and (2) of this section, the procedures that a contracting agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(4) If the screening and selection procedures created by a contracting agency under subsection (3) of this section result in the determination by the contracting agency that two or more candidates are equally qualified, the contracting agency may select a candidate through any process adopted by the contracting agency.

(5) The contracting agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

(6) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

(7) It is the goal of this state to promote a sustainable economy in the rural areas of the state. In order to monitor progress toward this goal, a state contracting agency to which this section applies shall keep a record of the locations for the architectural, engineering and land surveying services contracts and related services contracts to be performed throughout the state, the locations of the selected consultants and the direct expenses on each contract. This record shall include the total number of contracts over a 10-year period for each consultant firm. The record of direct expenses shall include all personnel travel expenses as a separate and identifiable expense on the contract. Upon request, the state contracting agency shall make these records available to the public. [2003 c.794 §91]

Note: See note under 279C.005 for operative date and applicability provisions.

Note: The amendments to 279C.110 by section 92, chapter 794, Oregon Laws 2003, become operative July 1, 2008, and apply only to public contracts for personal services advertised or solicited on or after July 1, 2008. See section 93, chapter 794, Oregon Laws 2003. The text that is operative on and after July 1, 2008, is set forth for the user's convenience.

279C.110. (1) A state contracting agency shall select consultants to provide architectural, engineering or land surveying services on the basis of qualifications for the type of professional service required. A state contracting agency may solicit or use pricing policies and proposals or other pricing information to determine consultant compensation only after the agency has se-

lected a candidate pursuant to subsection (2) of this section.

(2) Subject to the requirements of subsection (1) of this section, the procedures that a contracting agency creates for the screening and selection of consultants and the selection of a candidate under this section shall be within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency. Screening and selection procedures may include a consideration of each candidate's:

(a) Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;

(b) Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;

(c) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(d) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;

(e) Availability to the project locale;

(f) Familiarity with the project locale; and

(g) Proposed project management techniques.

(3) If the screening and selection procedures created by a contracting agency under subsection (2) of this section result in the determination by the contracting agency that two or more candidates are equally qualified, the contracting agency may select a candidate through any process adopted by the contracting agency.

(4) The contracting agency and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the contracting agency as determined solely by the contracting agency. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

(5) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

(6) It is the goal of this state to promote a sustainable economy in the rural areas of the state. In order to monitor progress toward this goal, a state contracting agency to which this section applies shall keep a record of the locations for the architectural, engineering and land surveying services contracts and related services contracts to be performed throughout the state, the locations of the selected consultants and the direct expenses on each contract. This record shall include the total number of contracts over a 10-year period for each consultant firm. The record of direct expenses shall include all personnel travel expenses as a separate and identifiable expense on the contract. Upon request, the state contracting agency shall make these records available to the public.

279C.115 Direct contracts for services of architects, engineers and land surveyors. (1) As used in this section, "consultant" means an architect, engineer or land surveyor.

(2) A local contracting agency may enter into an architectural, engineering or land surveying services contract directly with a consultant if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under rules adopted under ORS 279A.065 and the new contract is a continuation of that project.

(3) A local contracting agency may adopt criteria for determining when this section applies to an architectural, engineering or land surveying services contract. [2003 c.794 §94]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.120 Selection procedure for related services. (1) A contracting agency may select consultants to perform related services:

(a) In accordance with screening and selection procedures adopted under ORS 279C.105;

(b) On the basis of the qualifications of the consultants for the types of related services required, under the requirements of ORS 279C.110; or

(c) On the basis of price competition, price and performance evaluations, an evaluation of the capabilities of bidders to perform the needed related services or an evaluation of the capabilities of the bidders to perform the needed related services followed by negotiations between the parties on the price for those related services.

(2) Subject to the requirements of subsection (1) of this section, the procedures that a contracting agency adopts for the screening and selection of consultants and the selection of a candidate under this section is within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and budget objectives for a particular project. Adjustments to accommodate a contracting agency's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed a threshold amount as determined by the contracting agency. [2003 c.794 §95]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.125 Architectural, engineering and land surveying services selection process for local government public improvements procured through state agency; rules. (1) The Department of Transportation, the Oregon Department of Administrative Services or any other state contracting agency shall adopt rules establishing a two-tiered selection process for contracts with architects, engineers and land surveyors to perform personal services contracts. The selection process shall apply only if:

(a) A public improvement is owned and maintained by a local government; and

(b) The Department of Transportation, the Oregon Department of Administrative Services or another state contracting agency will serve as the lead state contracting agency and will execute personal services contracts with architects, engineers and land surveyors for work on the public improvement project.

(2) The selection process required by subsection (1) of this section must require the lead state contracting agency to select no fewer than the three most qualified consultants when feasible in accordance with ORS 279C.110.

(3) The local government is responsible for the final selection of the consultant from the list of qualified consultants selected by the lead state contracting agency or through an alternative process adopted by the local government.

(4) Nothing in this section applies to the selection process used by a local contracting agency when the contracting agency executes a contract directly with architects, engineers or land surveyors. [2003 c.794 §96]

Note: See note under 279C.005 for operative date and applicability provisions.

PROCUREMENT OF CONSTRUCTION SERVICES

(General Policies)

279C.300 Policy on competition. It is the policy of the State of Oregon that public improvement contracts awarded under this chapter must be based on competitive bidding, except as otherwise specifically provided in ORS 279C.335 for exceptions and formal exemptions from competitive bidding requirements. [2003 c.794 §97]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.305 Least-cost policy for public improvements; costs estimates in budget process; use of agency forces; record of costs. (1) It is the policy of the State of Oregon that contracting agencies shall make every effort to construct public improvements at the least cost to the contracting agency.

(2) Not less than 30 days prior to adoption of the contracting agency's budget for the subsequent budget period, each contracting agency shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement known to the contracting agency that the contracting agency plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether the contracting agency intends to perform the construction through a private contractor. If the contracting agency intends to perform construction work using the contracting agency's own equipment and personnel on a project estimated to cost more than $125,000, the contracting agency shall also show that the contracting agency's decision conforms to the policy stated in subsection (1) of this section. The list is a public record and may be revised periodically by the agency.

(3) Before a contracting agency constructs a public improvement with its own equipment or personnel:

(a) If the estimated cost exceeds $125,000, the contracting agency shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work must include a reasonable allowance for the cost, including investment cost, of any equipment used. As used in this paragraph, "adequate" means sufficient to control the performance of the work and to ensure satisfactory quality of construction by the contracting agency personnel.

(b) The contracting agency shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs is a public record.

(4) Subsections (2) and (3) of this section do not apply to a contracting agency when the public improvement is to be used for the distribution or transmission of electric power.

(5) For purposes of this section, resurfacing of highways, roads or streets at a depth of two or more inches and at an estimated cost that exceeds $125,000 is a public improvement. [2003 c.794 §98]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.310 Limitation on contracting agency constructing public improvement. If a contracting agency fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services pursuant to section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555 (Municipal Audit Law), the contracting agency may not construct a public improvement with the contracting agency's own equipment or personnel if the cost exceeds $5,000. [2003 c.794 §99]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.315 Waiver of damages for unreasonable delay by contracting agency against public policy. (1) Any clause in a public improvement contract that purports to waive, release or extinguish the rights of a contractor to damages or an equitable adjustment arising out of unreasonable delay in performing the contract, if the delay is caused by acts or omissions of the contracting agency or persons acting therefor, is against public policy and is void and unenforceable.

(2) Subsection (1) of this section is not intended to render void any contract provision that:

(a) Requires notice of any delay;

(b) Provides for arbitration or other procedures for settlement of contract disputes; or

(c) Provides for reasonable liquidated damages. [2003 c.794 §100]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.320 Contracts for construction other than public improvements. (1) Contracting agencies shall enter into contracts for minor alteration, ordinary repair or maintenance of public improvements, as well as any other construction contract that is not defined as a public improvement under ORS 279A.010, in accordance with the provisions of ORS chapter 279B. This subsection does not apply to emergency contracts regulated under ORS 279C.335.

(2) Nothing in this section relieves contracting agencies or contractors of any other relevant requirements under this chapter, including payment of prevailing wage rates when applicable.

(3) When construction services are not considered to be a public improvement under this chapter because no funds of a public agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, the benefiting public body may nonetheless condition acceptance of the services on receipt of such protections as the public body considers to be in the public interest, including a performance bond, a payment bond and appropriate insurance. [2003 c.794 §101]

Note: See note under 279C.005 for operative date and applicability provisions.

(Competitive Bidding; Contract Specifications; Exceptions; Exemptions)

279C.330 "Findings" defined. As used in ORS 279C.335, 279C.345 and 279C.350, "findings" means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding:

(1) Operational, budget and financial data;

(2) Public benefits;

(3) Value engineering;

(4) Specialized expertise required;

(5) Public safety;

(6) Market conditions;

(7) Technical complexity; and

(8) Funding sources. [2003 c.794 §102]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.335 Competitive bidding; exceptions; exemptions. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A contract for goods or services if the value of the contract is less than $5,000.

(d) A contract not to exceed $100,000, or not to exceed $50,000 in the case of a contract for a highway, bridge or other transportation project, made under procedures for competitive quotes in sections 132 and 133, chapter 794, Oregon Laws 2003.

(e) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive

bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(4)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(5) A public improvement contract may be exempted from the requirement of subsection (1) of this section if emergency conditions require prompt execution of the contract. In accordance with rules adopted under ORS 279A.065, a contracting agency may declare that an emergency exists. If an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the Director of the Oregon Department of Administrative Services or the local contract review board grants an extension. [2003 c.794 §103]

Note 1: See note under 279C.005 for operative date and applicability provisions.

Note 2: The amendments to 279C.335 by section 104, chapter 794, Oregon Laws 2003, become operative July 1, 2009. See section 105, chapter 794, Oregon Laws 2003. The text that is operative from July 1, 2009, until July 1, 2012 is set forth for the user's convenience.

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A contract for goods or services if the value of the contract is less than $5,000.

(d) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050

(3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(4)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(5) A public improvement contract may be exempted from the requirement of subsection (1) of this section if emergency conditions require prompt execution of the contract. In accordance with rules adopted under ORS 279A.065, a contracting agency may declare that an emergency exists. If an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the Director of the Oregon Department of Administrative Services or the local contract review board grants an extension.

Note 3: The amendments to 279C.335 by section 105a, chapter 794, Oregon Laws 2003, become operative July 1, 2012. See section 105b, chapter 794, Oregon Laws 2003. The text that is operative on and after July 1, 2012, is set forth for the user's convenience.

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

(a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

(b) A public improvement contract exempt under subsection (2) of this section.

(c) A contract for goods or services if the value of the contract is less than $5,000.

(d) Contracts for repair, maintenance, improvement or protection of property obtained by the Director of Veterans' Affairs under ORS 407.135 and 407.145 (1).

(2) Subject to subsection (3)(b) of this section, the Director of the Oregon Department of Administrative Services or a local contract review board may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency. In making the finding, the director or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In granting exemptions under subsection (2) of this section, the director or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(4)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(5) A public improvement contract may be exempted from the requirement of subsection (1) of this section if emergency conditions require prompt execution of the

contract. In accordance with rules adopted under ORS 279A.065, a contracting agency may declare that an emergency exists. If an emergency is declared, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency, unless the director or the local contract review board grants an extension.

279C.340 Contract negotiations. If a public improvement contract is competitively bid and all responsive bids from responsible bidders exceed the contracting agency's cost estimate, the contracting agency, in accordance with rules adopted by the contracting agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the contract within the contracting agency's cost estimate. A negotiation with the lowest responsive, responsible bidder under this section may not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated. [2003 c.794 §106]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.345 Specifications for contracts; exemptions. (1) Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the product is exempt under subsection (2) of this section.

(2) The Director of the Oregon Department of Administrative Services or a local contract review board may exempt certain products or classes of products from subsection (1) of this section upon any of the following findings:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the contracting agency;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. [2003 c.794 §107]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.350 Exemption procedure; appeal. (1) Exemptions granted by the Director of the Oregon Department of Administrative Services under ORS 279C.335 (2) or 279C.345 (2) constitute rulemaking and not contested cases under ORS chapter 183. However, an exemption granted with regard to a specific public improvement contract by the Director of the Oregon Department of Administrative Services, or an exemption granted by the Director of Transportation with regard to a specific public improvement contract or class of public improvement contracts described in ORS 279A.050 (3)(b), shall be granted by order. The order shall set forth findings supporting the decision to grant or deny the request for the exemption. The order is reviewable under ORS 183.484 and does not constitute a contested case order. Jurisdiction for review of the order is with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(2) Any person except the contracting agency or anyone representing the contracting agency may bring a petition for a declaratory judgment to test the validity of any rule adopted by the Director of the Oregon Department of Administrative Services under ORS 279C.335 or 279C.345 in the manner provided in ORS 183.400.

(3) Any person except the contracting agency or anyone representing the contracting agency may bring an action for writ of review under ORS chapter 34 to test the validity of an exemption granted under ORS 279C.335 or 279C.345 by a local contract review board. [2003 c.794 §108]

Note: See note under 279C.005 for operative date and applicability provisions.

Note: The amendments to 279C.350 by section 109, chapter 794, Oregon Laws 2003, become operative July 1, 2012. See section 110, chapter 794, Oregon Laws 2003. The text that is operative on and after July 1, 2012, is set forth for the user's convenience.

279C.350. (1) Exemptions granted by the Director of the Oregon Department of Administrative Services under ORS 279C.335 (2) or 279C.345 (2) constitute rulemaking and not contested cases under ORS chapter 183. However, an exemption granted with regard to a specific public improvement contract by the director shall be granted by order of the director. The order shall set forth findings supporting the decision of the director to grant or deny the request for the exemption. The order is reviewable under ORS 183.484 and does not constitute a contested case order. Jurisdiction for review of the order is with the Circuit Court of Marion County. The court may award costs and attorney fees to the prevailing party.

(2) Any person except the contracting agency or anyone representing the contracting agency may bring a petition for a declaratory judgment to test the validity of any rule adopted by the director under ORS 279C.335 or 279C.345 in the manner provided in ORS 183.400.

(3) Any person except the contracting agency or anyone representing the contracting agency may bring an action for writ of review under ORS chapter 34 to test the validity of an exemption granted under ORS 279C.335 or 279C.345 by a local contract review board.

279C.355 Evaluation of public improvement projects not contracted by competitive bidding. (1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts described in ORS 279A.050 (3)(b), in excess of $100,000 for which the contracting agency did not use the competitive bidding process, the contracting agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the local contract review board or, for a class of public improvement contracts described in ORS 279A.050 (3)(b), the Director of Transportation an evaluation of the public improvement contract or the class of public improvement contracts.

(2) The evaluation must include but is not limited to the following matters:

(a) The actual project cost as compared with original project estimates;

(b) The amount of any guaranteed maximum price;

(c) The number of project change orders issued by the contracting agency;

(d) A narrative description of successes and failures during the design, engineering and construction of the project; and

(e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

(3) The evaluations required by this section:

(a) Must be made available for public inspection; and

(b) Must be completed within 30 days of the date the contracting agency accepts:

(A) The public improvement project; or

(B) The last public improvement project if the project falls within a class of public improvement contracts described in ORS 279.050 (3)(b). [2003 c.794 §111]

Note: See note under 279C.005 for operative date and applicability provisions.

Note: The amendments to 279C.355 by section 112, chapter 794, Oregon Laws 2003, become operative July 1, 2012. See section 113, chapter 794, Oregon Laws 2003. The text that is operative on and after July 1, 2012, is set forth for the user's convenience.

279C.355. (1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts, in excess of $100,000 for which the contracting agency did not use the competitive bidding process, the contracting agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services or the local contract review board an evaluation of the public improvement contract or the class of public improvement contracts.

(2) The evaluation shall include but is not limited to the following matters:

(a) The actual project cost as compared with original project estimates;

(b) The amount of any guaranteed maximum price;

(c) The number of project change orders issued by the contracting agency;

(d) A narrative description of successes and failures during the design, engineering and construction of the project; and

(e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

(3) The evaluations required by this section:

(a) Must be made available for public inspection; and

(b) Must be completed within 30 days of the date the contracting agency accepts:

(A) The public improvement project; or

(B) The last public improvement project if the project falls within a class of public improvement contracts.

(Solicitation; Contract Award; Rejection)

279C.360 Requirement for public improvement advertisements. (1) An advertisement for public improvement contracts must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the contracting agency may determine. The Director of the Oregon Department of Administrative Services or a local contract review board, by rule or order, may authorize advertisements for public improvement contracts to be published electronically instead of in a newspaper of general circulation if the director or board determines that electronic advertisements are likely to be cost-effective. If the public improvement contract has an estimated cost in excess of $125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation. The director or board may, by rule or order, require an advertisement to be published more than once or in one or more additional publications.

(2) All advertisements for public improvement contracts must state:

(a) The public improvement project;

(b) The office where the specifications for the project may be reviewed;

(c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;

(e) The name and title of the person designated for receipt of bids;

(f) The date, time and place that the contracting agency will publicly open the bids; and

(g) If the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a). [2003 c.794 §114]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.365 Requirements for solicitation documents and bids and proposals. (1) A contracting agency preparing solicitation documents for a public improvement contract shall, at a minimum, include:

(a) The public improvement project;

(b) The office where the specifications for the project may be reviewed;

(c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement;

(e) The name and title of the person designated for receipt of bids;

(f) The date, time and place that the contracting agency will publicly open the bids;

(g) A statement that, if the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the contracting agency unless the bid contains a statement by the bidder that ORS 279C.840 or 40 U.S.C. 276a will be complied with;

(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;

(i) A statement that the contracting agency may reject any bid not in compliance with all prescribed public contracting procedures and requirements and may reject for good cause all bids upon a finding of the agency that it is in the public interest to do so;

(j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that a bid for a public improvement contract may not be received or considered by the contracting agency unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.

(2) All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:

(a) In writing;

(b) Filed with the person designated for receipt of bids by the contracting agency; and

(c) Opened publicly by the contracting agency immediately after the deadline for submission of bids.

(3) After having been opened, the bids must be made available for public inspection.

(4) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check of each bidder shall be attached to all bids as bid security unless the contract for which a bid is submitted has been exempted from this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the contract. [2003 c.794 §115]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.370 First-tier subcontractor disclosure. (1)(a) Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or $15,000, whichever is greater, or $350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection applies only to public improvement contracts with an estimated value of more than $100,000.

(d) This subsection does not apply to public improvement contracts that have been exempted from competitive bidding requirements under ORS 279C.335 (2).

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of

each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR
DISCLOSURE FORM

PROJECT NAME: _____
BID #: _____
BID CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1) _____	$_____	_____
2) _____	$_____	_____
3) _____	$_____	_____
4) _____	$_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name): _____

Contact name: _____
Phone no.: _____

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(3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a nonresponsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.375 Award of contract; bonds. (1) After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder.

(2) In determining the lowest responsible bidder, a contracting agency shall:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract; and

(b) Determine whether the prospective bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a prospective bidder has:

(A) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to indicate the capability of the prospective bidder to meet all contractual responsibilities;

(B) A satisfactory record of performance. The contracting agency shall document the record of performance of a prospective bidder if the contracting agency finds the prospective bidder not to be responsible under this subparagraph;

(C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a prospective bidder if the contracting agency finds the prospective bidder not to be responsible under this subparagraph;

(D) Qualified legally to contract with the contracting agency; and

(E) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the prospective bidder not to be responsible.

(3) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond as described in ORS 279C.380. [2003 c.794 §117]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.380 Performance bond; payment bond; waiver of bonds in case of emergency. (1) A successful bidder for a public improvement contract shall promptly execute and deliver to the contracting agency the following bonds:

(a) A performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the contracting agency that awarded the contract and any public agency or agencies for whose benefit the contract was awarded. If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract required by this paragraph must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work. A contracting agency may waive the requirement of a performance bond. A contracting agency may permit the successful bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

(b) A payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

(2) If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection (1) of this section upon execution of an amendment establishing the guaranteed maximum price. The contracting agency shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

(3) Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the contracting agency or to the public agency or agencies for whose benefit the contract was awarded, as specified in the solicitation documents, and shall be in a form approved by the contracting agency.

(4) In cases of emergency, or when the interest or property of the contracting agency or the public agency or agencies for whose benefit the contract was awarded probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with rules adopted under ORS 279A.065. [2003 c.794 §118]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.385 Return or retention of bid security. Upon the execution of a public improvement contract and delivery of a good and sufficient performance bond and a good and sufficient payment bond by the successful bidder, the bid security of the successful bidder shall be returned to the bidder. A bidder who is awarded a contract and who fails promptly and properly to execute the contract and to deliver the performance bond and the payment bond shall forfeit the bid security that accompanied the successful bid. The bid security shall be taken and considered as liquidated damages and not as a penalty for failure of the bidder to execute the contract and bonds. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and may not be retained by the contracting agency after the contract has been duly signed. [2003 c.794 §119]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.390 Exemption of contracts from bid security and bonds. (1) Subject to the provisions of subsection (2) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance.

(2) The contracting agency may require bid security and a good and sufficient performance bond, a good and sufficient payment bond, or any combination of such bonds, even though the public improvement contract is of a class exempted by the Director of the Oregon Department of Administrative Services, the local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation.

(3) The Director of Transportation may:

(a) Exempt contracts or classes of contracts financed from the proceeds of bonds issued under ORS 367.620 (3)(a) from the requirement for bid security and from the requirement that a good and sufficient bond be furnished to ensure performance of the contract; or

(b) Reduce the amount of the required performance bond for contracts or classes of contracts financed from the proceeds of the bonds issued under ORS 367.620 (3)(a) to less than 100 percent of the contract price.

(4) Any recoverable damages that exceed the amount of the performance bond required under subsection (3) of this section shall be the sole responsibility of the Department of Transportation. [2003 c.794 §120; 2003 c.794 §120a]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.395 Rejection of bids. A contracting agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject all bids upon a finding of the contracting agency it is in the public interest to do so. In any case where competitive bids are required and all bids are rejected, and the proposed project is not abandoned, new bids may be called for as in the first instance. [2003 c.794 §121]

Note: See note under 279C.005 for operative date and applicability provisions.

(Competitive Proposals)

279C.400 Competitive proposals; procedure. (1) When authorized or required by an exemption granted under ORS 279C.335, a contracting agency may award a public improvement contract by competitive proposals. A contract awarded under this section may be amended only in accordance with rules adopted under ORS 279A.065.

(2) Except as provided in ORS 279C.330 to 279C.355, 279C.360 to 279C.390, 279C.395 and 279C.430 to 279C.450, competitive proposals shall be subject to the following requirements of competitive bidding:

(a) Advertisement under ORS 279C.360;

(b) Requirements for solicitation documents under ORS 279C.365;

(c) Disqualification due to a Construction Contractors Board listing as described in ORS 279C.375 (2)(a);

(d) Contract execution and bonding requirements under ORS 279C.375 and 279C.380;

(e) Determination of responsibility under ORS 279C.375 (2)(b);

(f) Rejection of bids under ORS 279C.395; and

(g) Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

(3) For the purposes of applying the requirements listed in subsection (2) of this section to competitive proposals, when used in the sections listed in subsection (2) of this section, "bids" includes proposals, and "bid documents" and "invitation to bid" include requests for proposals.

(4) Competitive proposals are not subject to the following requirements of competitive bidding:

(a) First-tier subcontractor disclosure under ORS 279C.370; and

(b) Reciprocal preference under ORS 279A.120.

(5) When award of a public improvement contract advertised by the issuance of a request for proposals may be made without negotiation, the contracting agency may require proposal security that serves the same function with respect to proposals as bid security serves with respect to bids under ORS 279C.365 (4), 279C.380 and 279C.385, as follows:

(a) The contracting agency may require proposal security in a form and amount as may be determined to be reasonably necessary or prudent to protect the interests of the contracting agency.

(b) The contracting agency shall retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract and provide any required bonds or insurance.

(c) The contracting agency shall return the proposal security to all proposers upon the execution of the contract, or earlier in the selection process.

(6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this chapter to invitations to bid, bids or bidders shall, to the extent practicable within the proposal process, be deemed equally applicable to requests for proposals, proposals or proposers. However, notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a con-

tract advertised under the competitive proposal process based on price, but may award the contract in accordance with ORS 279C.410 (8). [2003 c.794 §129]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.405 Requirements for requests for proposals. In addition to the general requirements of ORS 279C.365, a contracting agency preparing a request for proposals shall include:

(1) All required contractual terms and conditions. The request for proposals also may:

(a) Identify those contractual terms or conditions the contracting agency reserves, in the request for proposals, for negotiation with proposers;

(b) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals; and

(c) Contain or incorporate the form and content of the contract that the contracting agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers.

(2) The method of contractor selection, which may include but is not limited to award without negotiation, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed either to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065.

(3) All evaluation factors that will be considered by the contracting agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. [2003 c.794 §130]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.410 Receipt of proposals; evaluation and award. (1) Notwithstanding the public records law, ORS 192.410 to 192.505:

(a) Proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation.

(b) Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

(2) For each request for proposals, the contracting agency shall prepare a list of proposals.

(3) Notwithstanding any requirement to make proposals open to public inspection after the contracting agency's issuance of notice of intent to award a contract, a contracting agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. The fact that proposals are opened at a public meeting as defined in ORS 192.610 does not make their contents subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals. If a request for proposals is canceled after proposals are received, the contracting agency may return a proposal to the proposer that made the proposal. The contracting agency shall keep a list of returned proposals in the file for the solicitation.

(4) As provided in the request for proposals, a contracting agency may conduct discussions with proposers who submit proposals the agency has determined to be closely competitive or to have a reasonable chance of being selected for award. The discussions may be conducted for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. The contracting agency shall accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best and final offers. In conducting discussions, the contracting agency may not disclose information derived from proposals submitted by competing proposers.

(5) When provided for in the request for proposals, the contracting agency may employ methods of contractor selection including but not limited to award based solely on the ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065. When applicable, in any instance in which the contracting agency determines that impasse has been reached in negotiations with a highest ranked proposer, the contracting agency may terminate negotiations with that proposer and commence negotiations with the next highest ranked proposer.

(6) The cancellation of requests for proposals and the rejection of proposals shall be in accordance with ORS 279C.395.

(7) At least seven days before the award of a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each proposer or post, electronically or otherwise, a notice of intent to award.

(8) If a public contract is awarded, the contracting agency shall award a public contract to the responsible proposer whose proposal is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals. Other factors may not be used in the evaluation.

(9) The contracting agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a request for proposals. [2003 c.794 §131]

Note: See note under 279C.005 for operative date and applicability provisions.

(Temporary provisions relating to competitive quotes)

Note: Sections 132, 133 and 332a, chapter 794, Oregon Laws 2003, provide:

Sec. 132. Competitive quotes for intermediate procurements. (1) A public improvement contract estimated by the contracting agency not to exceed $100,000, or not to exceed $50,000 in the case of contracts for highways, bridges and other transportation projects, may be awarded in accordance with intermediate procurement procedures for competitive quotes established by rules adopted under section 10 of this 2003 Act [279A.065]. A contract awarded under this section may be amended to exceed the thresholds set forth in this subsection only in accordance with rules adopted under section 10 of this 2003 Act.

(2) A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section or to circumvent competitive bidding requirements under sections 88 to 179 of this 2003 Act [ORS chapter 279C].

(3) Intermediate procurements under this section need not be made through competitive bidding. However, nothing in this section may be construed as prohibiting a contracting agency from conducting a procurement that does not exceed the thresholds in subsection (1) of this section under competitive bidding procedures. [2003 c.794 §132]

Sec. 133. Requirements for competitive quotes. (1) Rules adopted under section 10 of this 2003 Act [279A.065] to govern competitive quotes shall require the contracting agency to seek at least three informally solicited competitive price quotes from prospective contractors. The contracting agency shall keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but in that event the contracting agency shall make a written record of the effort made to obtain the quotes.

(2) If a contract is to be awarded by competitive quotes, the contracting agency shall award the contract to the prospective contractor whose quote will best serve the interests of the contracting agency, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If an award is not made to the prospective contractor offering the lowest price quote, the contracting agency shall make a written record of the basis for award. [2003 c.794 §133]

Sec. 332a. Sections 132 and 133 of this 2003 Act are repealed on June 30, 2009. [2003 c.794 §332a]

Note: Sections 132 and 133, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003.

(Prequalification and Disqualification)

279C.430 Prequalification of bidders. (1) A contracting agency may adopt a rule, resolution, ordinance or other regulation requiring mandatory prequalification for all persons desiring to bid for public improvement contracts that are to be let by the agency. The rule, resolution, ordinance or other regulation authorized by this section must include the time for submitting prequalification applications and a general description of the type and nature of the contracts that may be let. The prequalification application must be in writing on a standard form prescribed under the authority of ORS 279A.050.

(2) When a contracting agency permits or requires prequalification of bidders, a person who wishes to prequalify shall submit a prequalification application to the contracting agency on a standard form prescribed under subsection (1) of this section. Within 30 days after receipt of a prequalification application, the contracting agency shall investigate the applicant as necessary to determine if the applicant is qualified. The determination shall be made in less than 30 days, if practicable, if the applicant requests an early decision to allow the applicant as much time as possible to prepare a bid on a contract that has been advertised. In making its determination, the contracting agency shall consider only the applicable standards of responsibility listed in ORS 279C.375 (2)(b). The agency shall promptly notify the applicant whether or not the applicant is qualified.

(3) If the contracting agency finds that the applicant is qualified, the notice must state the nature and type of contracts that the person is qualified to bid on and the period of time for which the qualification is valid under the contracting agency's rule, resolution, ordinance or other regulation. If the contracting agency finds the applicant is not qualified as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice must specify the reasons found under ORS 279C.375 (2)(b) for not prequalifying the applicant and inform the ap-

plicant of the right to a hearing under ORS 279C.445 and 279C.450.

(4) If a contracting agency has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified person and that the person is no longer qualified or is less qualified, the agency may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified person. The notice shall state the reasons found under ORS 279C.375 (2)(b) for revocation or revision of the prequalification of the person and inform the person of the right to a hearing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any public improvement contract for which publication of an advertisement, in accordance with ORS 279C.360, commenced before the date the notice of revocation or revision was received by the prequalified person. [2003 c.794 §123]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.435 Effect of prequalification by Department of Transportation or Oregon Department of Administrative Services. If a person is prequalified with the Department of Transportation or with the Oregon Department of Administrative Services, the person is rebuttably presumed qualified with any other contracting agency for the same kind of work. When qualifying for the same kind of work with another contracting agency, the person may submit proof of the prequalification in lieu of a prequalification application as required by ORS 279C.430. [2003 c.794 §128]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.440 Disqualification from consideration for award of contracts. (1)(a) A contracting agency may disqualify a person from consideration for award of the contracting agency's contracts for the reasons listed in subsection (2) of this section after providing the person with notice and a reasonable opportunity to be heard.

(b) In lieu of the disqualification process described in paragraph (a) of this subsection, a contracting agency contracting for a public improvement may petition the Construction Contractors Board to disqualify a person from consideration for award of the contracting agency's public improvement contracts for the reasons listed in subsection (2) of this section. The Construction Contractors Board shall provide the person with notice and a reasonable opportunity to be heard.

(c) A contracting agency or the Construction Contractors Board may not disqualify a person under this section for a period of more than three years.

(2) A person may be disqualified from consideration for award of a contracting agency's contracts for any of the following reasons:

(a) The person has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor.

(c) The person has been convicted under state or federal antitrust statutes.

(d) The person has committed a violation of a contract provision that is regarded by the contracting agency or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for disqualification.

(e) The person does not carry workers' compensation or unemployment insurance as required by statute.

(3) A contracting agency or the Construction Contractors Board shall issue a written decision to disqualify a person under this section. The decision shall:

(a) State the reasons for the action taken; and

(b) Inform the disqualified person of the appeal right of the person under:

(A) ORS 279C.445 and 279C.450 if the decision to disqualify was issued by a contracting agency; or

(B) ORS chapter 183 if the decision to disqualify was issued by the Construction Contractors Board.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified person. [2003 c.794 §122]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.445 Appeal of disqualification. Any person who wishes to appeal disqualification shall, within three business days after receipt of notice of disqualification, notify the contracting agency that the person ap-

peals the disqualification. Immediately upon receipt of the notice of appeal:

(1) A state contracting agency shall notify the Director of the Oregon Department of Administrative Services.

(2) All contracting agencies other than state contracting agencies shall notify the appropriate local contract review board. [2003 c.794 §124]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.450 Appeal procedure for prequalification and disqualification decisions; hearing; costs; judicial review. (1) The procedure for appeal from a disqualification or denial, revocation or revision of a prequalification by a contracting agency shall be in accordance with this section and is not subject to ORS chapter 183 except when specifically provided by this section.

(2) Promptly upon receipt of notice of appeal from a contracting agency as provided for by ORS 279C.445, the Director of the Oregon Department of Administrative Services or the local contract review board shall notify the person appealing and the contracting agency of the time and place of the hearing. The director or board shall conduct the hearing and decide the appeal within 30 days after receiving the notification from the contracting agency. The director or board shall set forth in writing the reasons for the decision.

(3) In the hearing the director or board shall consider de novo the notice of disqualification or denial, revocation or revision of a prequalification, the reasons listed in ORS 279C.440 (2) on which the contracting agency based the disqualification or the standards of responsibility listed in ORS 279C.375 (2)(b) on which the contracting agency based the denial, revocation or revision of the prequalification and any evidence provided by the parties. In all other respects, a hearing before the director shall be conducted in the same manner as a contested case under ORS 183.415 (3) to (6) and (9), 183.425, 183.440, 183.450 and 183.452.

(4) The director may allocate the director's cost for the hearing between the person appealing and the contracting agency whose disqualification or prequalification decision is being appealed. The allocation shall be based upon facts found by the director and stated in the final order that, in the director's opinion, warrant such allocation of the costs. If the final order does not allocate the director's costs for the hearing, the costs shall be paid as follows:

(a) If the decision to disqualify or deny, revoke or revise a prequalification of a person is upheld, the director's costs shall be paid by the person appealing the disqualification or prequalification decision.

(b) If the decision to disqualify or deny, revoke or revise a prequalification of a person as a bidder is reversed by the director, the director's costs shall be paid by the contracting agency whose disqualification or prequalification decision is the subject of the appeal.

(5) The decision of the director or board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the director or board has its principal office. The circuit court shall reverse or modify the decision only if it finds:

(a) The decision was obtained through corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the director or board or any of its members.

(c) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision.

(6) The procedure provided in this section is the exclusive means of judicial review of the decision of the director or board. The judicial review provisions of ORS 183.480 and writs of review and mandamus as provided in ORS chapter 34, and other legal, declaratory and injunctive remedies, are not available.

(7) The circuit court may, in its discretion, stay the letting of the contract that is the subject of the petition in the same manner as a suit in equity. When the court determines that there has been an improper disqualification or denial, revocation or revision of a prequalification and the contract has been let, the court may proceed to take evidence to determine the damages, if any, suffered by the petitioner and award such damages as the court may find as a judgment against the director or board. The court may award costs and attorney fees to the prevailing party. [2003 c.794 §125]

Note: See note under 279C.005 for operative date and applicability provisions.

(Remedies)

279C.460 Suit by or on behalf of adversely affected bidder or proposer; exception for personal services contract. (1) Any bidder or proposer adversely affected or any trade association of construction contractors acting on behalf of a member of the association to protect interests common to construction contractor members may commence a suit in the circuit court for the county where the principal offices of a contracting agency are located, for the purpose of requiring compliance with, or prevention

of violations of, ORS 279C.300 to 279C.470 or to determine the applicability of ORS 279C.300 to 279C.470 to matters or decisions of the contracting agency.

(2) The court may order such equitable relief as the court considers appropriate in the circumstances. In addition to or in lieu of any equitable relief, the court may award an aggrieved bidder or proposer any damages suffered by the bidder or proposer as a result of violations of ORS 279C.300 to 279C.470 for the reasonable cost of preparing and submitting a bid or proposal. A decision of the contracting agency may not be voided if other equitable relief is available.

(3) If the contracting agency is successful in defending the contracting agency's actions against claims of violation or potential violation of ORS 279C.300 to 279C.470, the court may award to the aggrieved contracting agency any damages suffered as a result of the suit.

(4) The court may order payment of reasonable attorney fees and costs on trial and on appeal to a successful party in a suit brought under this section.

(5) This section does not apply to personal services contracts under ORS 279C.100 to 279C.125. [2003 c.794 §134]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.465 Action against successful bidder; amount of damages; when action to be commenced; defenses. (1) Any person that loses a competitive bid or proposal for a contract involving the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation of a building or structure may bring an action for damages against another person who is awarded the contract for which the bid or proposal was made if the person making the losing bid or proposal can establish that the other person knowingly violated ORS 279C.840, 656.017, 657.505 or 701.055 while performing the work under the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) A person bringing an action under this section must establish a violation of ORS 279C.840, 316.167, 656.017, 657.505 or 701.055 by a preponderance of the evidence.

(3) Upon establishing that the violation occurred, the person shall recover, as liquidated damages, 10 percent of the total amount of the contract or $5,000, whichever is greater.

(4) In any action under this section, the prevailing party is entitled to an award of reasonable attorney fees.

(5) An action under this section must be commenced within two years of the substantial completion of the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or renovation. For the purposes of this subsection, "substantial completion" has the meaning given that term in ORS 12.135.

(6) A person may not recover any amounts under this section if the defendant in the action establishes by a preponderance of the evidence that the plaintiff:

(a) Was in violation of ORS 701.055 at the time of making the bid or proposal on the contract;

(b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the plaintiff as of the time of making the bid or proposal on the contract; or

(c) Was in violation of ORS 279C.840 with respect to any contract performed by the plaintiff within one year before making the bid or proposal on the contract at issue in the action. [2003 c.794 §135]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.470 Compensation for contractor on contract declared void by court; exceptions; applicability. (1) If a court determines that a public improvement contract is void because the contracting agency letting the contract failed to comply with any statutory or regulatory competitive bidding or other procurement requirements, and the contractor entered into the contract without intentionally violating the laws regulating public improvement contracts, then, unless the court determines that substantial injustice would result, the contractor is entitled to reimbursement for work performed under the contract as follows:

(a) If the work under the public improvement contract is substantially complete, the contracting agency shall ratify the contract.

(b) If the work under the public improvement contract is not substantially complete, the contracting agency shall ratify the contract and the contract shall be deemed terminated. Upon termination, the contractor shall be paid in accordance with ORS 279C.660, unless the court determines that payment under ORS 279C.660 would be a substantial injustice to the contracting agency or the contractor, in which case the contractor shall be paid as the court deems equitable.

(c) For the purposes of this section, a ratified contract shall be deemed valid, binding and legally enforceable, and the contractor's payment and performance bonds shall remain in full force and effect.

(2) Notwithstanding subsection (1) of this section, if a court determines that a public improvement contract is void as a result of fraudulent or criminal acts or omissions of the contractor or of both the contracting agency letting the contract and the contractor, the contractor is not entitled to reimbursement for work performed under the contract.

(3) This section does not apply to a public improvement contract if:

(a) The contracting agency's employee that awarded the public improvement contract did not have the authority to do so under law, ordinance, charter, contract or agency rule; or

(b) Payment is otherwise prohibited by Oregon law.

(4) The contractor and all subcontractors under a public improvement contract are prohibited from asserting that the public improvement contract is void for any reason described in this section. [2003 c.794 §136]

Note: See note under 279C.005 for operative date and applicability provisions.

CONSTRUCTION CONTRACTS GENERALLY

(Required Contract Conditions)

279C.500 "Person" defined. As used in ORS 279C.500 to 279C.530, unless the context otherwise requires, "person" includes the State Accident Insurance Fund Corporation and the Department of Revenue. [2003 c.794 §137]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing. (1) Every public contract shall contain a condition that the contractor shall:

(a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) In addition to the conditions specified in subsection (1) of this section, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. [2003 c.794 §138]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching. (1) Every public improvement contract for demolition shall contain a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective.

(2) Every public improvement contract for lawn and landscape maintenance shall contain a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective. [2003 c.794 §139]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. (1) Every public contract shall contain a clause or condition that, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

(2) Every public improvement contract shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from

the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

(3) Every public improvement contract and every contract related to the public improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(4) The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims. [2003 c.794 §140]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.520 Condition concerning hours of labor. (1) Every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract must contain a provision that employees must be paid at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. [2003 c.794 §141]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.525 Provisions concerning environmental and natural resources laws; remedies. (1) Solicitation documents for a public improvement contract shall make specific reference to federal, state and local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. If the successful bidder awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in the public improvement contract or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of this chapter; or

(f) Issue the contractor a change order setting forth the additional work that must be undertaken.

(2) In addition to the obligation imposed under subsection (1) of this section to refer to federal, state and local agencies with ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources, a solicitation document must also make specific reference to known conditions at the construction site that may require the successful bidder to comply with the ordinances, rules or regulations identified under subsection (1) of this section.

(3) If the successful bidder encounters a condition not referred to in the solicitation documents, not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under subsection (1) of this section, the successful bidder shall immediately give notice of the condition to the contracting agency.

(4) Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the successful bidder may not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the contracting agency.

(5) Upon request by the contracting agency, the successful bidder shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the contracting agency for resolution.

(6) Within a reasonable period of time following delivery of an estimate under subsection (5) of this section, the contracting agency may:

(a) Terminate the contract;

(b) Complete the work itself;

(c) Use nonagency forces already under contract with the contracting agency;

(d) Require that the underlying property owner be responsible for cleanup;

(e) Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of this chapter; or

(f) Issue the contractor a change order setting forth the additional work that must be undertaken.

(7)(a) If the contracting agency chooses to terminate the contract under subsection (1)(a) or (6)(a) of this section, the successful bidder shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The contracting agency shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor.

(b) If the contracting agency causes work to be done by another contractor under subsection (1)(c) or (e) or (6)(c) or (e) of this section, the initial contractor may not be held liable for actions or omissions of the other contractor.

(c) The change order under subsection (1)(f) or (6)(f) of this section shall include the appropriate extension of contract time and compensate the contractor for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The contracting agency shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor.

(8) Notwithstanding subsections (1) to (7) of this section, a contracting agency:

(a) May allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the solicitation documents; and

(b) In a local improvement district, may allocate all or a portion of the known and unknown environmental and natural resource risks to a contractor by so stating in the solicitation documents. [2003 c.794 §142]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.530 Condition concerning payment for medical care and providing workers' compensation. (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or

deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §143]

Note: See note under 279C.005 for operative date and applicability provisions.

(Hours of Labor)

279C.540 Maximum hours of labor on public contracts; holidays; exceptions; liability to workers; rules. (1) When labor is employed by the state or a county, school district, municipality, municipal corporation or subdivision thereof through a contractor, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on the following legal holidays:

(A) Each Sunday.

(B) New Year's Day on January 1.

(C) Memorial Day on the last Monday in May.

(D) Independence Day on July 4.

(E) Labor Day on the first Monday in September.

(F) Thanksgiving Day on the fourth Thursday in November.

(G) Christmas Day on December 25.

(2) An employer shall give notice in writing to employees who perform work under subsection (1) of this section, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(3) For the purpose of this section, each time a legal holiday, other than Sunday, listed in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection (1) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

(4) Subsections (1) and (2) of this section do not apply to a public improvement contract or a contract for services if the contractor is a party to a collective bargaining agreement in effect with any labor organization.

(5) When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

(6) This section does not apply to labor performed in the prevention or suppression of fire under contracts and agreements made under the authority of the State Forester or the State Board of Forestry, under ORS 477.406.

(7) This section does not apply to contracts for personal services designated under ORS 279A.055, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (1)(b)(B) to (G) of this section and for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(8) Subsections (1) and (2) of this section do not apply to contracts for services at a county fair or for other events authorized by a county fair board if persons employed under the contract receive at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week.

(9)(a) Subsections (1) and (2) of this section do not apply to contracts for services. However, persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in subsection (1)(b)(B) to (G) of this section and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(10) Any contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of this section is liable to the affected employees in the amount

of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the contractor or subcontractor or contractor's or subcontractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

(11) An action to enforce liability to employees under subsection (10) of this section may be brought as an action on the contractor's payment bond as provided for in ORS 279C.610.

(12) This section does not apply to financial institutions as defined in ORS 706.008.

(13) In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt rules to carry out the provisions of this section. [2003 c.794 §144]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.545 Time limitation on claim for overtime; posting of circular by contractor. When labor is employed by the state or a county, school district, municipality, municipal corporation or subdivision thereof through another as a contractor, any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:

(1) Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work.

(2) Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed. [2003 c.794 §145]

Note: See note under 279C.005 for operative date and applicability provisions.

(Retainage and Payments)

279C.550 "Retainage" defined. As used in ORS 279C.550 to 279C.570, "retainage" means the difference between the amount earned by a contractor on a public contract and the amount paid on the contract by the contracting agency. [2003 c.794 §146]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.555 Withholding of retainage. The withholding of retainage by a contractor or subcontractor on public improvement contracts shall be in accordance with ORS 701.420 and 701.430 except when the charter of the contracting agency contains provisions requiring retainage by the contracting agency of more than five percent of the contract price of the work completed. [2003 c.794 §147]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.560 Form of retainage. (1) Moneys retained by a contracting agency under ORS 279C.570 (7) shall be:

(a) Retained in a fund by the contracting agency and paid to the contractor in accordance with ORS 279C.570; or

(b) At the option of the contractor, paid to the contractor in accordance with subsection (3) or (4) of this section and in a manner authorized by the Director of the Oregon Department of Administrative Services.

(2) If the contracting agency incurs additional costs as a result of the exercise of the options described in subsection (1) of this section, the contracting agency may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all accrued costs.

(3) The contractor may deposit bonds or securities with the contracting agency or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the contracting agency. In such event the contracting agency shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Interest on the bonds or securities shall accrue to the contractor.

(4) If the contractor elects, the retainage as accumulated shall be deposited by the contracting agency in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the contracting agency. When the contracting agency is a state contracting agency, the account shall be established through the State Treasurer. Earnings on the account shall accrue to the contractor.

(5) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

(6) The contractor, with the approval of the contracting agency, may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the contracting agency in a form acceptable to the contracting agency. The bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The contracting agency shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Whenever a contracting agency accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier. [2003 c.794 §148]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.565 Limitation on retainage requirements. Unless otherwise specifically included by statute, the provisions of ORS 279C.560 or 279C.625 apply only as between the contracting agency or public body and the party with whom it contracts. [2003 c.794 §149]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.570 Prompt payment policy; progress payments; retainage; interest; exception; settlement of compensation disputes. (1) It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No contracting agency is exempt from the provisions of this section.

(2) Contracting agencies shall make progress payments on the contract monthly as work progresses on a public improvement contract. Payments shall be based upon estimates of work completed that are approved by the contracting agency. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. The contracting agency shall pay to the contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier date. The rate of interest charged to the contracting agency on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier date, but the rate of interest may not exceed 30 percent.

(3) Interest shall be paid automatically when payments become overdue. The contracting agency shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on public contracts. The contracting agency may not require the contractor to petition, invoice, bill or wait additional days to receive interest due.

(4) When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the contracting agency shall so notify the contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven days of being notified by the contracting agency, may not cause a payment to be made later than specified in this section unless interest is also paid.

(5) If requested in writing by a first-tier subcontractor, the contractor, within 10 days after receiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to the contracting agency or pay document provided by the contracting agency to the contractor specifically related to any labor or materials supplied by the first-tier subcontractor.

(6) Payment of interest may be postponed when payment on the principal is delayed because of disagreement between the contracting agency and the contractor. Whenever a contractor brings formal administrative or judicial action to collect interest due under this section, the prevailing party is entitled to costs and reasonable attorney fees.

(7) A contracting agency may reserve as retainage from any progress payment on a public contract an amount not to exceed five percent of the payment. As work progresses, a contracting agency may reduce the amount of the retainage and the contracting agency may eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the contracting agency's opinion, such

work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the contractor, and the application shall include written approval of the contractor's surety. However, when the contract work is 97.5 percent completed the contracting agency may, at the contracting agency's discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the contractor, the contracting agency shall respond in writing within a reasonable time.

(8) The retainage held by a contracting agency shall be included in and paid to the contractor as part of the final payment of the contract price. The contracting agency shall pay to the contractor interest at the rate of 1.5 percent per month on the final payment due the contractor, interest to commence 30 days after the work under the contract has been completed and accepted and to run until the date when the final payment is tendered to the contractor. The contractor shall notify the contracting agency in writing when the contractor considers the work complete and the contracting agency shall, within 15 days after receiving the written notice, either accept the work or notify the contractor of work yet to be performed on the contract. If the contracting agency does not, within the time allowed, notify the contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

(9)(a) The contracting agency shall pay, upon settlement or judgment in favor of the contractor regarding any dispute as to the compensation due a contractor for work performed under the terms of a public contract, the amount due plus interest at the rate of two times the discount rate, but not to exceed 30 percent, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date of the settlement or judgment, and accruing from the later of:

(A) The due date of any progress payment received under the contract for the period in which such work was performed; or

(B) Thirty days after the date on which the claim for the payment under dispute was presented to the contracting agency by the contractor in writing or in accordance with applicable provisions of the contract.

(b) Interest shall be added to and not made a part of the settlement or judgment. [2003 c.794 §150]

Note: See note under 279C.005 for operative date and applicability provisions.

(Subcontractors)

279C.580 Contractor's relations with subcontractors. (1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until such time as the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment of such amount.

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public contract awarded by a contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in ORS 279C.515 (2).

(4) The contract awarded by the contracting agency shall require the contractor to include in each of the contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor under sub-subparagraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after making application to a contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers such funds from the contracting agency;

(f) Notify the contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates that such withholding began and ended; and

(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279C.570 from the 11th day after receipt of the withheld amounts from the contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(7)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor's performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon making such determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified in ORS 279C.570.

(8) A written notice of any withholding shall be issued to a subcontractor, with a copy to the contracting agency of any such notice issued by a contractor, specifying:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor.

(10) A contractor's obligation to pay a late payment interest penalty to a subcontractor under the clause included in a subcontract under subsection (3) or (4) of this section is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such late payment interest penalty. [2003 c.794 §151]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.585 Authority to substitute undisclosed first-tier subcontractor; circumstances; rules. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

(5) When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board.

(7) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good

cause" includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.

(10) When the substitution is reasonably based on the contract alternates chosen by the contracting agency. [2003 c.794 §152]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.590 Complaint process for substitutions of subcontractors; civil penalties. (1)(a) A subcontractor disclosed under ORS 279C.370 may file a complaint based on the subcontractor disclosure requirements under ORS 279C.370 with the Construction Contractors Board about a contractor if the contractor has substituted another subcontractor for the complaining subcontractor.

(b) If more than one subcontractor files a complaint with the board under paragraph (a) of this subsection relating to a single subcontractor disclosure, the board shall consolidate the complaints into one proceeding. If the board imposes a civil penalty under this section against a contractor, the amount collected by the board shall be divided evenly among all of the complaining subcontractors.

(c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a deposit of $500 with the board upon filing the complaint.

(d) If the board determines that a contractor's substitution was not in compliance with ORS 279C.585, the board shall return the full amount of the deposit posted under paragraph (c) of this subsection to the complaining subcontractor.

(e) If the board determines that a contractor has not substituted a subcontractor or that the contractor's substitution was in compliance with ORS 279C.585, the board shall award the contractor $250 of the deposit and shall retain the other $250, which may be expended by the board.

(2) Upon receipt of a complaint under subsection (1) of this section, the board shall investigate the complaint. If the board determines that a contractor has substituted a subcontractor in a manner not in compliance with ORS 279C.585, the board may impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

(3) If the board imposes a civil penalty under subsection (2) of this section and it is the first time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board shall:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(4) If the board imposes a civil penalty under subsection (2) of this section and it is the second time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to six months. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(5) If the board imposes a civil penalty under subsection (2) of this section and the board has imposed a civil penalty under subsection (2) of this section against the contractor three or more times during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or $15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to $1,000 and shall place the contractor on the list established under ORS 701.227 for up to one year. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(6) Within 10 working days after receiving a complaint under subsection (1) of this section, the board shall notify, in writing, any contracting agency that is a party to the contract for which the complaint has been filed that the complaint has been filed. [2003 c.794 §153]

Note: See note under 279C.005 for operative date and applicability provisions.

(Action on Payment Bonds)

279C.600 Right of action on payment bond of contractor or subcontractor; notice of claim. (1) A person claiming to have supplied labor or materials for the performance of the work provided for in a public contract, including any person having a direct contractual relationship with the contractor furnishing the payment bond or a direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

(a) The person or the assignee of the person has not been paid in full; and

(b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor and the contracting agency.

(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has received information indicating that one or more workers providing labor on a public works have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action on the contractor's payment bond, as provided in ORS 279C.380 and 279C.400. The commissioner's right of action exists without necessity of an assignment and extends to workers on the project who are not identified when the written notice of claim is given, but for whom the commissioner has received information indicating that the workers have provided labor on the public works and have not been paid in full. The commissioner shall give written notice of the claim, as prescribed in ORS 279C.605, to the contractor and the contracting agency. [2003 c.794 §154]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.605 Notice of claim. (1) The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business or at the residence of the contractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 150 days after the employee last provided labor or materials.

(3) The notice must be in writing substantially as follows:

To (here insert the name of the contractor and the name of the public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the payment bond taken from (here insert the name of the principal and, if known, the surety or sureties upon the payment bond) for the work of (here insert a brief description of the work concerning which the payment bond was taken). Such material or labor was supplied to (here insert the name of the contractor or subcontractor).

_____

(here to be signed)

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(4) When notice of claim is given by the commissioner and if the claim includes a worker who is then unidentified, the commissioner shall include in the notice a statement that the claim includes an unidentified worker for whom the commissioner has received information indicating that the worker has not been paid in full at the prevailing rate of wage required by ORS 279C.840 or overtime wages required by ORS 279C.540.

(5) The notice shall be signed by the person making the claim or giving the notice. [2003 c.794 §155]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.610 Action on contractor's payment bond; time limitation. (1) The Commissioner of the Bureau of Labor and Industries or a person who has a right of action on the payment bond under ORS 279C.600 and, where required, who has filed and served the notice or notices of claim, as required under ORS 279C.600 and 279C.605, or that person's assignee, may institute an action on the contractor's payment bond in a circuit court of this state or the federal district court of the district.

(2) The action shall be on the relation of the commissioner, the claimant, or that person's assignee, as the case may be, and shall be in the name of the contracting agency that let the contract or, when applicable, the public agency or agencies for whose benefit the contract was let. It may be prosecuted to final judgment and execution for the use and benefit of the commissioner or the claimant, or that person's assignee, as the fact may appear.

(3) The action shall be instituted no later than two years after the person last provided labor or materials or two years after the worker listed in the commissioner's notice of claim last provided labor. [2003 c.794 §156]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.615 Preference for labor and material liens. All labor and material liens have preference and are superior to all other liens and claims of any kind or nature created by ORS 279C.500 to 279C.530 and 279C.600 to 279C.625. [2003 c.794 §157]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.620 Rights of person providing medical care to employees of contractor. A person providing medical, surgical or hospital care services or other needed care and attention, incident to sickness or injury, to the employees of a contractor or subcontractor on a public contract is deemed to have performed labor on the public contract for the purposes of ORS 279C.600 to 279C.625. [2003 c.794 §158]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.625 Joint liability when payment bond not executed. If the public contract is one for which a payment bond as provided for in ORS 279C.380 and 279C.400 is required and the contractor fails to pay for labor or materials or to pay claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund or the Department of Revenue and the officers of the public body that authorized the contract fail or neglect to require the person entering into the contract to execute the payment bond:

(1) The State of Oregon and the officers authorizing the contract shall be jointly liable for the labor and materials used in the performance of any work under the contract, and for claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into with the State of Oregon.

(2) The public body and the officers authorizing the contract shall be jointly liable for the labor and materials used in the performance of any work under the contract and for claims due the Industrial Accident Fund, the Unemployment Compensation Trust Fund and the Department of Revenue, if the contract was entered into on behalf of a public body other than the state. [2003 c.794 §159]

Note: See note under 279C.005 for operative date and applicability provisions.

(Termination of Contract for Public Interest Reasons)

279C.650 "Labor dispute" defined. As used in ORS 279C.650 to 279C.670, "labor dispute" has the meaning given that term in ORS 662.010. [2003 c.794 §160]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.655 Extension and compensation when work suspended. If a public contract is not terminated but work under the contract is suspended by an order of a contracting agency for any reason considered to be in the public interest other than a labor dispute or any third-party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute, the contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. [2003 c.794 §161]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.660 Compensation when contract terminated due to public interest. When a public contract is terminated by mutual agreement, provision shall be made for the payment of compensation to the contractor. In addition to a reasonable amount of compensation for preparatory work and for all costs and expenses arising out of termination, the amount to be paid to the contractor:

(1) Shall be determined on the basis of the contract price in the case of any fully completed separate item or portion of the work for which there is a separate or unit contract price; and

(2) May, with respect to any other work, be a percent of the contract price equal to the percentage of the work completed. [2003 c.794 §162]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.665 Contractual provisions for compensation when contract terminated due to public interest. A contracting agency may provide in a public improvement contract detailed provisions under which the contractor shall be entitled, as a matter of right, to compensation upon termination of the contract on account of any reason con-

sidered to be in the public interest. [2003 c.794 §163]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.670 Application of ORS 279C.650 to 279C.670. ORS 279C.650 to 279C.670 do not apply to suspension of the work or termination of the contract that occurs as a result of the contractor's violation of federal, state or local statutes, ordinances, rules or regulations in existence at the time the contract was executed or as a result of violations of the terms of the contract. [2003 c.794 §164]

Note: See note under 279C.005 for operative date and applicability provisions.

PREVAILING WAGE RATE

279C.800 Definitions for ORS 279C.800 to 279C.870. As used in ORS 279C.800 to 279C.870, unless the context requires otherwise:

(1) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(2) "Locality" means the following district in which the public works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(3) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits, paid in the locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries. In making such determinations, the commissioner shall rely on an independent wage survey to be conducted once each year. However, if it appears to the commissioner that the data derived from the survey alone are insufficient to establish the rate, the commissioner also shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to workers on any public works is based on some period of time other than an hour, the hourly wage shall be mathematically determined by the number of hours worked in that period of time.

(4) "Public agency" means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(5) "Public works" includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the reconstruction or renovation of privately

owned property that is leased by a public agency. [2003 c.794 §165]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.805 Policy. The Legislative Assembly declares that the purposes of the prevailing rate of wage law are:

(1) To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community-established compensation standards.

(2) To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.

(3) To encourage training and education of workers to industry skills standards.

(4) To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits. [2003 c.794 §166]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.810 Exemptions. (1) ORS 279C.800 to 279C.870 do not apply to:

(a) Projects for which the contract price does not exceed $25,000.

(b) Projects regulated under the Davis-Bacon Act (40 U.S.C. 276a). Notwithstanding such regulation, contractors and subcontractors shall pay individuals employed as flaggers on the projects not less than the prevailing rate of wage as determined by the Commissioner of the Bureau of Labor and Industries for that classification of work. As used in this paragraph, "flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(c)(A) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS chapter 183, the commissioner shall adopt rules to carry out the provisions of this paragraph.

(B) As used in this paragraph:

(i) "Funds of a public agency" does not include funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction.

(ii) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2)(a) A public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(b) When the commissioner determines that a public agency has divided a public works project for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order compelling compliance.

(c) In making determinations under this subsection, the commissioner shall consider:

(A) The physical separation of the project structures;

(B) The timing of the work on project phases or structures;

(C) The continuity of project contractors and subcontractors working on project parts or phases; and

(D) The manner in which the public agency and the contractors administer and implement the project. [2003 c.794 §172]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.815 Determination of prevailing rates of wage; providing information to commissioner. (1) As used in this section, "person" includes any employer, labor organization or any official representative of an employee or employer association.

(2) The Commissioner of the Bureau of Labor and Industries shall determine the prevailing rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800 at least once each year by means of an independent wage survey and make this information available at least twice each year. The commissioner may amend the rate at any time.

(3) A person shall make such reports and returns to the Bureau of Labor and Industries as the commissioner may require to determine the prevailing rates of wage. The reports and returns shall be made upon forms furnished by the bureau and within the time prescribed therefor by the commissioner. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.410 to 192.505, all reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) In order to assist the commissioner in making determinations of the prevailing rates of wage, the commissioner may enter into contracts with public or private parties to obtain relevant data and information. Any such contract may include provisions for the manner and extent of the market review of affected trades and occupations and such other requirements regarding timelines of reports, accuracy of data and information

and supervision and review as the commissioner may prescribe. [2003 c.794 §173]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.820 Advisory committee to assist commissioner. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee to assist the commissioner in the administration of ORS 279C.800 to 279C.870.

(2) The advisory committee must include equal representation of members from management and labor in the building and construction industry who perform work on public works contracts and such other interested parties as the commissioner shall appoint. [2003 c.794 §179]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.825 Fees; rules. (1)(a) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish a fee to be paid by the contractor to whom a public works contract subject to ORS 279C.800 to 279C.870 has been awarded. The fee shall be used to pay the costs of:

(A) Surveys to determine the prevailing rates of wage;

(B) Administering and providing investigations under and enforcement of ORS 279C.800 to 279C.870; and

(C) Providing educational programs on public contracting law under the Public Contracting Code.

(b) The fee shall be 0.1 percent of the contract price. However, in no event may a fee be charged and collected that is more than $5,000 or less than $100.

(2) The commissioner shall pay moneys received under this section into the State Treasury. The moneys shall be credited to the Prevailing Wage Education and Enforcement Account created by ORS 651.185.

(3) The contractor shall pay the fee at the time of the first progress payment or 60 days after work on the contract has begun, whichever date is earlier.

(4) Failure to make timely payment under subsection (3) of this section shall subject the contractor to a civil penalty under ORS 279C.865 in such amount as the commissioner, by rule, shall specify. [2003 c.794 §178]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.830 Contractual provisions regarding prevailing rates of wage and fee for administration of law. (1) The specifications for every contract for public works shall contain a provision stating the existing prevailing rate of wage that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. The contract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage.

(2) The specifications for every contract for public works shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner. [2003 c.794 §168]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.835 Notifying commissioner of public works contract. Public agencies shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions of ORS 279C.800 to 279C.870 has been awarded. The notification shall be made within 30 days of the date that the contract is awarded. The notification shall include a copy of the disclosure of first-tier subcontractors that was submitted under ORS 279C.370. [2003 c.794 §175]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions. (1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279C.800 (1)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279C.800 (1)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage.

(2) After a contract for public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage is not subject to attack in any legal proceeding by any contractor or subcontractor in connection with that contract.

(3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the

specifications of a contract for public works, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public works shall keep the prevailing rates of wage for that project posted in a conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and subcontractors.

(5) Every contractor or subcontractor engaged on a project for which there is a contract for a public works to which the prevailing wage requirements apply that also provides or contributes to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor's employees on the project shall post a notice describing the plan in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plan, the notice shall contain information on how and where to make claims and where to obtain further information.

(6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the contractor or subcontractor to workers employed in the performance of a public works contract.

(b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage specified in the contract.

(c) This subsection is not intended to prohibit payments to a worker who is enrolled in any government-subsidized training or retraining program.

(7) A person may not take any action that circumvents the payment of the prevailing rate of wage to workers employed on a public works contract, including, but not limited to, reducing an employee's regular rate of pay on any project not subject to ORS 279C.800 to 279C.870 in a manner that has the effect of offsetting the prevailing rate of wage on a public works project. [2003 c.794 §167]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.845 Certified statements regarding payment of prevailing rates of wage. (1) The contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with the public agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works, and further certifying that no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. The certificate and statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read the statement and certificate and knows the contents thereof and that the same is true to the contractor or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(2) The contractor or subcontractor shall deliver or mail each certified statement required by subsection (1) of this section to the public agency. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public works shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

(3) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

(4) Certified statements received by a public agency are public records subject to the provisions of ORS 192.410 to 192.505. [2003 c.794 §169]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.850 Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime. (1) At any reasonable time the Commissioner of the Bureau of Labor and Industries may enter the office or business establishment of any contractor or subcontractor performing public works and gather facts and information necessary to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(2) Upon request by the commissioner, every contractor or subcontractor performing work on public works shall make available

to the commissioner for inspection during normal business hours any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works. The commissioner's request must be made a reasonable time in advance of the inspection.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section is not open to inspection by the public.

(4) The commissioner may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to require the payment of prevailing rates of wage or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account. [2003 c.794 §170]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.855 Liability for violations. (1) Any contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of their unpaid minimum wages, including all fringe benefits as defined in ORS 279C.800, and in an additional amount equal to the unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279C.610.

(3) If the public agency fails to include a provision that the contractor and any subcontractor shall comply with ORS 279C.840 in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several with any contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840. The Commissioner of the Bureau of Labor and Industries may enforce the provisions of this subsection by a civil action under ORS 279C.850 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332. [2003 c.794 §171]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.860 Ineligibility for public works contracts for failure to pay or post notice of prevailing rates of wage; certified payroll reports to commissioner. (1) When the Commissioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS chapter 183, determines that a contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works, a subcontractor has failed to pay to its employees amounts required by ORS 279C.840 and the contractor has paid those amounts on the subcontractor's behalf, or a contractor or subcontractor has intentionally failed or refused to post the prevailing rates of wage as required by ORS 279C.840 (4), the contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest shall be ineligible, for a period not to exceed three years from the date of publication of the name of the contractor or subcontractor on the ineligible list as provided in this section, to receive any contract or subcontract for public works. The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be ineligible under this section and the period of time for which they are ineligible. A copy of the list shall be published, furnished upon request and made available to contracting agencies.

(2) When the contractor or subcontractor is a corporation, the provisions of subsection (1) of this section apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing rate of wage or the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf.

(3) For good cause shown, the commissioner may direct the removal of the name of a contractor or subcontractor from the ineligible list.

(4) To assist the commissioner in determining whether the contractor or subcontractor is paying the prevailing rate of wage, when a prevailing rate of wage claim is filed, or evidence indicating a violation has occurred, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under ORS 279C.800 to 279C.870 shall send a certified copy of the payroll for those workers when the commissioner requests the certified copy. [2003 c.794 §174]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.865 Civil penalties. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $5,000 for each violation of any provision of ORS 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All moneys collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining violations, conducting hearings and assessing and collecting the penalties. The remainder, if any, of moneys collected as penalties under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [2003 c.794 §177]

Note: See note under 279C.005 for operative date and applicability provisions.

279C.870 Civil action to enforce payment of prevailing rates of wage. (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin the contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all civil actions brought under this section. In addition to other costs, the court may award the prevailing party reasonable attorney fees at the trial and on appeal. However, attorney fees may not may be awarded against the commissioner under this section.

(2) The court shall require any party, other than the commissioner, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the commissioner would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279C.860 (1). If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279C.860 (2). [2003 c.794 §176]

Note: See note under 279C.005 for operative date and applicability provisions.

Chapter 284
(Partial)

2003 EDITION

Organizations for Economic Development

GOVERNOR'S COUNCIL ON OREGON'S ECONOMY

284.540 Governor's Council on Oregon's Economy; membership; purpose

284.545 Legislative findings

284.550 Definition of "traded sector"

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(Temporary provisions relating to sites identified for industrial or traded sector uses are compiled as notes following ORS 284.560)

284.565 Development of process for certifying sites ready for industrial or traded sector development

284.570 Development of state economic development strategy; advisory committee; rules; focus of strategy

284.575 Duties of Department of Transportation related to state economic development strategy

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284.580 Role of local governments in implementation of state economic development strategy

284.585 Assistance to local governments; site assessment methodology

GOVERNOR'S COUNCIL ON OREGON'S ECONOMY

284.540 Governor's Council on Oregon's Economy; membership; purpose. (1) There is established the Governor's Council on Oregon's Economy.

(2) The members of the council are:

(a) The presiding officer of the Oregon Economic and Community Development Commission;

(b) The chairperson of the Oregon Transportation Commission;

(c) The chairperson of the State Board of Agriculture;

(d) The chairperson of the International Trade Commission;

(e) The chairperson of the Oregon Council for Knowledge and Economic Development;

(f) The president of the State Board of Higher Education; and

(g) Other persons designated by the Governor.

(3) The council shall meet quarterly to:

(a) Discuss and coordinate the activities of each entity described in subsection (2) of this section that relate to economic development and improving the economy in Oregon; and

(b) Discuss and recommend to the Legislative Assembly methods for creating certainty for the development process. [2003 c.800 §3]

284.545 Legislative findings. The Legislative Assembly finds that:

(1) There is a need for a statewide inventory of sites that are planned and zoned for industrial or traded sector uses and are ready for development;

(2) There is a need to improve coordination among local, regional and state agencies with respect to economic development programs, planning and policy; and

(3) There is a need for additional methodologies and guidance to assist local governments in economic development planning. [2003 c.800 §10]

284.550 Definition of "traded sector." As used in ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, unless the context requires otherwise, "traded sector" has the meaning given that term in ORS 285A.010. [2003 c.800 §11]

284.555 Economic Revitalization Team; regulatory efficiency group; membership; purpose; reports. (1) The Governor shall establish the Economic Revitalization Team in the office of the Governor for the purpose of coordinating and streamlining state policies, programs and procedures and providing coordinated state agency assistance to local governments.

(2) The team shall establish a regulatory efficiency group to assist the team consisting of the directors of the following state agencies:

(a) The Department of Environmental Quality;

(b) The Economic and Community Development Department;

(c) The Department of Transportation;

(d) The Department of State Lands;

(e) The Department of Land Conservation and Development;

(f) The State Department of Agriculture;

(g) The Housing and Community Services Department; and

(h) Other appropriate agencies as determined by the Governor.

(3) Subject to the direction of the Governor, the team shall:

(a) Develop mechanisms to increase coordination among agencies on common activities;

(b) Coordinate the activities of state agencies on specific state and local projects;

(c) Coordinate the planning and permitting activities of state agencies for the sites identified for industrial or traded sector development under section 12, chapter 800, Oregon Laws 2003;

(d) Coordinate activities of the regulatory efficiency group agencies with local governments;

(e) Coordinate the grant and loan activities of state agencies to implement section 12, chapter 800, Oregon Laws 2003;

(f) Participate in the rulemaking activities of regulatory efficiency group agencies to coordinate economic development activities;

(g) Prepare a report for the Seventy-second Legislative Assembly on the sites identified for industrial or traded sector development under section 12, chapter 800, Oregon Laws 2003, including a description of each site and the economic benefit expected from site development. If fewer than 25 sites are identified, the report must include an analysis of why the target set forth in section 12, chapter 800, Oregon Laws 2003, was not achieved;

(h) Prepare a report for the Seventy-second Legislative Assembly with specific recommendations regarding the future of the team; and

(i) Undertake other activities as directed by the Governor.

(4) The team shall establish an advisory committee of individuals familiar with agency permit procedures to advise the Governor and the regulatory efficiency group agencies on permit issues related to economic development.

(5) The team shall submit a report detailing its activities to the Legislative Assembly in the manner described in ORS 192.245 not later than January 31 of each odd-numbered year. The report must include:

(a) Case studies that demonstrate the types of problems encountered in coordinating agency functions;

(b) Case studies that demonstrate statutory impediments to efficient economic development; and

(c) Recommendations for legislative measures to improve agency operations and statewide economic development.

(6) The team or a state agency working with the team to implement ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, or a state agency implementing ORS 284.570 to 284.585 may:

(a) Accept and expend funds received from gifts, grants or other sources as necessary to perform activities authorized under ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, or ORS 284.570 to 284.585.

(b) Enter into contracts and other agreements as necessary to perform activities authorized under ORS 284.545 to 284.565 and sections 12 and 15 to 20, chapter 800, Oregon Laws 2003, or ORS 284.570 to 284.585. [2003 c.800 §13]

284.560 Duties of Economic Revitalization Team. The Economic Revitalization Team established pursuant to ORS 284.555, acting through the regulatory efficiency group agencies, shall:

(1) Give priority to expediting permits or other actions necessary for development projects proposed for a site identified for industrial or traded sector development under section 12, chapter 800, Oregon Laws 2003; and

(2) Take actions that are necessary to facilitate the implementation of the state economic development strategy developed under ORS 284.570. [2003 c.800 §14]

Note: Sections 12, 15, 16, 17, 18, 19 and 20, chapter 800, Oregon Laws 2003, provide:

Sec. 12. (1) The Economic Revitalization Team established pursuant to section 13 of this 2003 Act [284.555], in conjunction with the Economic and Community Development Department, shall work with local governments, as defined in ORS 174.116, and affected state agencies to identify and prioritize up to 25 sites to be used for industrial or traded sector uses.

(2) The team, and the department, shall identify sites that are consistent with data collected by the department from businesses seeking to locate or expand in Oregon and shall prioritize sites that are:

(a) Of sufficient size to meet industrial or traded sector needs, as expressed in inquiries received by the department from businesses seeking to locate or expand in Oregon;

(b) Owned and held in a manner that facilitates efficient industrial or traded sector development;

(c) Within the jurisdiction of a local government that shows a willingness to cooperate in siting new development;

(d) Served by necessary public facilities and infrastructure, including transportation facilities, or such facilities and infrastructure can be provided within a reasonable period of time;

(e) Subject to few, if any, environmental constraints, or constraints that can be mitigated within a reasonable period of time; and

(f) Zoned in a manner that allows the desired industrial or traded sector development, or can be zoned in that manner within a reasonable period of time.

(3) At least one of the 25 sites must be in eastern Oregon, as defined in ORS 321.405. Preference must be given to a site that:

(a) Is contiguous to a city's urban growth boundary on the effective date of this 2003 Act [September 24, 2003];

(b) Contains at least 100 acres;

(c) Is not composed predominantly of agricultural soils in soil classes I, II, III or IV or a combination of those soil classes;

(d) Is not in farm use, as defined in ORS 215.203, on the date of the first public hearing for the proposal to amend the urban growth boundary;

(e) Is served by adequate transportation, sewer and water facilities or is located where adequate services can be made available within 12 months after the date the site is to be added to the urban growth boundary; and

(f) Is planned and zoned only for industrial or traded sector development, and ancillary uses necessary for the development.

(4) To assist the team, and the department, in identifying and prioritizing sites under this section, the Director of the Economic and Community Development Department shall convene an advisory committee consisting of eight members, including a county representative and a city representative, who are knowledgeable about the need for and requirements of industrial and traded sector development and the availability of land for industrial or traded sector development within the state.

(5) The team, and the department, shall identify and prioritize sites under this section not later than December 15, 2003. [2003 c.800 §12]

Note: 321.405 was repealed by section 35b, chapter 621, Oregon Laws 2003. The text of section 12, chapter 800, Oregon Laws 2003, was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of section 12, chapter 800, Oregon Laws 2003, for the repeal of 321.405 has not been made.

Sec. 15. (1) The Department of State Lands shall develop and implement an expedited process for identifying and mitigating loss of wetlands or other waters of the state on sites identified for industrial or traded sector development under section 12 of this 2003 Act.

(2) The department shall adopt administrative rules to implement the expedited process required under this

section not later than six months after the effective date of this 2003 Act [September 24, 2003]. [2003 c.800 §15]

Sec. 16. The Department of Environmental Quality may request federal grant moneys to assist in assessment and remediation of contamination on a site identified for industrial or traded sector development under section 12 of this 2003 Act. [2003 c.800 §16]

Sec. 17. The Land Conservation and Development Commission shall:

(1) In conjunction with the Economic Revitalization Team, establish a committee to study and report to the Governor on the conversion of industrial land to non-industrial land.

(2) Adopt administrative rules to ensure that final action is taken not later than 180 days after submission of amendments to a comprehensive plan and land use regulations or submission of a new land use regulation when the changes are necessary to expedite and facilitate industrial or traded sector development of a site identified under section 12 of this 2003 Act, including rules establishing time limits for interested parties or the Department of Land Conservation and Development to take exception to the amendments or the new land use regulation and time limits for scheduling a hearing if one is required.

(3) Adopt, amend or repeal administrative rules as necessary to expedite and facilitate industrial or traded sector development of a site identified under section 12 of this 2003 Act. [2003 c.800 §17]

Sec. 18. The Oregon Transportation Commission shall identify an amount, to be drawn from an account established by the commission for immediate transportation opportunities or from any other fund as determined by the commission, that the commission determines is necessary to resolve transportation constraints on a site identified for industrial or traded sector development under section 12 of this 2003 Act. [2003 c.800 §18]

Sec. 19. Under the direction of the Economic Revitalization Team established pursuant to section 13 of this 2003 Act [284.555], the following state agencies shall provide staff and resources as necessary to implement the industrial or traded sector site identification and prioritization described in section 12 of this 2003 Act:

(1) The Economic and Community Development Department;

(2) The Department of Land Conservation and Development;

(3) The Department of Transportation;

(4) The Department of Environmental Quality; and

(5) The Department of State Lands. [2003 c.800 §19]

Sec. 20. (1) With regard to compliance with ORS 196.800 to 196.900, the Director of the Department of State Lands may:

(a) Provide technical assistance to property owners, state agencies and local governments, as defined in ORS 174.116, regarding sites identified for industrial or traded sector development under section 12 of this 2003 Act; and

(b) Provide technical assistance for transportation facilities related to industrial or traded sector development of a site identified under section 12 of this 2003 Act.

(2) Technical assistance provided under this section may include guiding, reviewing and approving the sufficiency of the required elements of an application for a removal or fill permit under ORS 196.825, including but not limited to a site plan, jurisdictional determination, an alternatives analysis and a mitigation plan. [2003 c.800 §20]

284.565 Development of process for certifying sites ready for industrial or traded sector development. The Economic and Community Development Department, in coordination with the Economic Revitalization Team established pursuant to ORS 284.555, shall develop and administer a process for certifying sites throughout the state that are ready for industrial or traded sector development. [2003 c.800 §21]

284.570 Development of state economic development strategy; advisory committee; rules; focus of strategy. (1) The Governor shall direct the Oregon Economic and Community Development Commission, in consultation with the Economic Revitalization Team established pursuant to ORS 284.555 and other state agencies as appropriate, to appoint an advisory committee composed of representatives of local governments, ports, local economic development organizations and private industry and other individuals familiar with economic development strategies to assist the commission in developing a state economic development strategy. The commission shall, by administrative rule, adopt and periodically update the strategy. The strategy must focus on:

(a) Creating, expanding and retaining Oregon businesses;

(b) Assisting in the development and growth of competitive industrial sectors;

(c) Creating jobs by attracting new businesses to Oregon;

(d) Providing economic development tools and resources to Oregon communities;

(e) Assisting local communities and regions in developing and maintaining economic development plans that are coordinated with the state economic development strategy;

(f) Providing an adequate supply of industrial, commercial and retail sites available for immediate development inside urban growth boundaries;

(g) Providing public infrastructure in a timely manner;

(h) Resolving constraints on and removing barriers to the timely development of industrial and traded sector sites; and

(i) Developing recommendations for prioritizing state loans, grants and technical assistance to local governments that meet the objectives of the state economic development strategy.

(2) The commission shall present the state economic development strategy to the Governor and the Seventy-second Legislative Assembly not later than June 30, 2004, including a report on actions taken to implement the strategy. [2003 c.800 §25]

284.575 Duties of Department of Transportation related to state economic development strategy. In furtherance of the state economic development strategy developed under ORS 284.570, the Department of Transportation shall:

(1) Develop a process to prioritize funding for transportation projects that further the state economic development strategy.

(2) Develop and maintain state transportation policies and a comprehensive long-range plan for a safe, multimodal transportation system that encourages economic efficiency and orderly economic development and that maximizes the use of existing transportation infrastructure.

(3) Take actions that are necessary to ensure that department policies and activities are implemented in a manner that supports the state economic development strategy.

(4) Expedite the processing of permits issued by the department for transportation projects that further the state economic development strategy. [2003 c.800 §27]

284.577 State and local cooperation to provide industrial, commercial and retail development sites; implementation of state economic development strategy; rules. In furtherance of the state economic development strategy developed under ORS 284.570, the Land Conservation and Development Commission shall:

(1) Provide local governments with basic and advanced methods for identifying, analyzing and providing for industrial, commercial and retail development sites.

(2) Develop and provide guidebooks and other appropriate materials to assist local governments in identifying and analyzing potential industrial, commercial and retail development sites.

(3) Provide local governments with technical assistance to assist in completing the identification and analysis and in amending comprehensive plans and land use regulations based on the identification and analysis.

(4) Provide grants to local governments in a manner that furthers the implementation of the state economic development strategy.

(5) Adopt, amend or repeal administrative rules and procedures as necessary to ensure that the following actions can be accomplished in a timely manner:

(a) Expansion of urban growth boundaries where necessary to accommodate industrial or traded sector development;

(b) Review of amendments to comprehensive plans and land use regulations and periodic review of comprehensive plans and land use regulations; and

(c) Focus the resources of the Department of Land Conservation and Development on issues related to land supply within urban growth boundaries and transportation and public facilities necessary to stimulate economic growth. [2003 c.800 §26]

284.580 Role of local governments in implementation of state economic development strategy. Local governments, as defined in ORS 174.116, shall participate in the implementation of the state economic development strategy developed under ORS 284.570 by demonstrating a willingness to:

(1) Coordinate local economic development plans with the state economic development strategy; and

(2) Expedite amendments to comprehensive plans and land use regulations. [2003 c.800 §29]

284.585 Assistance to local governments; site assessment methodology. In furtherance of the state economic development strategy developed under ORS 284.570, the Department of State Lands shall:

(1) Consistent with ORS 196.674, focus wetlands inventories on areas described in the state economic development strategy. The department may provide grants and technical assistance to local governments to conduct the inventories.

(2) Develop a site assessment methodology for rapidly determining the capacity of a site for economic development. The methodology shall address site-specific impediments to development and any costs associated with compliance with ORS 196.800 to 196.900. [2003 c.800 §28]

Chapter 291
(Partial)

2003 EDITION

Public Contract Approval

PUBLIC CONTRACT APPROVAL

291.045 Definitions for ORS 291.045 and 291.047

291.047 Public contract approval by Attorney General; exemptions

291.049 Ratification of public contract when performance begun prior to contract approval; conditions; effects; rules

AGENCY FEE RESTRICTIONS

291.050 Definitions for ORS 291.050 to 291.060

291.055 Agency fee approval required; exemptions; restoration of temporarily reduced fees

291.060 Report of fees to Legislative Assembly

MASS TRANSIT ASSESSMENT

291.405 Assessment of state agencies for mass transit purposes; rates

291.407 Mass Transit Assistance Account; source; distribution; assistance of Department of Transportation; exemption from parking code requirements

PUBLIC CONTRACT APPROVAL

291.045 Definitions for ORS 291.045 and 291.047. As used in this section and ORS 291.047:

(1) "Information technology" includes, but is not limited to, all present and future forms of hardware, software and services for data processing, office automation and telecommunications.

(2) "State agency" includes every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees; and

(b) The Public Defense Services Commission.

(3) "Public contract" means any acquisition, disposition, purchase, lease, sale or transfer of rights by a state agency of real or personal property, public improvements or services.

(4) "Public improvement" means projects for construction, reconstruction or renovation on real property by or for a state agency. [1997 c.869 §4; 2003 c.449 §22]

291.047 Public contract approval by Attorney General; exemptions. (1) The Attorney General shall approve for legal sufficiency all personal services contracts, all architectural and engineering services contracts and all information technology contracts calling for payment in excess of $75,000 entered into by a state agency before any such contract becomes binding on the State of Oregon and before any service may be performed or payment may be made under the contract.

(2) The Attorney General shall approve for legal sufficiency all public contracts not subject to subsection (1) of this section that are entered into by a state agency and that provide for payment in excess of $100,000 before any such contract becomes binding on the State of Oregon and before any service may be performed or payment may be made under the contract.

(3) The Attorney General shall impose by rule requirements necessary to carry out the provisions of this section. Such rules shall include, but are not limited to, a requirement that state agencies submit to the Attorney General procurement and other contract documents for review of the anticipated contract before a procurement of goods or services is publicly advertised if the anticipated contract is reasonably expected to require review for legal sufficiency. A state agency may request that the Attorney General assist the agency in developing requests for proposals, invitations to bid and requests for qualifications or information that are suitable to the needs of the agency.

(4) The Attorney General may exempt by rule classes of contracts from the requirements of this section if the Attorney General determines that the degree of risk assumed by state agencies under such contracts is not materially reduced by legal review of individual contracts within the class.

(5) The Attorney General may, by rule, set forth a process to exempt contracts or classes of contracts from the requirements of this section when:

(a) The contract is substantially composed of forms, terms or conditions that have been preapproved by the Attorney General; or

(b) Circumstances exist that create a substantial risk of loss, damage, interruption of services or threat to public health or safety and that require prompt execution of a contract to deal with the risk.

(6) Notwithstanding subsections (1) and (2) of this section, the Attorney General may authorize services to be performed under a contract described in subsection (1) or (2) of this section before approval for legal sufficiency if the Attorney General determines that the authorization will not result in undue risk to this state. An authorization under this subsection shall be limited to specific classes of contracts or to contracts for specific agency programs. The Attorney General may condition an authorization on a finding by the Director of the Oregon Department of Administrative Services, or a designee of the director, and by any other agency with a role in approving such contracts that the contract administration practices of the requesting agency are adequate to manage the proposed contract and that the mission of the agency will be significantly impaired without such authorization. [1997 c.869 §2; 1999 c.264 §1]

291.049 Ratification of public contract when performance begun prior to contract approval; conditions; effects; rules. (1) If the parties to a public contract perform under the contract before the contract is approved for legal sufficiency by the Attorney General as required under ORS 291.047 and section 3, chapter 869, Oregon Laws 1997, the agency may ratify the public contract if the Attorney General determines that the contract is legally sufficient prior to ratification. As a condition for approval, the Attorney General may require that the contract be amended as necessary to make the contract legally sufficient.

(2) Upon approval of the public contract for legal sufficiency and ratification of the public contract by a state agency under this section, the public contract is effective and the state agency may make payments on the ratified public contract even if the payments are for services rendered prior to ratification.

(3) The Attorney General may adopt rules to implement this section. [1999 c.264 §2]

Note: 291.049 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 291 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

AGENCY FEE RESTRICTIONS

291.050 Definitions for ORS 291.050 to 291.060. As used in ORS 291.050 to 291.060:

(1) "Fee" means an amount imposed and collected by a state agency to defray or recover the costs of administering the law involved in providing a service to the public and used by the state agency to carry out or enforce a law under its jurisdiction. "Fee" does not include:

(a) Fines and civil penalties or any court judgments.

(b) The sale of products or charges for rents, leases or other real estate transaction costs.

(c) Interest and other charges for bonding and loan transactions.

(d) Charges levied by one state agency on another state agency.

(2) "Products" means goods and publications purchased voluntarily that have a commercial value. "Products" includes copying charges for public records as defined in ORS 192.410 and the conducting of informational seminars. "Products" does not include services or licenses or permits issued by state agencies.

(3) "State agency" means every state officer, board, commission, department, institution, branch or agency of the state government that is subject to the provisions of ORS 291.201 to 291.222 and 291.232 to 291.260. "State agency" includes the Legislative Assembly, including legislative committees and service agencies, the Secretary of State, the State Treasurer and the Judicial Department. "State agency" does not include a commodity commission established under ORS 576.051 to 576.455 or the Oregon Beef Council created under ORS 577.210. [1995 c.576 §1; 2003 c.604 §99]

Note: 291.050 to 291.060 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

291.055 Agency fee approval required; exemptions; restoration of temporarily reduced fees. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and the fee assessed is based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the Oregon State Fair and Exposition Center in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be restored to their normal level if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be restored to its normal level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160. [1995 c.576 §2; 1997 c.37 §1; 1997 c.684 §3; 2003 c.605 §3]

Note: See note under 291.050.

291.060 Report of fees to Legislative Assembly. The Oregon Department of Administrative Services shall, no later than January 15 of each odd-numbered year, provide the Legislative Assembly with a report setting forth in detail all fees charged by each state agency, the purpose for the fee or charge, the persons affected by the fee or charge, the statutory authority for the fee or charge, the amounts collected in the past biennium, the amounts expected to be paid during the present biennium and estimated for the next biennium in the Governor's recommended budget, and any changes in the fee or charge authorized during the present biennium or proposed for the next biennium in the Governor's recommended budget. The department shall report to the Emergency Board and the appropriate interim committee when requested to provide information concerning the development of the report. [1995 c.576 §3]

Note: See note under 291.050.

MASS TRANSIT ASSESSMENT

291.405 Assessment of state agencies for mass transit purposes; rates. (1) This section and ORS 291.407 allow the Oregon Department of Administrative Services to assess state agencies and to provide moneys from the assessments to mass transit districts, established under ORS 267.010 to 267.390, transportation districts, established under ORS 267.510 to 267.650, and service districts, established under ORS 451.410 to 451.610 to provide public transportation services, as reimbursement for the benefit that state government receives from the districts.

(2) State agencies subject to assessment under this section include every state officer, board, commission, department, institution, branch or agency of the state whose costs are paid wholly or in part from funds held in the State Treasury, and include the Legislative Assembly, the state courts and their officers and committees.

(3) If the Oregon Department of Administrative Services elects to pay moneys to districts under this section and ORS 291.407, the department shall do the following:

(a) Determine what services performed for subject state agencies will be subject to assessment under this section;

(b) Determine which subject agencies have employees within each district who are performing the subject services;

(c) Determine the amount of wages paid to the agency employees for performing the subject services within each district; and

(d) Establish a rate of assessment of not more than six-tenths of one percent of the total amount of the wages determined under this subsection.

(4) When determining under subsection (3)(c) of this section the total amount of wages paid to agency employees for performing subject services within each district, the Oregon Department of Administrative Services shall include wages that are paid from federal funds only to the extent the assessment on those wages is authorized to be paid under federal regulations.

(5) Notwithstanding any other provision of this section, the Oregon Department of Administrative Services shall not establish rates or impose assessments under this section that exceed the following:

(a) The Oregon Department of Administrative Services shall not assess more from an agency than the Legislative Assembly provides the agency for purposes of this section, either directly or indirectly through its approval of budgets or through the Emergency Board, if the agency budget is approved by the Legislative Assembly from General Fund moneys.

(b) If an agency is an agency other than one described in paragraph (a) of this subsection, the Oregon Department of Administrative Services shall not assess moneys from the agency at a greater rate than the rate applicable to an agency described in paragraph (a) of this subsection.

(6) At any time it determines appropriate, the Oregon Department of Administrative Services may:

(a) Redetermine any factors necessary to perform its duties under this section; or

(b) Vary the rate under this section within the limits established under this section.

(7) After making determinations and establishing a rate under this section, the Oregon Department of Administrative Services may direct the assessment against the payrolls of subject agencies at the rate established by the department. All moneys assessed under this section shall be promptly forwarded to the Oregon Department of Administrative Services. Assessments under this section are administrative expenses of an agency, as defined in ORS 291.305.

(8) The Oregon Department of Administrative Services shall pay any moneys it receives under this section to the State Treasurer for deposit in the account established under ORS 291.407 for use as provided in that section. [1981 c.788 §1; 1997 c.60 §1; 2003 c.51 §1]

Note: Section 2, chapter 51, Oregon Laws 2003, provides:

Sec. 2. The amendments to ORS 291.405 by section 1 of this 2003 Act apply to distributions of moneys to districts from the assessment of state agencies for mass transit on or after January 1, 1996. [2003 c.51 §2]

Note: 291.405 and 291.407 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 291 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

291.407 Mass Transit Assistance Account; source; distribution; assistance of Department of Transportation; exemption from parking code requirements. (1) The Mass Transit Assistance Account is established in the General Fund of the State Treasury. The account shall consist of moneys deposited in the account under ORS 291.405 and as otherwise provided by law. The moneys in the account are continuously appropriated to the Oregon Department of Administrative Services to be used as provided in this section.

(2) The Oregon Department of Administrative Services shall distribute moneys from the account established under this section to districts described in ORS 291.405 on the last day of each calendar quarter. Subject to the limitations in this section, the amount distributed to each district shall be equal to the total assessments received by the department during the immediate preceding three months under ORS 291.405 from agencies with employees performing subject services within that district.

(3) Distributions under this section are subject to the following limitations:

(a) Except for newly formed districts, the Oregon Department of Administrative Services shall not distribute to a district during a calendar year an amount that exceeds the amount received by the district under the district's own taxes during the immediate preceding fiscal year of the district.

(b) The Oregon Department of Administrative Services shall not distribute to a newly formed district during a calendar year an amount that exceeds the amount the budget approved by the district board proposes as revenue for the district from the district's own taxes during the current fiscal year of the district. If the district does not collect the proposed amount, the department shall make adjustments in the distributions during subsequent years to recover any amount paid under this section that is over the amount the district actually received under the district's own taxes.

(4) The limitations imposed under this section that are based on amounts received by a district under its own taxes do not include amounts received by the district from farebox revenues, federal moneys, state moneys, gifts, investments, bonds or similar moneys received by the district.

(5) The Department of Transportation shall provide the Oregon Department of Administrative Services with any information concerning a mass transit district or transportation district that the Oregon Department of Administrative Services determines necessary for the performance of its duties under this section and ORS 291.405. The Department of Transportation shall provide the information in the form and at times determined by the Oregon Department of Administrative Services.

(6) In exchange for payments authorized under this section to transit districts, the State of Oregon and its agencies shall be exempt from any parking code requirements for existing state-owned buildings, construction

of new state buildings or the renovation of existing state buildings, which have been or may be established by any political subdivision within the boundaries of a transit district receiving such payments. [1981 c.788 §2]

Note: See second note under 291.405.

Chapter 319

2003 EDITION

Motor Vehicle and Aircraft Fuel Taxes

MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

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PENALTIES

319.990 Penalties

MOTOR VEHICLE FUEL AND AIRCRAFT FUEL TAXES

319.010 Definitions for ORS 319.010 to 319.430. As used in ORS 319.010 to 319.430, unless the context requires otherwise:

(1) "Aircraft" means every contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

(2) "Aircraft fuel" means any gasoline and any other inflammable or combustible gas or liquid by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the Department of Transportation is for purposes other than the propulsion of aircraft.

(3) "Airport" means any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft.

(4) "Broker" means and includes every person other than a dealer engaged in business as a broker, jobber or wholesale merchant dealing in motor vehicle fuel or aircraft fuel.

(5) "Bulk transfer" means any change in ownership of motor vehicle fuel or aircraft fuel contained in a terminal storage facility or any physical movement of motor vehicle fuel or aircraft fuel between terminal storage facilities by pipeline or marine transport.

(6) "Dealer" means any person who:

(a) Imports or causes to be imported motor vehicle fuels or aircraft fuels for sale, use or distribution in, and after the same reaches the State of Oregon, but "dealer" does not include any person who imports into this state motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who assumes liability for the payment of the applicable license tax to this state;

(b) Produces, refines, manufactures or compounds motor vehicle fuels or aircraft fuels in the State of Oregon for use, distribution or sale in this state;

(c) Acquires in this state for sale, use or distribution in this state motor vehicle fuels or aircraft fuels with respect to which there has been no license tax previously incurred; or

(d) Acquires title to or possession of motor vehicle fuels or aircraft fuels in this state and exports the product out of this state.

(7) "Department" means the Department of Transportation.

(8) "Distribution" means, in addition to its ordinary meaning, the delivery of motor vehicle fuel or aircraft fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel or aircraft fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(9) "First sale, use or distribution of motor vehicle fuel or aircraft fuel" means the first withdrawal, other than by bulk transfer, of motor vehicle fuel or aircraft fuel from terminal storage facilities for sale, use or distribution. "First sale, use or distribution of motor vehicle fuel or aircraft fuel" also means the first sale, use or distribution of motor vehicle fuel or aircraft fuel after import into this state if the motor vehicle fuel or aircraft fuel is delivered other than to the terminal storage facilities of a licensed dealer.

(10) "Highway" means every way, thoroughfare and place, of whatever nature, open for use of the public for the purpose of vehicular travel.

(11) "Motor vehicle" means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel.

(12) "Motor vehicle fuel" means and includes gasoline and any other inflammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas or liquid, the chief use of which, as determined by the department, is for purposes other than the propulsion of motor vehicles upon the highways of this state.

(13) "Person" includes every natural person, association, firm, partnership, corporation or the United States.

(14) "Restricted landing area" means any area of land or water, or both, which is used or made available for the landing and takeoff of aircraft, the use of which, except in case of emergency, is provided from time to time by the department.

(15) "Service station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles or aircraft fuel into the fuel tanks of aircraft.

(16) "Terminal storage facility" means any fuel storage facility that has marine or pipeline access. [Amended by 1955 c.287 §19; 1955 c.730 §§1,15; 1957 c.209 §1; 1959 c.505 §1; 1963 c.226 §1; 1987 c.610 §1; 1989 c.664 §1; 1993 c.741 §28]

319.020 Monthly statement by dealer; license tax imposed. (1) Subject to subsections (2) to (4) of this section, in addition to the taxes otherwise provided for by law, every dealer engaging in the dealer's own name, or in the name of others, in the first sale, use or distribution of motor vehicle fuel or aircraft fuel or withdrawal of motor vehicle fuel or aircraft fuel for sale, use or distribution within areas in this state within which the state lacks the power to tax the sale, use or distribution of motor vehicle fuel or aircraft fuel, shall:

(a) Not later than the 25th day of each calendar month, render a statement to the Department of Transportation of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn by the dealer in the State of Oregon as well as all such fuel sold, used or distributed in this state by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month.

(b) Except as provided in ORS 319.270, pay a license tax computed on the basis of 24 cents per gallon on the first sale, use or distribution of such motor vehicle fuel or aircraft fuel so sold, used, distributed or withdrawn as shown by such statement in the manner and within the time provided in ORS 319.010 to 319.430.

(2) When aircraft fuel is sold, used or distributed by a dealer, the license tax shall be computed on the basis of nine cents per gallon of fuel so sold, used or distributed, except that when aircraft fuel usable in aircraft operated by turbine engines (turbo-prop or jet) is sold, used or distributed, the tax rate shall be one cent per gallon.

(3) In lieu of claiming refund of the tax paid on motor vehicle fuel consumed by such dealer in nonhighway use as provided in ORS 319.280, 319.290 and 319.320, or of any prior erroneous payment of license tax made to the state by such dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(4) The license tax computed on the basis of the sale, use, distribution or withdrawal of motor vehicle or aircraft fuel shall not be imposed wherever such tax is prohibited by the Constitution or laws of the United States with respect to such tax. [Amended by 1955 c.730 §2; 1959 c.505 §2; 1967 c.463 §1; 1973 c.376 §1; 1977 c.293 §1; 1981 c.698 §1; 1983 c.727 §§1,5; 1985 c.209 §12; 1987 c.610 §2; 1987 c.899 §§8,10, 14; 1989 c.664 §2; 1989 c.865 §1; 1991 c.497 §§6,7; 1999 c.1037 §§1,3]

319.025 [1991 c.863 §18; repealed by 1991 c.863 §21]

319.030 License required to be dealer in motor vehicle fuel. No dealer shall sell, use or distribute any motor vehicle fuel until the dealer has secured a dealer's license as required by ORS 319.010 to 319.430.

319.040 Application for and issuance of dealer's license. (1) Every person, before becoming a dealer in motor vehicle fuel in this state, shall make an application to the Department of Transportation for a license authorizing such person to engage in business as a dealer.

(2) Applications for the license must be made on forms prescribed, prepared and furnished by the department.

(3) The applications shall be accompanied by a duly acknowledged certificate containing:

(a) The name under which the dealer is transacting business within Oregon.

(b) The places of business and location of distributing stations of the dealer in Oregon.

(c) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent.

(4) If the dealer is an association of persons, firm, partnership or corporation organized under the laws of another state, territory or country, if it has not already done so, it must first comply with the laws of Oregon relating to the transaction of its appropriate business in Oregon.

(5) The application for a motor vehicle fuel dealer's license having been accepted for filing, and the bond required by ORS 319.050 having been accepted and approved, the department may issue to the dealer a license in such form as the department may prescribe to transact business as a dealer in the State of Oregon. The license so issued is not assignable, and is valid only for the dealer in whose name issued.

(6) The department shall keep and file all applications and bonds with an alphabetical index thereof, together with a record of all licensed dealers. [Amended by 1957 c.209 §2; 1999 c.769 §18]

319.042 Grounds for refusal to issue dealer license; hearing; records inspection. (1) The Department of Transportation may refuse to issue a dealer license to a person who applies as provided in ORS 319.040 if the department finds that the person:

(a) Was the holder of a license revoked under ORS 319.100;

(b) Is applying for a license on behalf of a real party in interest whose license was revoked under ORS 319.100;

(c) Was an officer, director, owner or managing employee of a nonindividual licensee whose license was revoked under ORS 319.100;

(d) Owes a debt to the state under ORS 319.010 to 319.430;

(e) Had a license issued by a jurisdiction other than Oregon to sell or buy untaxed motor vehicle fuel that was revoked or canceled for cause, whether the license was held by the person as an individual or as an officer, director, owner or managing employee or on behalf of a real party in interest;

(f) In any jurisdiction, pleaded guilty to or was convicted of a crime directly related to the sale, use or distribution of motor vehicle fuel, whether as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of motor vehicle fuel;

(g) Had a civil judgment imposed for conduct involving fraud, misrepresentation, conversion or dishonesty, as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of motor vehicle fuel;

(h) Misrepresented or concealed a material fact in obtaining a license or in the reinstatement thereof;

(i) Violated a statute or administrative rule regarding fuel taxation or distribution;

(j) Failed to cooperate with the department's investigations by:

(A) Not furnishing requested documents;

(B) Not furnishing when requested to do so a full and complete written explanation of a matter under investigation by the department; or

(C) Not responding to a subpoena issued by the department; or

(k) Failed to comply with an order issued by the department.

(2) In addition to refusal of a license for reasons specified in subsection (1) of this section, the department may refuse to issue a dealer license for any other reason the department deems sufficient.

(3) Before refusing to issue a license under this section, the department shall grant the applicant a hearing and shall give the applicant at least 10 days' written notice of the time and place of the hearing. The hearing shall be a contested case hearing under the provisions of ORS chapter 183.

(4) For purpose of consideration of an application for a license, the department may inspect or investigate the records of this state or of any other jurisdiction to verify the information on the application and to verify the applicant's criminal and licensing history. [1999 c.769 §17]

Note: 319.042 was added to and made a part of 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.050 Performance bond; hearing. (1) At the time of filing the certificate and application for a dealer's license, the Department of Transportation shall require the dealer to file with the department, in a form prepared by the department, a bond executed by the dealer as principal with a corporate surety authorized to transact business in this state. The bond shall be payable to the State of Oregon conditioned upon performance of all the requirements of ORS 319.010 to 319.430, including the payment of all taxes, penalties and other obligations of the dealer arising out of ORS 319.010 to 319.430.

(2) Except as provided in ORS 319.051, 319.052 and 319.053, a bond under subsection (1) of this section shall be in an amount that is equivalent to twice the dealer's estimated monthly license tax, as determined by the department, or $250,000, whichever is less.

(3) The department may reduce or increase the required amount for a bond as provided in ORS 319.051 and 319.052.

(4) A bond given in connection with ORS 319.010 to 319.430 is a continuing instrument and covers any and all periods of time including the first and all subsequent periods for which a license may be granted in consequence of the giving of the bond. The liability of the surety on the bond for the aggregate of all claims that arise under the bond may not exceed the amount of the penalty of the bond. No recoveries on any bond or any execution of any new bond may invalidate any bond, but the total recoveries under any one bond may not exceed the amount of the bond.

(5) A dealer required under this section to obtain a bond may demand by proper petition a hearing on the necessity of the bond or the reasonableness of the amount required. The department shall grant the petition for a hearing and shall hold the hearing within 10 days after the demand for the hearing. The decision of the department becomes final 10 days after service of the order on the dealer. The hearing is not subject to the requirements of ORS 183.413 to 183.470. [Amended by 1967 c.359 §690; 1999 c.769 §12; 2003 c.52 §1]

319.051 Conditions for reduced bond amount. (1) For a dealer described in subsection (2) of this section, the bond required by the Department of Transportation under ORS 319.050 shall be in an amount that is equivalent to twice the dealer's estimated monthly license tax, as determined by the department, or $100,000, whichever is less.

(2) The provisions of subsection (1) of this section apply to a dealer who held a valid dealer's license on October 23, 1999, issued under ORS 319.010 to 319.430, and who, since October 23, 1999, has:

(a) Not been required to file a bond greater than $100,000; and

(b) Performed, as determined by the department, the requirements of ORS 319.010 to 319.430, including the payment of all taxes, penalties and other obligations of the dealer arising out of ORS 319.010 to 319.430. [2003 c.52 §3]

Note: 319.051 to 319.053 were added to and made a part of 319.010 to 319.430 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.052 Conditions for increased bond amount; request and conditions for reduction; rules. (1) The Department of Transportation shall increase a dealer's bond filed under ORS 319.050 to an amount that is equivalent to twice the dealer's estimated monthly license tax, as determined by the department, or $1 million, whichever is less, if, within a 24-month period, the dealer:

(a) Was late three or more times in filing reports or making payments to the department;

(b) Had three or more checks or electronic funds transfers to the department dishonored for lack of funds or credit;

(c) Failed to maintain or make available a record of all purchases, receipts, sales and distribution of motor vehicle fuel as required under ORS 319.390; or

(d) Had a motor vehicle fuel dealer license issued in this state or another jurisdiction revoked.

(2) The department may waive an increase in the bond amount under subsection (1) of this section if the department determines that the dealer did not intend to avoid payment of license taxes when the dealer engaged in the conduct described in subsection (1)(a), (b) or (c) of this section or when the dealer engaged in the conduct that led to the license revocation described in subsection (1)(d) of this section. If the department waives an increase in the bond amount, the bond shall remain at an amount that is:

(a) Required under ORS 319.051 for a dealer described in ORS 319.051; or

(b) Required under ORS 319.050.

(3) If the department increases the bond amount as provided in subsection (1) of this section, the dealer may, after 24 months, request in writing that the department reduce the bond amount. The department shall reduce the bond amount if the department determines that the dealer, in the 24 months prior to the dealer's written request:

(a) Filed timely reports and made timely payments;

(b) Had no checks or electronic funds transfers to the department dishonored for lack of funds or credit;

(c) Maintained and made available a record of all purchases, receipts, sales and distribution of motor vehicle fuel as required under ORS 319.390; and

(d) Did not have a motor vehicle fuel dealer license issued in this state or another jurisdiction revoked.

(4) If the department determines that the dealer met all of the requirements under subsection (3) of this section, the department shall reduce the bond required of a dealer described in ORS 319.050 or a dealer described in ORS 319.051 to an amount that is equivalent to twice the dealer's estimated monthly license tax, as determined by the department, or $250,000, whichever is less.

(5) If the department determines that the dealer failed to meet the requirements under subsection (3) of this section and that the failure was not due to the dealer's intent to avoid payment of license taxes, the department may reduce the bond required of a dealer described in ORS 319.050 or a dealer described in ORS 319.051 to an amount that is equivalent to twice the dealer's estimated monthly license tax, as determined by the department, or $250,000, whichever is less.

(6) For purposes of this section, the department shall adopt rules establishing what constitutes evidence that a dealer did not intend to avoid payment of license taxes. [2003 c.52 §4]

Note: See note under 319.051.

319.053 Amount of bond when twice license tax is less than $1,000. If the amount that is equivalent to twice the amount of a dealer's estimated monthly license tax, as determined by the Department of Transportation, is an amount that is less than $1,000, the bond amount required by ORS 319.050, 319.051 or 319.052 shall be $1,000. [2003 c.52 §5]

Note: See note under 319.051.

319.060 Deposit in lieu of bond. In lieu of the bond or bonds in total amount as fixed under ORS 319.050, 319.051, 319.052 or 319.053, any dealer may deposit with the State Treasurer, under such terms and con-

ditions as the Department of Transportation may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the State of Oregon, or any county of this state, of an actual market value not less than the amount so fixed by the department. [Amended by 2003 c.52 §7]

319.070 Release of surety. Any surety on a bond furnished by a dealer as provided in ORS 319.050 shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of 30 days from the date upon which the surety has lodged with the Department of Transportation a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which accrues before the expiration of the 30-day period. The department shall promptly, upon receiving the request, notify the dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond, or makes a deposit in accordance with the requirements of ORS 319.050 and 319.060, the department forthwith shall cancel the dealer's license.

319.080 Additional bond or deposit. The Department of Transportation may require a dealer to give a new or additional surety bond or to deposit additional securities of the character specified in ORS 319.060 if, in its opinion, the security of the surety bond theretofore filed by the dealer, or the market value of the properties deposited as security by the dealer, becomes impaired or inadequate. Upon failure of the dealer to give the new or additional surety bond or to deposit additional securities within 10 days after being requested so to do by the department, the department forthwith shall cancel the license of the dealer.

319.090 Immediate collection of tax and interest where dealer fails to secure license; penalties; waiver. (1) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and bond and securing the license required by ORS 319.030, the license tax provided in ORS 319.020 shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(2) Except as otherwise provided in this subsection, the Department of Transportation shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall immediately assess the tax and interest in the amount found due, together with a penalty of 100 percent of the tax, and shall make its certificate of such assessment and penalty. The department may waive all or part of a penalty imposed under this subsection if the department determines that a violation of the requirement under this section to file the certificate and bond or to secure the license was due to reasonable cause and without intent to avoid payment of the tax. In any suit or proceeding to collect such tax, interest or penalty, the certificate is prima facie evidence that the dealer therein named is indebted to the State of Oregon in the amount of the tax, interest and penalty therein stated. [Amended by 1981 c.396 §1; 1989 c.664 §3; 1999 c.769 §5]

319.096 Suspension of license; liability for tax; reinstatement. (1) The Department of Transportation may, prior to a hearing, suspend the license of a motor vehicle fuel dealer who refuses or neglects to comply with the provisions of ORS 319.010 to 319.430 until the dealer complies with the provisions of ORS 319.010 to 319.430.

(2) Upon suspension of a dealer's license under subsection (1) of this section, the department shall immediately notify:

(a) The dealer by certified mail of the dealer's license suspension and the dealer's right to request an immediate hearing to contest the license suspension; and

(b) All other licensed motor vehicle fuel dealers by a method determined under ORS 319.102 that the authority of the dealer to purchase tax-deferred motor vehicle fuel has been suspended.

(3) If a licensed motor vehicle fuel dealer sells tax-deferred motor vehicle fuel to a dealer whose license has been suspended under subsection (1) of this section after the third day after the selling dealer receives notice of the suspension under subsection (2) of this section, the selling dealer and the suspended dealer are jointly and severally liable for the tax owed on the sale of the fuel.

(4)(a) Notwithstanding the joint and several liability of the selling dealer and the suspended dealer under subsection (3) of this section, the department shall attempt to collect from the suspended dealer the tax owed on the fuel for a period of 45 days from the date of the sale to the suspended dealer.

(b) After the expiration of the 45-day period under this subsection, the department shall collect from the selling dealer any tax not collected from the suspended dealer under this subsection.

(5) The department shall waive the liability of a selling dealer under subsection (3) of this section if the selling dealer establishes to the satisfaction of the department that:

(a) The sale of the motor vehicle fuel to the suspended dealer was due to circum-

stances that were beyond the control of the selling dealer; or

(b) The dealer whose license was suspended engaged in fraud or deceit to avoid timely payment of the tax to the selling dealer.

(6) When a dealer whose license has been suspended under subsection (1) of this section complies with the provisions of ORS 319.010 to 319.430, the department shall reinstate the dealer's license and shall notify by a method determined under ORS 319.102 all licensed motor vehicle fuel dealers that the dealer's license has been reinstated and that the dealer is authorized to purchase tax-deferred fuel.

(7) If the department determines that a dealer whose license has been suspended under subsection (1) of this section is unwilling or unable to comply with the provisions of ORS 319.010 to 319.430, the department shall revoke the license of the dealer as provided in ORS 319.100. [2003 c.113 §2]

Note: 319.096, 319.098 and 319.102 were added to and made a part of 319.010 to 319.430 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.098 Contesting license suspension. A dealer whose license has been suspended by the Department of Transportation under ORS 319.096 may contest the suspension as provided in ORS chapter 183. [2003 c.113 §3]

Note: See note under 319.096.

319.100 Revocation of license. (1) The Department of Transportation shall revoke the license of any dealer whose license has been suspended under ORS 319.096 and who the department determines is unwilling or unable to comply with the provisions of ORS 319.010 to 319.430.

(2) The department shall mail by certified mail addressed to the dealer at the last-known address in the files of the department, a notice of intention to revoke the dealer's license. The notice shall give the reason for the revocation of the license.

(3) The license revocation becomes effective without further notice if within 10 days from the mailing of the notice the dealer has not complied with the provisions of ORS 319.010 to 319.430.

(4) The department shall provide notice of the revocation of the license of a dealer under this section to all other licensed motor vehicle fuel dealers by a method determined under ORS 319.102. [1989 c.664 §4; 2003 c.113 §4]

319.102 Notice to dealers of suspension or revocation of another dealer's license; rules. The Department of Transportation shall establish by rule the most efficient method of notifying licensed motor vehicle fuel dealers as required under ORS 319.096 and 319.100 that a dealer's license has been suspended, revoked or reinstated. The possible methods may include, but need not be limited to, notice by telephone, electronic mail or regular mail. [2003 c.113 §5]

Note: See note under 319.096.

319.110 Cancellation of license on request of dealer or when licensee no longer a dealer. (1) The Department of Transportation may, upon written request of a dealer, cancel any license issued to such dealer, the cancellation to become effective 30 days from the date of receipt of the written request.

(2) If the department ascertains and finds that the person to whom a license has been issued is no longer engaged in the business of a dealer, the department may cancel the license of such dealer upon investigation after 30 days' notice has been mailed to the last-known address of the dealer.

319.120 Remedies cumulative. Except as otherwise provided in ORS 319.180 and 319.200, the remedies of the state provided in ORS 319.090, 319.100 and 319.110 are cumulative. No action taken pursuant to those statutes shall relieve any person from the penal provisions of ORS 319.010 to 319.430 and 319.990. [Amended by 1967 c.54 §1; 1999 c.769 §7]

319.125 Change of ownership; cancellation of license. A licensed dealer who has a change of ownership shall notify the Department of Transportation immediately of the change. Upon notification, the department shall immediately cancel the motor vehicle fuel dealer license of the dealer. No license may be issued to any successor of the dealer until the successor completes an application and certificate and supplies the department with an adequate bond. For purposes of this section:

(1) In the case of a corporation with more than 100 stockholders, transfer of stock in normal trading is not considered a change in ownership.

(2) In the case of a corporation with 100 or fewer stockholders, transfer of less than 50 percent of the stock in any period of 12 consecutive months is not considered a change in ownership. [1987 c.610 §21]

Note: 319.125 was added to and made a part of 319.010 to 319.430 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

319.130 [Repealed by 1987 c.610 §23]

319.140 [Amended by 1959 c.505 §3; 1987 c.158 §50a; 1987 c.610 §3; repealed by 1989 c.664 §6]

319.150 [Repealed by 1989 c.664 §6]

319.160 [Amended by 1957 c.209 §3; 1959 c.505 §4; 1967 c.359 §691; 1987 c.610 §4; repealed by 1989 c.664 §6]

319.170 [Amended by 1987 c.610 §5; repealed by 1989 c.664 §6]

319.180 Payment of tax; delinquency penalty; interest rates. (1) The license tax imposed by ORS 319.020 shall be paid on or before the 25th day of each month to the Department of Transportation which, upon request, shall receipt the dealer therefor.

(2) Except as provided in subsection (4) of this section, to any license tax not paid as required by subsection (1) of this section there shall be added a penalty of one percent of such license tax.

(3) Except as provided in subsection (4) of this section, if the tax and penalty required by subsection (2) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of 10 percent shall be paid in addition to the penalty provided for in subsection (2) of this section.

(4) If the department determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (2) and (3) of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in ORS 319.090 has been assessed and paid.

(5)(a) If the license tax imposed by ORS 319.020 is not paid as required by subsection (1) of this section, interest shall be charged at the rate of.0329 percent per day until the tax and interest have been paid in full.

(b) If the license tax imposed by ORS 319.020 is overpaid, the department may credit interest to the account of the taxpayer in the amount of.0329 percent per day up to a maximum amount that equals any interest assessed against the taxpayer under paragraph (a) of this subsection in any given audit period.

(6) No dealer who incurs a tax liability as provided for in ORS 319.010 to 319.430, shall knowingly and willfully fail to report and pay the same to the department as required by ORS 319.010 to 319.430. [Amended by 1955 c.730 §3; 1957 c.209 §4; 1959 c.505 §5; 1963 c.226 §2; 1967 c.54 §2; 1979 c.344 §4; 1987 c.610 §6; 1989 c.664 §5; 1999 c.769 §6]

319.182 Collection of delinquent tax, interest or penalty; warrant; judgment lien. (1) If a person fails to pay in full any tax, interest or penalty due under ORS 319.010 to 319.430, the Department of Transportation may issue a warrant under the department's official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the person found within that county, for payment of the amount due, with the added penalties or charges, interest and the cost of executing the warrant, and to return the warrant to the department and pay to the department the money collected from the sale by the time specified in the warrant, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the person mentioned in the warrant, the amount of the tax or portion of the tax and penalties or charges for which the warrant is issued and the date when the copy is recorded. The amount of the warrant shall become a lien upon the title to and interest in property of the person against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18.

(3) The sheriff shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the Department of Transportation, a warrant of like terms, force and effect to levy upon funds of the person in possession of the Department of Revenue may be issued and directed to any agent authorized by the Department of Transportation to collect taxes payable under ORS 319.010 to 319.430, and in the execution thereof the agent shall have all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. [1999 c.769 §2; 2003 c.576 §200]

Note: 319.182, 319.184 and 319.186 were added to and made a part of 319.010 to 319.430 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.184 Use of collection agency. (1) The Department of Transportation may engage the services of a collection agency to collect any of the taxes, interest and penalties due to the state under ORS 319.010 to 319.430. The department may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The department may assign to the collection agency, for collection purposes only, any of the taxes, interest and penalties due the state under ORS 319.010 to 319.430.

(3) The collection agency may bring such actions or take such proceedings, including attachment and garnishment proceedings, as may be necessary. [1999 c.769 §3]

Note: See note under 319.182.

319.186 Uncollectible tax, interest or penalty. (1) Any tax, interest or penalty due the state assigned to a collection agency pursuant to ORS 319.184 that remains uncollected for two years after the date of such assignment meets the criteria for uncollectibility formulated pursuant to ORS 293.240, and may be assigned to the Secretary of State.

(2) ORS 293.245 applies to any tax, interest or penalty due the state assigned to the Secretary of State pursuant to subsection (1) of this section. [1999 c.769 §4]

Note: See note under 319.182.

319.190 Monthly statement of dealer; penalty. (1) Every dealer in motor vehicle fuel shall render to the Department of Transportation, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the department, a signed statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by one of the principal officers, or by an authorized agent in case of a corporation; or by the managing agent or owner in case of a firm or association.

(2) The signed statement filed with the department as required by this section is a public record. All other documents, including supporting schedules and information received from other taxing jurisdictions and entities, shall be kept confidential and exempt from public inspection except that such information may be shared with tax collecting entities in other jurisdictions on the condition that the receiving jurisdiction agrees to keep such information confidential. If a statement is not received on or before the 25th day of each month, a penalty shall be assessed pursuant to ORS 319.180 or, if the department determines that no tax is due, a penalty of $25 shall be assessed. [Amended by 1955 c.730 §4; 1957 c.209 §5; 1987 c.610 §7]

319.192 Refund to dealer of uncollectible taxes; rules. (1) Upon application to the Department of Transportation, a motor vehicle fuel dealer may obtain a refund of the tax paid to the department on sales of motor vehicle fuel if:

(a) The dealer has received less than full consideration for the fuel from or on behalf of a purchaser;

(b) The account has been declared by the dealer to be an uncollectible account receivable and meets all applicable standards for deductibility for federal income tax purposes pursuant to the Internal Revenue Code; and

(c) The dealer has not previously received a refund from the department for motor vehicle fuel taxes not paid by the same purchaser.

(2) For purposes of determining the amount of a refund due under this section, the amount of consideration received by the motor vehicle fuel dealer shall be apportioned between the charges for the motor vehicle fuel and the tax for the fuel. The amount of the tax refunded may not exceed the amount of tax paid under ORS 319.020.

(3) If the motor vehicle fuel dealer who receives a refund under this section subsequently collects any amount from any source for the account declared uncollectible, the amount collected shall be apportioned between the charges for the motor vehicle fuel and the corresponding tax for the fuel. The motor vehicle fuel tax collected shall be returned to the department.

(4) The department shall adopt rules governing the process of applying for and receiving refunds under this section. [2003 c.307 §2]

Note: 319.192 was added to and made a part of 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.200 Assessing tax and penalty where dealer fails to report. If any dealer, except one subject to ORS 319.090, fails to file the report required by ORS 319.190, the Department of Transportation shall proceed forthwith to determine from the best available source the amount of motor vehicle fuel sold, distributed or used by such dealer for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed or used. The department immediately shall assess the license tax in the amount so determined, adding thereto a penalty of 10 percent for failure to report. The penalty shall be cumulative of other penalties provided in ORS 319.010 to 319.430 and 319.990. In any suit brought to enforce the rights of the state under this section, the certificate of the department showing the amount of taxes, penalties, interest and costs unpaid by any dealer and that the same are due and unpaid to the state is prima facie evidence of the facts as shown. [Amended by 1967 c.54 §3; 1987 c.610 §8]

319.210 Billing purchasers. Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the Department of Transportation the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the department are maintained. [Amended by 1955 c.730 §5; 1987 c.610 §9]

319.220 Receipt, payment or sale of motor vehicle fuel without invoice or delivery tag prohibited. No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel. [Amended by 1955 c.730 §6; 1987 c.610 §10]

319.230 Transporting motor vehicle fuel in bulk. Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of this state with such conveyance, have and possess during the entire time of hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any sheriff, deputy sheriff, constable, state police or other officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement. [Amended by 1957 c.209 §6]

319.240 Exemption of export fuel. (1) The license tax imposed by ORS 319.020 may not be imposed on motor vehicle fuel that is exported by a dealer:

(a) From this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and

(b) Who has a valid motor vehicle fuel dealer's license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded.

(2) In support of any exemption from license taxes claimed under this section other than in the case of stock transfers or deliveries in equipment, every dealer must execute and file with the Department of Transportation an export certificate in such form as shall be prescribed, prepared and furnished by the department, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the State of Oregon, and giving such details with reference to such shipment as the department may require. All export certificates in support of shipments to other states, territories or countries must be completed and on file in the principal office of the dealer in this state within three months after the close of the calendar month in which the shipments to which they relate are made, unless the state, territory or country of destination would not be prejudiced with respect to its collection of taxes thereon if the certificate is not filed within such time. The department may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The department may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(3) Any motor vehicle fuel carried from this state in the fuel tank of a motor vehicle shall not be considered as exported from this state, except that a refund of the tax may be paid on such fuel as provided in ORS 319.280 (1)(d).

(4) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export upon which the Oregon tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or shall divert the motor vehicle fuel or any portion thereof, or shall cause it to be diverted from interstate or foreign transit begun in this state, or shall unlawfully return the motor vehicle fuel or any portion thereof to be used or sold in this state and fail to notify the department and the dealer from whom the motor vehicle fuel was originally purchased of the person's act.

(5) No dealer or other person shall conspire with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use so as to avoid any of the taxes imposed by ORS 319.010 to 319.430. [Amended by 1953 c.82 §2; 1955 c.730 §7; 1959 c.186 §1; 1963 c.257 §1; 1987 c.610 §11; 2003 c.56 §1]

319.250 Certain sales to Armed Forces exempted; reports. The license tax imposed by ORS 319.020 shall not be imposed on any aircraft or motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from this state; but every dealer shall be required to report such sales to the Department of Transportation in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate. [Amended by 1955 c.730 §8; 1959 c.186 §2; 1961 c.43 §1; 1987 c.610 §12]

319.260 Fuel in vehicles coming into or leaving state not taxed. Any person coming into or leaving Oregon in a motor

vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for the purpose of operating such motor vehicle, without complying with any of the provisions imposed upon dealers by ORS 319.010 to 319.430. However, if motor vehicle fuel so brought into the state is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into this state shall be subject to all the provisions of ORS 319.010 to 319.430 and 319.990 applying to dealers. [Amended by 1987 c.610 §12a]

319.270 Fuel sold or distributed to dealers. (1) Notwithstanding ORS 319.020, if the first sale, use or distribution of motor vehicle fuel or aircraft fuel is from one licensed dealer to another licensed dealer, the selling or distributing dealer is not required to pay the license tax imposed by ORS 319.020. When the purchasing or receiving dealer first sells, uses or distributes the fuel, that dealer shall pay the license tax regardless of whether the sale, use or distribution is to another licensed dealer.

(2) A dealer who renders monthly statements to the Department of Transportation as required by ORS 319.020 and 319.190 shall show separately the number of gallons of motor vehicle fuel sold or delivered to dealers. [Amended by 1987 c.610 §13]

319.275 Liability for taxes, interest and penalties when person importing fuel does not hold license. (1) A person who is not a licensed dealer shall not accept or receive motor vehicle or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid motor vehicle fuel dealer license in this state. If a person who is not a licensed dealer accepts or receives motor vehicle fuel or aircraft fuel from a person who imports motor vehicle fuel or aircraft fuel and does not hold a valid motor vehicle fuel dealer license in this state, the purchaser or receiver shall be liable for all taxes, interest and penalties contained in ORS 319.010 to 319.430.

(2) A licensed dealer who accepts or receives motor vehicle fuel or aircraft fuel in this state from a person who imports motor vehicle or aircraft fuel who does not hold a valid dealer license in this state shall pay the tax imposed by ORS 319.020 to the Department of Transportation upon the first sale, use or distribution of the motor vehicle fuel or aircraft fuel. [1987 c.610 §22; 1991 c.863 §§18a,21a]

319.280 Refunds generally. (1) Any person who has paid any tax on motor vehicle fuel levied or directed to be paid by ORS 319.010 to 319.430 either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid, except as provided in ORS 319.290 to 319.330, if such person has:

(a) Purchased and used such fuel for the purpose of operating or propelling a stationary gas engine, a tractor or a motor boat, if the motor boat is used for commercial purposes at any time during the period for which the refund is claimed;

(b) Purchased and used such fuel for cleaning or dyeing or other commercial use, except when used in motor vehicles operated upon any highway;

(c) Purchased and exported such fuel from this state, in containers other than fuel supply tanks of motor vehicles, provided that the person:

(A) Exports the motor vehicle fuel from this state to another state, territory or country, not including a federally recognized Indian reservation located wholly or partially within the borders of this state, where the motor vehicle fuel is unloaded; and

(B) Has a valid motor vehicle fuel dealer's license or its equivalent issued by the state, territory or country to which the fuel is exported and where it is unloaded;

(d) Purchased and exported such fuel in the fuel supply tank of a motor vehicle and has used such fuel to operate the vehicle upon the highways of another state, if the user has paid to the other state a similar motor vehicle fuel tax on the same fuel, or has paid any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state; or

(e) Purchased and used such fuel for small engines that are not used to propel motor vehicles on highways, including but not limited to those that power lawn mowers, leaf blowers, chain saws and similar implements.

(2) When a motor vehicle with auxiliary equipment uses fuel and there is no auxiliary motor for such equipment or separate tank for such a motor, a refund may be claimed and allowed as provided by subsection (4) of this section, except as otherwise provided by this subsection, without the necessity of furnishing proof of the amount of fuel used in the operation of the auxiliary equipment. The person claiming the refund may present to the Department of Transportation a statement of the claim and be allowed a refund as follows:

(a) For fuel used in pumping aircraft fuel, motor vehicle fuel, fuel or heating oils or other petroleum products by a power take-off unit on a delivery truck, refund shall be al-

lowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each 1,000 gallons of petroleum products delivered.

(b) For fuel used in operating a power take-off unit on a cement mixer truck or on a garbage truck, claimant shall be allowed a refund of 25 percent of the tax paid on all fuel used in such a truck.

(3) When a person purchases and uses motor vehicle fuel in a vehicle equipped with a power take-off unit, a refund may be claimed for fuel used to operate the power take-off unit provided the vehicle is equipped with a metering device approved by the department and designed to operate only while the vehicle is stationary and the parking brake is engaged; the quantity of fuel measured by the metering device shall be presumed to be the quantity of fuel consumed by the operation of the power take-off unit.

(4) Before any such refund may be granted, the person claiming such refund must present to the department a statement, accompanied by the original invoices, or reasonable facsimiles approved by the department, showing such purchases; provided that in lieu of original invoices or facsimiles, refunds submitted under subsection (1)(d) of this section shall be accompanied by information showing source of the fuel used and evidence of payment of tax to the state in which the fuel was used. The statement shall be made over the signature of the claimant, and shall state the total amount of such fuel for which the claimant is entitled to be reimbursed under subsection (1) of this section. The department upon the presentation of the statement and invoices or facsimiles, or other required documents, shall cause to be repaid to the claimant from the taxes collected on motor vehicle fuel such taxes so paid by the claimant. [Amended by 1959 c.186 §3; 1963 c.257 §2; 1969 c.465 §1; 1971 c.163 §1; 1973 c.135 §1; 1985 c.152 §1; 1997 c.364 §1; 2001 c.820 §4; 2003 c.56 §2]

319.290 Limitation on applications for refunds. Applications for refunds made under ORS 319.280, 319.320 and 319.330 must be filed with the Department of Transportation before the expiration of 15 months from the date of purchase or invoice, except that unused fuel reported as an ending inventory on any claim may be included in a subsequent claim if presented not later than 15 months from the filing date of the claim which established the inventory. All applications for refunds based upon exportation of motor vehicle fuel from this state in the fuel supply tank of a motor vehicle must be filed with the department before the expiration of 15 months from the last day of the month in which the fuel was used, or before the expiration of 15 months from the date of an assessment for unpaid tax by the state in which the fuel was used. [Amended by 1955 c.730 §9; 1963 c.257 §3; 1979 c.344 §5]

319.300 Seller to give invoice for each purchase made by person entitled to refund. (1) When motor vehicle fuel is sold to a person who claims to be entitled to a refund of the tax imposed, the seller of the motor vehicle fuel shall make and deliver at the time of the sale separate invoices for each purchase in such form and containing any information prescribed by the Department of Transportation.

(2) The invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. Any person who alters any part of any invoice that will tend to give to the claimant an illegal gain, shall have the entire claim invalidated. The seller shall for a period of at least 18 months retain copies of all invoices and make them available to the department upon request. [Amended by 1953 c.77 §2; 1955 c.730 §10; 1957 c.209 §7]

319.310 Claims for refunds may be required to be under oath; investigation of claims. (1) The Department of Transportation may require any person who makes claim for refund of tax upon motor vehicle fuel to furnish a statement, under oath, giving the occupation, description of the machines or equipment in which the motor vehicle fuel was used, the place where used and such other information as the department may require.

(2) The department may investigate claims and gather and compile such information in regard to the claims as it considers necessary to safeguard the state and prevent fraudulent practices in connection with tax refunds and tax evasions. The department may, in order to establish the validity of any claim, examine the books and records of the claimant for such purposes. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the department may require. Failure of the claimant to maintain such records or to accede to the demand for such examination constitutes a waiver of all rights to the refund claimed on account of the transaction questioned. [Amended by 1959 c.186 §4]

319.320 Refund of tax on fuel used in operation of vehicles over certain roads or private property. (1) Upon compliance with subsection (2) or (3) of this section the Department of Transportation shall refund, in the manner provided in subsection (2) or (3) of this section, the tax on motor vehicle fuel that is used in the operation of a motor vehicle:

(a) By any person on any road, thoroughfare or property in private ownership.

(b) By any person on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph.

(c) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street.

(d) By any person on any county road for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(A) The use of the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such person to use such road and requiring such person to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the department.

(2) Except for a farmer subject to subsection (3) of this section, the person or agency, as the case may be, who has paid any tax on such motor vehicle fuels levied or directed to be paid, as provided by ORS 319.010 to 319.430, is entitled to claim a refund of the tax so paid on such fuels or for the proportionate part of tax paid on fuels used in the operation of such vehicles, when part of the operations are over such roads, thoroughfares or property. The proportionate part shall be based upon the number of miles traveled by any such vehicle over such roads, thoroughfares or property as compared to the total number of miles traveled by such vehicle. To be eligible to claim such refund the person or agency, as the case may be, shall first establish and maintain a complete record of the operations, miles traveled, gallons of fuel used and other information, in such form and in such detail as the department may prescribe and require, the source of supply of all fuels purchased or used, and the particular vehicles or equipment in which used. Whenever any such claim is received and approved by the department, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(3) A farmer who has paid any tax on motor vehicle fuels levied or directed to be paid, as provided in ORS 319.010 to 319.430, is entitled to claim a refund of the tax paid on such fuels used in farming operations in the operation of any motor vehicle on any road, thoroughfare or property in private ownership. To be eligible to claim such refund a farmer shall maintain in such form and in such detail as the department may prescribe and require, a record, supported by purchase invoices, of all such motor vehicle fuel purchased (including fuel purchased to operate any motor vehicle on the highway) and, for each and every motor vehicle operated on the highway, a record of all fuel used and of all miles traveled on the highway. Whenever any such claim is received and approved by the department, it shall cause the refund of tax to be paid to the claimant in like manner as provided for paying of other refund claims.

(4) As used in subsections (2) and (3) of this section, "farmer" includes any person who manages or conducts a farm for the production of livestock or crops but does not include a person who manages or conducts a farm for the production of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or of forest trees unless the production of such forest products or forest trees is only incidental to the primary purpose of the farming operation. [Amended by 1961 c.368 §1; 1965 c.64 §1; 1965 c.425 §2; 1967 c.367 §2; 1979 c.344 §6]

319.330 Refunds to purchasers of fuel for aircraft. (1) Whenever any statement and invoices are presented to the Department of Transportation showing that motor vehicle fuel or aircraft fuel has been purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid, the department shall refund the tax paid, but only after deducting from the tax paid nine cents for each gallon of such fuel so purchased and used, except that when such fuel is used in operating air-

craft turbine engines (turbo-prop or jet) the deduction shall be one cent for each gallon. No deduction provided under this subsection shall be made on claims presented by the United States or on claims presented where a satisfactory showing has been made to the department that such aircraft fuel has been used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States. The amount so deducted shall be paid on warrant of the Oregon Department of Administrative Services to the State Treasurer, who shall credit such amount to the State Aviation Account for the purpose of carrying out the provisions of the state aviation law, and such amounts hereby are appropriated for such purposes.

(2) If satisfactory evidence is presented to the Department of Transportation showing that aircraft fuel upon which the tax has been paid has been purchased and used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States, the department shall refund the tax paid. [Amended by 1959 c.505 §6; 1973 c.575 §1; 1977 c.293 §2; 1999 c.935 §26; 1999 c.1037 §§2,4]

319.340 [Amended by 1959 c.203 §1; repealed by 1979 c.344 §11]

319.350 [Amended by 1971 c.118 §1; repealed by 1979 c.344 §11]

319.360 [Amended by 1957 c.209 §8; repealed by 1979 c.344 §11]

319.370 Examinations and investigations; correcting reports and payments. The Department of Transportation, or its duly authorized agents, may make any examination of the accounts, records, stocks, facilities and equipment of dealers, brokers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this state, and such other investigations as it considers necessary in carrying out the provisions of ORS 319.010 to 319.430. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the department pursuant to the requirements of ORS 319.010 to 319.430, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax, penalty or interest accruing thereon, the department may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations. [Amended by 1987 c.610 §14]

319.375 Limitation on credit for or refund of overpayment and on assessment of additional tax. (1) Except as otherwise provided in ORS 319.010 to 319.430, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the state.

(2) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under ORS 319.010 to 319.430 shall be served on dealers within three years from the date upon which such additional taxes become due. [1955 c.730 §14; 1987 c.610 §15]

319.380 Examining books and accounts of carrier of motor vehicle fuel. The Department of Transportation or its duly authorized agents may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within this state for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes on same in enforcing the provisions of ORS 319.010 to 319.430.

319.382 Agreements for refunds to Indian tribes. Notwithstanding any other provision of law, the Department of Transportation may enter into agreements with the governing body of any Indian tribe residing on a reservation in Oregon to provide refunds to the tribe of state motor vehicle fuel taxes for fuel purchased on the reservation and used by tribal members on tribal reservation lands, other than for motor vehicle fuel used on state highways, county roads or city streets supported by the State Highway Fund. [1993 c.706 §2]

Note: 319.382 was added to and made a part of 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.390 Records to be kept by dealers; inspection of records. Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the Department of Transportation of all purchases, receipts, sales and distribution of motor fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the department or its deputies or other officers duly authorized by the department. Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax law of another state, territory, country or the federal government, the department shall forward to such officials any information which it may have relative to the import or export of any motor vehicle fuel by any dealer, provided such other state, territory, country or federal gov-

ernment furnishes like information to this state. [Amended by 1955 c.730 §11; 1987 c.610 §16]

319.400 Records to be kept three years. Every dealer shall maintain and keep, within the State of Oregon, for a period of three years, all records of motor vehicle fuel used, sold and distributed within this state by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the Department of Transportation. [Amended by 1955 c.730 §12; 1987 c.610 §17]

319.410 Disposition of tax moneys. (1) The Department of Transportation shall promptly turn over the license tax to the State Treasurer to be disposed of as provided in ORS 802.110.

(2) The revenue from the license tax collected from the use, sale or distribution of aircraft fuel as imposed by ORS 319.020 (2) shall be transferred upon certification of the department to the State Treasurer, who shall credit such amount to the State Aviation Account for the purpose of carrying out the provisions of the state aviation laws, and such amount hereby is appropriated for such purpose. [Amended by 1955 c.287 §20; 1961 c.146 §2; 1963 c.226 §3; 1969 c.70 §1; 1983 c.338 §909; 1993 c.741 §29; 1999 c.935 §27]

319.415 Estimate of tax on fuel used for boats; transfer to Boating Safety, Law Enforcement and Facility Account; use. (1) On or before July 15, 1987, and on or before July 15 of each year thereafter, the Oregon Department of Administrative Services, after consultation with the Department of Transportation and the State Marine Board, shall determine the amount of the motor vehicle fuel tax imposed under ORS 319.010 to 319.430 during the preceding fiscal year with respect to fuel purchased and used to operate or propel motor boats. The amount determined shall be reduced by the amount of any refunds for motor boats used for commercial purposes actually paid during the preceding year on account of ORS 319.280 (1)(a).

(2)(a) The Oregon Department of Administrative Services shall estimate the amount of fuel described in subsection (1) of this section that is used to operate or propel motor boats by conducting a statistically valid, unbiased, independent survey of boat owners. The survey shall be conducted once every four years and shall be designed to estimate the average daily fuel consumption by motor boats and the total days of motor boat use per year. The survey shall be used to determine the amount of the transfer required by subsection (3) of this section for the first transfer that occurs after the survey is completed. If the tax rate changes during the fiscal year, the amount of tax to be transferred shall be prorated based on the percentage of total motor boat use taking place during each tax period.

(b) In years when no survey is conducted, the amount to be transferred under subsection (3) of this section shall be calculated by multiplying the per boat fuel consumption factors from the preceding survey by the number of motor boats as shown by the annual actual count of boat registrations. The resulting amount, in gallons per year, shall be the basis for the determination of the amount to be transferred.

(c) The survey required by paragraph (a) of this subsection shall be developed by a research department within the Oregon University System, in consultation with the State Marine Board and the Department of Transportation. The Oregon Department of Administrative Services shall contract for the development and conduct of the survey, and the costs shall be paid by the Department of Transportation. Costs paid by the Department of Transportation may be deducted from the amount transferred to the State Marine Board under subsection (3) of this section.

(3) The Oregon Department of Administrative Services shall certify the amount of the estimate made under subsection (1) of this section, as reduced by refunds, to the Department of Transportation, to the State Marine Board and to the State Treasurer. Thereupon, that amount shall be transferred from the Department of Transportation Driver and Motor Vehicle Suspense Account to the Boating Safety, Law Enforcement and Facility Account created under ORS 830.140, and is continuously appropriated to the State Marine Board for the purposes for which the moneys in the Boating Safety, Law Enforcement and Facility Account are appropriated. [1985 c.152 §4; 1993 c.741 §30; 1999 c.296 §1]

319.417 Estimate of tax on fuel used in aircraft; transfer to State Aviation Account; use. (1) On or after October 3, 1989, and on or before July 15 of each year thereafter, the Oregon Department of Administrative Services, after consultation with the Department of Transportation and the Director of the Oregon Department of Aviation shall estimate, using a methodology approved by the Oregon Transportation Commission, the amount of the motor vehicle fuel tax imposed under ORS 319.010 to 319.430 during the preceding fiscal year with respect to motor vehicle fuel purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid. The estimate shall be reduced by the amount of any refunds actually paid on motor vehicle fuel, excluding those paid on aviation gasoline or jet fuel, during the pre-

ceding fiscal year pursuant to ORS 319.330 (1).

(2) The Oregon Department of Administrative Services shall certify the amount of the estimate made under subsection (1) of this section to the Department of Transportation, the Director of the Oregon Department of Aviation and the State Treasurer. Thereupon, the amount of the estimate shall be transferred from the Department of Transportation Driver and Motor Vehicle Suspense Account to the State Aviation Account and is continuously appropriated to the Oregon Department of Aviation to carry out the purposes of ORS chapters 835, 836 and 837. [1989 c.101 §2; 1993 c.741 §31; 1999 c.935 §28]

Note: 319.417 was added to and made a part of 319.010 to 319.430 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

319.420 ORS 319.510 to 319.880 not affected. ORS 319.010 to 319.410 do not affect or repeal any of the provisions of ORS 319.510 to 319.880.

319.430 Savings clause. All rights and obligations arising under the provisions of the statutes repealed in section 38, chapter 413, Oregon Laws 1945, shall not in any way be affected by such repeal. Such statutes shall be considered in full force and effect for the purpose of carrying out all duties and obligations contracted or arising under such statutes, prior to June 16, 1945.

USE FUEL TAX

319.510 Short title. ORS 319.510 to 319.880 may be cited as the Use Fuel Tax Law of 1943.

319.520 Definitions for ORS 319.510 to 319.880. As used in ORS 319.510 to 319.880, unless the context clearly indicates a different meaning:

(1) "Combined weight" means the total empty weight of all vehicles in a combination plus the total weight of the load carried on that combination of vehicles.

(2) "Delinquent" means having failed to pay a tax or penalty within the time provided by law.

(3) "Department" means the Department of Transportation.

(4) "Fuel" means any combustible gas, liquid or material of a kind used for the generation of power to propel a motor vehicle on the highways except motor vehicle fuel as defined in ORS 319.010.

(5) "Highway" means every way, thoroughfare and place, of whatever nature, open to the use of the public for the purpose of vehicular travel.

(6) "Light weight" means the weight of a vehicle when fully equipped for moving over the highway.

(7) "Motor vehicle" means every self-propelled vehicle operated on the highway, except an implement of husbandry used in agricultural operations and only incidentally operated or moved upon the highway.

(8) "Person" means any individual, firm, copartnership, joint venture, association, corporation, trust, receiver or any group or combination acting as a unit.

(9) "Seller" means:

(a) A person that sells fuel to a user; or

(b) If the fuel is dispensed at a nonretail facility as defined in ORS 480.310, the person that owns the user's accounts and bills the user for fuel purchased at a nonretail facility.

(10) "To sell fuel for use in a motor vehicle" means to dispense or place fuel for a price into a receptacle on a motor vehicle, from which receptacle the fuel is supplied to propel the motor vehicle.

(11) "To use fuel in a motor vehicle" means to receive into any receptacle on a motor vehicle, fuel to be consumed in propelling the motor vehicle on the highways of this state; and, if the fuel is received into the receptacle outside the taxing jurisdiction of the state, "to use fuel in a motor vehicle" means to consume in propelling the motor vehicle on the highways of this state. [Amended by 1955 c.287 §21; 1959 c.188 §1; 1977 c.429 §1; 1981 c.703 §1; 1989 c.992 §24a; 1991 c.284 §5; 1993 c.741 §32; 2003 c.99 §1]

319.525 Agreements with Indian tribes. Notwithstanding any other provision of law, the Department of Transportation may enter into agreements with the governing body of any Indian tribe residing on a reservation in Oregon to provide for the administration of the tax imposed under ORS 319.510 to 319.880. [2001 c.305 §2]

319.530 Imposition of tax; rate. (1) To compensate this state partially for the use of its highways, an excise tax hereby is imposed at the rate of 24 cents per gallon on the use of fuel in a motor vehicle. Except as otherwise provided in subsections (2) and (3) of this section, 100 cubic feet of fuel used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

(2) One hundred twenty cubic feet of compressed natural gas used or sold in a gaseous state, measured at 14.73 pounds per square inch of pressure at 60 degrees Fahrenheit, is taxable at the same rate as a gallon of liquid fuel.

(3) One and three-tenths liquid gallons of propane at 60 degrees Fahrenheit is taxable at the same rate as a gallon of other liquid fuel. [Amended by 1959 c.188 §2; 1967 c.463 §2; 1981 c.698 §2; 1981 c.703 §2; 1983 c.727 §§2,6; 1985 c.209 §13; 1987 c.899 §§9,11,15; 1989 c.865 §2; 1991 c.497 §§8,9; 1995 c.311 §1]

319.540 [Repealed by 1959 c.188 §44]

319.550 User's license required to use fuel; exceptions. No person shall use fuel in a motor vehicle in this state unless the person holds a valid user's license, except that:

(1) A nonresident may use fuel in a motor vehicle not registered in Oregon for a period not exceeding 30 days without obtaining a user's license or the emblem provided in ORS 319.600, if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(2) No user's license is required for a person who uses fuel in a motor vehicle with a combined weight of 26,000 pounds or less if, for all fuel used in a motor vehicle in this state, the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(3) No user's license is required for a person who uses fuel as described in ORS 319.520 (4) in the vehicles specified in subsection (4) of this section if the person pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(4) Subsection (3) of this section applies to the following vehicles:

(a) Motor homes as defined in ORS 801.350.

(b) Recreational vehicles as defined in ORS 446.003. [Amended by 1959 c.188 §3; 1977 c.429 §2; 1985 c.265 §1; 1989 c.992 §25; 1991 c.284 §8]

319.560 Application for and issuance of user's license. A user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall apply to the Department of Transportation for a user's license upon forms prescribed by the department and shall set forth such information as the department may require. On receipt of the application, the department may issue to the applicant a user's license without charge authorizing the applicant to use fuel in a motor vehicle in this state. The license is valid only for the person in whose name it is issued and is valid until canceled or revoked. [Amended by 1959 c.188 §4; 1977 c.429 §3; 1999 c.769 §21]

319.570 Faithful performance bond. (1) At the time of filing the application for a user's license, the Department of Transportation may require the user of fuel in a motor vehicle to file with the department, in such form as shall be prepared by the department, a bond duly executed by the user as principal with a corporate surety authorized to transact business in this state. The bond shall be payable to the State of Oregon conditioned upon faithful performance of all the requirements of ORS 319.510 to 319.880, including the payment of all taxes, penalties and other obligations of such user arising out of ORS 319.510 to 319.880 and 319.990 (4).

(2) The total amount of the bond or bonds required of any user of fuel in a motor vehicle shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations provided in this section. The total amount of the bond or bonds required of any user of fuel in a motor vehicle shall be equivalent to twice the estimated monthly tax of the user, determined in such manner as the department considers proper. However, the total amount of the bond or bonds required of any user of fuel in a motor vehicle shall never be less than $10. Any bond given in connection with ORS 319.510 to 319.880 shall be a continuing instrument and shall cover any and all periods of time including the first and all subsequent periods for which a license may be granted in consequence of the giving of the bond. The liability of the surety on the bond for the aggregate of all claims which arise thereunder shall not exceed the amount of the penalty of the bond. No recovery on any bond or any execution of any new bond shall invalidate any bond, but the total recoveries under any one bond shall not exceed the amount of the bond. [Amended by 1959 c.188 §5; 1967 c.359 §692]

319.580 Deposit in lieu of bond. In lieu of any bond or bonds in total amount as fixed under ORS 319.570, any user may deposit with the Department of Transportation, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or negotiable bonds or other obligations of the United States, the State of Oregon, or any county of this state, of an actual market value not less than the amount so fixed by the department. The department shall turn over to the State Treasurer for safekeeping all such deposits so received.

319.590 Release of surety. Any surety on a bond furnished by a user as provided in ORS 319.570 shall be released and discharged from any and all liability to the state accruing on the bond after the expiration of 60 days from the date upon which the surety has lodged with the Department of Transportation a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which accrues before the expiration of the 60-day period. The department shall promptly, upon receiving the request, notify

the user who furnished the bond, and unless the user, on or before the expiration of the 60-day period files a new bond, or makes a deposit in accordance with the requirements of ORS 319.580, the department forthwith shall cancel the user's license.

319.600 Display of emblem. Except as provided in ORS 319.550, a user of fuel in a motor vehicle shall display an emblem in a conspicuous place on each motor vehicle in connection with which fuel is used. Each such emblem shall be issued without charge by the Department of Transportation upon application by a person holding an uncanceled or unrevoked user's license and shall be displayed only upon the motor vehicle with respect to which it is issued. [Amended by 1959 c.188 §6]

319.610 [Repealed by 1959 c.188 §44]

319.611 Penalty for unlicensed use of fuel or nondisplay of authorization or emblem; waiver. (1) If any person required to be licensed under ORS 319.550 uses fuel in a motor vehicle in this state at a time when the person does not hold a valid user's license or does not display a valid authorization or user's emblem issued by the Department of Transportation, a penalty of 25 percent of the tax applicable to the fuel so used shall be imposed. The penalty so imposed shall be in addition to any other penalty imposed under the provisions of ORS 319.510 to 319.990.

(2) The department may waive any penalty provided by subsection (1) of this section that is imposed after January 1, 1998, if the department determines that there was reasonable cause for the failure to hold a valid user's license or display a valid authorization or user's emblem issued by the department and finds that there was no intent to avoid payment. [1959 c.188 §8; 1977 c.429 §4; 1997 c.275 §2; 1999 c.769 §13]

319.620 [Amended by 1955 c.476 §1; repealed by 1959 c.188 §44]

319.621 Seller's license. (1) No person shall sell fuel for use in a motor vehicle in this state unless the person holds a valid seller's license.

(2) A person shall apply to the Department of Transportation for a seller's license upon forms prescribed, prepared and furnished by the department. No charge shall be made for the license. The license is valid only for the person in whose name it is issued and is valid until canceled or revoked.

(3) The department may require an applicant for a seller's license to file with the department a bond or deposit of not less than $100 under the same terms and conditions prescribed for users in ORS 319.570, 319.580 and 319.590. [Formerly 319.670]

319.628 Grounds for refusal to issue user's or seller's license; hearing; records inspection. (1) The Department of Transportation may refuse to issue a user's license or a seller's license to a person who applies as provided in ORS 319.560 or 319.621 if the department finds that the person:

(a) Was the holder of a license revoked under ORS 319.630;

(b) Is applying for a license on behalf of a real party in interest whose license was revoked under ORS 319.630;

(c) Was an officer, director, owner or managing employee of a nonindividual licensee whose license was revoked under ORS 319.630;

(d) Owes a debt to the state under ORS 319.510 to 319.880;

(e) Had a license issued by a jurisdiction other than Oregon to sell or use untaxed use fuel that was revoked or canceled for cause, whether the license was held by the person as an individual or as an officer, director, owner or managing employee or on behalf of a real party in interest;

(f) In any jurisdiction, pleaded guilty to or was convicted of a crime directly related to the sale, use or distribution of use fuel, whether as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of use fuel;

(g) Had a civil judgment imposed for conduct involving fraud, misrepresentation, conversion or dishonesty, as an individual or as an officer, director, owner or managing employee of a business engaged in the sale or distribution of use fuel;

(h) Misrepresented or concealed a material fact in obtaining a license or in the reinstatement thereof;

(i) Violated a statute or administrative rule regarding fuel taxation or distribution;

(j) Failed to cooperate with the department's investigations by:

(A) Not furnishing requested documents;

(B) Not furnishing when requested to do so a full and complete written explanation of a matter under investigation by the department; or

(C) Not responding to a subpoena issued by the department; or

(k) Failed to comply with an order issued by the department.

(2) In addition to refusal of a license for reasons specified in subsection (1) of this section, the department may refuse to issue a user's license or seller's license for any other reason the department deems sufficient.

(3) Before refusing to issue a license under this section, the department shall grant the applicant a hearing and shall give the applicant at least 10 days' written notice of the time and place of the hearing. The hearing shall be a contested case hearing under the provisions of ORS chapter 183.

(4) For purpose of consideration of an application for a license, the department may inspect or investigate the records of this state or of any other jurisdiction to verify the information on the application and to verify the applicant's criminal and licensing history. [1999 c.769 §20]

319.630 Revocation of license; reissue of license. (1) The Department of Transportation may revoke the license of a user or seller if the user or seller fails to comply with any provision of ORS 319.510 to 319.880 or any rule or regulation adopted under ORS 319.510 to 319.880. Before revoking the license the department shall serve written notice on the person ordering the person to appear before the department at a time not less than 10 days after such service and show cause why the license should not be revoked. The notice shall be served in the manner prescribed by ORS 319.760 (3).

(2) A new license shall not be issued to a person whose license has been revoked unless it appears to the satisfaction of the department that the person will comply with the provisions of ORS 319.510 to 319.880 and the rules and regulations adopted under ORS 319.510 to 319.880. [Amended by 1959 c.188 §10]

319.640 Cancellation of license on request of user. If any person to whom a license has been issued pursuant to ORS 319.550 to 319.600 ceases using fuel within this state for a period of six months, the person shall immediately request in writing that the Department of Transportation cancel the license. On receipt of the request the department shall cancel the license.

319.650 Notifying department upon ceasing to use fuel in connection with motor vehicle. If any person ceases using fuel within this state in connection with a motor vehicle with respect to which an emblem has been issued pursuant to ORS 319.600 but continues using fuel within this state in connection with another motor vehicle or other motor vehicles, the person shall immediately notify the Department of Transportation.

319.660 Removal of emblem. Any person whose license has been revoked or canceled pursuant to ORS 319.630 or 319.640, or who is required by ORS 319.650 to notify the Department of Transportation that such person has ceased using fuel within this state in connection with a motor vehicle, immediately shall remove from the motor vehicle on which it is displayed and shall destroy or, if the department so requests, shall return to the department each emblem issued to such person under ORS 319.600 or the emblem issued with respect to the motor vehicle in connection with which such person has ceased using fuel within this state, as the case may be.

319.665 Seller to collect tax; exceptions. (1) The seller of fuel for use in a motor vehicle shall collect the tax provided by ORS 319.530 at the time the fuel is sold, unless:

(a) The vehicle into which the seller delivers or places the fuel bears a valid permit or user's emblem issued by the Department of Transportation; or

(b) The fuel is dispensed at a nonretail facility, as defined in ORS 480.310, in which case the seller shall collect any tax owed at the same time the seller collects the purchase price from the person to whom the fuel was dispensed at the nonretail facility. A seller is not required to collect the tax under this paragraph from a person who certifies to the seller that the use of the fuel is exempt from the tax imposed under ORS 319.530.

(2) The department shall supply each seller of fuel for use in a motor vehicle with a chart which sets forth the tax imposed on given quantities of fuel. [1959 c.188 §12; 1971 c.149 §1; 1977 c.429 §5; 1997 c.275 §3; 2003 c.99 §2]

319.670 [Amended by 1959 c.188 §9; renumbered 319.621]

319.671 When invoices required; contents. (1) The seller of fuel for any purpose shall make a duplicate invoice for every sale of fuel for any purpose and shall retain one copy and give the other copy to the user. The Department of Transportation may prescribe the form of the invoice. The invoice shall show:

(a) The seller's name and address;

(b) The date;

(c) The amount of the sale in gallons; and

(d) The name and address of the user.

(2) In addition to the invoice entries listed in subsection (1) of this section, the seller of fuel for use in a motor vehicle shall indicate on the invoice the amount of the tax collected, if any, and:

(a) The identification plate number, if the vehicle bears an identification plate issued by the department;

(b) The emblem number, if the vehicle bears a user's emblem;

(c) The temporary pass number or the receipt number, if the vehicle bears no valid

user's emblem or identification plate issued by the department; or

(d) The license plate number if the vehicle bears no valid user's emblem or permit issued by the department.

(3) Notwithstanding subsection (1) of this section, this section does not require any invoice to be prepared for any sale where fuel is delivered into the fuel tank of a vehicle described in this subsection unless the operator of the vehicle requests an invoice. If an invoice is prepared under this subsection, the name and address of a user is not required to be shown on the invoice for sales where the fuel is delivered into the fuel tanks of vehicles described in this subsection. This subsection applies to vehicles:

(a) That have a combined weight of 26,000 pounds or less; and

(b) For which the tax under ORS 319.530 must be paid at the time of sale under ORS 319.665. [1959 c.188 §13; 1981 c.433 §1; 1989 c.992 §26; 1991 c.284 §9; 1997 c.275 §4; 2001 c.567 §2]

319.675 Seller's report to department. Except as provided in ORS 319.692, the seller of fuel for use in a motor vehicle shall report to the Department of Transportation on or before the 20th day of each month, the amount of fuel sold, during the preceding calendar month, subject to the tax provided by ORS 319.530 and such other information pertaining to fuel handled as the department may require. The department may prescribe the form of the report. [1959 c.188 §14; 1963 c.226 §6]

319.680 [Repealed by 1959 c.188 §44]

319.681 Payment of tax by seller. The seller of fuel for use in a motor vehicle shall remit to the Department of Transportation with each report required by ORS 319.675 all the tax due on the amount of fuel sold less four percent, which the seller shall retain. [1959 c.188 §15; 1977 c.429 §6]

319.690 Monthly report of user; remittance; credit against taxes; annual reports of certain users. (1) Except as provided in subsection (2) of this section and ORS 319.692, each user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall, on or before the 20th day of each month, file with the Department of Transportation a report showing the amount of fuel used during the immediately preceding calendar month by the user and such other information as the department may require for the purposes of ORS 319.510 to 319.880. The reports shall be in the form prescribed by the department. Each report shall be accompanied by a remittance payable to the department for the amount of all the tax shown by the report to be due and payable. Any tax paid to a seller is a credit against the amount of tax otherwise due and payable to the state under ORS 319.510 to 319.880 or 825.474, 825.476 and 825.480. Also, when filing a monthly tax report, a user may, in lieu of claiming a refund, take a deduction or credit for the tax on any fuel which would otherwise be subject to refund under ORS 319.831 (1).

(2) Each user of fuel in a motor vehicle with a light weight of less than 8,000 pounds required to be licensed under ORS 319.550 may file an annual report of all fuel used upon Oregon highways. The report for each calendar year shall be filed on or before March 1 of the year following and shall be accompanied by a remittance payable to the department of all the tax shown to be due and payable on the amount of fuel used. [Amended by 1959 c.188 §16; 1963 c.226 §7; 1971 c.149 §2; 1977 c.429 §7]

319.692 Quarterly reports if average monthly tax under $300; when annual reports authorized. (1) Whenever in the judgment of the Department of Transportation the average monthly tax to be paid by a use fuel seller or user will be less than $300, the department may authorize the seller or user to file quarterly tax reports in lieu of the monthly tax reports required by ORS 319.675 and 319.690. The quarterly reports so authorized, and accompanying remittances as shown thereon to be due and payable, shall be filed on or before the due dates as follows: First quarter, April 20; second quarter, July 20; third quarter, October 20; fourth quarter, January 20. Any provisions of ORS 319.675 and 319.690 otherwise applicable to the filing of monthly reports and remittances shall be applicable to the quarterly filings.

(2) Whenever in the judgment of the department the average annual tax to be paid by a use fuel seller or user will be less than $100, the department may authorize the seller or user to file annual tax reports in lieu of the monthly tax reports required by ORS 319.675 and 319.690. The annual reports authorized by this subsection, and accompanying remittances as shown on the reports to be due and payable, shall be filed on or before January 20 following the year for which the reports are filed. Any provisions of ORS 319.675 and 319.690 otherwise applicable to the filing of monthly reports and remittances shall be applicable to the annual filings. [1963 c.226 §5; 1985 c.265 §2; 1989 c.992 §27]

319.694 Penalty for delinquency in remitting tax; waiver; interest rates. (1) Except as provided in subsection (2) of this section, if any user or seller is delinquent in remitting the tax provided by ORS 319.530 on the date specified in ORS 319.690, 319.675, 319.681 or 319.692, a penalty of 10 percent of the amount of the tax due shall be added to

the amount due and the total shall immediately be due and payable.

(2) If the Department of Transportation determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalty provided by subsection (1) of this section may be waived.

(3)(a) If the excise tax imposed by ORS 319.530 is not paid as required by ORS 319.690, 319.675, 319.681 or 319.692, interest shall be charged at the rate of.0329 percent per day until the tax and interest have been paid in full.

(b) If the excise tax imposed by ORS 319.530 is overpaid, the department may credit interest to the account of the taxpayer in the amount of.0329 percent per day up to a maximum amount that equals any interest assessed against the taxpayer under paragraph (a) of this subsection in any given audit period.

(4) No seller or user who incurs a tax liability as provided in ORS 319.510 to 319.880 shall knowingly and willfully fail to report and pay the tax liability to the department as required by ORS 319.510 to 319.880. [1959 c.188 §18; 1963 c.226 §8; 1971 c.149 §3; 1987 c.158 §51; 1987 c.610 §18; 1999 c.769 §14]

319.697 Records required of sellers and users; alternative records for certain users. (1) Every user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall keep a record of fuel used and be prepared to prove that all the tax due and payable on fuel used has been paid. An invoice, described in ORS 319.671, properly filled out, is proof that any tax due which is shown on the invoice as paid was paid for the fuel covered by the invoice. The user's record of fuel used for any purpose, other than fuel obtained from a seller who collected the tax, shall indicate the date the fuel was obtained, the name and address of the seller from whom the fuel was obtained, and the amount of fuel obtained, in gallons.

(2) In lieu of maintaining an actual record of fuel used, a user required to be licensed under ORS 319.550 who operates a motor vehicle with a light weight of less than 8,000 pounds may maintain an accurate record of miles operated upon Oregon highways. The gallons of taxable fuel used shall be computed by applying a reasonable miles per gallon figure to the Oregon miles operated. The Department of Transportation shall determine whether the miles per gallon figure is reasonable and its decision shall be final.

(3) Every seller of fuel for any purpose shall keep a record of fuel sold for any purpose and shall be prepared to prove that all the tax provided by ORS 319.530 has been remitted to the department. The department may specify the form of the seller's record.

(4) Every seller, and every user of fuel in a motor vehicle required to be licensed under ORS 319.550 shall preserve in this state for a period of three years all records of fuel used or fuel sold, together with invoices and any other relevant records or papers which may be specified by the department.

(5) The department or its authorized agent may examine every user's or seller's records and papers required to be preserved by subsection (4) of this section at any time during normal business hours. [1959 c.188 §§19,20,21,22; 1971 c.149 §4; 1977 c.429 §8]

319.700 Tax as lien. The tax and the penalty imposed upon a user of fuel in a motor vehicle by ORS 319.510 to 319.880 shall constitute a lien upon, and shall have the effect of an execution duly levied against, any motor vehicle in connection with which the taxable use is made, attaching at the time of such use. The lien shall not be removed until the tax has been paid or the motor vehicle subject to the lien has been sold in payment of such tax. The lien is paramount to all private liens or encumbrances of whatever character upon the motor vehicle and to the rights of any conditional vendor or any other holder of the legal title in or to the motor vehicle. [Amended by 1959 c.188 §23]

319.710 [Repealed by 1959 c.188 §44]

319.720 Delinquency in payment; notice to debtors of user or seller; report to department. If a user or seller is delinquent in the payment of any obligation imposed under ORS 319.510 to 319.880, the Department of Transportation may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the user or seller, or owing any debts to such user or seller, at the time of the receipt by them of the notice. Thereafter any person so notified shall neither transfer nor make other disposition of such credits, personal property or debts until the department has consented to a transfer or other disposition or until 30 days have elapsed from and after the receipt of the notice. All persons so notified shall, within five days after the receipt of the notice, advise the department of all such credits, personal property or debts in their possession, under their control or owing by them, as the case may be. [Amended by 1959 c.188 §24]

319.730 Collection of delinquent payment by seizure and sale of motor vehicle. (1) Whenever any user is delinquent in the payment of any obligation imposed under ORS 319.510 to 319.880, the Department of

Transportation may proceed to collect the amount due from the user in the manner prescribed in this section.

(2) The department shall seize any motor vehicle subject to the lien provided for by ORS 319.700 and thereafter sell it at public auction to pay such obligation and any and all costs that may have been incurred on account of the seizure and sale.

(3) Notice of the intended sale and the time and place thereof shall be given to the delinquent user and to all persons appearing of record to have an interest in the motor vehicle. The notice shall be given in writing at least 10 days before the date set for the sale by enclosing it in an envelope addressed to the user at the address as it appears in the records of the department and, in the case of any person appearing of record to have an interest in the motor vehicle, addressed to the person at the last-known residence or place of business, and depositing the envelope in the United States mail, postage prepaid. In addition, the notice shall be published at least three times, the first of which shall be not less than 10 days before the date set for the sale, in a newspaper of general circulation published in the county in which the motor vehicle seized is to be sold. If there is no newspaper of general circulation in the county, the notice shall be posted in three public places in the county for such period of 10 days.

(4) The notice shall contain a description of the motor vehicle to be sold, together with a statement of the amount due under ORS 319.510 to 319.880, the name of the user and the further statement that unless such amount is paid before the time fixed in the notice the motor vehicle will be sold in accordance with law and such notice.

(5) The department shall then proceed to sell the motor vehicle in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under ORS 319.510 to 319.880 from the delinquent user, the excess shall be returned to the user and the receipt obtained therefor. If any person having an interest in or lien upon the motor vehicle has filed with the department prior to the sale notice of such interest or lien, the department shall withhold payment of any such excess to the user pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the user shall not be available, the department shall deposit the excess with the State Treasurer as trustee for the user or for the heirs, successors or assigns of the user. [Amended by 1999 c.59 §79]

319.740 Action by Attorney General to collect delinquency; certificate of department as evidence. (1) Whenever any user or seller is delinquent in the payment of any obligation under ORS 319.510 to 319.880, the Department of Transportation may transmit notice of the delinquency to the Attorney General who shall at once proceed to collect by appropriate legal action the tax and penalty due.

(2) In any suit brought to enforce the rights of the state under ORS 319.510 to 319.880, a certificate by the department showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of ORS 319.510 to 319.880 relating to the obligation. [Amended by 1959 c.188 §25]

319.742 Collection of delinquent obligation generally; warrant; judgment lien. (1) If a person fails to pay in full any obligation due under ORS 319.510 to 319.880, the Department of Transportation may issue a warrant under the department's official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the person found within that county, for payment of the amount of the obligation and the cost of executing the warrant, and to return the warrant to the department and pay to the department the money collected from the sale by the time specified in the warrant, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the person mentioned in the warrant, the amount of the obligation for which the warrant is issued and the date when the copy is recorded. The amount of the warrant shall become a lien upon the title to and interest in property of the person against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18.

(3) The sheriff shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the Department of Transportation, a warrant of like terms, force and effect to levy upon funds of the person in possession of the Department of Revenue may be issued and directed to any agent authorized by the Department of

Transportation to collect taxes payable under ORS 319.510 to 319.880, and in the execution thereof the agent shall have all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. [1999 c.769 §9; 2003 c.576 §201]

319.744 Use of collection agency. (1) The Department of Transportation may engage the services of a collection agency to collect any obligation due to the state under ORS 319.510 to 319.880. The department may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The department may assign to the collection agency, for collection purposes only, any of the obligations due the state under ORS 319.510 to 319.880.

(3) The collection agency may bring such actions or take such proceedings, including attachment and garnishment proceedings, as may be necessary. [1999 c.769 §10]

319.746 Uncollectible obligation. (1) Any obligation due the state assigned to a collection agency pursuant to ORS 319.744 that remains uncollected for two years after the date of such assignment meets the criteria for uncollectibility formulated pursuant to ORS 293.240, and may be assigned to the Secretary of State.

(2) ORS 293.245 applies to any obligation due the state assigned to the Secretary of State pursuant to subsection (1) of this section. [1999 c.769 §11]

319.750 [Repealed by 1959 c.188 §44]

319.760 Assessment of deficiency; presumption that fuel subject to tax. (1) If the Department of Transportation is not satisfied that a report filed or amount of tax or penalty paid to the state by any user or seller is correct, the department may assess the tax and penalty due based upon any information available to the department.

(2) If a seller fails to account satisfactorily for any fuel sold or disposed of, it shall be presumed that the fuel not accounted for was sold to users for use in motor vehicles and the department shall assess the tax and penalty due against the seller.

(3) The department shall give to the user or seller written notice of the assessment. The notice may be served personally or by mail. If made by mail, service shall be made by depositing the notice in the United States mail, postage prepaid, addressed to the user or seller at the address as it appears in the records of the department. [Amended by 1959 c.188 §26]

319.770 [Repealed by 1959 c.188 §44]

319.780 Assessing tax and penalty upon failure to make report. (1) If any user or seller fails to make a report required by ORS 319.510 to 319.880, the Department of Transportation shall make an estimate, based upon any information available to the department, for the month or months with respect to which the user or seller failed to make a report, and assess the tax and penalty due from the user or seller under ORS 319.510 to 319.880.

(2) The department shall give to the user or seller written notice of the assessment in the manner prescribed by ORS 319.760 (3). [Amended by 1959 c.188 §27]

319.790 Petition for reassessment. (1) Any user or seller against whom an assessment is made under ORS 319.760 and 319.780 may petition for a reassessment within 30 days after service of notice of the assessment. If a petition is not filed within the 30-day period, the amount of the assessment becomes conclusive.

(2) If a petition for reassessment is filed within the 30-day period the Department of Transportation shall reconsider the assessment and, if requested in the petition, shall grant the user or seller an oral hearing and give the user or seller 10 days' notice of the time and place thereof. The department may continue the hearing from time to time. The department shall serve on the petitioner notice of its finding upon reassessment. If the finding is that a tax or penalty is delinquent, the petitioner shall pay to the department, within 30 days after notice is served, all the tax or penalty found to be delinquent.

(3) Notice required by this section shall be served in the manner prescribed by ORS 319.760 (3). [Amended by 1959 c.188 §28]

319.800 [Repealed by 1959 c.188 §44]

319.801 Appeal to circuit court. Any person aggrieved by a finding, order or determination by the Department of Transportation under ORS 319.630 or 319.790 may appeal therefrom to the circuit court of the county in which the person resides. Such appeal shall be taken within 60 days from the date of the entry or making of such order, finding or determination and in the manner provided by law for appeals in actions at law. [1959 c.188 §30]

319.810 Time limitation on service of notice of additional tax. Except in the case of an alleged fraudulent report, or neglect or refusal to make a report, no notice of assessment shall be served on the user or seller after three years have expired since the alleged erroneous report was filed or a report should have been filed. [Amended by 1959 c.188 §31]

319.820 Refund of tax erroneously or illegally collected. (1) If the Department of Transportation determines any amount of tax or penalty has been paid more than once or has been erroneously or illegally collected, the department shall credit such amount against any amounts then due from the user or seller under ORS 319.510 to 319.880 or 319.990 (4) and shall refund any balance to the user or seller, the successor, administrator or executor of the user or seller.

(2) A user or seller may claim a credit or refund for any amount of tax or penalty which the user or seller has paid more than once or which the user or seller has paid or which has been collected erroneously or illegally. No such claim for a credit or refund shall be allowed unless the claim is filed with the department within three years from the date of the payment or collection or, with respect to an assessment made under ORS 319.760 and 319.780, within six months after the assessment becomes conclusive, whichever period expires the later. Every such claim must be in writing and must state the specific grounds upon which it is founded. Failure to file such claim within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayments under ORS 319.510 to 319.880. Within 30 days of allowing or disallowing any such claim in whole or in part, the department shall serve notice of such action on the claimant. The service shall be made in the manner prescribed by ORS 319.760 (3). [Amended by 1959 c.188 §32]

319.830 [Repealed by 1959 c.188 §44]

319.831 Refund of tax on fuel used in operation of vehicle over certain roads or private property. (1) If a user obtains fuel for use in a motor vehicle in this state and pays the use fuel tax on the fuel obtained, the user may apply for a refund of that part of the use fuel tax paid which is applicable to use of the fuel to propel a motor vehicle:

(a) In another state, if the user pays to the other state an additional tax on the same fuel;

(b) Upon any road, thoroughfare or property in private ownership;

(c) Upon any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products, as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, or for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with or by:

(A) An agency of the United States;

(B) The State Board of Forestry;

(C) The State Forester; or

(D) A licensee of an agency named in subparagraph (A), (B) or (C) of this paragraph;

(d) By an agency of the United States or of this state or of any county, city or port of this state on any road, thoroughfare or property, other than a state highway, county road or city street;

(e) By any incorporated city or town of this state;

(f) By any county of this state or by any road assessment district formed under ORS 371.405 to 371.535;

(g) Upon any county road for the removal of forest products as defined in ORS 321.005, or the products of such forest products converted to a form other than logs at or near the harvesting site, if:

(A) Such use upon the county road is pursuant to a written agreement entered into with, or to a permit issued by, the State Board of Forestry, the State Forester or an agency of the United States, authorizing such user to use such road and requiring such user to pay for or to perform the construction or maintenance of the county road;

(B) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of such county road; and

(C) Copies of the agreements or permits required by subparagraphs (A) and (B) of this paragraph are filed with the Department of Transportation;

(h) By a school district or education service district of this state or the contractors of a school district or education service district, for those vehicles being used to transport students;

(i) By a rural fire protection district organized under the provisions of ORS chapter 478;

(j) By any district, as defined in ORS chapter 198, that is not otherwise specifically provided for in this section; or

(k) By any state agency, as defined in ORS 240.855.

(2) An application for a refund under subsection (1) of this section shall be filed with the department within 15 months after the date the use fuel tax, for which a refund is claimed, is paid.

(3) The application for a refund provided by subsection (1) of this section shall include a signed statement by the applicant indicating the amount of fuel for which a refund is claimed, and the way in which the fuel was used which qualifies the applicant for a refund. If the fuel upon which the refund is claimed was obtained from a seller to whom the use fuel tax was paid, the application shall be supported by the invoices which cover the purchase of the fuel. If the applicant paid the use fuel tax directly to the department, the applicant shall indicate the source of the fuel and the date it was obtained.

(4) The department may require any person who applies for a refund provided by subsection (1) of this section to furnish a statement, under oath, giving the person's occupation, description of the machines or equipment in which the fuel was used, the place where used and such other information as the department may require. [1959 c.188 §§34,35,36(1); 1961 c.542 §1; 1963 c.257 §4; 1965 c.425 §3; 1967 c.367 §3; 1971 c.118 §2; 1979 c.344 §7; 1999 c.696 §1; 2001 c.927 §1]

319.835 Investigation of refund applications. The Department of Transportation may investigate refund applications and gather and compile such information in regard to the applications as it considers necessary to safeguard the state and prevent fraudulent practices in connection with tax refunds and tax evasions. The department may, in order to establish the validity of any application, examine the books and records of the applicant for such purposes. Failure of the applicant to accede to the demand for such examination constitutes a waiver of all rights to a refund on account of the transaction questioned. [1959 c.188 §36(2)]

319.840 Enforcement; rules and regulations. The Department of Transportation hereby is charged with the enforcement of the provisions of ORS 319.510 to 319.880 and 319.990 (4), and hereby is authorized to prescribe, adopt and enforce rules and regulations relating to the administration and enforcement thereof.

319.850 Presumption of use. For the purposes of the proper administration of ORS 319.510 to 319.880 and 319.990 (4) and to prevent evasion of the tax imposed by ORS 319.530, it shall be presumed, until the contrary is established under such reasonable rules as the Department of Transportation may adopt, that all fuel received into or delivered into any receptacle on a motor vehicle from which receptacle fuel is supplied to propel such motor vehicle is consumed in propelling such motor vehicle on the highways of this state. [Amended by 1959 c.188 §37]

319.860 Producers, distributors and others to keep records; examining books and records. (1) Every person producing, manufacturing, importing, distributing, storing, transporting or otherwise handling fuel shall maintain and keep in this state for a period of not less than three years such records, receipts, invoices and other pertinent papers in such form as the Department of Transportation may require.

(2) The department may examine during normal business hours the books, papers, records and equipment of any person producing, manufacturing, importing, distributing, storing, transporting or otherwise handling fuel and may investigate the character of the disposition which any such person makes of fuel in order to determine whether all taxes due under ORS 319.510 to 319.880 are being properly reported and paid. [Amended by 1959 c.188 §38]

319.870 Results of investigations to be private. It is unlawful for the Department of Transportation, or any person having an administrative duty under ORS 319.510 to 319.880, to divulge the business affairs, operations, or information obtained by an investigation of records and equipment of any user or other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. However, the department may authorize examination of such reports by, and the giving of information therein contained to other state officers, or tax officers of another state or the federal government if a reciprocal arrangement exists.

319.875 Prohibitions. (1) No person shall intentionally make a false statement in any report, petition or application required or permitted by ORS 319.510 to 319.880.

(2) No person shall intentionally collect, or attempt to collect or receive a refund of a tax or penalty paid to the Department of Transportation under ORS 319.510 to 319.880 to which the person is not entitled.

(3) No person shall intentionally aid or assist another person to violate any provision of ORS 319.510 to 319.880. [1959 c.188 §§40,41,42]

319.880 Disposition of moneys. All money received by the Department of Transportation pursuant to ORS 319.510 to 319.880 shall be turned over promptly to the State Treasurer and shall be disposed of as provided in ORS 802.110. [Amended by 1955 c.287 §22; 1961 c.146 §3; 1969 c.70 §2; 1983 c.338 §910]

PENALTIES

319.990 Penalties. (1) Any person who violates any of the provisions of ORS 319.010 to 319.430, or any person who makes any false statement in any statement required by ORS 319.010 to 319.430 for the refund of any money or tax as provided in ORS 319.010 to 319.430, or who collects or causes to be repaid to the person or any person any tax, without being entitled to it under the provisions of ORS 319.010 to 319.430, shall, upon conviction, be punished by a fine of not more than $1,000, or by imprisonment in the county jail not more than six months, or both.

(2) Violation of ORS 319.180 (6) or 319.694 (4) is theft of public money and, upon conviction, is punishable as provided in ORS 164.043 to 164.057.

(3) Violation of any provision of ORS 319.240 (4) and (5) is punishable, upon conviction, by a fine of not more than $5,000, or by imprisonment in the county jail not exceeding six months, or both.

(4) Violation of any provision of ORS 319.510 to 319.880 is a misdemeanor.

(5) Justice courts have concurrent jurisdiction with the circuit court of all violations under the provisions of ORS 319.010 to 319.125 and 319.190 to 319.430, 319.510 to 319.880 or this section. [Amended by 1959 c.188 §43; 1961 c.261 §3; 1971 c.743 §355; 1987 c.610 §19; 1987 c.907 §15; 1999 c.769 §15]

Chapter 323
(Partial)

2003 EDITION

Cigarette Tax

IMPOSITION OF TAX

323.030 Tax imposed; rate; exclusiveness; only one distribution taxed

(Temporary provisions relating to cigarette taxes are compiled as notes following ORS 323.030)

DISTRIBUTION OF TAX REVENUES

323.455 Distribution of certain cigarette tax revenues

IMPOSITION OF TAX

323.030 Tax imposed; rate; exclusiveness; only one distribution taxed. (1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of 29 mills for the distribution of each cigarette in this state.

(2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes.

(3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482. [1965 c.525 §§18,30; 1971 c.535 §1; 1985 c.816 §1; 1989 c.866 §1; 1997 c.2 §1; 2003 c.804 §4]

Note 1: Section 3, chapter 385, Oregon Laws 1995, provides:

Sec. 3. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of five mills for the distribution of each cigarette in this state occurring prior to January 1, 2006.

(2) Any cigarette with respect to which a tax has been prepaid under section 3 of this 2003 Act [323.068] or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(3) All moneys received by the Department of Revenue from the tax imposed under this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. Amounts necessary to pay the expenses incurred by the Department of Revenue and to reimburse the Oregon State Police and the Department of Justice for the administration and enforcement of this section are continuously appropriated to the Department of Revenue from the suspense account.

(4) After the payment of administrative and enforcement expenses and refunds, the moneys in the suspense account shall be paid over and credited to the General Fund and shall be used exclusively to fund medical assistance under the Oregon Health Plan. [1995 c.385 §3; 1997 c.589 §1; 1999 c.1077 §10; 2001 c.982 §1; 2003 c.709 §1; 2003 c.804 §5]

Note 2: The amendments to section 3, chapter 385, Oregon Laws 1995, by section 1, chapter 709, Oregon Laws 2003, were referred to the people by referendum petition for their approval or rejection at a special election to be held throughout this state on February 3, 2004. See section 1, chapter 730, Oregon Laws 2003. If chapter 709, Oregon Laws 2003, is approved by the people, the amendments to section 3, chapter 385, Oregon Laws 1995, by section 1, chapter 709, become operative on March 4, 2004. The text (including amendments by section 5, chapter 804, Oregon Laws 2003) that is operative if chapter 709 is rejected by the people, and that is operative until March 4, 2004, regardless of the outcome of the election, is set forth for the user's convenience.

Sec. 3. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of five mills for the distribution of each cigarette in this state occurring prior to January 1, 2004.

(2) Any cigarette with respect to which a tax has been prepaid under section 3 of this 2003 Act [323.068] or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(3) All moneys received by the Department of Revenue from the tax imposed under this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. Amounts necessary to pay the expenses incurred by the Department of Revenue and to reimburse the Oregon State Police and the Department of Justice for the administration and enforcement of this section are continuously appropriated to the Department of Revenue from the suspense account.

(4) After the payment of administrative and enforcement expenses and refunds, the moneys in the suspense account shall be paid over and credited to the General Fund and shall be used exclusively to fund the Oregon Health Plan as described under ORS 414.019.

Note 3: The amendments to section 3, chapter 385, Oregon Laws 1995, by section 5d, chapter 804, Oregon Laws 2003, become operative January 1, 2008. See section 67, chapter 804, Oregon Laws 2003. The text that, if chapter 709, Oregon Laws 2003, is approved by the people (see Note 2), is operative on and after January 1, 2008, is set forth for the user's convenience.

Sec. 3. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of five mills for the distribution of each cigarette in this state occurring prior to January 1, 2006.

(2) Any cigarette with respect to which a tax has been prepaid under section 3 of this 2003 Act [323.068] or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(3) All moneys received by the Department of Revenue from the tax imposed under this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445.

(4) After the payment of refunds, the moneys in the suspense account shall be paid over and credited to the General Fund and shall be used exclusively to fund medical assistance under the Oregon Health Plan.

Note 4: The amendments to section 3, chapter 385, Oregon Laws 1995, by section 5d, chapter 804, Oregon Laws 2003, become operative January 1, 2008. See section 67, chapter 804, Oregon Laws 2003. The text that, if chapter 709, Oregon Laws 2003, is rejected by the people (see Note 2), is operative on and after January 1, 2008, is set forth for the user's convenience.

Sec. 3. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of five mills for the distribution of each cigarette in this state occurring prior to January 1, 2004.

(2) Any cigarette with respect to which a tax has been prepaid under section 3 of this 2003 Act [323.068] or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(3) All moneys received by the Department of Revenue from the tax imposed under this section shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445.

(4) After the payment of refunds, the moneys in the suspense account shall be paid over and credited to the General Fund and shall be used exclusively to fund the Oregon Health Plan as described under ORS 414.019.

Note 5: Section 28, chapter 442, Oregon Laws 1995, provides:

Sec. 28. Nothing in section 1 (3) or 3 (4), chapter 385, Oregon Laws 1995, requires the establishment of a dedicated fund account or a specific limitation for the expenditure of funds. [1995 c.442 §28; 2003 c.804 §5a]

DISTRIBUTION OF TAX REVENUES

323.455 Distribution of certain cigarette tax revenues. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. Amounts necessary to pay the expenses incurred by the Department of Revenue and to reimburse the Oregon State Police and the Department of Justice for the administration and enforcement of ORS 323.005 to 323.482 are continuously appropriated to the Department of Revenue from the suspense account. After the payment of administrative and enforcement expenses and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly and disabled individuals as provided in ORS 391.800 to 391.830.

(2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832. [1965 c.525 §93; 1969 c.299 §1; 1971 c.535 §7; 1975 c.527 §1; 1981 c.797 §7; 1985 c.816 §13; 1989 c.224 §52; 1989 c.866 §7; 1997 c.2 §2; 1999 c.21 §59; 2001 c.114 §49; 2003 c.804 §27a]

Note: The amendments to 323.455 by section 27b, chapter 804, Oregon Laws 2003, become operative January 1, 2008. See section 67, chapter 804, Oregon Laws 2003. The text that is operative on and after January 1, 2008, is set forth for the user's convenience.

323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly and disabled individuals as provided in ORS 391.800 to 391.830.

(2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the benefits available under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431.832.

TITLE 31

HIGHWAYS, ROADS, BRIDGES AND FERRIES

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Chapter 366

2003 EDITION

State Highways and State Highway Fund

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GENERAL PROVISIONS

366.005 Definitions. As used in this chapter and in ORS chapter 367, unless the context requires otherwise:

(1) "Chief engineer" or "engineer" means the person designated by the director under ORS 184.628.

(2) "Commission" means the Oregon Transportation Commission.

(3) "Department" means the Department of Transportation.

(4) "Director" means the Director of Transportation.

(5) "Federal funds" means any funds provided by the United States for cooperative road work with states, counties, cities or other municipal subdivisions of the state under Acts of Congress enacted for those purposes.

(6) "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

(7) "Highway fund" means the State Highway Fund.

(8) "State highway" means any road or highway designated as such by law or by the Oregon Transportation Commission pursuant to law and includes both primary and secondary state highways.

(9) "This Act" means this chapter and ORS 105.760, 373.010, 373.015, 373.020 and 373.030. [Amended by 1969 c.599 §16; 1973 c.249 §28; 1979 c.186 §8; 1989 c.904 §34; 1993 c.741 §34; 2003 c.618 §44]

366.010 "County court" and "road" or "highway" defined. As used in this Act:

(1) "County court" includes all county officers or boards charged by law with the duty of building, constructing, repairing, altering or maintaining roads or bridges, or both.

(2) "Road" or "highway" includes necessary bridges and culverts, and city streets, subject to such restrictions and limitations as are provided.

366.015 "Hard surfaced highways" defined. As used in all highway Acts, "hard surfaced highways" means any state road or highway constructed and surfaced or to be constructed and surfaced with such materials or combinations of materials as to produce what is commonly known or styled "pavement," and not such construction or surfacing as is commonly known as "macadam."

366.105 [Amended by 1969 c.599 §17; 1971 c.598 §1; 1973 c.249 §29; 1979 c.186 §9; repealed by 1993 c.741 §147]

366.110 [Amended by 1969 c.314 §29; repealed by 1973 c.249 §91]

366.112 Bicycle lane and path advisory committee; members, terms, duties and powers; meetings. (1) There is created in the Department of Transportation an advisory committee to be appointed by the Governor to advise the department regarding the regulation of bicycle traffic and the establishment of bicycle lanes and paths. The committee shall consist of eight members including an employee of a unit of local government employed in land use planning, a representative of a recognized environmental group, a person engaged in the business of selling or repairing bicycles, a member designated by the Oregon Recreation Trails Advisory Council, and at least one member under the age of 21 at the time of appointment. Members of the advisory committee shall be entitled to compensation and expenses as provided by ORS 292.495.

(2) The members shall be appointed to serve for terms of four years each. A vacancy on the committee shall be filled by appointment by the Governor for the unexpired term.

(3) The committee shall meet regularly four times a year, at times and places fixed by the chairperson of the committee. The committee may meet at other times upon notice by the chairperson or three members of the committee. The department shall provide office space and personnel to assist the committee as requested by the chairperson, within the limits of available funds. The committee shall adopt rules to govern its proceedings and may select officers it considers necessary. [1973 c.716 §1; 1993 c.741 §35]

Note: 366.112 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.115 [Repealed by 1973 c.249 §91]

366.120 [Repealed by 1973 c.249 §91]

366.125 [Repealed by 1973 c.249 §91]

366.130 [Repealed by 1971 c.418 §23]

366.135 [Amended by 1953 c.129 §2; repealed by 1973 c.249 §91]

366.140 [Amended by 1953 c.129 §2; repealed by 1973 c.249 §91]

366.145 [Amended by 1971 c.598 §2; 1973 c.249 §30; 1979 c.186 §10; repealed by 1993 c.741 §147]

366.150 Bond of director. The Director of Transportation shall furnish a fidelity bond executed by a company duly licensed to transact the business of surety within this state, in such penal sum, not less than $200,000, as the Oregon Transportation Commission shall determine. The bond shall be conditioned for the faithful discharge by the director of the duties of office, for the faithful performance by all persons employed by

the director of their duties and trusts therein and for the transfer and delivery to the director's successor in office, or to any other person authorized by law to receive the same, of all moneys, books, papers, records and other articles and effects belonging to the office. The premium for the bond shall be paid out of highway funds. [Amended by 1971 c.598 §3; 1973 c.249 §31]

366.155 Duties and powers of department regarding highways; assistance to counties and State Parks and Recreation Department. (1) The Department of Transportation shall, among other things:

(a) So far as practicable, compile statistics relative to the public highways of the state and collect all information in regard thereto which the Director of Transportation may deem important or of value in connection with highway location, construction, maintenance, improvement or operation.

(b) Keep on file in the office of the department copies of all plans, specifications and estimates prepared by the department.

(c) Make all necessary surveys for the location or relocation of highways and cause to be made and kept in the department a general highway plan of the state.

(d) Collect and compile information and statistics relative to the mileage, character and condition of highways and bridges in the different counties in the state, both with respect to state and county highways.

(e) Investigate and determine the methods of road construction best adapted in the various counties or sections of the state, giving due regard to the topography, natural character and availability of road-building materials and the cost of building and maintaining roads under this Act.

(f) Prepare surveys, plans, specifications and estimates for the construction, reconstruction, improvement, maintenance and repair of any bridge, street, road and highway. In advertising for bids on any such project the director shall invite bids in conformity with such plans and specifications.

(g) Keep an accurate and detailed account of all moneys expended in the location, survey, construction, reconstruction, improvement, maintenance or operation of highways, roads and streets, including costs for rights of way, under this Act, and keep a record of the number of miles so located, constructed, maintained or operated in each county, the date of construction, the width of such highways and the cost per mile for the construction and maintenance of the highways.

(h) Upon request of a county governing body, assist the county on matters relating to road location, construction or maintenance. Plans and specifications for bridges or culverts that are provided under this paragraph shall be provided without cost to the 10 counties with the lowest dedicated county road funding, as defined in ORS 366.772. Standard specifications for road projects shall be provided without cost to all counties. The Department of Transportation shall determine an amount to be charged for assistance under this paragraph in establishing specifications and standards for roads under ORS 368.036. The costs of assistance not specifically provided for under this paragraph shall be paid as provided by agreement between the county governing body and the director.

(i) Upon request of the State Parks and Recreation Department, assist the State Parks and Recreation Department in evaluating the potential need for construction, reconstruction, improvement, maintenance or operation of highways, roads and streets that would result if the State Parks and Recreation Commission acquired and developed a new historic site, park or recreation area under the criteria established pursuant to ORS 390.112 or any other criteria for acquisition established by the State Parks and Recreation Commission.

(2) The director may require duties with respect to audits and accounting procedures provided for in this section and ORS 366.165 to be performed and responsibilities to be assumed by the fiscal officer of the department appointed under ORS 184.637.

(3) In carrying out the duties set forth in this section, the director shall act in a manner that is consistent with the goal set forth in ORS 468B.155. [Amended by 1967 c.454 §33; 1971 c.598 §4; 1973 c.249 §32; 1981 c.153 §60; 1989 c.345 §6; 1989 c.833 §49; 1993 c.741 §36; 1995 c.79 §201; 1999 c.1038 §1; 2003 c.618 §22]

366.157 Program for prevention of vandalism and prevention and cleanup of litter. The Department of Transportation shall administer a program aimed toward prevention of vandalism and prevention and cleanup of litter. The program may include public informational activities, but shall be directed primarily toward encouraging and facilitating involvement of youth in prevention of vandalism and litter and in litter cleanup work. Moneys for the program are provided from the Environmental Quality Information Account described under ORS 802.100. [Formerly 802.080]

366.158 Adopt-a-Highway Program; rules. (1) The Department of Transportation shall administer a program aimed toward beautifying and cleaning state roadsides. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating involve-

ment of volunteer groups in litter cleanup work, each group on a specific section of highway. The program shall be called the Oregon Adopt-a-Highway Program. Moneys for the program shall be provided from funds available to the department. The department may adopt any rules it considers necessary for implementation of the Oregon Adopt-a-Highway Program.

(2) An agreement entered into between the department and a volunteer group pursuant to subsection (1) of this section shall include but need not be limited to:

(a) Identification of the designated section of highway. The volunteer group may request a specific section of highway it wishes to adopt, but the assignment shall be at the discretion of the department.

(b) Specification of the duties of the volunteer group. The group shall remove litter along the designated section of highway at least four times each year.

(c) Specification of the responsibilities of the volunteer group. The group shall agree to abide by all rules related to the program that are adopted by the department.

(d) Duration of the agreement. The volunteer group may contract to care for the designated section of highway for one, two or three years.

(3) A sign identifying the group and recognizing the group's contribution shall be placed by the department at each end of the section of highway adopted by the group unless the department determines that doing so would be unsafe to persons using the highway.

(4) The department shall provide reflective vests, garbage bags and highway signs for the participating volunteer groups. [1991 c.486 §2]

366.159 Vegetation control permit; fee. (1) The Department of Transportation may issue a vegetation control permit to a person who holds a sign permit issued pursuant to ORS 377.700 to 377.840. A vegetation control permit authorizes the holder of the permit to control vegetation in the right of way of a state highway, in accordance with the provisions of this section, in order to keep the sign visible to the traveling public.

(2) The department may not issue a vegetation control permit for a scenic area as defined in ORS 377.505.

(3) The department may not issue a vegetation control permit for the right of way of a portion of state highway that is access controlled, or for which access rights have not accrued to the abutting property unless:

(a) Access to the right of way is from the abutting property; and

(b) The access does not breach, violate, destroy or otherwise diminish the effectiveness or purpose of fences or other physical barriers to the right of way.

(4) The department may charge a fee to the person issued a vegetation control permit under this section. The amount of the fee shall be determined by the department and shall be designed to recover the cost to the department of issuing the permit. [2001 c.508 §7]

366.160 [Amended by 1967 c.454 §34; 1971 c.598 §5; 1973 c.249 §33; 1979 c.186 §11; repealed by 1989 c.345 §7; 1991 c.486 §2]

366.165 Revolving fund. (1) The revolving fund in the amount of $400,000 established by warrant drawn on any fund belonging to the state highway funds in favor of the Director of Transportation is continued.

(2) The revolving fund shall be deposited with the State Treasurer. The fund shall be at the disposal of the director. The director may designate persons authorized to pay claims from the fund and shall specify the maximum amount of money each designee may draw from the fund. The fund may be used:

(a) To pay salaries, travel expenses, compensation or payments for real property purchased or otherwise acquired, and emergency claims; or

(b) To secure or take advantage of trade discounts and to pay for services, materials and capital outlay.

(3) All vouchers for claims paid from the fund shall be approved by the director and audited by the fiscal officer of the Department of Transportation. When claims are so approved and audited, warrants covering them shall be drawn in favor of the director and shall be used by the director to reimburse the fund. [Amended by 1957 c.9 §1; 1967 c.454 §35; 1969 c.87 §1; 1971 c.598 §6; 1973 c.249 §34; 1979 c.186 §12; 1987 c.265 §1; 1993 c.741 §37]

366.170 [Amended by 1973 c.249 §35; repealed by 1993 c.741 §147]

366.175 [Amended by 1959 c.611 §1; renumbered 390.120]

366.180 [Amended by 1959 c.611 §2; renumbered 390.130]

366.182 [1959 c.611 §§5,6; renumbered 390.140]

366.183 [1959 c.611 §7; renumbered 390.150]

366.185 [1957 c.635 §2; 1971 c.481 §11a; 1971 c.598 §7; 1973 c.249 §36; repealed by 1979 c.186 §30]

POWERS AND DUTIES OF OREGON TRANSPORTATION COMMISSION

366.205 Power and authority of commission over highways; rules. (1) The Oregon Transportation Commission has general supervision and control over all matters pertaining to the selection, establishment, lo-

cation, construction, improvement, maintenance, operation and administration of state highways, the letting of contracts therefor, the selection of materials to be used therein and all other matters and things considered necessary or proper by the commission for the accomplishment of the purposes of this Act.

(2) The commission has full power to carry out the provisions of and may make such rules as it considers necessary for the accomplishment of the purposes of this Act, as defined in ORS 366.005.

(3) The Director of Transportation, as authorized by the commission, shall appoint such officials and do any other act or thing necessary to fully meet the requirements of ORS 366.510. [Amended by 1963 c.601 §1; 1965 c.368 §6; 1973 c.249 §37; 1975 c.436 §8; 1985 c.565 §64; 1989 c.904 §35; 1993 c.741 §38]

366.210 Limit on administration and engineering expenditure. The total cost in any one year for administration and engineering of highway construction shall not exceed 10 percent of the total funds available to the Department of Transportation during that year for its highway activities. [Amended by 1973 c.249 §38; 1993 c.741 §39]

FREIGHT ADVISORY COMMITTEE

366.212 Freight Advisory Committee. (1) There is created the Freight Advisory Committee to be appointed by the Director of Transportation to advise the director and the Oregon Transportation Commission regarding issues, policies and programs that impact multimodal freight mobility in Oregon.

(2) The director shall have discretion to determine the number of committee members and the duration of membership. The committee membership shall include, but not be limited to, representatives from the shipping and carrier industries, the state, local governments and ports, including the Port of Portland.

(3) The committee shall:

(a) Elect a chairperson and a vice chairperson.

(b) Meet at least four times a year.

(c) Provide input on statewide and regional policies and actions that impact freight mobility.

(d) Provide input on the development of policy and planning documents that impact freight mobility.

(e) Advise the commission and regionally based advisory groups about the Statewide Transportation Improvement Program and the program's consideration and inclusion of highest priority multimodal freight mobility projects in each Department of Transportation region.

(4) The committee may make recommendations for freight mobility projects to the commission. In making the recommendations, the committee shall give priority to multimodal projects.

(5) The Department of Transportation shall provide policy and support staff to the committee. The department shall also provide other personnel to assist the committee as requested by the chairperson and within the limits of available funds. [2001 c.240 §2; 2003 c.618 §46]

STATE HIGHWAYS

366.215 Creation of state highways; reduction in vehicle-carrying capacity. (1) The Oregon Transportation Commission may select, establish, adopt, lay out, locate, alter, relocate, change and realign primary and secondary state highways.

(2) Except as provided in subsection (3) of this section, the commission may not permanently reduce the vehicle-carrying capacity of an identified freight route when altering, relocating, changing or realigning a state highway unless safety or access considerations require the reduction.

(3) A local government, as defined in ORS 174.116, may apply to the commission for an exemption from the prohibition in subsection (2) of this section. The commission shall grant the exemption if it finds that the exemption is in the best interest of the state and that freight movement is not unreasonably impeded by the exemption. [Amended by 1977 c.312 §2; 2003 c.618 §38]

366.220 Creation of state highway system. (1) The Oregon Transportation Commission may select, establish, designate, construct, maintain, operate and improve or cause to be constructed, maintained, operated and improved a system of state highways within the state, which highways shall be designated by name and by the point of beginning and terminus thereof. The system of state highways shall include such other highways as may from time to time be selected and adopted by the commission pursuant to law and all highways adopted and classified as secondary state highways which are subject to and qualified for construction, improvement, betterment and maintenance as are other state highways.

(2) The commission may classify and reclassify the highways comprising the state highway system as primary and secondary highways. Secondary highways may consist of newly established highways, reclassified primary highways and county roads selected

pursuant to ORS 366.290. [Amended by 1953 c.252 §2; 1977 c.312 §3]

366.225 [Amended by 1953 c.252 §2; 1957 c.123 §1; repealed by 1977 c.312 §4]

366.226 [Amended by 1953 c.252 §2; 1957 c.123 §2; repealed by 1977 c.312 §4]

366.227 [Amended by 1953 c.252 §2; 1957 c.123 §3; repealed by 1977 c.312 §4]

366.228 [Amended by 1957 c.123 §4; repealed by 1977 c.312 §4]

366.229 [Repealed by 1977 c.312 §4]

366.230 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.231 [Repealed by 1977 c.312 §4]

366.232 [Amended by 1953 c.252 §2; 1957 c.123 §5; repealed by 1977 c.312 §4]

366.233 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.234 [Repealed by 1977 c.312 §4]

366.235 [Amended by 1957 c.123 §6; repealed by 1977 c.312 §4]

366.236 [Repealed by 1977 c.312 §4]

366.237 [Amended by 1955 c.6 §1; repealed by 1977 c.312 §4]

366.238 [Amended by 1953 c.252 §2; 1957 c.123 §7; 1959 c.202 §1; repealed by 1977 c.312 §4]

366.239 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.240 [Repealed by 1977 c.312 §4]

366.241 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.242 [Amended by 1953 c.252 §2; 1957 c.123 §8; repealed by 1977 c.312 §4]

366.243 [Repealed by 1977 c.312 §4]

366.244 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.245 [Repealed by 1977 c.312 §4]

366.246 [Repealed by 1977 c.312 §4]

366.247 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.248 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.249 [Repealed by 1977 c.312 §4]

366.250 [Repealed by 1977 c.312 §4]

366.251 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.252 [Amended by 1957 c.123 §9; repealed by 1977 c.312 §4]

366.253 [Repealed by 1977 c.312 §4]

366.254 [Repealed by 1977 c.312 §4]

366.255 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.256 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.257 [Amended by 1953 c.252 §2; 1957 c.123 §10; repealed by 1977 c.312 §4]

366.258 [Repealed by 1977 c.312 §4]

366.259 [Repealed by 1977 c.312 §4]

366.260 [Amended by 1953 c.252 §2; 1957 c.123 §11; repealed by 1977 c.312 §4]

366.261 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.262 [Repealed by 1977 c.312 §4]

366.263 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.264 [Repealed by 1977 c.312 §4]

366.265 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.266 [Repealed by 1977 c.312 §4]

366.267 [Repealed by 1977 c.312 §4]

366.268 [Repealed by 1977 c.312 §4]

366.269 [Repealed by 1977 c.312 §4]

366.270 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.271 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.272 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.273 [Amended by 1953 c.252 §2; 1957 c.123 §12; repealed by 1977 c.312 §4]

366.274 [Repealed by 1977 c.312 §4]

366.275 [Repealed by 1977 c.312 §4]

366.276 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.277 [Amended by 1953 c.252 §2; 1957 c.123 §13; repealed by 1977 c.312 §4]

366.278 [Amended by 1953 c.252 §2; repealed by 1977 c.312 §4]

366.279 [1953 c.252 §3; repealed by 1977 c.312 §4]

366.280 [1953 c.252 §4; repealed by 1977 c.312 §4]

366.281 [1953 c.252 §5; repealed by 1957 c.123 §14]

366.282 [1953 c.252 §6; repealed by 1957 c.123 §14]

366.283 [1953 c.252 §7; repealed by 1957 c.123 §14]

366.284 [1953 c.252 §8; repealed by 1977 c.312 §4]

366.285 Location of highways when in doubt; procedure. (1) The Department of Transportation may locate, relocate, define, establish, reestablish and confirm the extension, location and establishment of primary and secondary state highways where:

(a) By reason of loss or destruction of field notes of the original surveys made by the county when such roads or highways were laid out and established by the county, defective or incomplete surveys or records, or destroyed monuments or marks, the exact original location and boundary cannot be found or ascertained.

(b) For any reason the exact location and right of way lines are in doubt or are challenged.

(2) In exercising the authority under subsection (1) of this section the procedure afforded the county with respect to public roads under ORS 368.201 to 368.221 may be followed by the department. [Amended by 1981 c.153 §61]

366.290 Adding to or removing roads from state highway system; responsibility for construction and maintenance. (1) The Department of Transportation may select, locate, establish, designate, improve and maintain out of the highway fund a system of state highways, and for that purpose may, by mutual agreement with several counties, se-

lect county roads or public roads. By an appropriate order entered in its records the department may designate and adopt such roads as state highways. Thereafter the construction, improvement, maintenance and repair of such roads shall be under the jurisdiction of the department.

(2) In the selection of highways or roads to comprise the state highway system the department shall give consideration to and shall select such county roads or public roads as will contribute to and best promote the completion of an adequate system of state highways.

(3) With the written consent of the county in which a particular highway or part thereof is located, the department may, when in its opinion the interests of the state will be best served, eliminate from the state highway system any road or highway or part thereof. Thereafter the road or highway or part thereof eliminated shall become a county road or highway, and the construction, repair, maintenance or improvement, and jurisdiction over such highway shall be exclusively under the county in which such highway or road is located.

(4) The construction, maintenance and repair of state highways shall be carried on at the sole expense of the state or at the expense of the state and the county by mutual agreement between the department and the county in which any particular state highway is located. [Amended by 1953 c.252 §2; 1979 c.223 §1]

366.292 Consideration of tolling prior to doing modernization project. Before proceeding with a modernization project, or a series of modernization projects on a single highway, that might result in a segment of highway to which tolling could reasonably be applied, the Department of Transportation shall determine what portion of the costs of construction and maintenance could be recovered through tolls on users of the project. The toll potential of a modernization project shall be considered among other factors in determining which modernization projects should be included in the Statewide Transportation Improvement Program, with those projects with the greater potential to be self-funded through tolls ranking higher. A determination under this section may be based on assumptions that a single toll would be imposed or on assumptions that tolls would be imposed that vary depending on time of day or any other condition the department deems relevant. [1999 c.1072 §2]

366.295 Relocation of highways. The Oregon Transportation Commission may make such changes in the location of highways designated and adopted by the commission, as in the judgment and discretion of the commission will result in better alignment, more advantageous and economical highway operation and maintenance, or as will contribute to and afford a more serviceable system of state highways than is possible under the present location. [Amended by 1977 c.312 §1]

366.300 Treatment of sections eliminated when highway relocated. (1) Whenever the Department of Transportation relocates or realigns a state highway or a section thereof, and by reason of such relocation or realignment there is eliminated from the original route of the highway a section thereof, the eliminated section shall, if needed for the service of persons living thereon or for a community served thereby, be maintained by the department at state expense, or by the county or by the state and the county on such terms and conditions as may be agreed upon.

(2) If such eliminated sections of old right of way, or any part thereof, in the judgment of the department, are needed or valuable for public road use, then the department shall, by appropriate action, declare the purpose of the department to preserve the same for public road use.

(3) If the department determines under subsection (2) of this section that the eliminated sections are merely parts of the old right of way which are no longer needed or valuable for highway right of way purposes or any other public road use, then if such eliminated sections are not owned by the department in fee, the department shall abandon such eliminated sections and such sections shall, except as otherwise provided in this section, revert to and title thereto shall vest in the abutting owner or owners.

(4) Nothing in this section shall impair vested rights of property owners under existing deeds, easements or contracts whereby the state or any county acquired such rights of way. This section shall not prevent the department from contracting for the acquisition of easements or rights of way on such terms and conditions as to abandonment and reverter as it may consider advisable under the conditions then existing. [Amended by 1985 c.259 §1]

366.305 Materials, supplies and equipment. The Department of Transportation may select the materials to be used in the construction, maintenance and operation of state highways. It may purchase or contract for, independent of any particular job, improvement or highway project, whether done by contract, force account or otherwise, any material, supplies or equipment deemed necessary for carrying out the provisions and purposes of this Act in such amounts and manner and pursuant to such method as in

the judgment of the department will be for the best interests of the state.

366.310 Buildings and structures. The Department of Transportation may construct, equip, furnish and maintain office accommodations, shops, equipment sheds, storage plants and warehouses, snow fences, patrolmen quarters or accommodations and any other building, structure or thing deemed necessary for the efficient administration of the duties of the department and which in the opinion of the department are required for the proper and adequate accomplishment of the purposes of this Act.

366.315 Widths of rights of way. The Department of Transportation may determine the widths of rights of way for all state highways.

366.317 Removal of trees and shrubs; notice; application. When the construction, expansion or improvement of a state highway as defined in ORS 366.005 would otherwise clearly and certainly cause the destruction of trees and shrubs which in the judgment of the engineer or the designee of the engineer may be removed in safety, the Department of Transportation shall:

(1) Prior to their destruction, cause notice to be placed in a newspaper of general distribution in the locality in which these trees and shrubs are located that these trees and shrubs may be destroyed, and that application may be made to the department at a specific time and place to remove these trees and shrubs for transplanting; and

(2) Permit the removal of these trees and shrubs by those making application to do so. [1975 c.414 §1]

366.320 Acquisition of rights of way and right of access. (1) The Department of Transportation may acquire rights of way deemed necessary for all primary and secondary state highways, both within and without the corporate limits of cities and towns, except that such rights of way within the corporate limits of cities and towns may be acquired at the sole expense of the state, at the expense of the city or town or at the expense of the city or town and the state, as may be mutually agreed upon.

(2) The department may acquire by purchase, agreement, donation or by the exercise of the power of eminent domain, real property or any right or interest therein deemed necessary for rights of way, either for original location or for widening, straightening or otherwise changing any highway, road or street. The department may, when acquiring real property for right of way, acquire all right of access from abutting property to the highway to be constructed, relocated or widened.

(3) All rights of way owned or held by the several counties over and along any roads adopted as state highways are vested in the state, by and through the department. This subsection does not apply to any rights of way owned by any city for city streets. [Amended by 1953 c.252 §2]

366.321 Expense of relocating municipal facilities payable by department; exceptions. (1) When location, construction, relocation, reconstruction, maintenance or repair of a state highway requires relocation of any facilities placed or maintained in or on a public right of way by any municipal corporation, or a district or authority established under ORS chapter 264, 450, 451, 523 or 545, the Department of Transportation shall pay the municipal corporation, district or authority whose facilities are so required to be relocated the reasonable expenses of relocation, less any benefits and salvage of the relocation.

(2) Subsection (1) of this section shall not apply to:

(a) Facilities located in or on the right of way of a state highway under permits issued by the department upon the condition that the permittee would bear the cost of any relocation; or

(b) Facilities located in or on the right of way of a state highway where the municipal corporation, district or authority established under ORS chapter 264, 450, 451 or 545, has placed such facilities in or on the right of way of the state highway without a permit from the Oregon Transportation Commission or has refused to execute a permit as required by law or commission regulations. However, this paragraph shall not apply where such municipal corporation, district or authority has located facilities in or on the right of way of a city street or county road with the permission of the governing body of such city or county before such city street or county road was selected and designated a state highway by the Department of Transportation pursuant to ORS 366.290 or 373.010. [1967 c.272 §1; 1975 c.587 §1; 1975 c.782 §51a]

366.323 Studies to aid in relocating persons displaced by highway acquisition. When plans of the Department of Transportation projected for one year involve acquisition of properties in any city which will require removal of 25 or more dwelling units, businesses or institutions, the Department of Transportation shall make a study of the persons residing on or maintaining businesses or institutions on property scheduled for highway acquisition. Such studies shall be kept current until the premises required for highway acquisition are vacated. The department shall obtain such other information

as it finds appropriate to aid in the relocation of persons displaced by the highway acquisition, and may extend its studies beyond city boundaries when the highway acquisition will involve dwellings, businesses or institutions within three miles of a city boundary. Such information shall be made available to the persons displaced and to other persons who may provide or assist in providing new locations. This section shall apply whether the highway acquisitions will be paid for in whole or in part from state funds either directly or by reimbursement. The Department of Transportation may contract with any governmental subdivision or agency, or with private concerns to make and maintain such studies, or may employ necessary assistants therefor. [1959 c.648 §1; 1963 c.187 §1]

366.324 Financial assistance to persons displaced by highway acquisition; rules. (1) When federal funds are available for payment of direct financial assistance to persons displaced by highway acquisition, the Department of Transportation may match such federal funds to the extent provided by federal law and to provide such direct financial assistance in the instances and on the conditions set forth by federal law and regulations.

(2) When federal funds are not available or used for payment of direct financial assistance to persons displaced by department acquisition of property, the department may provide direct financial assistance to such persons. Financial assistance authorized by this subsection shall not exceed the total amount that would have been payable under subsection (1) of this section if federal funds had been available or used. The department may adopt rules and regulations to carry out the provisions of this subsection. [1959 c.648 §2; 1963 c.187 §2; 1965 c.222 §1]

366.325 Rights of way through cemeteries. The Department of Transportation may acquire by purchase, agreement, donation or by exercise of the power of eminent domain, real property for right of way through a cemetery, except that the department has no authority to acquire any such real property by exercise of the power of eminent domain if within the area sought to be taken there are graves which would be disturbed by the location and construction of a highway. The department may acquire by purchase, agreement, donation or exercise of the power of eminent domain, real property contiguous to the cemetery, and may convey such real property to the cemetery association or the owners of the cemetery in exchange for the property sought to be acquired for right of way purposes, but such authority shall not be exercised unless and until the owners of the cemetery agree in writing to the exchange of lands.

366.330 Acquisition of land adjoining right of way. The Department of Transportation may, when acquiring real property for right of way purposes, acquire additional real property adjoining the real property sought to be acquired for the particular public project if such additional and adjoining real property is needed for the purpose of moving and establishing thereon buildings or other structures then established on real property required for right of way purposes. The acquisition of the abutting, additional real property may be accomplished by purchase, agreement, donation or exercise of the power of eminent domain. Such real property can be acquired only in the event that the owner of the real property required for right of way purposes and on which there is then located buildings or other structures, has entered into a written agreement with the department providing for and consenting to the removal and reestablishment of the buildings or structures on the additional, abutting real property.

366.332 Definitions for ORS 366.332 and 366.333. As used in ORS 366.332 and 366.333:

(1) "Real property" includes any right, title or interest in real property.

(2) "Utility" means any corporation, including municipal or quasi-municipal corporation, company, individual, association of individuals, lessee, trustee or receiver, that owns, operates, manages or controls all or part of any plant or equipment in this state, whether or not such plant or equipment or part thereof is wholly within or outside any city, which plant or equipment is used, directly or indirectly:

(a) For the conveyance of telegraph or telephone messages, with or without wires;

(b) For the transportation of water, gas or petroleum products by pipelines;

(c) For the production, transmission, delivery or furnishing of heat, light, water, power, electricity or electrical impulses; or

(d) For the transmission and delivery of television pictures and sound by cables. [1965 c.382 §2]

366.333 Acquisition of utility real property; exchange of land for right of way. (1) If real property upon which utility facilities are located is necessary for city street, public road or state highway location, relocation, construction, reconstruction, betterment or maintenance, and any portion of the real property is likewise required by the utility for the proper operation of its business, but the utility is willing to convey the real property to the state for city street,

public road or state highway purposes in exchange for other real property within a reasonable distance, the state, through the Department of Transportation, may acquire by purchase, agreement or by the exercise of the power of eminent domain, other real property, except that of another utility, within a reasonable distance. After having acquired such real property, the state, through the department, may convey it to the utility in exchange for the real property required from the utility for city street, public road or state highway purposes. The difference in the value of the respective real properties shall be considered by the department in making the exchange.

(2) ORS 366.332 and this section do not vest in any utility any right, title or interest in any city street, public road, state highway or other public property. [1965 c.382 §§3,4]

366.335 Acquisition of railroad right of way; exchange of land therefor. (1) Whenever in the location, relocation, construction or betterment of any highway within the state, it is deemed necessary to locate, relocate or construct the highway, or any part thereof, upon the right of way of any railroad company, the state, through the Department of Transportation, may negotiate and agree with the railroad company for the right to use or occupy the right of way, or so much thereof as is necessary for highway purposes.

(2) In case no satisfactory agreement can be effected, then the state, through the department, may acquire the right of way by exercise of the power of eminent domain, and for that purpose may commence and prosecute condemnation proceedings to acquire the right to the use and occupancy of sufficient of the railroad right of way for highway purposes.

(3) Nothing in subsection (2) of this section authorizes the use or occupancy of the railroad right of way which would interfere with the operation of the railroad or its necessary appurtenances, taking into consideration the use of the railroad right of way by the company for yards, terminals, station grounds and necessary additional trackage, or which would jeopardize the safety of the public.

(4) In the event that the right of way or property of any railroad company in the state required or needed for state highway location, relocation, construction or betterment, and any portion of the property or right of way is likewise needed and required by the railroad company for the proper operation of its trains and the usual and ordinary conduct of its business, but which property or land the railroad company is willing to deed to the state for highway purposes in exchange for a like amount of land within a reasonable distance, the state, through the department, may acquire by purchase, agreement or by exercise of the power of eminent domain, an equal amount of land or property within a reasonable distance. After having acquired such land or property, the state, through the department, may convey the same to the railroad company in exchange for the land or property needed and required from the railroad company for highway purposes. The difference in the value of the respective parcels of land shall be considered by the department in making the exchange. [Amended by 1965 c.383 §1; 1999 c.59 §100]

366.337 Exchange of certain parcels of land authorized. The Department of Transportation, in the name of the State of Oregon, hereby is authorized to convey to any person, firm or corporation all or parts of the real properties described in section 1 of chapter 21, Oregon Laws 1953, in exchange for other real properties in close proximity thereto which, in the judgment of the department, are of equal or superior useful value for public use. [1953 c.21 §2]

366.340 Acquisition of real property generally. The Department of Transportation may acquire by purchase, agreement, donation or by exercise of the power of eminent domain real property, or any right or interest therein, including any easement or right of access, deemed necessary for:

(1) Construction of shops, equipment sheds, office buildings, maintenance sites, patrolmen accommodations, snow fences, quarry sites, gravel pits, storage sites, stock pile sites, weighing stations and broadcasting stations.

(2) Appropriation, acquisition or manufacture of road-building materials, approach or hauling roads, connecting roads, frontage road, highway drainage and drainage tunnels.

(3) Maintenance of an unobstructed view of any state highway so as to provide for the safety of the traveling public.

(4) Any other use or purpose deemed necessary for carrying out the purposes of this Act.

(5) Elimination or prevention of hazardous or undesirable points of entry from adjacent property to state highways. [Amended by 1953 c.252 §2]

366.345 [Amended by 1957 c.392 §1; 1963 c.601 §2; renumbered 390.110]

366.350 [Amended by 1959 c.611 §3; 1963 c.601 §3; renumbered 390.160]

366.355 [Renumbered 390.210]

366.360 Taking fee simple title. In all cases where title to real property is acquired by the Department of Transportation either by donation, agreement or exercise of the

power of eminent domain, a title in fee simple may be taken.

366.365 Going upon private property. The Department of Transportation may go upon private property in the manner provided by ORS 35.220 to determine the advisability or practicability of locating and constructing a highway thereover or the source, suitability or availability of road-building materials thereon. [Amended by 1953 c.252 §2; 2003 c.477 §5]

366.370 [Repealed by 1971 c.741 §38]

366.375 [Repealed by 1971 c.741 §38]

366.380 [Amended by 1957 c.656 §1; 1959 c.339 §1; 1967 c.479 §7; repealed by 1971 c.741 §38]

366.385 [Repealed by 1967 c.479 §8]

366.390 [Repealed by 1971 c.741 §38]

366.392 [1953 c.621 §1; subsection (2) enacted as 1961 c.404 §1; 1967 c.454 §36; repealed by 1971 c.741 §38]

366.393 [1953 c.621 §2; subsection (2) enacted as 1961 c.404 §2; repealed by 1971 c.741 §38]

366.394 [1967 c.479 §10; repealed by 1971 c.741 §38]

366.395 Disposition or leasing of property; sale of forest products. (1) The Department of Transportation may sell, lease, exchange or otherwise dispose or permit use of real or personal property, including equipment and materials acquired by the department, title to which real or other property may have been taken either in the name of the department, or in the name of the state, and which real or personal property is, in the opinion of the department, no longer needed, required or useful for department purposes, except that real property may be leased when, in the opinion of the department, such real property will not be needed, required or useful for department purposes during the leasing period.

(2) The department may sell, lease, exchange or otherwise dispose of such real or personal property in such manner as in the judgment of the department will best serve the interests of the state and will most adequately conserve highway funds or the department's account or fund for the real or personal property. In the case of real property, interest in or title to the same may be conveyed by deed or other instrument executed in the name of the state, by and through the department. All funds or money derived from the sale or lease of any such property shall be paid by the department to the State Treasurer with instructions to the State Treasurer to credit such funds or moneys:

(a) To the highway fund; or

(b) To the department's account or fund for the property. The State Treasurer shall credit the funds and moneys so received as the department shall direct.

(3)(a) Before offering forest products for sale the department shall cause the forest products to be appraised.

(b) If the appraised value of the forest products exceeds $15,000, the department shall not sell them to a private person, firm or corporation except after a public auction to receive competitive bids. Prior to such auction, the department shall give notice thereof not less than once a week for three consecutive weeks by publication in one or more newspapers of general circulation in the county in which the forest products are located and by such other media of communication as the department deems advisable. The minimum bid price and a brief statement of the terms and conditions of the sale shall be in the notice.

(c) Notice and competitive bidding under paragraph (b) of this subsection shall not be required if the Director of Transportation declares an emergency to exist that requires the immediate removal of the timber. If an emergency has been so declared:

(A) Then the timber, regardless of value, may be sold by a negotiated price; and

(B) The director shall make available for public inspection a written statement giving the reasons for declaring the emergency.

(4) The department's account or fund for the forest product shall be credited with the proceeds of the sale. [Amended by 1953 c.252 §2; 1971 c.279 §1; 1983 c.26 §1; 1989 c.904 §60; 1993 c.741 §40]

366.400 Execution of contracts. The Department of Transportation may enter into all contracts deemed necessary for the construction, maintenance, operation, improvement or betterment of highways or for the accomplishment of the purposes of this Act. All contracts executed by the department shall be made in the name of the state, by and through the department. [Amended by 1953 c.252 §2; 1975 c.771 §24]

366.405 [Amended by 1953 c.252 §2; repealed by 1975 c.771 §33]

366.410 [Repealed by 1975 c.771 §33]

366.415 [Amended by 1967 c.454 §37; 1969 c.423 §2; repealed by 1975 c.771 §33]

366.420 [Repealed by 1975 c.771 §33]

366.425 Deposit of moneys for highway work. (1) Any county, city or road district of the state or any person, firm or corporation may deposit moneys in the State Treasury or may deposit with the Department of Transportation an irrevocable letter of credit approved by the department for laying out, surveying, locating, grading, surfacing, repairing or doing other work upon any public highway within the state under the direction of the department. When any money or a letter of credit is deposited with the department under this subsection, the

department shall proceed with the proposed highway project.

(2) Money deposited under subsection (1) of this section shall be disbursed for the purpose for which it was deposited upon a voucher approved by the department and a warrant. [Amended by 1967 c.454 §38; 1979 c.365 §1]

366.430 [Amended by 1953 c.252 §2; repealed by 1969 c.429 §6]

366.435 Auditing and allowing claims. The Department of Transportation may allow all claims legally payable out of the highway fund. The department shall, if satisfied as to the correctness and validity of a claim, indorse approval thereon. When claims have been approved and indorsed by the fiscal officer of the department, they shall be filed with the fiscal officer of the department, who shall audit and pay the same out of the highway fund. [Amended by 1953 c.252 §2; 1967 c.454 §39]

366.440 Payment of employees. The Department of Transportation may pay employees by individual and separate vouchers or by a payroll.

366.445 Repair of damaged highways. The Department of Transportation may repair or cause to be repaired at once any state highway which has been damaged by slides, flood or other catastrophe so that the highway may be immediately reopened to traffic. To accomplish the reopening of the highway the department may, if it is deemed for the best interests of the state, proceed at once to remove the slide or to repair the damage with the department's own forces, or with other available forces. The department may cause such work to be done by contract without calling for competitive bids.

366.450 Road signs. The Department of Transportation may erect and maintain such directional road and other signs on the state highways at such places and of such material and design as it selects. [Amended by 1957 c.663 §1]

366.455 Removing advertising signs and unlawful structures. The Department of Transportation may take down and remove from the right of way of any state highway or from private property adjoining the highway any advertising sign or other structure or thing erected or maintained thereon contrary to law. When removing such sign, thing or structure the department shall follow and comply with the legal or statutory procedure provided by law.

366.460 Construction of sidewalks within highway right of way. The Department of Transportation may construct and maintain within the right of way of any state highway or section thereof sidewalks, footpaths, bicycle paths or trails for horseback riding or to facilitate the driving of livestock. Before the construction of any of such facilities the department must find and declare that the construction thereof is necessary in the public interest and will contribute to the safety of pedestrians, the motoring public or persons using the highway. Such facilities shall be constructed to permit reasonable ingress and egress to abutting property lawfully entitled to such rights.

366.462 Construction of fences on freeway overpasses. (1) The Department of Transportation shall construct fences on all freeway overpasses that are built on and after November 4, 1993. The fences shall be designed to deter persons from throwing objects from the overpasses onto the freeways.

(2) Beginning in the fiscal year that starts July 1, 1993, the Department of Transportation shall construct at least 15 fences per year on existing freeway overpasses. The department shall develop a priority system to construct fences first on those overpasses that involve the greatest risk factors. [1993 c.510 §§1,2; 2001 c.104 §125]

Note: 366.462 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.465 Gates and stock guards. The Department of Transportation may erect and maintain gates and stock or cattle guards in state highways at such points where the highways are crossed by drift or stock fences, where such highways intersect state or government-owned highways or other public highways and at other places in the state highways as the department may deem for the best interests of the public. The department may issue permits for the erection and maintenance of the same. Any gates constructed under this section must be constructed and maintained upon the right of way and not upon the traveled portion of the highway. If gates or stock guards are constructed under this section pursuant to a permit issued by the department, then the permit may contain such conditions, obligations and requirements as the department may deem for the best interests of the general public.

366.470 Agreements with railroad companies for snow removal. (1) The Department of Transportation may enter into agreements with a railroad company for the removal of snow from highway and railroad whenever a state highway is in close proximity to a railroad track and by reason thereof and in order to remove from the highway snow and ice which has blocked or threatens to block the highway to traffic it becomes necessary to cast such snow and ice upon the railroad tracks, thereby impairing

or interfering with train movement and tending to block train operations. The agreement may be made during or in anticipation of any such contingency, shall be in writing and shall fix the terms and conditions under which and the extent to and manner in which the state may, in removing the snow and ice from the highway, cast it upon the railroad tracks.

(2) The department may procure or cause to be executed by a corporation authorized to do such business in the state, a liability policy of insurance, an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or an undertaking running in favor of the state, the department, the railroad company and their officers and such employees of such parties as the contracting parties may designate.

(3) The insurance, letter of credit or undertaking:

(a) Shall be acceptable to the contracting parties.

(b) Shall in any event indemnify, protect and hold harmless the railroad company, its officers and employees designated, the state, the department, its officers and employees designated, from all claims for damage occasioned by or in connection with the removal of snow from the highway and the casting of the snow upon the railroad tracks.

(c) May, if so provided, reimburse either or both of the contracting parties for loss, cost and expense incurred in connection with or resulting from such work.

(4) The department may pay out of the highway fund the premium for the insurance or for the fee for the letter of credit and the cost and expense incurred or sustained by the railroad company and the state incident to the snow removal. [Amended by 1953 c.252 §2; 1991 c.331 §58; 1997 c.631 §466]

366.475 [Amended by 1979 c.104 §1; repealed by 1983 c.324 §59]

366.480 Destruction of vouchers. The Department of Transportation may from time to time destroy copies of vouchers which have ceased to possess any record value or serve any purpose and which have been in the files and custody of the department for a period of at least 10 years.

366.485 [Repealed by 1975 c.605 §33]

ROADSIDE REST AREAS

366.486 Construction of roadside rest area facilities for disabled persons. When a new roadside rest area is established adjacent to or within the right of way of a state highway, or when rest room facilities are constructed in an existing roadside rest area adjacent to or within the right of way of a state highway, a separate rest room facility for disabled persons of both sexes shall be constructed. The facility shall meet all requirements of ORS 447.210 to 447.280. [1993 c.738 §1]

Note: 366.486, 366.487 and 366.490 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.487 Use of roadside rest area rest rooms by disabled persons. (1) If a roadside rest area adjacent to or within the right of way of a state highway does not have a separate rest room facility for disabled persons of both sexes, a disabled person and a person of the opposite sex who is accompanying a disabled person for the purpose of assisting the disabled person in using the rest room may enter any existing rest room. Prior to entering the rest room, the assisting person shall receive permission from anyone who is in the rest room.

(2) A sign shall be posted outside all rest room facilities subject to the provisions of subsection (1) of this section stating that attendants of the opposite sex may accompany or be accompanied by disabled persons into any rest room. The sign shall include appropriate graphics. [1993 c.738 §2]

Note: See note under 366.486.

366.490 Coffee and cookies at roadside rest areas; rules. (1) The Department of Transportation shall establish by rule a permit program allowing nonprofit organizations to provide free coffee or other nonalcoholic beverages and cookies at roadside rest areas. Cookies offered under the program must come from a licensed facility. Rules adopted under this section may not restrict the program to any particular days of the year.

(2) An organization may apply for a permit to provide coffee, other beverages and cookies by submitting a written request to an employee of the department designated by the department. The request shall specify the day on which the organization wishes to offer the beverages and cookies and the specific rest area where they will be offered. The request shall be submitted not more than 60 days prior to the date requested.

(3) The department shall issue a permit to the selected organization not less than 30 days in advance of the date for which the permit is issued. If there is more than one request for the same date and the same place, the department shall select one organization by random drawing and shall issue the permit to that organization.

(4) The department may not issue more than one permit for the same time and place.

(5) An organization that receives a permit shall confine distribution of coffee, other beverages or cookies to an area of the rest

area designated in the permit or by the rest area attendant. The organization may not use, be within or obstruct access to any building or other structure in the rest area.

(6) An organization providing coffee, other beverages or cookies may receive donations but may not solicit them at the rest area.

(7) An organization may post signs identifying the organization and the activity, provided that each sign is not more than 10 square feet in area and there are not more than two signs. The signs may be placed only on vehicles used in connection with the provision of beverages and cookies or located in the area designated for the activity.

(8) The department may revoke the permit of any organization that fails to comply with the provisions of this section or with rules adopted by the department to implement the provisions. [1993 c.738 §3]

Note: See note under 366.486.

STATE HIGHWAY FUND

366.505 Composition and use of highway fund. (1) The State Highway Fund shall consist of:

(a) All moneys and revenues derived under and by virtue of the sale of bonds, the sale of which is authorized by law and the proceeds thereof to be dedicated to highway purposes.

(b) All moneys and revenues accruing from the licensing of motor vehicles, operators and chauffeurs.

(c) Moneys and revenues derived from any tax levied upon gasoline, distillate, liberty fuel or other volatile and inflammable liquid fuels, except moneys and revenues described in ORS 184.642 (2)(a) that become part of the Department of Transportation Operating Fund.

(d) Moneys and revenues derived from or made available by the federal government for road construction, maintenance or betterment purposes.

(e) All moneys and revenues received from all other sources which by law are allocated or dedicated for highway purposes.

(2) The highway fund shall be deemed and held as a trust fund, separate and distinct from the General Fund, and may be used only for the purposes authorized by law and is continually appropriated for such purposes.

(3) All interest earnings on any of the funds designated in subsection (1) of this section shall be placed to the credit of the highway fund. [Amended by 1953 c.125 §5; 1989 c.966 §43; 2001 c.820 §5]

366.506 Highway cost allocation study; purposes; design; report; use of report by Legislative Assembly. (1) Once every two years, the Oregon Department of Administrative Services shall conduct either a full highway cost allocation study or an examination of data collected since the previous study. The purposes of the study or examination of data are to determine:

(a) The proportionate share that the users of each class of vehicle should pay for the costs of maintenance, operation and improvement of the highways, roads and streets in the state; and

(b) Whether the users of each class are paying that share.

(2) The department may use any study design it determines will best accomplish the purposes stated in subsection (1) of this section. In designing the study the department may make decisions that include, but are not limited to, the methodology to be used for the study, what constitutes a class of vehicle for purposes of collection of data under subsections (1) to (4) of this section and the nature and scope of costs that will be included in the study.

(3) The department may appoint a study review team to participate in the study or examination of data required by subsection (1) of this section. The team may perform any functions assigned by the department, including but not limited to consulting on the design of the study.

(4) A report on the results of the study or examination of data shall be submitted to the legislative revenue committees and the legislative committees with primary responsibility for transportation by January 31 of each odd-numbered year.

(5) The Legislative Assembly shall use the report described in subsections (1) to (4) of this section to determine whether adjustments to revenue sources described in section 3a (3), Article IX of the Oregon Constitution, are needed in order to carry out the purposes of section 3a (3), Article IX of the Oregon Constitution. If such adjustments are needed, the Legislative Assembly shall enact whatever measures are necessary to make the adjustments. [2003 c.755 §§1,2]

Note: 366.506 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.507 Modernization program; funding; conditions and criteria. The Department of Transportation shall use an amount equal to the amount of moneys in the State Highway Fund that becomes available for its use from the increase in tax rates created by the amendments to ORS 319.020, 319.530,

825.476 and 825.480 by sections 1, 2 and 10 to 15, chapter 209, Oregon Laws 1985, and an amount equal to one-third of the amount of moneys in the State Highway Fund that becomes available for its use from any increase in tax rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 5, 6 and 8 to 15, chapter 899, Oregon Laws 1987, and from any increase in tax rates that results from the provisions of sections 16 and 17, chapter 899, Oregon Laws 1987, to establish and operate a state modernization program for highways. The program established under this section and the use of moneys in the program are subject to the following:

(1) The moneys may be used by the department to retire bonds that the department issues for the modernization program under bonding authority of the department.

(2) The intent of the modernization program is to increase highway safety, to accelerate improvements from the backlog of needs on the state highways and to fund modernization of highways and local roads to support economic development in Oregon. Projects both on and off the state highway system are eligible.

(3) Projects to be implemented by the modernization program shall be selected by the Oregon Transportation Commission. The criteria for selection of projects will be established after public hearings that allow citizens an opportunity to review the criteria. The commission may use up to one-half of moneys available under this section for modernization projects selected by the commission from a list of projects of statewide significance.

(4) In developing criteria for selection of projects, the commission shall consider the following:

(a) Projects must be of significance to the state highway system.

(b) Except for projects that are of statewide significance, projects must be equitably distributed throughout Oregon.

(c) Projects may be on county or city arterial roads connecting to or supporting a state highway.

(d) Priority may be given to projects that make a meaningful contribution to increased highway safety.

(e) Priority may also be given to projects that encourage economic development where:

(A) There is commitment by private industry to construct a facility.

(B) There is support from other state agencies.

(f) Priority may be given where there is local government or private sector financial participation, or both, in the improvement in addition to improvements adjacent to the project.

(g) Priority may be given where there is strong local support.

(5) Except as otherwise provided in this subsection, federal moneys or moneys from the State Highway Fund other than those described in this section may be used for the modernization program as long as the total amount used is equal to the amount described in this section. Federal moneys that are appropriated by Congress for specific projects and federal moneys that are allocated by the United States Department of Transportation for specific projects may not be used for the modernization program under this section. [1985 c.209 §9; 1987 c.899 §2; 1999 c.969 §4; 2001 c.766 §1; 2003 c.618 §14]

Note: The amendments to 366.507 by section 2, chapter 766, Oregon Laws 2001, become operative January 2, 2006. See section 3, chapter 766, Oregon Laws 2001. The text that is operative on and after January 2, 2006, including amendments by section 15, chapter 618, Oregon Laws 2003, is set forth for the user's convenience.

366.507. The Department of Transportation shall use an amount equal to the moneys in the State Highway Fund that become available for its use from the increase in tax rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 1, 2 and 10 to 15, chapter 209, Oregon Laws 1985, and an amount equal to one-third of the moneys in the State Highway Fund that become available for its use from any increase in tax rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 5, 6 and 8 to 15, chapter 899, Oregon Laws 1987, and from any increase in tax rates that results from the provisions of sections 16 and 17, chapter 899, Oregon Laws 1987, exclusively to establish a state modernization program for highways. The program established under this section and the use of moneys in the program are subject to the following:

(1) The moneys may be used by the department to retire bonds that the department issues for the modernization program under bonding authority of the department.

(2) The intent of the modernization program is to increase highway safety, to accelerate improvements from the backlog of needs on the state highways and to fund modernization of highways and local roads to support economic development in Oregon. Projects both on and off the state highway system are eligible.

(3) Projects to be implemented by the modernization program shall be selected by the Oregon Transportation Commission. The criteria for selection of projects will be established after public hearings that allow citizens an opportunity to review the criteria. The commission may use up to one-half of moneys available under this section for modernization projects selected by the commission from a list of projects of statewide significance.

(4) In developing criteria for selection of projects, the commission shall consider the following:

(a) Projects must be of significance to the state highway system.

(b) Except for projects that are of statewide significance, projects must be equitably distributed throughout Oregon.

(c) Projects may be on county or city arterial roads connecting to or supporting a state highway.

(d) Priority may be given to projects that make a meaningful contribution to increased highway safety.

(e) Priority may also be given to projects that encourage economic development where:

(A) There is commitment by private industry to construct a facility.

(B) There is support from other state agencies.

(f) Priority may be given where there is local government or private sector financial participation, or both, in the improvement in addition to improvements adjacent to the project.

(g) Priority may be given where there is strong local support.

366.508 Legislative findings. (1) The Legislative Assembly finds that:

(a) Estimated highway, road and street revenues from current sources will not adequately meet the need for continued development of a statewide road and bridge system that is economically efficient, provides accessibility to and from commercial, agricultural, industrial, tourist and recreational facilities and enhances the highway safety, environmental quality and land use goals of this state;

(b) Responsibility for the cost of the highway, road and street system should be proportional and should be based on the number and types of vehicles that use the system and on the frequency of their use; and

(c) Expansion, modernization, maintenance, repair, reconstruction, increased capacity and enhanced safety on all roads and bridges is crucial to the economic revitalization of Oregon.

(2) The Legislative Assembly declares that the purpose of this section and ORS 319.020, 319.530, 366.507, 366.739, 366.774, 366.790, 825.476 and 825.480 is:

(a) To enhance the revenue base for the state, counties and cities for continued development and maintenance of the road and bridge system; and

(b) To enhance the revitalization of this state's economy by implementing a long-term plan for the state, counties and cities that establishes priorities for road and bridge improvements. [1987 c.899 §1]

Note: 366.508 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.509 Budget for highway safety; priority for safety projects. (1) As part of the recommended budget for the Department of Transportation, the Governor shall submit to the Legislative Assembly a plan to spend $100 million to improve highway safety. Upon approval by the Legislative Assembly, the Department of Transportation shall implement the plan.

(2) In developing schedules for highway projects, including but not limited to construction, preservation and maintenance projects, the Oregon Transportation Commission and the Department of Transportation shall give priority to projects that enhance the safety of the users of the highways. [1999 c.969 §2]

366.510 Turning over highway funds to State Treasurer. All state officials charged with the collection of highway funds shall, upon the first of each month after collection, unless a different time is otherwise provided, turn the same over to the State Treasurer, who shall enter such revenues in the account of the highway fund. [Amended by 1967 c.454 §106]

366.512 Collection of certain registration fees for State Parks and Recreation Department Fund. (1) The Department of Transportation shall collect all registration fees for campers, manufactured structures, motor homes and travel trailers. Such fees shall be paid into the State Parks and Recreation Department Fund.

(2) As used in this section, the words "camper," "manufactured structure," "motor home" and "travel trailer" have the meanings given those terms in ORS chapter 801. [1969 c.605 §46; 1979 c.186 §13; 1983 c.338 §918; 1983 c.363 §2; 1985 c.16 §460; 1985 c.395 §6; 1989 c.904 §36; 1993 c.696 §15; 2003 c.14 §161]

Note: The amendments to 366.512 by section 72, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

366.512. (1) The Department of Transportation shall collect all registration fees for campers, motor homes and travel trailers. Such fees shall be paid into the State Parks and Recreation Department Fund.

(2) As used in this section, the words "camper," "motor home" and "travel trailer" have the meanings given those terms in ORS chapter 801.

366.514 Use of highway fund for footpaths and bicycle trails. (1) Out of the funds received by the Department of Transportation or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project. Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated. Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths and trails along other highways, roads and streets.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) Where the establishment of such paths and trails would be contrary to public safety;

(b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use; or

(c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.

(3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:

(a) This subsection does not apply to a city in any year in which the one percent equals $250 or less, or to a county in any year in which the one percent equals $1,500 or less.

(b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve fund in accordance with ORS 294.525, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.

(c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:

(A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or

(B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.

(4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes. The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The department shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310 and rules adopted under ORS 447.231. The department shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the department and cities and counties. The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and nonmotorized vehicles, except that motorized wheelchairs shall be allowed to use footpaths and bicycle trails.

(5) As used in this section, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route. [1971 c.376 §2; 1979 c.825 §1; 1983 c.19 §1; 1983 c.338 §919; 1991 c.417 §7; 1993 c.503 §12; 1997 c.308 §36; 2001 c.389 §1]

366.515 [Amended by 1971 c.376 §3; 1973 c.249 §39; repealed by 1975 c.436 §7]

366.516 Incurring obligations payable from anticipated revenues. The Department of Transportation may incur obligations to be paid from the State Highway Fund for the construction, reconstruction, improvement, repair or maintenance of highways, streets and bridges in excess of the amount then standing to the credit of the State Highway Fund if in the opinion of the department there will be sufficient funds available for the payment of such obligations when they become due and payable and all other debts, obligations and expenses chargeable against the State Highway Fund including those amounts that are required by law to be set aside from the State Highway Fund for particular purposes. Obligations incurred under the authority of this section need not be payable in the same biennial period during which the obligation is incurred. [1953 c.125 §2]

366.517 Department may determine certain accounting procedures. The Department of Transportation shall determine the accounting period for which any expenditures shall be charged against the State Highway Fund. The department may charge such expenditures against the State Highway Fund at the time the expenditures are actually paid even though the expenditures were obligated during a prior accounting period. The department may keep its accounts on a calendar year basis. [1953 c.125 §3; 1967 c.454 §40]

366.518 Expenditures from highway fund to be reported, budgeted and limited to amounts budgeted. The Department of Transportation shall submit a biennial statement and budget estimate as required by law, and shall limit its expenditures from the State Highway Fund during each biennial period to the total amount of the budget approved according to law; provided, that the word "expenditures" shall mean all money actually paid out or due and payable, but shall not mean liabilities or obligations incurred but not due and payable until a subsequent biennial period. The provisions of any law establishing a Legislative Assembly emergency committee shall apply to expenditures from the State Highway Fund. [1953 c.125 §4]

366.520 Expenses in legalizing state highways. The expenses incurred in any proceeding by the Department of Transportation under ORS 368.201 to 368.221, when applied to state highways, shall be paid out of the highway fund. [Amended by 1981 c.153 §62]

366.522 Appropriations from highway fund for legislative interim committees. It hereby is declared to be the policy and intent of the Legislative Assembly that the total appropriations out of the State Highway Fund made by it for the payment of expenses incurred by the Legislative Assembly by and through its interim committee during any biennium shall be deemed to be the maximum amount necessary for such purpose. Any unexpended and unobligated balance remaining in any such appropriation heretofore or hereafter made shall, after the expiration of the biennium for which the appropriation was made, be returned to the State Highway Fund and may thereafter be used for any purpose authorized by law. [1953 c.84 §1]

366.524 [1985 c.209 §7; 1987 c.899 §18; 1987 c.899 §19; 1989 c.865 §5a; 1993 c.637 §17; 1993 c.770 §7; 1995 c.440 §3; 2001 c.669 §5; 2003 c.618 §16; renumbered 366.739 in 2003]

366.525 [Amended by 1967 c.463 §3; 1971 c.376 §4; 1979 c.344 §8; 1981 s.s. c.3 §108; 1983 c.164 §3; 1983 c.338 §920; 1985 c.209 §3; renumbered 366.762 in 2003]

366.530 [Amended by 1955 c.43 §1; 1955 c.287 §23; 1967 c.454 §41; 1977 c.743 §1; 1983 c.338 §921; 1987 c.440 §7; 1991 c.407 §34; 1993 c.741 §41; 1997 c.249 §117; renumbered 366.764 in 2003]

366.535 [Amended by 1967 c.463 §4; 1975 c.527 §2; 1979 c.344 §9; 1985 c.209 §4; renumbered 366.766 in 2003]

366.540 [Amended by 1967 c.454 §42; 1983 c.363 §3; 2003 c.618 §45; renumbered 366.768 in 2003]

366.541 [1995 c.790 §1; 2003 c.618 §19; renumbered 366.772 in 2003]

366.542 [1987 c.899 §3; 1999 c.797 §1; 2003 c.201 §38; renumbered 366.774 in 2003]

366.543 [2001 c.669 §6; 2002 s.s.1 c.3 §4; renumbered 366.742 in 2003]

366.545 [1965 c.634 §3; renumbered 390.170]

HISTORIC COLUMBIA RIVER HIGHWAY

366.550 "Historic Columbia River Highway" defined. As used in ORS 366.550 to 366.553, "Historic Columbia River Highway" means all parts of the original Columbia River Highway, constructed between 1913 and 1922, in Multnomah, Hood River and Wasco Counties, that have been designated as a "Historic and Scenic Highway" under ORS 377.100 and all properties and structures that are within the Columbia River Highway Historic District, National Register of Historic Places. [1987 c.382 §1]

Note: 366.550 to 366.553 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.551 Policy. The Legislative Assembly declares that it is the public policy of the State of Oregon to preserve and restore the continuity and historic integrity of the remaining segments of the Historic Columbia River Highway for public use and enjoyment and in furtherance thereof:

(1) To reuse and manage the Historic Columbia River Highway as a continuous visitor attraction that ties together Columbia Gorge cities and rural service centers and contributes to their economic development.

(2) To rehabilitate, restore, maintain and preserve all original roadway and highway-related structures on the intact and usable highway segments.

(3) To connect intact and usable highway segments with recreation trails, where feasible, to create a continuous historic road route through the Columbia Gorge which links local, state and federal recreation and historic sites.

(4) To provide a coordinated visitor information program to identify and interpret the significance of the highway.

(5) To preserve and enhance the scenic qualities of the highway and its associated corridor.

(6) To coordinate appropriate state agency activities and funds to accomplish these purposes. [1987 c.382 §2]

Note: See note under 366.550.

366.552 Historic road program for Historic Columbia River Highway; footpaths and bicycle trails; acquisition of property; cooperation with other agencies. (1) The Department of Transportation and the State Parks and Recreation Department shall prepare and manage a historic road program, in consultation with the Historic Columbia River Highway Advisory Committee and other affected entities, consistent with the purposes of the Columbia River Gorge National Scenic Area Act of 1986 and the public policy of this state declared in ORS 366.551.

(2) The departments shall inform the advisory committee of those activities of the departments which may affect the continuity, historic integrity and scenic qualities of the Historic Columbia River Highway.

(3) The departments shall undertake efforts to rehabilitate, restore, maintain and preserve all intact and usable segments of the Historic Columbia River Highway and associated state parks. The Department of Transportation may expend funds dedicated

for footpaths and bicycle trails under ORS 366.514 to construct footpaths and bicycle trails on those portions of the Historic Columbia River Highway that are parts of the state highway system or that are county roads or city streets and the State Parks and Recreation Department may incorporate those segments into the Oregon recreation trails system under the provisions of ORS 390.950 to 390.989 and 390.995 (2).

(4) The departments may acquire real property, or any right or interest therein, deemed necessary for the preservation of historic, scenic or recreation qualities of the Historic Columbia River Highway, for the connection of intact and usable segments, or for the development and maintenance of parks along or in close proximity to the highway. The departments shall encourage the acquisition of lands, or interests in lands, by donation, agreement, exchange or purchase.

(5) The departments shall assist and cooperate with other agencies and political subdivisions of the state, state agencies, the federal government, special purpose districts, railroads, public and private organizations and individuals to the extent necessary to carry out the provisions of ORS 366.550 to 366.553. The departments may enter into such contracts as are necessary to carry out these provisions. [1987 c.382 §3; 1989 c.904 §37]

Note: See note under 366.550.

366.553 Advisory committee; members; duties; meetings. (1) There is created in the Department of Transportation an advisory committee to advise the Director of Transportation and the Oregon Transportation Commission on policy matters pertaining to the preservation and restoration of the Historic Columbia River Highway. The committee shall consist of 10 members, including the State Parks and Recreation Director, State Historic Preservation Officer, Director of the Economic and Community Development Department or their delegates, one member appointed by the Director of Transportation and six citizen members, two residents each from Wasco, Hood River and Multnomah Counties. The Governor shall appoint one member from each of the three counties and each county commission shall appoint one member respectively. Citizen members shall have knowledge or specific interest in historic or scenic preservation, engineering design, recreation or related disciplines.

(2) The citizen members shall be appointed to terms of four years, commencing on July 1 of the year of appointment. Members of the advisory committee shall be entitled to expenses as provided by ORS 292.495 (2).

(3) The committee shall review the department's preparation of the historic road program and its ongoing management and submit recommendations to the Director of Transportation.

(4) The committee shall review proposed highway-related activities and other public actions, except for routine highway maintenance, which may affect the historic integrity, continuity, scenic values, public access and public recreational opportunities within the Columbia River Highway Historic District and submit recommendations to the director. The committee may appoint subcommittees composed of qualified members or other technical specialists, as required, to review plans, construction or other subjects as designated by the committee. The director shall provide notice to the committee of proposed activities, actions or projects at the earliest possible opportunity.

(5) The committee may recommend to the director that a public hearing with appropriate public notification be held for proposed activities, actions or projects which significantly affect the Historic Columbia River Highway.

(6) The committee shall meet regularly a minimum of four times a year at times and places fixed by the chairperson of the committee. The department shall provide personnel services to assist the committee within the limits of available funds. The committee shall adopt rules to govern its proceedings and may select officers it considers necessary. [1987 c.382 §4; 1989 c.904 §61; 1993 c.736 §54; 1993 c.741 §42]

Note: See note under 366.550.

INTERGOVERNMENTAL HIGHWAY COOPERATION

366.556 Acceptance of provisions of Acts of Congress. The State of Oregon assents to the Act of July 11, 1916, 39 Stat. 355, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," or Acts supplementary thereto, and accepts the provisions and benefits of any Act of Congress having for its purpose the construction, improvement or maintenance of public roads or highways in the State of Oregon. [Formerly 366.705]

366.558 Contracting with and submitting programs to federal government. The Department of Transportation may enter into all contracts and agreements with the federal government relating to the survey, construction, improvement and maintenance of roads and highways, including county roads and city streets, submit such scheme or program of construction, improvement or maintenance as may be required by the federal govern-

ment, and do all other things necessary fully to carry out the cooperation contemplated and provided for by the Acts of Congress mentioned in ORS 366.556. [Formerly 366.710]

366.560 Pledge of state to match federal funds. For the construction or improvement and maintenance of rural post roads or such other roads, highways and streets as may be eligible for federal aid funds, the good faith of the state is pledged to make available funds which alone, or combined with funds made or to be made available by counties and cities, will be sufficient to match funds made available to the State of Oregon by the federal government for highway, road or street purposes. For the purpose of evidencing such good faith the Department of Transportation, in the name of the state, is authorized to enter into any and all agreements with the federal government. [Formerly 366.715]

366.562 Use of highway fund to match federal moneys. The Department of Transportation may use, allocate or in any manner employ for the purpose of matching any sum of money made available to the state by the federal government for road or highway purposes any moneys credited to the highway fund, regardless of the source from which such moneys may have been derived. [Formerly 366.720]

366.564 Borrowing to match federal moneys. For the purpose of providing funds to match funds made available to the state by the federal government for highway purposes and for the matching of which federal funds there are no highway funds immediately available, the Department of Transportation may borrow money as provided in ORS 367.105. [Formerly 366.725]

366.566 Meeting requirements of federal aid statutes. The Department of Transportation or officers having control of the state highways shall enter into such contracts, appoint such officers and do any other act or thing necessary to fully meet the requirements of the federal government and the officers acting under the federal statutes mentioned in ORS 366.556, or of other federal aid furnished. [Formerly 366.730]

366.568 Using highway funds to comply with federal aid statutes. The Department of Transportation or officers having control of the state highways shall, out of the money received in the highway funds each year from any and all sources, first set aside, if deemed necessary or expedient, a sufficient amount to comply with the terms of the Federal Acts mentioned in ORS 366.556, and any other aid hereafter furnished by the federal government for the construction of roads and highways or to match the federal aid. [Formerly 366.735]

366.570 Payments under cooperative agreement with federal government. (1) Where state or county roads are to be surveyed or constructed under the supervision of the federal government with the aid of state or county funds, or both, the State Treasurer or county treasurer, or both, may advance to the federal government, in the manner provided in this section, the full amount set forth in the cooperative agreement, or such portion of the amount as may be specified by the federal government at any time after the Department of Transportation or the county commissioners have entered into a cooperative agreement with the federal government for the survey, construction or maintenance of a road under any such statute, or under any appropriation statute for the federal government against which such expenditures may be chargeable.

(2) The advance payments shall be made to the fiscal agent of the federal government designated by, and upon receipt of, a request for such funds from the federal government, if the federal government agrees to refund to the state or county treasurer, or both, as the case may be, any amount advanced in excess of the proportionate share of the actual cost.

(3) When the state, through the Department of Transportation has entered into any cooperative agreement with the federal government for the survey or construction of any state road or highway as in this section contemplated, the department shall prepare, verify and approve a claim in favor of the federal government for the amount of the state's share of the cost of the work, accompanying the claim with a copy of the agreement. The claim shall be paid by warrant on the State Treasurer in the manner provided by law, from such funds as are available for road purposes as shall be directed by the department. [Formerly 366.765]

366.572 State highway agreements with local governments. (1) The Department of Transportation may enter into a cooperative agreement with any one or more cities, counties, road districts or other municipalities of the state for the construction, reconstruction, improvement, repair or maintenance of any state highway, and provide for an allocation of the cost of the project to the contracting parties.

(2) The Department of Transportation may enter into cooperative agreements with any county for the survey, construction, improvement, reconstruction, repair or maintenance of any state highway or part thereof upon such basis of contribution as may be agreed upon between them. [Formerly 366.770]

366.574 Intergovernmental road maintenance agreement. (1) The Legislative Assembly declares that it is the public policy of the State of Oregon to promote cooperation between the Department of Transportation and counties on road maintenance projects when it results in an overall benefit to the public. Monetary savings that result from the cooperative efforts shall primarily be retained by the counties and the division of the department that enters into the agreement. The participants should endeavor to cooperate regardless of the proportion of benefit to either party.

(2) A county and the Department of Transportation or a division of the department may establish an intergovernmental road maintenance agreement that will govern the maintenance of state highways and county roads within the county or other areas described by the agreement or of a particular road project. The agreement must be ratified by the governing body of the county and the Director of Transportation. An agreement under this section shall require highways and roads to be maintained in accordance with standards mutually established by the Oregon Transportation Commission and the county governing body.

(3) All employees and managers of the department and the county who will perform road maintenance activities described in the agreement or who will be involved in the road project described in the agreement must be given a reasonable opportunity to participate with the department and the counties in establishing the terms and provisions of the agreement.

(4) Nothing in this section or in the agreement affects title to or ownership of state highways or county roads.

(5) The agreement must:

(a) Provide for the use of state and county road maintenance equipment and facilities by the participants.

(b) Recognize an agreement between either participant and a state or federal agency established to protect the environment. The intergovernmental road maintenance agreement should contain references to applicable provisions that implement procedures and specifications contained in the agreement between either participant and the agency.

(c) Establish a procedure, consistent with appropriate collective bargaining agreements, to ensure that employees of the department and the county are properly supervised.

(d) Establish a procedure to determine which maintenance methods will be used by the participants.

(e) Establish a procedure to account for changes in operating costs due to the establishment of the agreement and to allocate increased costs or distribute cost savings between the county and the department.

(f) Establish a formula, adjustment factor or procedure for the equitable adjustment and comparison of the maintenance and equipment use rates required of the department under federal law and the maintenance and equipment use rates employed by the county.

(g) Authorize the participants to use either the procurement procedures applicable to the department or the procurement procedures applicable to the county as long as the procurement procedures include adequate safeguards fostering competition and are consistent with ORS 279.005 and 279.007. [Formerly 366.773]

Note: The amendments to 366.574 (formerly 366.773) by section 265, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

366.574. (1) The Legislative Assembly declares that it is the public policy of the State of Oregon to promote cooperation between the Department of Transportation and counties on road maintenance projects when it results in an overall benefit to the public. Monetary savings that result from the cooperative efforts shall primarily be retained by the counties and the division of the department that enters into the agreement. The participants should endeavor to cooperate regardless of the proportion of benefit to either party.

(2) A county and the Department of Transportation or a division of the department may establish an intergovernmental road maintenance agreement that will govern the maintenance of state highways and county roads within the county or other areas described by the agreement or of a particular road project. The agreement must be ratified by the governing body of the county and the Director of Transportation. An agreement under this section shall require highways and roads to be maintained in accordance with standards mutually established by the Oregon Transportation Commission and the county governing body.

(3) All employees and managers of the department and the county who will perform road maintenance activities described in the agreement or who will be involved in the road project described in the agreement must be given a reasonable opportunity to participate with the department and the counties in establishing the terms and provisions of the agreement.

(4) Nothing in this section or in the agreement affects title to or ownership of state highways or county roads.

(5) The agreement must:

(a) Provide for the use of state and county road maintenance equipment and facilities by the participants.

(b) Recognize an agreement between either participant and a state or federal agency established to protect the environment. The intergovernmental road maintenance agreement should contain references to applicable provisions that implement procedures and specifications contained in the agreement between either participant and the agency.

(c) Establish a procedure, consistent with appropriate collective bargaining agreements, to ensure that

employees of the department and the county are properly supervised.

(d) Establish a procedure to determine which maintenance methods will be used by the participants.

(e) Establish a procedure to account for changes in operating costs due to the establishment of the agreement and to allocate increased costs or distribute cost savings between the county and the department.

(f) Establish a formula, adjustment factor or procedure for the equitable adjustment and comparison of the maintenance and equipment use rates required of the department under federal law and the maintenance and equipment use rates employed by the county.

(g) Authorize the participants to use either the procurement procedures applicable to the department or the procurement procedures applicable to the county as long as the procurement procedures include adequate safeguards fostering competition and are consistent with ORS 279A.015 and 279C.300.

Note: 366.574 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.576 Road, highway or street agreements with local governments. The Department of Transportation may enter into an agreement with any county, city, town or road district for the construction, reconstruction, improvement, repair or maintenance of any road, highway or street, upon terms and conditions mutually agreed to by the contracting parties; and the department may acquire by purchase, agreement, donation or by exercise of the power of eminent domain, any real property necessary for rights of way therefor. [Formerly 366.775]

366.578 Farm-to-market roads. (1) The Department of Transportation and local governments shall consider the importance of farm-to-market roads when making highway funding decisions.

(2) As used in this section, "farm-to-market road" means a rural or urban road, street or highway that is used to move agricultural or logging products to market. [Formerly 366.777]

Note: 366.578 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.605 [Renumbered 367.105]

366.625 [Renumbered 367.202]

366.627 [Renumbered 367.204]

366.629 [Renumbered 367.206]

366.631 [Renumbered 367.208]

366.633 [Renumbered 367.210]

366.635 [Renumbered 367.212]

366.637 [Renumbered 367.214]

366.639 [Renumbered 367.216]

366.641 [Renumbered 367.218]

366.643 [Renumbered 367.220]

366.645 [Renumbered 367.226]

366.650 [Renumbered 367.228]

366.655 [Renumbered 367.230]

366.660 [Renumbered 367.232]

366.665 [Renumbered 367.234]

366.670 [Renumbered 367.236]

366.675 [Renumbered 367.238]

366.680 [Renumbered 367.240]

366.685 [Renumbered 367.242]

366.688 [1953 c.20 §2; renumbered 367.252]

366.689 [1953 c.20 §3; renumbered 367.254]

366.690 [1953 c.20 §4; renumbered 367.256]

366.691 [1953 c.20 §5; renumbered 367.258]

366.692 [1953 c.20 §6; renumbered 367.260]

366.693 [1953 c.20 §7; renumbered 367.262]

366.694 [1953 c.20 §8; renumbered 367.264]

366.695 [1953 c.20 §9; renumbered 367.266]

366.696 [1953 c.20 §10; renumbered 367.268]

366.697 [1953 c.20 §11; renumbered 367.270]

366.6980 [1957 c.22 §1; renumbered 367.282]

366.6981 [1957 c.22 §2; renumbered 367.284]

366.6982 [1957 c.22 §3; renumbered 367.286]

366.6983 [1957 c.22 §4; renumbered 367.288]

366.6984 [1957 c.22 §5; renumbered 367.290]

366.6985 [1957 c.22 §6; renumbered 367.292]

366.6986 [1957 c.22 §7; renumbered 367.294]

366.6987 [1957 c.22 §8; renumbered 367.296]

366.6988 [1957 c.22 §9; renumbered 367.298]

366.6989 [1957 c.22 §10; renumbered 367.300]

366.6990 [1957 c.22 §11; renumbered 367.302]

366.7000 [1957 c.354 §1; renumbered 367.324]

366.7001 [1957 c.354 §2; renumbered 367.326]

366.7002 [1957 c.354 §3; renumbered 367.328]

366.7003 [1957 c.354 §4; renumbered 367.330]

366.7004 [1957 c.354 §5; renumbered 367.332]

366.7005 [1957 c.354 §6; renumbered 367.334]

366.7006 [1957 c.354 §7; renumbered 367.336]

366.7007 [1957 c.354 §8; renumbered 367.338]

366.7008 [1957 c.354 §9; renumbered 367.340]

366.7009 [1957 c.354 §10; renumbered 367.344]

366.7010 [1957 c.354 §11; renumbered 367.346]

366.7020 [1959 c.386 §1; renumbered 367.365]

366.7021 [1959 c.386 §2; 1961 c.345 §1; renumbered 367.370]

366.7022 [1959 c.386 §3; renumbered 367.380]

366.7023 [1959 c.386 §4; renumbered 367.385]

366.7024 [1959 c.386 §5; 1961 c.381 §3; renumbered 367.390]

366.7025 [1959 c.386 §6; renumbered 367.395]

366.7026 [1959 c.386 §7; renumbered 367.400]

366.7027 [1959 c.386 §8; renumbered 367.405]

366.7028 [1959 c.386 §9; renumbered 367.410]

366.7029 [1959 c.386 §10; 1961 c.345 §2; renumbered 367.415]

366.7030 [1959 c.386 §11; renumbered 367.420]

366.705 [Renumbered 366.556 in 2003]

366.710 [Amended by 1979 c.293 §3; renumbered 366.558 in 2003]

366.715 [Amended by 1979 c.293 §4; renumbered 366.560 in 2003]

366.720 [Renumbered 366.562 in 2003]

366.725 [Renumbered 366.564 in 2003]

366.730 [Renumbered 366.566 in 2003]

366.735 [Part renumbered 367.155; 1979 c.293 §6; renumbered 366.568 in 2003]

ALLOCATIONS TO COUNTIES AND CITIES

(Generally)

366.739 Allocation of moneys to counties and cities generally. Except as otherwise provided in ORS 366.744, the taxes collected under ORS 319.020, 319.530, 803.090, 803.420, 818.225, 825.476 and 825.480, minus $71.2 million per biennium, shall be allocated 24.38 percent to counties under ORS 366.762 and 15.57 percent to cities under ORS 366.800. [Formerly 366.524]

366.740 [Renumbered 367.160]

366.742 Repayment of specified bonds; allocation of moneys not needed for repayment. Each biennium, any portion of the $71.2 million referred to in ORS 366.739 that remains after deducting an amount equal to total debt service payments payable on outstanding Highway User Tax Bonds described in ORS 367.620 (2) shall be allocated 50 percent to the Department of Transportation, 30 percent to counties and 20 percent to cities. Moneys allocated to counties and cities under this section shall be distributed in the same manner as moneys allocated under ORS 366.739 are distributed. [Formerly 366.543]

Note: 366.742 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.744 Allocation of moneys from specified increases in title and registration fees and in truck taxes and fees; restrictions on expenditure by Multnomah County. (1) The following moneys shall be allocated as provided in subsection (2) of this section:

(a) The amount attributable to the increase in title fees by the amendments to ORS 803.090 by section 1, chapter 618, Oregon Laws 2003.

(b) The amount attributable to the increase in registration fees by the amendments to ORS 803.420 by section 2, chapter 618, Oregon Laws 2003, except for the amount paid to the State Parks and Recreation Department Fund under ORS 366.512; and

(c) The amount attributable to the increase in fees and tax rates by the amendments to ORS 818.225, 825.476 and 825.480 by sections 3, 4 and 5, chapter 618, Oregon Laws 2003.

(2) The moneys described in subsection (1) of this section shall be allocated as follows:

(a) 57.53 percent to the Department of Transportation.

(b) 25.48 percent to the department to pay the principal and interest due on bonds authorized under ORS 367.620 (3) that are issued for replacement and repair of bridges on county highways. However, any portion of the 25.48 percent that is not needed for payment of principal and interest on the bonds described in this paragraph shall be allocated to counties. Moneys allocated to counties under this paragraph shall be distributed in the same manner as moneys allocated to counties under ORS 366.739 are distributed.

(c) 16.99 percent to the department to pay the principal and interest due on bonds authorized under ORS 367.620 (3) that are issued for replacement and repair of bridges on city highways. However, any portion of the 16.99 percent that is not needed for payment of principal and interest on the bonds described in this paragraph shall be allocated to cities. Moneys allocated to cities under this paragraph shall be distributed in the same manner as moneys allocated to cities under ORS 366.739 are distributed.

(3)(a) Multnomah County shall spend a majority of moneys distributed to it under subsection (2)(b) of this section on bridges in the county.

(b) Moneys distributed to Multnomah County under subsection (2)(b) of this section that are not spent on bridges shall be distributed equitably within the county, based on the agreement described in paragraph (c) of this subsection.

(c) Multnomah County and the cities within the county shall agree upon the distribution of moneys described in paragraph (b) of this subsection. When the county and the cities have reached an agreement, they shall notify the Oregon Transportation Commission of the agreement. If the commission does not receive notice of an agreement by June 30, 2004, the Department of Transportation may not distribute moneys that would otherwise go to the county under paragraph (b) of this subsection. Such moneys shall revert to the State Highway Fund for use by the Department of Transportation. [2003 c.618 §18]

Note: Section 145, chapter 655, Oregon Laws 2003, provides:

Sec. 145. If House Bill 2041 [chapter 618, Oregon Laws 2003] becomes law, notwithstanding any contrary provision by section 18, chapter 618, Oregon Laws 2003 [366.744], providing for the distribution of moneys from increases in title fees under ORS 803.090, all moneys from fees for the issuance of a certificate of title for a manufactured structure, less costs of collection, shall

be retained by the Department of Transportation for use in the administration and enforcement of the duties, functions and powers of the Department of Transportation relating to manufactured structures, manufactured structure dealers and manufactured structure dealerships or for transfer to the Department of Consumer and Business Services as provided under section 3 of this 2003 Act. [2003 c.655 §145]

366.745 [Renumbered 367.165]

366.747 Allocation of moneys from specified increases in fees. (1) The following moneys shall be allocated as described in subsection (2) of this section:

(a) The amount attributable to the increase in the inspection fee by the amendments to ORS 803.215 by section 47, chapter 618, Oregon Laws 2003.

(b) The amount attributable to any increase in registration plate fees by the amendments to ORS 803.570 by section 48, chapter 618, Oregon Laws 2003.

(c) The amount attributable to the increases in fees for driver licenses, permits and endorsements by the amendments to ORS 807.370 by section 49, chapter 618, Oregon Laws 2003.

(d) The amount attributable to the increase in the weight receipt fee by the amendments to ORS 825.450 by section 50, chapter 618, Oregon Laws 2003.

(2) The moneys described in subsection (1) of this section shall be allocated 60 percent to counties and 40 percent to cities. Moneys allocated under this section shall be distributed in the same manner as moneys allocated to counties and cities under ORS 366.739 are distributed. [2003 c.618 §53]

366.749 Allocation of moneys resulting from increase in numbers of vehicle registrations, titles and trip permits due to specified actions by vehicle dealers and persons engaged in towing. (1) Each year the Department of Transportation shall determine the increase in the number of vehicle registrations and titles that is attributable to ORS 803.565 and the increase in the number of trip permits issued under ORS 803.600 that is attributable to the amendments to ORS 803.600 by section 3, chapter 600, Oregon Laws 2003.

(2) Notwithstanding any other allocation of moneys to counties and cities under this chapter, the amount of moneys from the increases described in subsection (1) of this section shall be allocated 60 percent to counties and 40 percent to cities. Moneys allocated under this section shall be distributed in the same manner as moneys allocated to counties and cities under ORS 366.739 are distributed. [2003 c.618 §55]

366.750 [Renumbered 367.170]

366.755 [Renumbered 367.175]

366.760 [Renumbered 367.180]

(Counties)

366.762 Appropriation from highway funds for counties. There shall be and hereby are appropriated out of the highway fund annually such sums of money established under ORS 366.739 out of all moneys credited to the State Highway Fund by the State Treasurer between July 1 of any year and June 30 of the following year that are subject to the appropriation under this section by ORS 366.739. The appropriation shall be distributed among the several counties for the purposes provided by law. [Formerly 366.525]

366.764 Basis of allocation of appropriation to counties. The sum designated in ORS 366.762 shall be remitted by warrant to the county treasurers of the several counties. The remittance in any year shall be in proportion of the number of vehicles, trailers, semitrailers, pole trailers and pole or pipe trailers registered in each county, to the total number of such vehicles registered in the state as of December 31 of the preceding year, as indicated by motor vehicles registration records. All such vehicles owned and operated by the state and registered under ORS 805.040, 805.045 and 805.060 shall be excluded from the computation in making the apportionment. [Formerly 366.530]

366.765 [Amended by 1967 c.454 §43; 1979 c.293 §7; 1981 c.153 §63; renumbered 366.570 in 2003]

366.766 Remitting appropriation to counties. The appropriation made by ORS 366.762 shall be remitted to the counties on a monthly basis within 35 days after the end of the month for which a distribution is made in an amount determined in ORS 366.739 and 366.762 and credited to the highway fund for such remittance. [Formerly 366.535]

366.768 Advances from highway fund to county. Upon satisfactory showing before the Department of Transportation by any county that the county does not have sufficient funds with which to pay, when due, bonded indebtedness incurred for highway purposes, the department may certify to such fact. Pursuant to the certificate, a warrant shall be drawn in favor of the county against the highway fund in the amount set out in each certificate, which amount so advanced shall be deducted from the next payment due the county under ORS 366.762 to 366.768. [Formerly 366.540]

366.770 [Amended by 1979 c.223 §2; renumbered 366.572 in 2003]

366.772 Allocation of moneys to counties with road funding deficit. (1) Not later than July 31 in each calendar year, the sum of $750,000 shall be withdrawn from the appropriation specified in ORS 366.762, and the sum of $250,000 shall be withdrawn from moneys available to the Department of

Transportation from the State Highway Fund. The sums withdrawn shall be set up in a separate account to be administered by the Department of Transportation.

(2) Not later than July 31 in each calendar year, the sum of $1 million shall be withdrawn from the separate account described in subsection (1) of this section and distributed to counties that had a county road base funding deficit in the prior fiscal year. A county's share of the $1 million shall be based on the ratio of the amount of the county's road base funding deficit to the total amount of county road base funding deficits of all counties.

(3) Moneys allocated as provided in this section may be used only for maintenance, repair and improvement of existing roads.

(4) As used in this section:

(a) "County road base funding deficit" means the amount of a county's minimum county road base funding minus the amount of that county's dedicated county road funding. A county has a county road base funding deficit only if the amount of the dedicated county road funding is less than the amount of the minimum county road base funding.

(b) "Dedicated county road funding" for a county means:

(A) Moneys received from federal forest reserves and apportioned to the county road fund in accordance with ORS 294.060;

(B) State Highway Fund moneys distributed to the county, other than moneys distributed under this section; and

(C) Federal Highway Administration revenues allocated by formula to the county annually under the federal-aid highway program authorized by 23 U.S.C. chapter 1. These moneys do not include federal funds received by the county through a competitive grant process.

(c) "Minimum county road base funding" means $1 million beginning on July 1, 2003, and thereafter means $1 million as adjusted annually on the basis of the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. [Formerly 366.541]

Note: The amendments to 366.772 (formerly 366.541) by section 20, chapter 618, Oregon Laws 2003, become operative July 1, 2008. See section 21, chapter 618, Oregon Laws 2003. The text that is operative on and after July 1, 2008, is set forth for the user's convenience.

366.772. (1) Not later than July 31 in each calendar year, the sum of $500,000 shall be withdrawn from the appropriation specified in ORS 366.762, and the sum of $250,000 shall be withdrawn from moneys available to the Department of Transportation from the State Highway Fund. The sums withdrawn shall be set up in a separate account to be administered by the Department of Transportation.

(2) Not later than July 31 in each calendar year, the sum of $750,000 shall be withdrawn from the separate account described in subsection (1) of this section and distributed to counties that had a county road base funding deficit in the prior fiscal year. A county's share of the $750,000 shall be based on the ratio of the amount of the county's road base funding deficit to the total amount of county road base funding deficits of all counties.

(3) Moneys allocated as provided in this section may be used only for maintenance, repair and improvement of existing roads.

(4) As used in this section:

(a) "County road base funding deficit" means the amount of a county's minimum county road base funding minus the amount of that county's dedicated county road funding. A county has a county road base funding deficit only if the amount of the dedicated county road funding is less than the amount of the minimum county road base funding.

(b) "Dedicated county road funding" for a county means:

(A) Moneys received from federal forest reserves and apportioned to the county road fund in accordance with ORS 294.060;

(B) State Highway Fund moneys distributed to the county, other than moneys distributed under this section; and

(C) Federal Highway Administration revenues allocated by formula to the county annually under the federal-aid highway program authorized by 23 U.S.C. chapter 1. These moneys do not include federal funds received by the county through a competitive grant process.

(c) "Minimum county road base funding" means $1 million beginning on July 1, 2003, and thereafter means $1 million as adjusted annually on the basis of the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

Note: 366.772 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.773 [2001 c.565 §1; renumbered 366.574 in 2003]

366.774 Authorized use of allocation to counties; report by counties to Legislative Assembly. (1) Moneys paid to counties under ORS 366.762 to 366.768 shall be used only for the purposes stated in sections 3 and 3a, Article IX of the Oregon Constitution, and the statutes enacted pursuant thereto including ORS 366.514.

(2) Counties receiving moneys under ORS 366.762 to 366.768 shall report annually to the Legislative Assembly the expenditures of those moneys in each of the following areas:

(a) Administration;

(b) Bicycle paths;

(c) Construction and expansion;

(d) Operations and maintenance;

(e) Other payments;

(f) Payments to other governments; and

(g) Repair and preservation.

(3) The Association of Oregon Counties shall make an annual report to the Legislative Assembly presenting the information required by subsection (2) of this section. The report shall be made to the committees of the Legislative Assembly with primary jurisdiction over transportation matters.

(4) For the purposes of subsection (2) of this section, each county shall account for moneys paid to the county under ORS 366.762 to 366.768 separately from any other county moneys. [Formerly 366.542]

Note: 366.774 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 1 and 2, chapter 780, Oregon Laws 2003, provide:

Sec. 1. (1) The Association of Oregon Counties shall establish a work group that consists of county officials to study the basis used to allocate the county portion of state highway funds to each county in this state.

(2) The association may appoint persons who are not county officials to the work group.

(3) The purpose of the work group is to study methods within the formula that allocates state highway funds to counties in order to address the following issues:

(a) The financial support that high-growth counties require due to the unique needs of those counties;

(b) The financial support that sparsely populated counties require for basic road programs;

(c) The effect on county road programs of large bridges including, but not limited to, bridges across the Willamette River;

(d) The effect on county road programs of vehicles, including heavy truck tractors and truck trailers, that are registered in a county but are not operated in the county; and

(e) Other issues relating to the allocation of state highway funds to counties.

(4) The work group shall develop and present a report on the results of its study to the appropriate committees of the Seventy-third Legislative Assembly on or before February 1, 2005.

(5) Funds made available to counties under ORS 366.524 [renumbered 366.739] may be used to pay the expenses of the work group. The association may enter into an intergovernmental agreement with the Department of Transportation to obtain the funds.

(6) All agencies of state government, as defined in ORS 174.111, and the League of Oregon Cities are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish the information and advice that members of the work group consider necessary to perform their duties. [2003 c.780 §1]

Sec. 2. Section 1 of this 2003 Act is repealed on January 2, 2006. [2003 c.780 §2]

366.775 [Amended by 1953 c.252 §2; 1979 c.223 §3; renumbered 366.576 in 2003]

366.777 [1999 c.541 §1; renumbered 366.578 in 2003]

366.780 [Repealed by 1981 c.153 §79]

(Cities)

366.785 Definitions for ORS 366.785 to 366.820. As used in ORS 366.785 to 366.820, unless the context requires otherwise:

(1) "Year" means a calendar year.

(2) "City" means only cities of this state which are regularly operating as such through elected governmental officers.

(3) "Population" means population as given in the latest determination of the State Board of Higher Education, except that for a city of more than 100,000 population according to the latest such determination, the term means 74 percent of the number of population given for the city in the determination for computation of its share for 1964, 78 percent for computation of its share for 1965, 82 percent for 1966, 86 percent for 1967, 90 percent for 1968, 94 percent for 1969, 98 percent for 1970; and for 1971 and subsequent years computation shall be made on the basis of full number of population. [Amended by 1961 c.259 §2; 1961 c.653 §1; 1963 c.399 §1]

366.790 Authorized use of appropriation to cities; report by cities to Legislative Assembly. (1) Moneys paid to cities under ORS 366.785 to 366.820 shall be used only for the purposes stated in sections 3 and 3a, Article IX of the Oregon Constitution and the statutes enacted pursuant thereto including ORS 366.514.

(2) Cities receiving moneys under ORS 366.785 to 366.820 shall report annually to the Legislative Assembly the expenditures of those moneys in each of the following areas:

(a) Administration;

(b) Bicycle paths;

(c) Construction and expansion;

(d) Operations and maintenance;

(e) Other payments;

(f) Payments to other governments; and

(g) Repair and preservation.

(3) The League of Oregon Cities shall make an annual report to the Legislative Assembly presenting the information required by subsection (2) of this section. The report shall be made to the committees of the Legislative Assembly with primary jurisdiction over transportation matters.

(4) For the purposes of subsection (2) of this section, each city shall account for moneys paid to the city under ORS 366.785 to 366.820 separately from any other city moneys.

(5) This section does not apply to a city with a population under 5,000. [Amended by 1961 c.653 §2; 1971 c.376 §5; 1985 c.565 §65; 1987 c.899 §4; 1999 c.797 §2]

366.795 [Repealed by 1955 c.237 §1]

366.800 Appropriation from highway fund for cities; amount and source. There shall be and hereby are appropriated out of the highway fund annually such sums of money established under ORS 366.739 out of all moneys credited to the highway fund by the State Treasurer between July 1 of any year and June 30 of the following year that are subject to the appropriation under this section by ORS 366.739. The appropriation shall be distributed among the several cities as provided in ORS 366.785 to 366.820. [Amended by 1967 c.463 §5; 1979 c.344 §10; 1981 s.s c.3 §109; 1983 c.164 §4; 1983 c.338 §922; 1985 c.209 §5]

366.805 Allocation of appropriation to cities. (1) Except as provided in subsection (2) of this section, the appropriation specified in ORS 366.800 shall be allocated to the cities as provided in this subsection. The moneys subject to allocation under this subsection shall be distributed by the Department of Transportation according to the following:

(a) The moneys shall be distributed to all the cities.

(b) Each city shall receive such share of the moneys as its population bears to the total population of the cities.

(2) Each year, the sum of $500,000 shall be withdrawn from the appropriation specified in ORS 366.800 and $500,000 shall be withdrawn from moneys available to the Department of Transportation from the State Highway Fund and set up in a separate account to be administered by the Department of Transportation. The following apply to the account described in this subsection:

(a) Money from the account shall only be used upon streets:

(A) That are not a part of the state highway system;

(B) That are within cities with populations of 5,000 or fewer persons; and

(C) That are inadequate for the capacity they serve or are in a condition detrimental to safety.

(b) All moneys in the account shall be allotted each year.

(c) Subject to paragraph (d) of this subsection, the department shall determine the distribution of the expenditures after considering applications made to it therefor from the cities.

(d) The department may enter into agreements with cities upon the advice and counsel of organizations representing cities to establish:

(A) The method of allotting moneys from the account; or

(B) The method of considering applications from cities and determining distribution based on the applications. [Amended by 1959 c.170 §1; 1985 c.123 §§1,2; 1991 c.355 §1]

366.810 Payment of appropriation to cities. Funds accrued and payable to cities under ORS 366.785 to 366.820 shall be remitted on a monthly basis within 35 days after the end of the month for which a distribution is made by the Department of Transportation to the financial officer of each city. The funds appropriated shall be apportioned on or before the last day of each month by the department, which shall certify to the apportionment. Upon such certification, warrants shall be drawn payable to the cities in the amounts set out. [Amended by 1967 c.454 §44; 1973 c.436 §1; 1975 c.527 §3]

366.815 City to establish state tax street fund; accumulations. (1) A city shall set aside in a state tax street fund all money which it receives under ORS 366.785 to 366.820.

(2) No money allocated to a city may be allowed to accumulate over two successive years unless the city perfects plans for a definite construction program allowable under ORS 366.785 to 366.820 which will necessitate the use of more than two years' estimated allocations. The program shall receive the approval of the Chief Engineer before money allocated may be accumulated. If any city accumulates allocated funds for over two years, and a definite construction program is not established, the funds shall revert to the State Treasurer to be reallocated to other cities as though they were an additional credit to the cities' appropriation under ORS 366.785 to 366.820. [Amended by 1993 c.741 §43]

366.820 Limit to application of ORS 366.785 to 366.815. Nothing in ORS 366.785 to 366.815 relieves the Department of Transportation of its statutory obligations with respect to the construction, reconstruction, maintenance, repair and improvement of streets or roads taken over by the state, or confers on the department jurisdiction or control over roads or streets benefited by ORS 366.785 to 366.815, except as provided therein. [Amended by 2001 c.104 §126]

MISCELLANEOUS PROVISIONS

366.905 "Old Oregon Trail" designation. All that portion of the east and west state highway across the state, commencing at the Idaho state line at Ontario and Nyssa, through Huntington, Baker City, La Grande, Pendleton, Umatilla, The Dalles, Hood River, Portland, Astoria and ending at Seaside on the Pacific Ocean, is designated as the Old Oregon Trail. That portion of the highway from The Dalles to Astoria shall retain its identity as the Columbia River Highway section of the Old Oregon Trail. The road from

Hood River, up the Hood River Valley around Mt. Hood, through Oregon City and on to Portland, shall be known as the Mt. Hood Loop section of the Old Oregon Trail. [Amended by 1991 c.67 §90; 2001 c.508 §1]

366.906 Oregon City designated end of Oregon Trail. (1) Notwithstanding the description in ORS 366.905, Oregon City, in Clackamas County, Oregon, is recognized and designated as the true and correct end of the Oregon National Historic Trail, otherwise known as the Oregon Trail or the Old Oregon Trail, and as such is deserving of preservation as an historic and economic resource for this state and the nation.

(2) That northern portion of Oregon City, Oregon, to the south and east of the confluence of the Clackamas and Willamette Rivers is recognized and designated as the site of the gathering and dispersal of the incoming Oregon Trail pioneers. [1987 c.184 §1]

Note: 366.906 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.907 Findings and declarations concerning Highway 101. The Legislative Assembly finds and declares that:

(1) Highway 101, the coast highway providing the only access to the whole western length of this state, is of economic, recreational, scenic, social and historic importance to the people of the state.

(2) There are many agencies and municipalities with particular regulatory or program interests in Highway 101 and the area it controls, but there is no comprehensive management plan or process to insure that state interests are protected and promoted.

(3) It is important that the State of Oregon develop and maintain a program of management to promote and insure coordinated management of Highway 101 as a whole. [1991 c.235 §2]

366.910 End of Lewis and Clark Trail. That portion of Broadway Street in Seaside which meets the Pacific Ocean shall be known as the end of the Lewis and Clark Trail.

366.915 Authorization to remove Crooked River Highway from state highway system and establish new route. Notwithstanding any other law to the contrary, the Department of Transportation may remove from the state highway system the state highway designated as the Crooked River Highway, otherwise defined as State Highway No. 14, which begins at Prineville and extends southeasterly to a connection with the Central Oregon Highway. Upon the removal of the highway from the state highway system, the department shall be under no further obligation with respect to the construction, reconstruction, maintenance or repair of the highway. Before taking such action, the department shall, in cooperation with the county court of Crook County, provide for the location of and establish as a part of the state highway system another highway between Prineville and the Central Oregon Highway.

366.920 [1965 c.572 §8; 1983 c.324 §17; renumbered 360.115]

366.990 [Renumbered 390.990]

Chapter 367

2003 EDITION

Transportation Financing; Projects

TRANSPORTATION FINANCING; PROJECTS

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Note: The definitions in 366.005 and 366.015 apply to this chapter.

FINANCING FOR TRANSPORTATION PROJECTS

(Generally)

367.010 Definitions for chapter. As used in this chapter:

(1) "Agency" means any department, agency or commission of the State of Oregon.

(2) "Bond" means an evidence of indebtedness including, but not limited to, a bond, a note, an obligation, a loan agreement, a financing lease, a financing agreement or other similar instrument or agreement.

(3) "Bond debt service" means payment of:

(a) Principal, interest, premium, if any, or purchase price of a bond;

(b) Amounts due to a credit enhancement provider authorized by this chapter;

(c) Amounts necessary to fund bond debt service reserves; and

(d) Amounts due under an agreement for exchange of interest rates if designated by the State Treasurer or the Department of Transportation.

(4) "Credit enhancement" means a letter of credit, line of credit, bond insurance policy, standby purchase agreement, surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of a bond.

(5) "Financial institution" means a banking institution, a financial institution or a non-Oregon institution, as those terms are defined in ORS 706.008, and any other institution defined by rule of the Oregon Transportation Commission as a financial institution for purposes of ORS 367.010 to 367.067.

(6) "Infrastructure assistance" means any use of moneys in the Oregon Transportation Infrastructure Fund, other than an infrastructure loan, to provide financial assistance for transportation projects. The term includes, but is not limited to, use of moneys in the infrastructure fund to finance leases, fund reserves, make grants, pay issuance costs or provide credit enhancement or other security for bonds issued by a public entity to finance transportation projects.

(7) "Infrastructure bonds" means bonds authorized by ORS 367.030, 367.555 to 367.600 or 367.605 to 367.670 that are issued to fund infrastructure loans and the proceeds of which are deposited in the infrastructure fund.

(8) "Infrastructure fund" means the Oregon Transportation Infrastructure Fund.

(9) "Infrastructure loan" means a loan of moneys in the infrastructure fund to finance a transportation project.

(10) "Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland or an intergovernmental entity organized under ORS 190.010.

(11) "Transportation project" means any project or undertaking that facilitates any mode of transportation within this state. The term includes, but is not limited to, a project for highway, transit, rail and aviation capital infrastructure, bicycle and pedestrian paths, bridges and ways, and other projects that facilitate the transportation of materials, animals or people. [1997 c.679 §1; 1999 c.1036 §3; 2003 c.201 §11]

367.015 Oregon Transportation Infrastructure Fund; sources; uses; rules; investment. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Oregon Transportation Infrastructure Fund. All moneys in the infrastructure fund are continuously appropriated to the Department of Transportation for the purposes of ORS 367.010 to 367.067.

(2) The infrastructure fund consists of:

(a) Moneys appropriated to the infrastructure fund by the Legislative Assembly.

(b) Moneys transferred to the infrastructure fund by the department from the State Highway Fund or from other funds available to the Oregon Transportation Commission.

(c) Moneys from any federal grant, state grant or other grant that are deposited in the infrastructure fund.

(d) Proceeds of infrastructure bonds.

(e) Proceeds of Highway User Tax Bonds issued under ORS 367.615 and 367.670 for the purpose of providing infrastructure assistance or an infrastructure loan.

(f) Moneys due to a municipality that are withheld pursuant to ORS 367.035 (3) or (5) and, for a loan made with proceeds of Highway User Tax Bonds, moneys due to a municipality that are withheld pursuant to ORS 367.655 (2)(c).

(g) Earnings on the infrastructure fund.

(h) Moneys paid to the department in connection with infrastructure loans or infrastructure assistance.

(i) Any grants or donations made to the State of Oregon for deposit in the infrastructure fund.

(3) A pledge by the department of its revenues or other moneys in the infrastructure fund is valid and binding from the time the pledge is made as provided in ORS 288.594.

(4) The department shall use moneys in the infrastructure fund solely to:

(a) Provide infrastructure loans and infrastructure assistance;

(b) Pay the bond debt service for infrastructure bonds and pay the costs of issuance and other costs related to infrastructure bonds;

(c) Pay the department's costs of administering the infrastructure fund and providing infrastructure loans and infrastructure assistance, including any costs of monitoring transportation projects and obtaining repayment of infrastructure loans and infrastructure assistance;

(d) Pay the department's or another public entity's costs for transportation projects including, but not limited to, projects funded with the proceeds of Highway User Tax Bonds; and

(e) Ensure repayment of loan guarantees or extensions of credit as provided in ORS 367.816.

(5) The department may establish separate accounts in the infrastructure fund for infrastructure loans, infrastructure assistance, the funding of infrastructure bond reserves, bond debt service payments for infrastructure bonds and related costs, administrative and operating expenses or any other purpose necessary or desirable for carrying out the purposes of ORS 367.010 to 367.067. The commission may adopt rules that govern how the infrastructure fund and its accounts are used. The infrastructure fund or any of its accounts may be held by an escrow agent or bond trustee.

(6) The department shall administer the infrastructure fund. Moneys in the infrastructure fund, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.820 and the earnings from such investments must be credited to the account in the infrastructure fund designated by the department. [1997 c.679 §2; 2003 c.201 §12; 2003 c.790 §14]

367.020 Loans and other assistance to public and private entities; rules; other authorized purposes. (1) Moneys in the Oregon Transportation Infrastructure Fund may be used to make infrastructure loans and provide infrastructure assistance to any public or private entity. The Oregon Transportation Commission shall adopt rules that prescribe procedures and standards for making infrastructure loans and providing infrastructure assistance.

(2) Moneys in the infrastructure fund may be used for any purpose as long as the use is consistent with any restrictions of the Oregon Constitution that may apply to such moneys. [1997 c.679 §§3,4; 2003 c.201 §13]

367.025 Issuance of infrastructure bonds; bond counsel. (1) If the Department of Transportation determines that it is necessary or desirable to issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the department shall ask the State Treasurer to issue infrastructure bonds.

(2) When the department asks the State Treasurer to issue infrastructure bonds, if the State Treasurer determines that infrastructure bonds shall be issued:

(a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the infrastructure fund.

(b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The department may not appoint bond counsel under this paragraph unless the State Treasurer has reviewed and approved the terms and conditions of the appointment. ORS 279.712 does not apply to an appointment or agreement described in this paragraph. [1997 c.679 §5; 2001 c.536 §9]

Note: The amendments to 367.025 by section 266, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

367.025. (1) If the Department of Transportation determines that it is necessary or desirable to issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the department shall ask the State Treasurer to issue infrastructure bonds.

(2) When the department asks the State Treasurer to issue infrastructure bonds, if the State Treasurer determines that infrastructure bonds shall be issued:

(a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the infrastructure fund.

(b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The department may not appoint bond counsel under this paragraph unless the State Treasurer has reviewed and approved the terms and conditions of the appointment. ORS 279A.140 does not apply to an appointment or agreement described in this paragraph.

367.030 Issuance of revenue bonds; bond covenants; maximum amount of bonds. (1) To provide moneys for the Oregon Transportation Infrastructure Fund or to refund bonds authorized by this section, the State Treasurer may, in cooperation with the Department of Transportation, issue revenue bonds of the State of Oregon that are payable solely from all or any portion of the moneys deposited in the infrastructure fund and may pledge such moneys to secure the revenue bonds. The department or State Treasurer may exercise any power granted to a municipality or public body by the Uniform Revenue Bond Act in connection with bonds authorized by this section. However, the State Treasurer or the department shall not pledge or encumber any moneys of the State of Oregon other than those required by ORS 367.010 to 367.067 to be deposited in the infrastructure fund.

(2) The department may enter into covenants for the benefit of the owners of bonds authorized by this section regarding the use of moneys in the infrastructure fund, the providing of infrastructure assistance and the collection of infrastructure loans. Any such covenants shall be binding upon the State of Oregon in accordance with their terms and shall be enforceable against the State of Oregon by owners of the bonds. However, no owner of bonds authorized by this section shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest thereon, or to enforce payment thereof against any property of the state, except those moneys in the infrastructure fund that are pledged to pay the bonds and any moneys the department or an agency may agree to use to repay infrastructure loans under ORS 367.040. Bonds authorized by this section shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except moneys in the infrastructure fund that are pledged to pay the bonds, and any property that the department or agency pledges, mortgages or assigns to secure infrastructure loans pursuant to ORS 367.040. Revenue bonds authorized by this section shall not constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation.

(3) The total principal amount of revenue bonds that are issued under this section and outstanding at any time shall not exceed $200 million. [1997 c.679 §6]

367.035 Loans to municipalities; authority of municipalities; repayment plan. (1) Notwithstanding any other provision of law or any restriction on indebtedness contained in a charter, a municipality may obtain an infrastructure loan from the Department of Transportation by entering into a loan contract with the department. A municipality that obtains an infrastructure loan may pledge to the repayment of the loan all or any portion of the revenue sources specified in this subsection. A municipality shall repay an infrastructure loan in accordance with the terms of the loan contract and to the extent required by the loan contract from any or all of the following sources:

(a) Revenues of any transportation project, including special assessment revenues;

(b) Moneys withheld under subsection (3) or (5) of this section;

(c) The general fund of the municipality; or

(d) Any other sources including, but not limited to, an appropriation or allocation to a county under ORS 366.762 to 366.768 or to a city under ORS 366.785 to 366.820.

(2) An infrastructure loan contract with a municipality may provide that a portion of the proceeds of the loan be applied to fund a reserve fund to secure the repayment of the loan or secure the repayment of revenue bonds issued to finance the loan.

(3) An infrastructure loan contract with a city or county may provide that all or a portion of the principal and interest on an infrastructure loan be repaid by withholding all or a portion of an apportionment due to a county under ORS 366.762 to 366.768 or due to a city under ORS 366.785 to 366.820. The department shall immediately transfer funds withheld under this subsection from the State Highway Fund to the Oregon Transportation Infrastructure Fund.

(4) A municipality that intends to obtain an infrastructure loan shall adopt an ordinance or resolution authorizing the infrastructure loan.

(5) If a municipality fails to comply with the terms of an infrastructure loan contract, the department may seek any legal or equitable remedy to obtain compliance or payment of damages. If any municipality fails to make an infrastructure loan payment when due, the State of Oregon shall, at the request of the department, withhold any funds due to the municipality from the state and apply the amounts withheld to pay the entire amount owed by the municipality under the infrastructure loan contract. The department shall deposit funds withheld under this subsection in the account of the infrastructure fund to which the municipality's infrastructure loan payments are required to be deposited. The department may waive the right of the State of Oregon to withhold moneys under this subsection only if the department

has not pledged the right as security for the repayment of infrastructure bonds. [1997 c.679 §7; 2003 c.201 §14]

367.040 Loans to state agencies; loan contract. (1) Notwithstanding ORS 283.087 (5), an agency may obtain an infrastructure loan. An agency may agree to pay the infrastructure loan from any or all of the available moneys of the agency and may pledge all or any portion of those moneys to repay the infrastructure loan. An infrastructure loan of an agency does not constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation.

(2) If an infrastructure loan is made to an agency, the terms of the infrastructure loan contract bind the State of Oregon and the agency, and the agency shall unconditionally repay the infrastructure loan from the moneys the agency has pledged in accordance with the terms of the infrastructure loan contract. [1997 c.679 §8; 2003 c.201 §15]

367.050 Powers of department. The Department of Transportation may:

(1) Make all contracts and agreements, execute and deliver all instruments and do all things necessary or convenient to provide financial assistance for transportation projects in accordance with ORS 367.010 to 367.067 or to perform covenants made to secure infrastructure bonds; and

(2) Enter into and perform such contracts and agreements with entities concerning the planning, construction, lease or other acquisition, installation or financing of transportation projects. [1997 c.679 §9; 2003 c.201 §16]

367.060 Department pledge to ensure loan guarantees; transfer of moneys from State Highway Fund. (1) The Department of Transportation may pledge not more than $50 million to ensure the repayment of loan guarantees or other extensions of credit made to or on behalf of municipalities to finance transportation projects or to ensure repayment of loan guarantees or other extensions of credit as provided in ORS 367.816. The lien of a pledge made under this subsection is subordinate to the lien of a pledge securing bonds issued under ORS 367.605 to 367.670.

(2) If, during a fiscal year, the moneys in the Oregon Transportation Infrastructure Fund are insufficient to cover any claims by financial institutions, credit enhancement providers, bondholders or bond trustees that arise from loan guarantees or other extensions of credit made under ORS 367.010 to 367.067, the department shall transfer, as often as necessary or appropriate in that fiscal year, moneys from the State Highway Fund to satisfy such claims. However, the department may not make a transfer of moneys from the State Highway Fund otherwise required by this section if:

(a) The transfer will reduce the moneys in the State Highway Fund to an amount that is insufficient to pay the principal and interest that will fall due during the fiscal year on outstanding bonds issued under ORS 367.555 to 367.600; or

(b) The transfer relates to a claim arising out of a transportation project for which moneys in the State Highway Fund may not be used under section 3a, Article IX, Oregon Constitution, and ORS 366.505. [1999 c.1036 §2; 2003 c.201 §17; 2003 c.790 §15]

(Short Line Railroads)

367.066 Definitions for ORS 367.066 and 367.067. As used in this section and ORS 367.067:

(1) "Credit premium" means the amount required to be paid to the United States Secretary of Transportation before disbursement of a federal loan under RRIFP.

(2) "RRIFP" means the Railroad Rehabilitation and Improvement Financing Program, 49 C.F.R. 260 et seq.

(3) "Short line railroad" means a class II or class III railroad as defined in 49 C.F.R. 1201. [2001 c.942 §15]

367.067 Short Line Credit Premium Account. (1) The Short Line Credit Premium Account is established as an account in the Oregon Transportation Infrastructure Fund. Moneys in the Short Line Credit Premium Account are continuously appropriated to the Department of Transportation for the purpose of carrying out the provisions of this section.

(2) A short line railroad may apply to the Department of Transportation for infrastructure assistance in a manner determined by the department by rule.

(3) In evaluating applications for infrastructure assistance under this section, the department shall give priority to projects that:

(a) Enhance public safety;

(b) Enhance the environment;

(c) Appear creditworthy, providing financially secure sources of repayment to secure a federal credit instrument;

(d) Promote rural economic development;

(e) Reduce demand for expansion of highway capacity;

(f) Enable Oregon companies to be more competitive in regional, national and international markets;

(g) Preserve or enhance rail or intermodal service to small communities or rural areas; and

(h) Will be operated by a short line railroad with federal credit assistance under the RRIFP.

(4) If a short line railroad receives infrastructure assistance under this section for a project for which federal credit assistance was received under RRIFP, and if all or part of the credit premium is returned to the railroad by the federal government, the railroad shall remit to the department the amount of moneys returned to the railroad.

(5) All moneys remitted to the department under subsection (4) of this section shall be deposited by the department into the Short Line Credit Premium Account. [2001 c.942 §16]

Note: Section 14, chapter 942, Oregon Laws 2001, provides:

Sec. 14. Lottery bonds for short line railroads. (1) Pursuant to ORS 286.560 to 286.580, lottery bonds may be issued to fund projects for the improvement, restoration, upgrading and preservation of systems, facilities and equipment of short line railroads.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well developed system of short line railroads is critical to the economic growth and stability of Oregon;

(b) Traditional funding techniques such as grant programs are unable to keep pace with infrastructure investment in Oregon due to budgetary constraints on state government;

(c) Short line railroads serve the public good and would benefit from the provision of public assistance;

(d) New investment capital can be attracted to infrastructure projects that are capable of generating their own revenue stream through dedicated funding sources;

(e) A state credit program can complement existing funding sources by leveraging resources from nonstate sources;

(f) The state could mitigate the need to expand highways by encouraging the development and sustainability of a statewide system of short line railroads; and

(g) Newly established state credit programs are most effectively delivered when they augment and utilize the resources of previously established state credit programs.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of $4 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs. Lottery bonds issued pursuant to this section shall be issued only at the request of the Director of Transportation.

(4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the Short Line Credit Premium Account established by ORS 367.067.

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs. [2001 c.942 §14; 2003 c.741 §6]

(Industrial Rail Spurs)

367.070 Industrial Rail Spur Fund. The Industrial Rail Spur Fund is established separate and distinct from the General Fund. The moneys in the Industrial Rail Spur Fund and the interest earnings of the fund are continuously appropriated to the Department of Transportation for the purpose of financing grants and loans to fund industrial rail spurs. The fund consists of moneys deposited in the fund under section 10, chapter 741, Oregon Laws 2003, and may include fees, moneys, federal funds, Miscellaneous Receipts or other revenues available for the purpose. [2003 c.741 §11]

Note: 367.070 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 10, chapter 741, Oregon Laws 2003, provides:

Sec. 10. (1) For the biennium beginning July 1, 2003, pursuant to ORS 286.560 to 286.580, the State Treasurer, at the request of the Director of Transportation, may issue lottery bonds to finance grants and loans to fund industrial rail spurs typically used to provide access for transportation of raw materials and finished products between manufacturing facilities and main rail lines.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well-developed system of industrial rail spurs supports state and local government efforts to attract new industries to Oregon and to keep and encourage expansion of existing industries;

(b) Industrial rail spurs serve the public good and would benefit from the provision of public assistance; and

(c) A state credit program can complement existing funding sources by leveraging resources from nonstate sources.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of $8 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs.

(4) The net proceeds of lottery bonds issued pursuant to this section must be deposited in the Industrial Rail Spur Fund established by section 11 of this 2003 Act [367.070].

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs. [2003 c.741 §10]

SHORT-TERM DEBT

367.105 Short-term borrowing; conditions; repayment. (1) In addition to the authority for short-term borrowing granted in ORS 288.165, the Department of Transportation, acting through the State Treasurer, may borrow money by entering into a credit agreement, a line of credit or a revolving line of credit, or by issuing a note, a warrant, a short-term promissory note, commercial paper or another similar obligation, for the following purposes:

(a) Providing matching funds as set forth in ORS 366.564.

(b) Providing funds with which to pay when due the principal or interest of bonded indebtedness created for highway purposes, the payment of which is necessary to preserve the financial credit of the state.

(c) Meeting emergencies.

(d) Providing funds for use by the department during times when expenditures exceed revenues, whether or not the department anticipated that expenditures would exceed revenues.

(e) Providing funds for the payment of current expenses in anticipation of revenue, grants or other moneys intended for payment of the current expenses.

(f) Providing funds for interim financing of a capital asset or project to be undertaken by the department.

(g) Refunding an outstanding obligation.

(2) Short-term borrowing under this section may be in such denominations or for such sums as the department fixes and may draw interest at a negotiated rate.

(3) The total outstanding indebtedness created by the short-term borrowing under this section may not exceed $100 million in outstanding principal amount.

(4) All short-term borrowing issued pursuant to this section shall mature within three years from the date of issuance.

(5) The department shall pay for and secure short-term borrowing under this section with funds from the State Highway Fund or other funds that are legally available to the department for the purposes for which the moneys were borrowed, including moneys received by the department from the United States government. [Formerly 366.605; 1969 c.427 §1; 1975 c.614 §11; 1981 c.94 §32; 1981 c.311 §1; 1991 c.793 §3; 2003 c.201 §18]

367.155 [Formerly part of 366.735; repealed by 1981 c.660 §18]

367.160 [Formerly 366.740; 1981 c.94 §33; repealed by 1981 c.660 §18]

GRANT ANTICIPATION REVENUE BONDS

367.161 Definitions for ORS 367.161 to 367.181. As used in ORS 367.161 to 367.181:

(1) "Federal transportation funds" means funds apportioned or allocated, or anticipated to be apportioned or allocated in the current or a future federal fiscal year, to the state by the United States Department of Transportation for use on a federal-aid highway or highway safety construction project or other federal funds that may be used for a highway improvement project that are available or are anticipated to be available in the current or a future federal fiscal year.

(2) "Grant anticipation revenue bond" means a revenue bond secured based on receipt, or anticipation of receipt in the current or a future federal fiscal year, of federal transportation funds.

(3) "Highway improvement project" means a federal-aid highway or highway safety construction project, a transportation project or another project for which the Department of Transportation may use federal transportation funds. [2003 c.201 §2]

367.163 Purposes for which bonds may be issued. The State Treasurer, at the request of the Department of Transportation, may issue grant anticipation revenue bonds for the purposes of:

(1) Financing highway improvement projects including highway improvement projects already under way or scheduled;

(2) Financing the restoration, reconstruction or renovation of highway improvements in Oregon;

(3) Financing transportation projects;

(4) Paying the costs of issuance of the revenue bonds including, but not limited to, the costs and fees of paying agents, trustees and remarketing agents; or

(5) Paying the costs of credit enhancements. [2003 c.201 §3]

367.165 [Formerly 366.745; repealed by 1981 c.660 §18]

367.166 Requirements for grant anticipation revenue bonds; authority of State Treasurer. (1) A grant anticipation revenue bond issued under ORS 367.161 to 367.181:

(a) Must contain on its face a statement that the ad valorem taxing power of this state or any political subdivision of this state is not pledged to the payment of the principal or the interest on the revenue bond.

(b) May be sold at public competitive bid or at private negotiated sale.

(c) May be sold at the price or prices established by the State Treasurer, upon the advice of the Department of Transportation.

(d) Must mature on or before a date determined by calculation of the expected economic life of the improvements, assets and projects financed with the proceeds of the revenue bonds.

(2) The State Treasurer shall determine, upon the advice of the department and consistent with ORS 288.805 to 288.945, all aspects relating to the sale of revenue bonds under ORS 367.161 to 367.181 that are not otherwise specifically provided, including rate of interest and discount, if any. [2003 c.201 §4]

367.168 Revenue declaration. (1) Before grant anticipation revenue bonds are issued under ORS 367.161 to 367.181, the Department of Transportation shall prepare a revenue declaration authorizing issuance of the revenue bonds. The declaration must be signed by the Director of Transportation, or the director's designee, and must be approved by the State Treasurer, or the treasurer's designee.

(2) A declaration under this section may:

(a) Pledge all or a portion of the moneys described in ORS 367.173 for purposes of the revenue bonds to be issued.

(b) Limit the purposes to which the department may apply the proceeds of the sale.

(c) Make pledges concerning the proceeds of the sale or moneys described in ORS 367.173 to secure payment of the revenue bonds issued under ORS 367.161 to 367.181.

(d) Limit or otherwise provide for the issuance of additional revenue bonds, including refunding bonds, under ORS 367.161 to 367.181, limit or establish terms upon which additional revenue bonds, including refunding bonds, may be issued under ORS 367.161 to 367.181.

(e) Provide for procedures, if any, by which the terms of contracts with bondholders may be amended or rescinded, for the percentage of the bondholders that must consent to amendment or rescission of the contract and for the manner of bondholder consent to amendment or rescission of the contract.

(f) Establish a trustee and vest the trustee with property, rights, powers or duties in trust, as the State Treasurer determines appropriate.

(g) Provide for other matters affecting issuance of the revenue bonds.

(3) A declaration under this section may establish the same requirements, be subject to the same provisions, create the same obligations and confer the same rights as an indenture under ORS 367.171, if so provided in the declaration. [2003 c.201 §5]

367.170 [Formerly 366.750; repealed by 1981 c.660 §18]

367.171 Indenture. An indenture under which grant anticipation revenue bonds are issued may provide for:

(1) The pledging of all or a portion of the moneys described in ORS 367.173 to the payment of the principal, interest, premium, if any, or the bond debt service of revenue bonds issued under ORS 367.161 to 367.181;

(2) Requirements concerning a particular series of revenue bonds issued under ORS 367.161 to 367.181;

(3) Requirements concerning moneys described in ORS 367.173 and payment on outstanding revenue bonds issued under ORS 367.161 to 367.181;

(4) A contractual undertaking for the benefit of bondholders concerning assessment, levy collection and deposit of moneys described in ORS 367.173;

(5) Provisions concerning the registration of revenue bonds or the recording or filing of the indenture;

(6) Provisions relating to a reserve account. Provisions under this subsection may include, but are not limited to, the amount required for an account and provisions for replenishing the account from moneys described in ORS 367.173;

(7) Provisions concerning trustees including, but not limited to:

(a) Establishing funds, accounts or moneys described in ORS 367.173 over which the trustee will be custodian; and

(b) Providing that a trustee will be appointed; or

(8) Establishing the maturation date of the revenue bonds. [2003 c.201 §6]

367.173 Moneys that may be used for payment of grant anticipation revenue bonds. The principal, interest, premium, if any, and the purchase or tender price of the grant anticipation revenue bonds issued under ORS 367.161 to 367.181 are payable solely from the following moneys:

(1) Federal transportation funds.

(2) To the extent affirmatively pledged at the time issuance of revenue bonds is authorized, the following moneys that are lawfully available:

(a) Moneys deposited in the State Highway Fund established under ORS 366.505.

(b) Except as provided in paragraph (c) of this subsection, moneys, once deposited in the State Highway Fund established under ORS 366.505, from the following sources may be affirmatively pledged:

(A) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

(B) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

(C) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

(D) Moneys described under ORS 803.090 from the titling of vehicles.

(E) Moneys described under ORS 803.420 from the registration of vehicles.

(F) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(G) Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues or moneys received by the department from sources not listed in subparagraphs (A) to (F) of this paragraph that are lawfully available to be pledged under this section.

(c) Moneys described in paragraph (b) of this subsection do not include:

(A) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

(B) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

(C) Moneys in the account established under ORS 366.512 for parks and recreation. [2003 c.201 §7]

367.175 [Formerly 366.755; 1975 c.462 §5; repealed by 1981 c.660 §18]

367.176 Refunding grant anticipation revenue bonds. The State Treasurer may issue grant anticipation revenue bonds to refund outstanding grant anticipation revenue bonds or other obligations, the proceeds of which were used to finance highway improvement projects. Refunding and advance refunding bonds authorized in this section are subject to the provisions of ORS 367.161 to 367.181. [2003 c.201 §8]

367.178 Collection and use of federal transportation funds. (1) When grant anticipation revenue bonds have been issued under ORS 367.161 to 367.181, the Department of Transportation shall collect federal transportation funds and may, as provided by the department when issuance of the revenue bonds was authorized, use the funds:

(a) For deposit into one or more special funds or accounts that may be pledged to secure payment of the revenue bonds.

(b) For payment of the costs of highway improvement projects.

(c) For reimbursement to the department of moneys previously spent on highway improvement projects.

(2) The department may direct the United States government to deposit federal transportation funds directly with a trustee for the holders of the revenue bonds to secure payment of the revenue bonds.

(3) The department shall use the proceeds of a sale of revenue bonds issued under ORS 367.161 to 367.181 to pay:

(a) The costs and expenses incurred in the construction or acquisition of a highway improvement project.

(b) Legal and financial costs and expenses incurred to issue or administer the revenue bonds.

(4) If moneys pledged to secure Highway User Tax Bonds pursuant to ORS 367.605 are also pledged to secure payment of principal, interest, premium, if any, and purchase or tender price of grant anticipation revenue bonds issued under ORS 367.161 to 367.181, the pledge to secure grant anticipation revenue bonds issued under ORS 367.161 to 367.181 is subordinate and subject to prior use of the moneys to pay Highway User Tax Bonds. [2003 c.201 §9]

367.180 [Formerly 366.760; repealed by 1981 c.660 §18]

367.181 Limits on obligation of grant anticipation revenue bonds. (1) Grant anticipation revenue bonds issued under ORS 367.161 to 367.181 are not general obligations of the State of Oregon or of an agency, department, board, commission, officer or employee of the State of Oregon.

(2) The revenue bonds are a limited obligation payable solely from federal transportation funds received by the Department of Transportation and, if provided by the department when issuance of the revenue bonds is authorized, other moneys lawfully available for the purpose and affirmatively pledged to the payment of principal, interest, premium, if any, and purchase or tender price of the revenue bonds.

(3) A holder of revenue bonds issued under ORS 367.161 to 367.181 may not compel the payment of federal transportation funds to the Department of Transportation. [2003 c.201 §10]

367.185 [1975 c.436 §6; repealed by 1981 c.660 §18]

367.202 [Formerly 366.625; repealed by 1963 c.61 §1]

367.204 [Formerly 366.627; repealed by 1963 c.61 §1]

367.206 [Formerly 366.629; repealed by 1963 c.61 §1]

367.208 [Formerly 366.631; repealed by 1963 c.61 §1]

367.210 [Formerly 366.633; repealed by 1963 c.61 §1]

367.212 [Formerly 366.635; repealed by 1963 c.61 §1]

367.214 [Formerly 366.637; repealed by 1963 c.61 §1]

367.216 [Formerly 366.639; repealed by 1963 c.61 §1]

367.218 [Formerly 366.641; repealed by 1963 c.61 §1]

367.220 [Formerly 366.643; repealed by 1963 c.61 §1]

BONDED INDEBTEDNESS FOR STATE HIGHWAYS

367.226 [Formerly 366.645; repealed by 2003 c.201 §39]

367.228 [Formerly 366.650; 1989 c.610 §1; repealed by 2003 c.201 §39]

367.230 [Formerly 366.655; repealed by 2003 c.201 §39]

367.232 [Formerly 366.660; repealed by 2003 c.201 §39]

367.234 [Formerly 366.665; 1981 c.660 §20; repealed by 2003 c.201 §39]

367.236 [Formerly 366.670; repealed by 2003 c.201 §39]

367.238 [Formerly 366.675; 1975 c.462 §6; 1983 c.740 §120; repealed by 2003 c.201 §39]

367.240 [Formerly 366.680; repealed by 1989 c.610 §3]

367.242 [Formerly 366.685; repealed by 2003 c.201 §39]

367.252 [Formerly 366.688; repealed by 1981 c.660 §18]

367.254 [Formerly 366.689; 1967 c.335 §43; repealed by 1981 c.660 §18]

367.256 [Formerly 366.690; repealed by 1981 c.660 §18]

367.258 [Formerly 366.691; 1981 c.660 §21; 1991 c.67 §91; repealed by 2003 c.201 §39]

367.260 [Formerly 366.692; 1975 c.462 §7; repealed by 1981 c.660 §18]

367.262 [Formerly 366.693; repealed by 1981 c.660 §18]

367.264 [Formerly 366.694; repealed by 1981 c.660 §18]

367.266 [Formerly 366.695; repealed by 1981 c.660 §18]

367.268 [Formerly 366.696; repealed by 1981 c.660 §18]

367.270 [Formerly 366.697; repealed by 1981 c.660 §18]

367.282 [Formerly 366.6980; repealed by 1981 c.660 §18]

367.284 [Formerly 366.6981; repealed by 1981 c.660 §18]

367.286 [Formerly 366.6982; 1967 c.335 §44; repealed by 1981 c.660 §18]

367.288 [Formerly 366.6983; repealed by 1981 c.660 §18]

367.290 [Formerly 366.6984; repealed by 1981 c.660 §18]

367.292 [Formerly 366.6985; 1975 c.462 §8; repealed by 1981 c.660 §18]

367.294 [Formerly 366.6986; repealed by 1981 c.660 §18]

367.296 [Formerly 366.6987; repealed by 1981 c.660 §18]

367.298 [Formerly 366.6988; repealed by 1981 c.660 §18]

367.300 [Formerly 366.6989; repealed by 1981 c.660 §18]

367.302 [Formerly 366.6990; repealed by 1981 c.660 §18]

367.324 [Formerly 366.7000; repealed by 1981 c.660 §18]

367.326 [Formerly 366.7001; repealed by 1981 c.660 §18]

367.328 [Formerly 366.7002; 1967 c.335 §45; repealed by 1981 c.660 §18]

367.330 [Formerly 366.7003; repealed by 1981 c.660 §18]

367.332 [Formerly 366.7004; repealed by 1981 c.660 §18]

367.334 [Formerly 366.7005; 1975 c.462 §9; repealed by 1981 c.660 §18]

367.336 [Formerly 366.7006; repealed by 1981 c.660 §18]

367.338 [Formerly 366.7007; repealed by 1981 c.660 §18]

367.340 [Formerly 366.7008; repealed by 1981 c.660 §18]

367.344 [Formerly 366.7009; repealed by 1981 c.660 §18]

367.346 [Formerly 366.7010; repealed by 1981 c.660 §18]

367.365 [Formerly 366.7020; repealed by 1981 c.660 §18]

367.370 [Formerly 366.7021; 1981 c.660 §48; repealed by 2003 c.201 §39]

367.372 [1961 c.381 §2; repealed by 1981 c.660 §18]

367.380 [Formerly 366.7022; 1967 c.335 §46; repealed by 1981 c.660 §18]

367.385 [Formerly 366.7023; repealed by 1981 c.660 §18]

367.390 [Formerly 366.7024; repealed by 1981 c.660 §18]

367.395 [Formerly 366.7025; 1975 c.462 §10; repealed by 1981 c.660 §18]

367.400 [Formerly 366.7026; repealed by 1981 c.660 §18]

367.405 [Formerly 366.7027; repealed by 1981 c.660 §18]

367.410 [Formerly 366.7028; repealed by 1981 c.660 §18]

367.415 [Formerly 366.7029; 1981 c.660 §49; repealed by 2003 c.201 §39]

367.420 [Formerly 366.7030; repealed by 1981 c.660 §18]

367.425 [1961 c.345 §3; repealed by 1981 c.660 §18]

367.430 [1961 c.345 §4; 1981 c.660 §50; repealed by 2003 c.201 §39]

367.465 [1961 c.483 §1; repealed by 1981 c.660 §18]

367.470 [1961 c.483 §2; repealed by 1981 c.660 §18]

367.480 [1961 c.483 §3; 1967 c.335 §47]

367.485 [1961 c.483 §4; repealed by 1981 c.660 §18]

367.490 [1961 c.483 §5; repealed by 1981 c.660 §18]

367.495 [1961 c.483 §6; 1975 c.462 §11; repealed by 1981 c.660 §18]

367.500 [1961 c.483 §7; repealed by 1981 c.660 §18]

367.505 [1961 c.483 §8; repealed by 1981 c.660 §18]

367.510 [1961 c.483 §9; repealed by 1981 c.660 §18]

367.520 [1961 c.483 §10; repealed by 1981 c.660 §18]

367.550 [1973 c.698 §1; repealed by 2003 c.201 §39]

367.555 Authority to issue general obligation bonds. In addition to the authority now vested by any other provision of law, the Department of Transportation may issue general obligation bonds of the State of Oregon used to provide funds to defray the costs of building and maintaining permanent roads, including the costs of location, relocation, improvement, construction and reconstruction of state highways and bridges, in an outstanding principal amount that is subject to the provisions of ORS 286.505 to 286.545. [1973 c.698 §2; 1981 c.660 §32; 2003 c.201 §19]

367.560 Disposition and use of general obligation bond proceeds. All moneys obtained from the sale of general obligation bonds under ORS 367.555 to 367.600 must be paid over to the State Treasurer and credited by the State Treasurer to the State Highway Fund. Such moneys may be used only for the purposes stated in ORS 367.555 to 367.600 and, pending the use of such moneys for

highway purposes, may be invested as provided by law. [1973 c.698 §3; 2003 c.201 §20]

367.565 Procedure for issuing general obligation bonds under ORS 367.555 to 367.600. The Department of Transportation shall issue general obligation bonds under ORS 367.555 to 367.600 in accordance with ORS 286.031 to 286.066. [1973 c.698 §4; 1981 c.660 §33; 2003 c.201 §21]

367.570 [1973 c.698 §5; repealed by 1981 c.660 §18]

367.575 [1973 c.698 §6; repealed by 1981 c.660 §18]

367.580 [1973 c.698 §7; repealed by 1981 c.660 §18]

367.585 [1973 c.698 §8; repealed by 1981 c.660 §18]

367.590 [1973 c.698 §9; repealed by 1981 c.660 §18]

367.595 Setting aside sufficient moneys to pay maturing obligations. The Department of Transportation shall compute and determine in January of each year, after the sale of bonds under ORS 367.555 to 367.600, the amount of principal and interest that will fall due during such year on general obligation bonds then outstanding and unpaid and shall maintain or hold in the State Highway Fund sufficient moneys to pay such maturing obligations. [1973 c.698 §10; 2003 c.201 §22]

367.600 Constitutional debt limits not to be exceeded. The Department of Transportation may not issue or sell general obligation bonds under ORS 367.555 to 367.600 that, singly or in the aggregate with previous debts or liabilities incurred for the building and maintaining of permanent roads, exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such general obligation bonds. [1973 c.698 §11; 2003 c.201 §23]

HIGHWAY USER TAX BONDS

367.605 Source of funds to secure Highway User Tax Bonds. (1) Moneys deposited in the State Highway Fund established under ORS 366.505 are pledged to payment of Highway User Tax Bonds issued under ORS 367.615 and 367.670.

(2) Except as provided in subsection (3) of this section, moneys, once deposited in the highway fund from the following sources are subject to the use or pledge described in subsection (1) of this section:

(a) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

(b) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

(c) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

(d) Moneys described under ORS 803.090 from the titling of vehicles.

(e) Moneys described under ORS 803.420 from the registration of vehicles.

(f) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(g) Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues received by the department from sources not listed in paragraphs (a) to (f) of this subsection that are available for the use or pledge described by this section.

(3) Moneys described under subsection (2) of this section do not include:

(a) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

(b) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

(c) Moneys in the account established under ORS 366.512 for parks and recreation.

(4) To the extent affirmatively pledged, moneys from the following sources are subject to the use or pledge described in subsection (1) of this section:

(a) Moneys received by the Department of Transportation from the United States government.

(b) Any other moneys legally available to the department.

(5) Notwithstanding ORS 366.507, the lien or charge of any pledge of moneys securing bonds issued under ORS 367.615 or 367.670 is superior or prior to any other lien or charge and to any law of the state requiring the department to spend moneys for specified highway purposes. [1985 c.551 §2; 2001 c.669 §8; 2003 c.201 §24]

367.610 [1985 c.551 §2a; repealed by 2003 c.201 §39]

367.615 Authority for bond issuance; bonds not general obligation; conditions for issuance of additional bonds; use of bond proceeds. In addition to any authority the Department of Transportation has to issue and sell bonds, the department may issue and sell revenue bonds known as Highway User Tax Bonds as provided in this section:

(1) Bonds issued under this section do not constitute a debt or general obligation of this state or any political subdivision of this state but are secured and payable from moneys described under ORS 367.605. A holder of bonds issued under this section may not compel the exercise of the ad valorem taxing power of the state to pay the bond debt service on the bonds.

(2) This state shall provide for the continued assessment, levy, collection and deposit into the highway fund moneys described under ORS 367.605 in amounts sufficient to pay, when due, the annual bond debt service and other amounts necessary to

meet requirements established by indenture under ORS 367.640.

(3) This state may not in any way impair obligations of any agreement between this state and the holders of bonds issued under this section.

(4) The authority granted by this section is continuing and the department reserves the right, through and with the prior approval of the State Treasurer, to issue additional bonds under this section subject to the following:

(a) Additional bonds must be secured equally and ratably by the pledge and appropriation of moneys described under ORS 367.605 unless the department, as permitted by law and the contracts with owners of outstanding Highway User Tax Bonds, issues additional bonds in different series and secures each series by a lien on and pledge of moneys described under ORS 367.605 that is superior to or subordinate to the lien of the pledge securing any other series of Highway User Tax Bonds.

(b) The department may only issue additional bonds if sufficient moneys described under ORS 367.605 may be pledged to pay the annual bond debt service for all outstanding bonds issued under this section as well as for the additional bonds.

(5) Proceeds from the sale of bonds under this section are declared to be for the purpose of building and maintaining permanent public roads and may be used:

(a) To finance the cost of state highway, county road and city street projects in this state.

(b) To pay the cost of issuing the bonds.

(c) For loans to cities and counties as provided under ORS 367.035 or 367.655.

(d) To pay the bond debt service of the bonds.

(e) To pay the costs of the State Treasurer and the department to administer and maintain the bonds and the Highway User Tax Bond program, including the cost of consultants, advisors, attorneys or other professional service providers appointed, retained or approved by the treasurer or the department.

(f) To pay capitalized interest, principal or premium, if any, of the bonds.

(g) For rebates or penalties due to the United States in connection with the bonds.

(6) The department may issue Highway User Tax Bonds as capital appreciation bonds, auction rate bonds, variable rate bonds, deep discount bonds or deferred interest bonds.

(7) The State Treasurer or the Director of Transportation, if so directed by the treasurer, may obtain credit enhancement or an agreement for exchange of interest rates to provide additional security or liquidity for the bonds or to provide funding, in lieu of cash, for all or a portion of a bond debt service reserve account established with respect to the bonds. [1985 c.551 §3; 2003 c.201 §25]

367.620 Limitation on bond amount. (1) The principal amount of Highway User Tax Bonds issued under ORS 367.615 shall be subject to the provisions of ORS 286.505 to 286.545.

(2) Highway User Tax Bonds may be issued under ORS 367.615 for the purposes described in ORS 367.622 in an aggregate principal amount sufficient to produce net proceeds of not more than $500 million.

(3)(a) Highway User Tax Bonds may be issued under ORS 367.615 for bridge purposes described in section 10 (1), chapter 618, Oregon Laws 2003, in an aggregate principal amount sufficient to produce net proceeds of not more than $1.6 billion.

(b) Highway User Tax Bonds may be issued under ORS 367.615 for modernization purposes described in sections 10 (2) and 11, chapter 618, Oregon Laws 2003, in an aggregate principal amount sufficient to produce net proceeds of not more than $300 million.

(c) The Department of Transportation may designate the extent to which a series of bonds authorized under this subsection is secured and payable on a parity of lien or on a subordinate basis to existing or future Highway User Tax Bonds. [1985 c.551 §4; 1999 c.1036 §4; 2001 c.669 §1; 2002 s.s.1 c.3 §1; 2003 c.618 §6]

Note: Section 2, chapter 3, Oregon Laws 2002 (first special session), provides:

Sec. 2. The Department of Transportation may not issue bonds under the authority granted by ORS 367.620 (2) in an aggregate principal amount that exceeds an amount the department reasonably believes can be paid with $71.2 million in biennial debt service. [2002 s.s.1 c.3 §2]

367.621 Use of private sector resources in specified work. It is the policy of the State of Oregon to use increased revenues from the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by sections 1 to 5, chapter 618, Oregon Laws 2003, in a manner that maximizes the creation of new jobs. Each public body, as defined in ORS 174.109, that receives moneys from the revenues generated by the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by sections 1 to 5, chapter 618, Oregon Laws 2003, shall use private sector resources to the greatest extent possible in accomplishing the work funded by revenues from the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by

sections 1 to 5, chapter 618, Oregon Laws 2003. [2003 c.618 §41]

Note: 367.621 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 10 to 13, chapter 618, Oregon Laws 2003, provide:

Sec. 10. (1) Proceeds of bonds authorized under ORS 367.620 (3)(a) shall be used as follows:

(a) Replacement and repair of bridges on state highways, $1.3 billion. The Oregon Transportation Commission shall choose projects under this paragraph that meet the criteria for freight mobility projects as defined in section 37 of this 2003 Act [184.611].

(b) Replacement and repair of bridges on county and city highways, $300 million. The commission shall choose projects under this paragraph that meet the criteria for freight mobility projects as defined in section 37 of this 2003 Act. In determining which bridges to replace or repair under this paragraph, the commission shall consult with representatives of local governments.

(2) Except as otherwise provided in section 11 of this 2003 Act, proceeds of bonds authorized under ORS 367.620 (3)(b) shall be used for the modernization program described in ORS 366.507. The commission shall give funding priority for modernization projects funded with the proceeds of bonds authorized under ORS 367.620 (3)(b) to projects that are ready for construction. [2003 c.618 §10]

Sec. 11. (1) The Oregon Transportation Commission shall use $100 million of the net proceeds of bonds authorized under ORS 367.620 (3)(b):

(a) For the capitalizable cost of planning, development, design and construction of projects recommended by the Freight Advisory Committee created by section 2, chapter 240, Oregon Laws 2001 [366.212].

(b) To provide or improve access to industrial land sites. In selecting sites under this paragraph, the commission shall consult with the Economic and Community Development Department and local governments and shall give preference to sites for which local matching moneys are available.

(c) To provide or improve access to sites where jobs can be created.

(2) Notwithstanding ORS 366.507 (4)(b), projects selected under this section need not be equitably distributed throughout the state. [2003 c.618 §11]

Sec. 12. (1) In order to facilitate the replacement and repair of bridges described in section 10 of this 2003 Act, the Department of Transportation, after consultation with affected road authorities, may designate temporary detour routes, and may specify conditions of travel, over highways that are not state highways.

(2) Prior to directing traffic onto a detour route chosen under this section, the department may repair or reconstruct the highways chosen as detour routes if the repair or reconstruction will be cost-effective in minimizing or preventing damage from the increased traffic on the detour route.

(3) The department shall repair damage to highways that are designated as detour routes under this section if the damage results from the increase in traffic caused by the detour.

(4) The department may exercise the authority granted under this section for as long as the replacement and repair of bridges described in section 10 of this 2003 Act continues, or until January 2, 2013, whichever comes first. [2003 c.618 §12]

Sec. 13. Section 12 of this 2003 Act is repealed on January 2, 2013. [2003 c.618 §13]

367.622 Preservation and modernization projects to be funded by specified bonds; rules; selection criteria. (1) As used in this section:

(a) "Highway" has the meaning given that term in ORS 801.305.

(b) "Modernization" has the meaning given that term in ORS 184.651.

(c) "Preservation" has the meaning given that term in ORS 184.651.

(2) Bonds described in ORS 367.620 (2) shall be used to finance preservation and modernization projects chosen by the Oregon Transportation Commission. The commission shall select projects from among the following:

(a) Highways that need increased lane capacity.

(b) Highways and bridges that have weight limitations.

(c) State and local bridges.

(d) Interchanges on multilane highways.

(e) District highways in cities and counties that require preservation. The Department of Transportation shall adopt rules defining "district highway" for purposes of this paragraph.

(3) In choosing projects under subsection (2) of this section, the commission shall use the following criteria, in addition to any criteria developed under ORS 367.623:

(a) Lane capacity projects shall be chosen from a financially constrained list.

(b) Bridge projects shall be chosen on the basis of a bridge inventory or rating system recognized by the commission.

(c) Priority for interchange projects shall be given to projects on multilane highways where safety can be enhanced by constructing a grade-separated interchange to replace an at-grade crossing.

(d) Priority for district highway preservation projects shall be given to those projects that may facilitate transfer of jurisdiction over the highway from the state to a local government.

(e) Projects selected for financing under this section shall be equitably distributed throughout the state, using the criteria for distribution of projects that are used for the Statewide Transportation Improvement Program. [2001 c.669 §2]

Note: 367.622 and 367.623 were added to and made a part of ORS chapter 367 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

367.623 Consultation with local governments for project selection. In establishing criteria other than those specified in ORS 367.622 for selection of projects, and in

choosing projects under ORS 367.622, the Oregon Transportation Commission shall consult with local governments, metropolitan planning organizations and regional transportation advisory groups. [2001 c.669 §3]

Note: See note under 367.622.

367.625 [1985 c.551 §4a; repealed by 1999 c.1036 §6]

367.630 Highway revenue declaration; contents; purpose. (1) Before bonds are issued under ORS 367.615, the Department of Transportation must prepare a highway revenue declaration authorizing issuance of the bonds. The declaration must be signed by the Director of Transportation or a person designated by the director and must be approved by the State Treasurer or a person designated by the State Treasurer.

(2) A declaration prepared under this section may do any of the following:

(a) Pledge any part or all of moneys described under ORS 367.605 for purposes of the bonds to be issued.

(b) Limit the purpose for which the proceeds of the sale may be applied by the department.

(c) Make pledges concerning the proceeds of the sale or moneys described under ORS 367.605 as necessary to secure payment of bonds of the department.

(d) Limit the issuance of additional bonds under ORS 367.615, limit or establish terms upon which additional bonds may be issued under ORS 367.615 or limit or establish the issuance or the terms of issuance or provide for the refunding of outstanding bonds.

(e) Provide for procedures, if any, by which the terms of contracts with bondholders may be amended or rescinded, for the percentage of the bondholders that must consent to amendment or rescinding of such contract and for the manner of bondholder consent to any amendment or rescinding of such contract.

(f) Establish a trustee as described under ORS 367.650.

(g) Vest a trustee appointed under ORS 367.650 with property, rights, powers and duties in trust, as the State Treasurer determines appropriate. Authority granted by this paragraph includes authority to:

(A) Include the rights, powers and duties of a trustee appointed to bondholders.

(B) Limit the rights, powers and duties of the trustee.

(h) Provide for other matters affecting issuance of the bonds.

(3) A declaration under this section may establish the same requirements, be subject to the same provisions, create the same obligations and confer the same rights and is otherwise subject to the same provisions as an indenture under ORS 367.640, if so provided in the declaration. [1985 c.551 §5; 1987 c.158 §64]

367.635 Bond form; sale; price; maturity; provisions subject to determination of State Treasurer. (1) A bond issued under ORS 367.615:

(a) Must contain on its face a statement that the ad valorem taxing power of this state or any political subdivision of this state is not pledged to the payment of the principal or the interest on the bond.

(b) May be sold at public competitive bid or at private negotiated sale.

(c) May be sold at the price or prices established by the State Treasurer, upon the advice of the Department of Transportation.

(d) Must mature on or before a date determined by calculation of the expected economic life of the improvements, assets and projects financed with the proceeds of the bonds. Subject to this paragraph, the time bonds mature may be as established by indenture under ORS 367.640.

(2) The State Treasurer shall determine, upon the advice of the department and consistent with ORS 288.805 to 288.945, all aspects relating to the sale of bonds under ORS 367.615 that are not otherwise specifically provided, including rate of interest and discount, if any. [1985 c.551 §6; 2003 c.201 §26]

367.640 Indenture; provisions. An indenture under which bonds described under ORS 367.615 are issued may provide for any or all of the following:

(1) The pledging of moneys or a portion of moneys described under ORS 367.605 to the payment of the bond debt service on bonds issued under ORS 367.615.

(2) Requirements concerning particular issues of bonds under ORS 367.615.

(3) Requirements concerning moneys described under ORS 367.605 and payment on outstanding bonds issued under ORS 367.615.

(4) A contractual undertaking for the benefit of bondholders concerning assessment, levy collection and deposit of moneys described under ORS 367.605.

(5) Provisions concerning the registration of bonds or recording or filing of the indenture.

(6) Provisions relating to a reserve account under ORS 367.645. Provisions under this subsection may include, but are not limited to, the amount required for such account or provisions for replenishing the account from moneys described under ORS 367.605.

(7) Provisions concerning trustees under ORS 367.650 including, but not limited to:

(a) Establishing funds, accounts or moneys described under ORS 367.605 over which the trustee will be custodian.

(b) Providing that a trustee will be appointed.

(8) Establishing the maturation date for the bonds, subject to ORS 367.635. [1985 c.551 §7; 2003 c.201 §27]

367.645 Reserve account. The Department of Transportation may establish a separate reserve account to provide additional security for bonds issued under ORS 367.615. The following apply to any account established under this section:

(1) The account may be established as part of the highway fund or separately.

(2) The establishment of an account does not, in itself, limit the payment of bond debt service for bonds issued under ORS 367.615 to moneys in the account. Bond debt service for bonds issued under ORS 367.615 may be paid from any moneys under ORS 367.605, whether or not an account is established, unless otherwise provided by indenture under ORS 367.640.

(3) The account is subject to any provisions established by indenture under ORS 367.640 concerning the amount of money in the account or the replenishing of moneys if the account is drawn down at any time while bonds are outstanding.

(4) The account is subject to any other provisions concerning the account that are established by indenture under ORS 367.640. [1985 c.551 §8; 1989 c.610 §2; 2003 c.201 §28]

367.650 Trust indenture to secure bonds; provisions. At the discretion of the State Treasurer, bonds issued under ORS 367.615 may be secured by a trust indenture. A trust indenture established under this section is subject to the following:

(1) The trust indenture shall be by and between the state and a trustee.

(2) The trustee may be any trust company or bank having the powers of a trust company whether inside or outside the state.

(3) The trustee may act as custodian as provided for by indenture under ORS 367.640.

(4) The trustee must be jointly appointed by the director and the State Treasurer.

(5) The trustee shall be vested with such powers and duties as provided for by indenture under ORS 367.640. [1985 c.551 §9]

367.655 Loan of bond proceeds to cities and counties; use of loans; rules. (1) Notwithstanding any other provision of law or any provision of charter or local ordinance to the contrary:

(a) The Department of Transportation may loan a portion of proceeds from bonds issued under ORS 367.615 to cities and counties; and

(b) Cities and counties may borrow moneys under this section.

(2) Any loan made under this section is subject to all of the following provisions:

(a) Moneys from the loan may only be used to defray costs of location, relocation, improvements, construction and reconstruction of city and county streets and roads.

(b) The department shall establish rules concerning the making of agreements for the loans. Repayment of principal and interest by any city or county must be made according to the agreement between the department and the city or county.

(c) If a city or county defaults of repayment, the department may withhold any part of the appropriation or allocation to the city under ORS 366.785 to 366.820 or the county under ORS 366.762 to 366.768 as provided for in the agreement for repayment made under this section. [1985 c.551 §10; 2003 c.201 §29]

367.660 Lien on certain moneys pledged for bonds; terms of lien. If moneys under ORS 367.605 are pledged for purposes of bonds by indenture under ORS 367.640, a lien is established upon the moneys. A lien established by this section is subject to all of the following:

(1) The lien is a first lien and security interest and prior charge upon the pledged moneys except to the extent provided otherwise by the indenture.

(2) The lien is valid and binding from the time the pledge is made.

(3) The pledged moneys are immediately subject to the lien without physical delivery or further act.

(4) The lien is valid and binding against all parties having claims on the money of any kind including claims under tort or contract.

(5) The lien is valid and binding against all parties irrespective of whether the parties have notice of the lien.

(6) No bond, indenture or any other instrument by which the pledge is made or the lien created must be recorded or filed except as provided by the indenture under ORS 367.640. [1985 c.551 §11; 2003 c.201 §30]

367.665 Interest on bonds exempt from state income tax. The interest upon all bonds issued under ORS 367.615 and upon all refunding and advance refunding bonds issued under ORS 367.670 is exempt from personal income taxation imposed by this state under ORS chapter 316. [1985 c.551 §12]

367.670 Refunding bonds. Outstanding bonds issued under ORS 367.615 may be refunded by the issuance of refunding or advance refunding bonds. Refunding and advance refunding bonds issued under this section are subject to the provisions relating to bonds issued under ORS 367.615 and are subject to and shall be issued in accordance with the provisions of ORS 286.051 and 288.605 to 288.695. [1985 c.551 §13]

BONDED INDEBTEDNESS FOR CITY AND COUNTY ROADS AND RECREATION FACILITIES

367.700 Authority to sell limited amount of bonds under ORS 367.700 to 367.750. In addition to the authority now vested by any other provision of law state highway bonds of the State of Oregon used to provide funds for purposes of ORS 367.700 to 367.750 in the aggregate principal sum may not exceed $50 million. [1975 c.211 §1; 1981 c.660 §34]

367.705 Use of funds; priority. (1) The Department of Transportation shall make loans to cities and counties from funds available under ORS 367.700 to 367.750 for the purposes stated in section 3a, Article IX of the Oregon Constitution.

(2) If funds available under ORS 367.700 to 367.750 are not sufficient to fund all projects for which funds are applied by cities and counties, the department shall give priority to projects in cities and counties having the highest rates of unemployment in this state. [1975 c.211 §2; 2003 c.201 §31]

367.710 Repayment by city or county; interest. (1) The Department of Transportation shall cause cities and counties that receive funds under ORS 367.705 to repay bond debt service by withholding from payments due to the city under ORS 366.785 to 366.820 or to the county under ORS 366.762 to 366.768. Funds withheld under this subsection remain in the State Highway Fund available for the purposes authorized by law.

(2) The Department of Transportation shall fix the rate of interest to be charged on any advance made under ORS 367.705. [1975 c.211 §3; 2003 c.201 §32]

367.715 Procedure for issuing bonds under ORS 367.700 to 367.750. All bonds issued under ORS 367.700 to 367.750 must be issued in accordance with ORS 286.031 to 286.066. [1975 c.211 §4; 1981 c.660 §35; 2003 c.201 §33]

367.720 [1975 c.211 §5; repealed by 1981 c.660 §18]

367.725 [1975 c.211 §6; repealed by 1981 c.660 §18]

367.730 [1975 c.211 §7; repealed by 1981 c.660 §18]

367.735 [1975 c.211 §8; repealed by 1981 c.660 §18]

367.740 [1975 c.211 §9; repealed by 1981 c.660 §18]

367.745 Setting aside sufficient moneys to pay maturing bonds. The Department of Transportation shall compute and determine in January of each year, after the sale of bonds under ORS 367.700 to 367.750, the amount of bond debt service that will fall due during such year on bonds then outstanding and unpaid and shall maintain or hold in the State Highway Fund sufficient moneys to pay such maturing obligations. [1975 c.211 §10; 2003 c.201 §34]

367.750 Constitutional debt limits not to be exceeded. The Department of Transportation may not issue or sell general obligation bonds under ORS 367.700 to 367.750 that, singly or in the aggregate with previous debts or liabilities incurred for the building and maintaining of permanent roads, exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. [1975 c.211 §11; 2003 c.201 §35]

OREGON INNOVATIVE PARTNERSHIPS PROGRAM

367.800 Findings. The Legislative Assembly finds that:

(1) Entrepreneurial approaches to the acquisition, design, management and financing of transportation projects will accelerate cost-effective project delivery.

(2) Entrepreneurial approaches can bring substantial benefits to the public in transportation project development and execution.

(3) Risk management is a critical component of partnerships for transportation projects.

(4) Successful implementation of an Oregon innovative partnership program for transportation projects requires that risk in a project be managed and shared by public and private sector participants, with the partner best able to control a risk bearing responsibility for the risk.

(5) The Legislative Assembly and the executive branch of government accept responsibility for providing predictability for partnerships for transportation projects and for allowing negotiated agreements to be implemented.

(6) The development, acquisition and construction of transportation projects creates jobs and furthers economic development in Oregon by, among other things:

(a) Increasing the economy and efficiency of public transportation, improving the flow of commerce into and around the state and the surrounding region, improving the attractiveness of Oregon to new businesses and supporting the operations and prosperity of existing businesses; and

(b) Improving the movement of people into and around the state and the surrounding region, alleviating congestion and crowding and reducing the burdens on existing public transportation systems and transportation facilities. [2003 c.790 §1]

Note: 367.800 to 367.826 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

367.802 Definitions. As used in ORS 367.800 to 367.824:

(1) "Agreement" means a written agreement, including but not limited to a contract, for a transportation project that is entered into under ORS 367.806.

(2) "Private entity" means any entity that is not a unit of government, including but not limited to a corporation, partnership, company, nonprofit organization or other legal entity or a natural person.

(3) "Transportation project" or "project" means any proposed or existing undertaking that facilitates any mode of transportation in this state.

(4) "Unit of government" means any department or agency of the federal government, any state or any agency, office or department of a state, any city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter-approved charter and any intergovernmental entity created under ORS 190.003 to 190.130, 190.410 to 190.440 or 190.480 to 190.490. [2003 c.790 §2]

Note: See note under 367.800.

367.804 Goals of Oregon Innovative Partnerships Program; authority of Department of Transportation; confidentiality; expenses. (1) The Department of Transportation shall establish the Oregon Innovative Partnerships Program for the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(2) The goals of the program are to:

(a) Develop an expedited project delivery process;

(b) Maximize innovation; and

(c) Develop partnerships with private entities and units of government.

(3) As part of the program established under this section, the department may:

(a) Solicit concepts or proposals for transportation projects from private entities and units of government.

(b) Accept unsolicited concepts or proposals for transportation projects from private entities and units of government.

(c) Evaluate the concepts or proposals received under this subsection and select potential projects based on the concepts or proposals. The evaluation under this paragraph shall include consultation with any appropriate local government, metropolitan planning organization or area commission on transportation.

(d) Charge an administrative fee for the evaluation in an amount determined by the department.

(4) Following an evaluation by the department of concepts or proposals submitted under subsection (3) of this section, and the selection of potential transportation projects, the department may negotiate and enter into the agreements described in ORS 367.806 for implementing the selected transportation projects.

(5) Except as provided in subsection (6) of this section:

(a) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, is exempt from disclosure under ORS 192.410 to 192.505 until:

(A) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under subsection (3)(c) of this section; or

(B) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(b) After the department has either shared the information described in paragraph (a) of this subsection with a local government, metropolitan planning organization or area commission on transportation, or has completed its evaluation of the proposed project, the information is subject to disclosure under ORS 192.410 to 192.505.

(6) Sensitive business, commercial or financial information that is not customarily provided to business competitors that is submitted to the department in connection with a transportation project under ORS 367.800 to 367.824 is exempt from disclosure under ORS 192.410 to 192.505 until the information is submitted to the Oregon Transportation Commission in connection with its review and approval of the transportation project under ORS 367.806.

(7) The department may, in connection with the evaluation of concepts or proposals for transportation projects, consider any fi-

nancing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(8) The department and any other unit of government may expend, out of any funds available for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for transportation projects and for negotiating agreements for transportation projects under ORS 367.806. The department or other unit of government may employ engineers, consultants or other experts the department or other unit of government determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department or other unit of government under this subsection prior to the issuance of transportation project revenue bonds or other financing shall be paid by the department or other unit of government, as applicable, and charged to the appropriate transportation project. The department or other unit of government shall keep records and accounts showing each amount so charged. Upon the sale of transportation project revenue bonds or upon obtaining other financing for any transportation project, the funds expended by the department or other unit of government under this subsection in connection with the project shall be repaid to the department or the unit of government from the proceeds of the bonds or other financing, as allowed by applicable law. [2003 c.790 §3]

Note: See note under 367.800.

367.806 Agreements. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

(h) Whether the project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation system programs and, if not consistent, how and when the project will become consistent with applicable plans and programs.

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) The provisions of ORS 383.003 to 383.027 do not apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS chapter 279 do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279.348 to 279.380 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279.334 and 279.348 to 279.380.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcon-

tractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or information are submitted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279.011.

(b) "Public works" has the meaning given that term in ORS 279.348. [2003 c.790 §4]

Note: The amendments to 367.806 by section 4b, chapter 790, Oregon Laws 2003, become operative March 1, 2005. See section 4c, chapter 790, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

367.806. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

(h) Whether the project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation system programs and, if not consistent, how and when the project will become consistent with applicable plans and programs.

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) The provisions of ORS 383.003 to 383.027 do not apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS chapters 279, 279A, 279B and 279C do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279C.800 to 279C.870 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279C.540 and 279C.800 to 279C.870.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or information are submit-

ted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279A.010.

(b) "Public works" has the meaning given that term in ORS 279C.800.

Note: See note under 367.800.

367.808 Evaluation of proposed agreements; role of Attorney General. (1) At the request of the Department of Transportation, the Attorney General may appoint special assistant attorneys general for the purpose of evaluating partnership agreements entered into or to be entered into as part of the program established under ORS 367.804. The special assistant attorneys general shall be under the direction and control of the Attorney General and may:

(a) Advise the Department of Transportation concerning the legality of specific proposed partnerships;

(b) Advise the department on legal procedures and practices related to implementation of specific projects that use a partnership;

(c) Assist the department in negotiating partnership agreements;

(d) Assist the department in preparing any document related to a specific partnership;

(e) Advise the department regarding accounting, investment and tax requirements applicable to specific projects that use a partnership; and

(f) Advise the department regarding any relevant federal securities or other laws and related disclosure requirements.

(2) When the Attorney General, as part of the review under ORS 291.047, reviews an agreement entered into under ORS 367.806, the Attorney General shall:

(a) Recognize that the agreement is the product of a partnership; and

(b) Defer to the business judgment of the department and the Oregon Transportation Commission concerning the assignment of risks and the incentives provided within the agreement. [2003 c.790 §5]

Note: See note under 367.800.

367.810 State Transportation Enterprise Fund. (1) The State Transportation Enterprise Fund is established separate and distinct from the General Fund. Interest earned by the State Transportation Enterprise Fund shall be credited to the fund.

(2) The following moneys shall be deposited into the State Transportation Enterprise Fund:

(a) Proceeds from bonds or other financing instruments issued under the provisions of ORS 367.800 to 367.824;

(b) Revenues received from any transportation project developed under the program established under ORS 367.804; and

(c) Any other moneys that are by donation, grant, contract, law or other means transferred, allocated or appropriated to the fund.

(3) Moneys in the State Transportation Enterprise Fund are continuously appropriated to the Department of Transportation for the purpose of carrying out the provisions of ORS 367.800 to 367.824 and implementing all or portions of any transportation project developed under the program established under ORS 367.804.

(4) Moneys in the State Transportation Enterprise Fund that are transferred from the State Highway Fund or from any one of the sources that comprise the State Highway Fund as specified in ORS 366.505 and that are revenue under section 3a, Article IX of the Oregon Constitution, may be used only for purposes authorized by section 3a, Article IX of the Oregon Constitution.

(5) The department shall establish a separate account in the State Transportation Enterprise Fund for each transportation project that is undertaken under the program established under ORS 367.804. Except as provided in subsection (4) of this section, the department may pledge moneys in the State Transportation Enterprise Fund to secure revenue bonds or any other debt obligations relating to the transportation project for which the account is established.

(6) Moneys in an account established under subsection (5) of this section shall be used as provided in any agreement applicable to the transportation project for which the account is established. [2003 c.790 §6]

Note: See note under 367.800.

367.812 Bonds secured by State Transportation Enterprise Fund; financing of transportation projects. (1) In addition to any authority the Department of Transportation has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance any transportation project in whole or in part, the department may request that the State Treasurer issue revenue bonds on behalf of the department. Revenue bonds authorized under this section

shall be issued in accordance with the applicable provisions of ORS chapters 286 and 288. The bonds shall be secured by a pledge of, and a lien on, and shall be payable only from moneys in the State Transportation Enterprise Fund established by ORS 367.810 and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the department of its revenues creates a lien that is valid and binding from the time the pledge is made as provided in ORS 288.594. Revenue bonds issued pursuant to this section are not general obligations of the state and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be expended:

(a) For the purpose of financing the costs of the transportation project for which the bonds are issued;

(b) To pay the costs and other administrative expenses of the bonds;

(c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and

(d) To reimburse the department for any costs related to carrying out the purposes of the program established under ORS 367.804.

(3) Any transportation project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. 122 and applicable state law.

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit or other financing arrangements available pursuant to the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. 181 et seq., or any other applicable federal law.

(c) Infrastructure loans or assistance from the Oregon Transportation Infrastructure Fund established by ORS 367.015.

(4) As security for the payment of financing described in subsection (3) of this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in subsection (3) of this section may be structured on a senior, parity or subordinate basis to any other financing. [2003 c.790 §7]

Note: See note under 367.800.

367.814 Moneys from federal government or other sources. (1) The Department of Transportation or a unit of government may accept from the United States or any of its agencies such funds as are available to this state or to the unit of government for carrying out the purposes of ORS 367.800 to 367.824, whether the funds are made available by grant, loan or other financing arrangement. The department or unit of government may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper and convenient for carrying out the purposes of ORS 367.800 to 367.824.

(2) The department or a unit of government may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other valuable thing made to the State of Oregon, the department or the unit of government for carrying out the purposes of ORS 367.800 to 367.824.

(3) Any transportation project may be financed in whole or in part by contribution of any funds or property made by any private entity or unit of government that is a party to any agreement entered into under ORS 367.806. [2003 c.790 §8]

Note: See note under 367.800.

367.816 Use of moneys in Oregon Transportation Infrastructure Fund for projects. (1) Notwithstanding ORS 367.020, the Department of Transportation may use moneys in the Oregon Transportation Infrastructure Fund established by ORS 367.015 to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of any transportation project that is part of the program established under ORS 367.804.

(2) The lien of a pledge made under this section is subordinate to the lien of a pledge securing bonds payable from moneys in the State Highway Fund described in ORS 366.505, the State Tollway Account established by ORS 383.009 or the State Transportation Enterprise Fund established by ORS 367.810. [2003 c.790 §9]

Note: See note under 367.800.

367.818 Eminent domain powers. The Department of Transportation may exercise the power of eminent domain to acquire property, rights of way or other rights in property for transportation projects that are part of the program established under ORS 367.804, regardless of whether the property will be owned in fee simple by the department. [2003 c.790 §10]

Note: See note under 367.800.

367.820 Creation of district; use of revenues within district. An agreement among the Department of Transportation and other units of government may create a new district, or designate a previously existing district, that includes any or all of the territory within the geographic boundaries of any or all Oregon counties in which a transportation project is located, and may require that all revenues from franchise fees, other user fees or other revenue sources collected within the district in connection with the transportation project be used exclusively for the benefit of the district. [2003 c.790 §11]

Note: See note under 367.800.

367.822 Advisory committees on transportation projects; rules. (1) The Department of Transportation and any unit of government that participates in a transportation project may establish advisory committees to advise the department or the unit of government with respect to transportation projects. An advisory committee shall consist of not fewer than five and not more than nine members, as determined by the department. Members shall be appointed by the department, or in a manner agreed to by the department and any participating unit of government.

(2) At the request of the department, an advisory committee may review concepts or proposals for transportation projects and submit recommendations to the department or the participating unit of government.

(3) An advisory committee shall meet as necessary at times and places fixed by the department or the participating unit of government. The department shall provide personnel services to assist the advisory committee within the limits of available funds. An advisory committee may adopt rules to govern its proceedings and may select officers. [2003 c.790 §12]

Note: See note under 367.800.

367.824 Rules; supremacy of federal law. (1) The Department of Transportation may adopt any rules it considers necessary to implement the provisions of ORS 367.800 to 367.824.

(2) Notwithstanding any provision of ORS 367.800 to 367.824, applicable federal laws, rules and regulations govern in any situation that involves federal funds if the federal laws, rules or regulations:

(a) Conflict with any provision of ORS 367.800 to 367.824;

(b) Require procedures that are additional to or different from those provided in ORS 367.800 to 367.824; or

(c) Require contract provisions not authorized by ORS 367.800 to 367.824. [2003 c.790 §§4a,13]

Note: See note under 367.800.

367.826 Reports to Emergency Board. (1) The Department of Transportation shall report to the Emergency Board at least twice during each interim regarding the transportation projects proposed or agreed to under ORS 367.800 to 367.824.

(2) The report under subsection (1) of this section shall include but need not be limited to information about expenditure of moneys for evaluation of concepts and proposals for transportation projects, agreements entered into, transportation projects that have been agreed to and financing mechanisms being used for transportation projects. [2003 c.790 §16]

Note: See note under 367.800.

Chapter 368

2003 EDITION

County Roads

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GENERAL PROVISIONS

368.001 Definitions. As used in this chapter:

(1) "County road" means a public road under the jurisdiction of a county that has been designated as a county road under ORS 368.016.

(2) "County road official" means the roadmaster, engineer, road supervisor, public works director or other administrative officer designated by the county governing body as being responsible for administration of the road activities of the county.

(3) "Local access road" means a public road that is not a county road, state highway or federal road.

(4) "Owner" means a vendee under a recorded land sale contract or, if there is no recorded land sale contract, the holder of the record title of land if the vendee or holder has a present interest equal to or greater than a life estate.

(5) "Public road" means a road over which the public has a right of use that is a matter of public record.

(6) "Road" means the entire right of way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways or alleys;

(b) Road related structures that are in the right of way such as tunnels, culverts or similar structures; and

(c) Structures that provide for continuity of the right of way such as bridges. [1981 c.153 §2]

368.005 [Amended by 1971 c.135 §1; repealed by 1981 c.153 §79]

368.010 [Amended by 1963 c.501 §1; repealed by 1981 c.153 §79]

368.011 County authority to supersede statutes; limitations. (1) Except as otherwise provided in this section, a county may supersede any provision in this chapter by enacting an ordinance pursuant to the charter of the county or under powers granted the county in ORS 203.030 to 203.075.

(2) A county shall not enact an ordinance to supersede any of the following provisions: This section and ORS 368.001, 368.016, 368.021, 368.026, 368.031, 368.051, 368.705, 368.707, 368.710, 368.720 and 368.722. [1981 c.153 §3]

368.016 County authority over roads; limitations. (1) Except as provided in this section or as otherwise specifically provided by law, the exercise of governmental powers relating to a road within a county is a matter of county concern.

(2) A county governing body:

(a) Does not have jurisdiction over any public road that is a state highway.

(b) Shall only take action involving a local access road within a city if the city governing body consents to the action.

(c) May by resolution or order make any public road within its jurisdiction a county road.

(3) Any road that has a classification as a county road on November 1, 1981, shall retain that classification unless the classification is changed under ORS 368.026 or as otherwise provided by law.

(4) A county governing body may seek assistance from the Department of Transportation as provided under ORS 366.155. [1981 c.153 §4; 1993 c.741 §44]

368.021 County authority over trails. (1) A county governing body has the same jurisdiction over trails as it has over local access roads.

(2) This section applies to trails that:

(a) Are easements over land or by watercourse that are not part of a road right of way;

(b) Provide certain forms of ingress to or egress from land or water or permit travel between places;

(c) Do not provide vehicle access of the type provided by a road; and

(d) Are not under the jurisdiction of a state or federal agency. [1981 c.153 §5]

368.026 Withdrawal of county road status; report; notice; hearing. (1) A county governing body shall use the following procedure to withdraw county road status from a portion of a county road that is outside a city:

(a) The county governing body may initiate proceedings by having the county road official prepare a report stating reasons for the proposed withdrawal and the effects the proposed withdrawal may have on land abutting the county road proposed to be withdrawn.

(b) The county governing body shall fix a date for a hearing on the withdrawal.

(c) The county governing body shall provide for notice of the hearing on the proposed withdrawal to be served on owners of land abutting the portion of county road proposed to be withdrawn. Notice shall be served in the manner provided under ORS 368.401 to 368.426.

(d) Any interested person shall have access to the report prepared by the county

road official under this section from a day not less than 20 days prior to the date of hearing.

(e) At the hearing, the county governing body shall accept the report of the county road official prepared under this section and shall accept testimony from persons favoring or objecting to the proposed withdrawal.

(f) After completion of the procedures under this section, the county governing body may retain the portion of county road as a county road or may by order or resolution declare county road status withdrawn from all or part of the portion of the road under consideration.

(2) The withdrawal of county road status from any county road that is within a city is subject to ORS 373.270.

(3) If a county governing body withdraws county road status from a portion of a county road, the road shall continue to be a public road. [1981 c.153 §6]

368.031 County jurisdiction over local access roads. A local access road that is outside a city is subject to the exercise of jurisdiction by a county governing body in the same manner as a county road except as follows:

(1) A county and its officers, employees or agents are not liable for failure to improve the local access road or keep it in repair.

(2) A county governing body shall spend county moneys on the local access road only if it determines that the work is an emergency or if:

(a) The county road official recommends the expenditure;

(b) The public use of the road justifies the expenditure proposed; and

(c) The county governing body enacts an order or resolution authorizing the work and designating the work to be either a single project or a continuing program. [1981 c.153 §7]

368.036 Standards for county roads and road work. (1) County roads and work performed on county roads shall comply with specifications and standards, including standards for width, adopted by the county governing body. If the county governing body does not have specifications for work performed on county roads, the work shall comply with standards and specifications adopted by the Department of Transportation.

(2) If a county governing body provides for work to be performed on a local access road, the standards for the road or specifications for work performed on the road may differ from standards and specifications for county roads, but the county governing body shall provide for the work to be performed in the same manner as it provides for work to be performed on county roads. [1981 c.153 §8]

368.039 Road standards adopted by local government supersede standards in fire codes; consultation with fire agencies. (1) When the governing body of a county or city adopts specifications and standards, including standards for width, for roads and streets under the jurisdiction of the governing body, such specifications and standards shall supersede and prevail over any specifications and standards for roads and streets that are set forth in a uniform fire code adopted by the State Fire Marshal, a municipal fire department or a county firefighting agency.

(2) This section applies to specifications and standards for roads and streets adopted by the governing body of a county or city in a charter, acknowledged comprehensive plan or ordinance adopted pursuant to ORS chapter 92, 203, 221 or 368.

(3) Before adopting or amending any comprehensive plan, land use regulation or ordinance that establishes specifications and standards for roads and streets, a governing body of a county or city shall consult with the municipal fire department or other local firefighting agency concerning the proposed specifications and standards. The county or city governing body shall consider the needs of the fire department or firefighting agency when adopting the final specifications and standards. [1997 c.409 §1]

Note: 368.039 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 368 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

368.041 Widths of county roads; maintenance of designated roads as county roads. (1) Unless otherwise provided under ORS 368.036, a public road that is designated as a county road after August 2, 1951, shall be 50 feet or any greater width the county governing body establishes. The proposed width shall be stated in all petitions or notices that initiate consideration of the designation of a road as a county road. The width established for a road shall be stated in orders or resolutions accepting the road as a county road under ORS 368.016.

(2) After a resolution or order designating a public road as a county road is final, the county shall maintain the public road as a county road. [Formerly 368.415]

368.046 County road official; duties. (1) A county governing body may employ an engineer or practical road builder as a county road official.

(2) A county road official shall work under the direction of the county governing body and shall:

(a) Assist the county governing body in preparing specifications for county work to be done on any road within the county;

(b) Superintend work done by the county upon roads within the county, whether the work is done under contract or otherwise;

(c) Recommend to the county governing body methods to be adopted for the construction, improvement, repair and maintenance of roads; and

(d) Perform other duties assigned by the county governing body. [1981 c.153 §9]

368.051 Accounting for county road work. The county road official or such other person as may be designated by the county governing body shall maintain a complete and accurate cost account for road work performed by the county as required under ORS 279.023. [Formerly 368.150]

Note: The amendments to 368.051 by section 267, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

368.051. The county road official or such other person as may be designated by the county governing body shall maintain a complete and accurate cost account for road work performed by the county as required under ORS 279C.305.

368.055 [Amended by 1963 c.519 §36; repealed by 1981 c.153 §79]

368.056 Permit for gate construction on public road. A county governing body may issue a permit to a person to allow construction of a gate or stock guard on a public road under the jurisdiction of the county governing body. The county governing body may impose any conditions or specifications on the permit it determines advisable to preserve the purposes of the public road. Conditions on a permit under this section may include a requirement that the person issued the permit shall bear all costs of construction and maintenance of the gate or stock guard. [1981 c.153 §33]

368.060 [Repealed by 1981 c.153 §79]

368.062 Transferring road within city to county jurisdiction. (1) Jurisdiction over a road within a city may be transferred to a county under this section whenever:

(a) The governing body of the city deems it necessary, expedient or for the best interest of the city to surrender jurisdiction over any road or portion thereof within the corporate limits of the city; and

(b) The governing body of the county deems it necessary or expedient and for the best interests of the county to acquire jurisdiction over the road or part thereof to the same extent as it has over other county roads.

(2) To initiate a proceeding for the transfer of jurisdiction under this section, the governing body of the city, upon its own motion or upon the request of the county by its governing body, shall give notice by:

(a) Posting in three public places in the county, one of which shall be within the unincorporated area of the county; or

(b) Publishing the notice once a week for four successive weeks in some newspaper of general circulation in the city.

(3) Notice under this section shall give the time and place of hearing and a succinct statement of the proposed action requested and describing the road or portion thereof proposed to be surrendered by the city to the county with convenient certainty.

(4) At the time and place mentioned in the notice under this section or at such adjournment as it may fix, the governing body of the city shall hear the matter, consider any objections or testimony offered by any person interested and determine whether it is necessary, expedient or for the best interests of the city to surrender jurisdiction over the road or portion thereof to the county.

(5) If the governing body of a city determines to surrender jurisdiction under this section and initiates action under this section:

(a) The governing body of the city shall make an order to that effect and offer to the county to surrender jurisdiction over the road or portion thereof, and may limit the time for the acceptance of the offer; and

(b) The county by order or resolution may within the time specified accept the city offer to surrender jurisdiction under this section.

(6) If a county governing body determines to initiate action under this section for the surrender of jurisdiction by a city over a road within a city:

(a) The county governing body may initiate the action by passage of a resolution or order that requests surrender and that may set any time or other limitations upon acceptance by the county of the surrender; and

(b) The governing body of the city may surrender jurisdiction of the road without further action by the county if the governing body of the city adopts an order surrendering the road that meets the limitations established by the county in its order or resolution.

(7) When a county adopts an order or resolution accepting a city's order and offer under subsection (5) of this section or when the governing body of a city adopts an order

meeting the limitations established by the county under subsection (6) of this section:

(a) The jurisdiction of the city over the road or portion thereof as a road within the city, or for its improvement, construction or repair shall cease;

(b) The full and absolute jurisdiction over the road for all purposes of repair, construction, improvement and the levying and collection of assessments therefor shall vest in the county; and

(c) The county shall have the same jurisdiction over the road or portion thereof as by its charter or the laws of the state are given or granted it over any of the county roads of such county.

(8) This section is applicable to all roads within a city, whether acquired by the city or the public by condemnation, defective condemnation and user, user or prescription or in any manner provided by law or in which the easement for road purposes is in the public. [1989 c.220 §2]

368.065 [Repealed by 1981 c.153 §79]

368.070 [Repealed by 1981 c.153 §79]

ACQUISITION OF PROPERTY FOR ROADS

368.073 Initiation of proceedings to acquire property for road purposes. A county governing body may initiate proceedings to acquire title or a lesser interest in real property for public road purposes:

(1) On its own action; or

(2) If a person files the following with the county governing body:

(a) A petition described in ORS 368.081; or

(b) A written proposal to dedicate or donate land owned by that person for public road purposes. [1981 c.153 §10]

368.075 [Repealed by 1975 c.774 §3 (368.076 enacted in lieu of 368.075)]

368.076 [1975 c.774 §4 (enacted in lieu of 368.075); repealed by 1981 c.153 §79]

368.080 [Repealed by 1981 c.153 §79]

368.081 Requirements for petition to initiate road proceedings. (1) A petition to initiate proceedings under ORS 368.073 must contain all of the following:

(a) A statement of the public necessity for the public road.

(b) A description of the proposed public road.

(c) A list containing the names and mailing addresses of any owner of property that:

(A) Is proposed to be acquired for the public road;

(B) Abuts the proposed public road; or

(C) Would otherwise be affected by the proposed acquisition of property for the public road.

(d) The signatures and mailing addresses of a majority of the owners of property that would abut the proposed road.

(2) The petition described under this section is subject to the following:

(a) Where a signature from an owner is required, the signature of an owner of property that has multiple ownership is valued as a fraction of an owner signature for that property in the same proportion as that owner's interest in the property bears to the interest of all other owners of the same property.

(b) Any person signing the petition may withdraw the signature by filing a written withdrawal with the county governing body.

(c) A signature that is required on the petition does not qualify for purposes of the petition if the signature is withdrawn or if the person whose signature appears on the petition files an objection under ORS 368.091.

(3) A county governing body may establish and require payment of a fee for the filing of a petition under this section. [1981 c.153 §11]

368.085 [Repealed by 1981 c.153 §79]

368.086 Road proceedings; hearing; notice. (1) If proceedings to acquire real property for public road purposes are initiated by filing a petition described under ORS 368.081, a county governing body shall not begin any proceedings described under ORS 368.096 until the county governing body has conducted a hearing to determine whether the public interest would be served by continuing the proceedings.

(2) A county governing body shall provide notice of the hearing required under this section to property owners:

(a) Owning property that would abut or be acquired for the proposed public road; and

(b) Owning property that would not be acquired for or abut the proposed public road if the county governing body determines the property might be affected by the proposed public road.

(3) Notice required under this section shall be by service under ORS 368.401 to 368.426 except that:

(a) Those persons signing the petition may be given notice by first class mail to the person's address shown on the petition; and

(b) The county governing body may provide for notice to persons owning property that would not be acquired for or abut the proposed public road by posting under ORS 368.401 to 368.426 if the county governing

body determines that posting is more likely to provide notice to those persons. [1981 c.153 §12]

368.090 [Repealed by 1981 c.153 §79]

368.091 Owners' rights to terminate road proceedings. (1) A county governing body shall discontinue any proceedings to acquire real property for public road purposes that are initiated by a petition described ORS 368.081 at any time before acquisition of the property if a majority of the owners of property that would abut the proposed road file objections to establishing the road with the county governing body.

(2) Multiple ownership of property is subject to the same conditions as a signature on a petition under ORS 368.081 for purposes of determining the number of owners. [1981 c.153 §13]

368.095 [Amended by 1969 c.518 §1; 1971 c.121 §1; repealed by 1981 c.153 §79]

368.096 Alternative methods to acquire property for roads. (1) If proceedings to acquire real property for public road purposes have been initiated under ORS 368.073, a county governing body may acquire the property by any of the following methods:

(a) Acceptance of a dedication or donation.

(b) Acquisition by purchase or other agreement.

(c) Exercise of the power of eminent domain under ORS chapter 35.

(d) Use of road viewers under ORS 368.161 to 368.171.

(2) Nothing in this section:

(a) Supersedes procedures for establishing roads by subdividing or partitioning land under ORS chapter 92;

(b) Precludes public acquisition of any property interest by adverse possession or prescription; or

(c) Restricts the ability of a public body to acquire an interest in property by any other method permitted by law. [1981 c.153 §14]

368.100 [Repealed by 1981 c.153 §79]

368.101 Authority to change road proceedings; limitation. (1) At any time after a proceeding is initiated under ORS 368.073 for the acquisition of real property for public road purposes, a county governing body may:

(a) Change the method of proceeding or the property subject to the proceeding in any manner the county governing body determines to be in the public interest.

(b) Discontinue the proceeding if the county governing body determines that the proceedings or the establishment of the proposed road is not in the public interest.

(2) Notwithstanding subsection (1) of this section a county governing body shall not make any change in or discontinue any proceeding that is initiated by a petition described under ORS 368.081 unless the governing body has provided an opportunity for a hearing described under ORS 368.086. [1981 c.153 §15]

368.105 [Repealed by 1981 c.153 §79]

368.106 Records and survey of property acquired for road. If a county governing body acquires an interest in real property for public road purposes, the county governing body shall cause:

(1) Any order or resolution enacted and deed or other document establishing an interest in the property for public road purposes to be recorded;

(2) The road right of way to be surveyed and monumented;

(3) The survey to be prepared in compliance with ORS 209.250; and

(4) The survey to be recorded with the county surveyor. [1981 c.153 §16]

368.110 [Amended by 1973 c.518 §1; repealed by 1981 c.153 §79]

368.111 Assessment of costs and damages from road proceedings. (1) If a county incurs costs or is required to pay damages in the acquisition of property necessary for a public road, the county governing body may assess those costs or damages to and order the costs or damages to be paid by any of the following:

(a) The county governing body.

(b) If the proceedings for acquisition were initiated by a petition described under ORS 368.081, the petitioners.

(c) If the acquisition is of land that is donated or dedicated, the person donating or dedicating the land.

(d) An owner of land that is specially benefited.

(2) This section does not limit the ability of a county governing body to provide for the payment of the costs of acquiring property for a public road in any manner permitted by law.

(3) Any person directed to pay costs or damages under an order issued under this section shall pay those costs or damages within 60 days after entry of the order or resolution. Any person who does not pay costs or damages as directed by an order or resolution under this section within the time established under this section is liable for those costs or damages. [1981 c.153 §17]

368.115 [Amended by 1973 c.518 §2; repealed by 1981 c.153 §79]

368.116 Acquisition of railroad right of way. (1) Whenever in the location, relocation, construction or betterment of a public road, a county governing body determines that it is necessary to locate, relocate or construct the public road, or any part thereof, upon the right of way of a railroad company, the county may negotiate and agree with the railroad company for the right to use or occupy the right of way, or any portion necessary for public road purposes.

(2) If agreement cannot be reached, then the county governing body may acquire the right of way by exercise of the power of eminent domain under ORS chapter 35.

(3) Nothing in this section authorizes the use or occupancy of the railroad right of way which would interfere with the operation of the railroad or its necessary appurtenances, taking into consideration the use of the railroad right of way by the company for yards, terminals, station grounds and necessary additional trackage, or which would jeopardize the safety of the public. [Formerly 368.290]

368.120 [Amended by 1973 c.518 §3; repealed by 1981 c.153 §79]

368.121 Financial assistance to persons displaced by county road acquisition; rules. (1) When federal funds are available for payment of direct financial assistance to persons displaced by county road acquisition, a county may match such federal funds to the extent provided by federal law and to provide such direct assistance in the instances and on the conditions set forth by federal law and regulations.

(2) When federal funds are not available or used for payment of direct financial assistance to persons displaced by county road acquisition, the county may provide direct financial assistance to such persons. Financial assistance authorized by this subsection shall not exceed the total amount that would have been payable under subsection (1) of this section if federal funds had been available or used. The county may adopt rules and regulations to carry out this subsection. [Formerly 368.310]

368.125 [Repealed by 1981 c.153 §79]

368.126 Order establishing new road along existing road to identify parts of existing road to be vacated. When a county governing body establishes a new public road following the general alignment of an existing public road, the final order or resolution shall identify all parts of any existing road that are to be vacated. Vacation of those parts described is effective without any other proceedings. A road so vacated shall not be closed to public use until the road laid out to replace it is actually opened to travel. [Formerly 368.540]

368.130 [Repealed by 1981 c.153 §79]

368.131 Right of way over United States public lands. The county governing body may by resolution accept the grant of rights of way for the construction of public roads over public lands of the United States. This section does not invalidate the acceptance of such grant by general public use and enjoyment. [Formerly 368.555]

368.132 [1973 c.518 §6; repealed by 1981 c.153 §79]

368.135 [Repealed by 1981 c.153 §79]

368.140 [Repealed by 1981 c.153 §79]

368.150 [1971 c.121 §2; 1981 c.153 §64; renumbered 368.051]

ROAD VIEWERS

368.161 Use of road viewers to establish road. (1) When proceedings have been initiated under ORS 368.073 to acquire real property for public road purposes, the county governing body may establish a board of road viewers and acquire property for the proposed road in the manner described in ORS 368.161 to 368.171.

(2) A board of road viewers established under this section shall consist of a county road official and two other persons whose duties and qualifications shall be determined by the county governing body. The board of road viewers shall meet and determine whether the board believes the establishment of the proposed road is in the public interest.

(3) If the board of road viewers recommends the establishment of the proposed road, the board shall file a report that includes the following with the county governing body:

(a) A description of the proposed location of the road;

(b) An assessment of damages created by the proposed road and the names of persons entitled to such damages; and

(c) Any other information required by the county governing body.

(4) If a board of road viewers recommends against the establishment of the public road, a county governing body may:

(a) Discontinue proceedings under ORS 368.161 to 368.171 to acquire property for the road; or

(b) Require the road viewers to complete a report on a proposed location under this section. [1981 c.153 §18]

368.166 Road viewer report; hearing; notice. (1) If a county governing body does not discontinue proceedings under ORS 368.161, it shall do the following upon receipt of a board of road viewers report containing information on the location of a proposed road:

(a) Set a time and place for a hearing on the establishment of the road; and

(b) Cause notice to be given to the persons and in the manner described in ORS 368.086.

(2) Any person owning land that will be affected by acquisition of property under ORS 368.161 to 368.171 may file with the county governing body an answer controverting any matter presented to the county governing body in the proceedings and alleging any new matter relevant to the proceedings. An answer filed under this subsection must be filed more than 10 days before the hearing required under this section.

(3) Within 10 days of the hearing, the county governing body shall provide for notice of any answer filed under this section to persons filing an answer or petition in the proceedings. Notice required under this subsection shall be by service under ORS 368.401 to 368.426. The county governing body may require a person filing an answer to pay the cost of providing notice under this subsection. [1981 c.153 §19]

368.171 Order, costs and damages under proceeding with road viewers. (1) After completion of proceedings under ORS 368.161 to 368.171 and consideration of matters and issues presented during the proceedings, the county governing body shall determine whether a public need exists for the public road and shall enter an order or resolution granting or denying the property acquisition. If the county governing body enters the order or resolution establishing a public road, the order or resolution shall:

(a) Describe the exact location and width of any public road established;

(b) Designate amounts of damages and costs incurred under the proceedings, persons entitled to payment of costs or damages and persons liable for payment of the costs or damages; and

(c) Assess costs under ORS 368.111.

(2) The requirements under this section are in addition to requirements under ORS 368.106. [1981 c.153 §20]

LEGALIZATION OF ROADS

368.201 Basis for legalization of road. A county governing body may initiate proceedings to legalize a county road under ORS 368.201 to 368.221 if any of the following conditions exist:

(1) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road.

(2) If the location of the road cannot be accurately determined due to:

(a) Numerous alterations of the road;

(b) A defective survey of the road or adjacent property; or

(c) Loss or destruction of the original survey of the road.

(3) If the road as traveled and used for 10 years or more does not conform to the location of a road described in the county records. [1981 c.153 §21]

368.205 [Amended by 1975 c.774 §1; 1977 c.338 §1; repealed by 1981 c.153 §79]

368.206 Proceedings for legalization of roads; report; notice. (1) If proceedings for legalization of a road are initiated under ORS 368.201, the county governing body shall:

(a) Cause the road to be surveyed to determine the location of the road and the width of the road according to:

(A) The laws governing the width of roads at the time the road was originally established; or

(B) If the original width of the road cannot be determined, to the width for roads of the same class established by the standards under ORS 368.036;

(b) Cause the county road official to file a written report with the county governing body including the survey required under this section and any other information required by the county governing body; and

(c) Cause notice of the proceedings for legalization to be provided under ORS 368.401 to 368.426 by service to owners of abutting land and by posting.

(2) In a proceeding under this section, any person may file with the county governing body information that controverts any matter presented to the county governing body in the proceeding or alleging any new matter relevant to the proceeding. [1981 c.153 §22]

368.210 [Repealed by 1981 c.153 §79]

368.211 Compensation for property affected by road legalization. (1) A county governing body shall provide for compensation under this section to any person who has established a structure on real property if the structure encroaches on a road that is the subject of legalization proceedings under ORS 368.201 to 368.221.

(2) To qualify for compensation under this section, a person must file a claim for damages with the county governing body before the close of the hearing to legalize the road. The county governing body shall consider a claim for damages unless the county governing body determines that:

(a) At the time the person acquired the structure, the person had a reasonable basis

for knowing that the structure would encroach upon the road;

(b) Upon the original location of the road, the person received damages;

(c) The person or the person's grantor applied for or assented to the road passing over the property; or

(d) When making settlements on the property, the person found the road in public use and traveled.

(3) The compensation allowed under this section shall be just compensation for the removal of the encroaching structure.

(4) The county governing body may proceed to determine compensation and acquire the structure by any method under ORS 368.096.

(5) If a county governing body determines that removal of the encroaching structure is not practical under this section, the county governing body may acquire property to alter the road being legalized. [1981 c.153 §23]

368.215 [Repealed by 1981 c.153 §79]

368.216 Order under road legalization proceeding. (1) After considering matters presented in a proceeding to legalize a road under ORS 368.201 to 368.221, a county governing body shall determine whether legalization of the road is in the public interest and shall enter an order abandoning or completing the legalization procedures on the road.

(2) When a county governing body legalizes a road under ORS 368.201 to 368.221, the county governing body shall comply with ORS 368.106.

(3) Courts shall receive any order filed under this section as conclusive proof that the county road exists as described in the order.

(4) Upon completion of the legalization procedures under ORS 368.201 to 368.221:

(a) Any records showing the location of the road that conflict with the location of the road as described in the order are void; and

(b) The road exists as shown on the order legalizing the road. [1981 c.153 §24]

368.218 [1975 c.774 §2; repealed by 1981 c.153 §79]

368.220 [Repealed by 1975 c.771 §33]

368.221 Legalization; county determination of lesser width. Notwithstanding ORS 368.036, a county governing body may legalize a road at any width that is less than the width of the road described in ORS 368.206 if the county governing body determines that:

(1) The legalization of the road at the lesser width is in the public interest; or

(2) An encroachment on the road may not be practically removed under ORS 368.211. [1981 c.153 §25]

368.225 [Repealed by 1975 c.771 §33]

368.230 [Amended by 1971 c.659 §4; repealed by 1975 c.771 §33]

368.235 [Amended by 1965 c.10 §1; repealed by 1975 c.771 §33]

368.240 [Repealed by 1975 c.771 §33]

368.245 [Amended by 1969 c.423 §3; repealed by 1975 c.771 §33]

368.250 [Repealed by 1975 c.771 §33]

ROAD HAZARDS

368.251 Obstruction of road drains prohibited. No person shall stop, obstruct or in any other manner impair or damage any drain, ditch or other man-made or natural waterway that:

(1) Prevents water from causing damage to, flowing across or standing on a public road under county jurisdiction; or

(2) Benefits a public road under county jurisdiction. [1981 c.153 §26]

368.255 [Repealed by 1975 c.771 §33]

368.256 Creation of road hazard prohibited. (1) Except as authorized by the county governing body, an owner or lawful occupant of land shall not allow:

(a) Any water to overflow, seep or otherwise discharge from that land onto a public road under county jurisdiction including, but not limited to, water that is passing over the land, diverted from the land by an obstruction on the land, flowing from the land because of rainfall or discharged from an irrigation sprinkler or other device.

(b) Any structure, tree, drainage way, soil deposit or other natural or man-made thing on that land to present a danger to or create a hazard for the public traveling on a public road or facilities within the right of way of the public road by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a public road that is under county jurisdiction.

(2) A person is not in violation of this section if there is no reasonable method for the person to control, stop or remove the cause of the violation. [1981 c.153 §27]

368.260 [Repealed by 1981 c.153 §79]

368.261 Order to abate road hazard. (1) A county road official may order a person who is in violation of ORS 368.256 to remove, divert or otherwise discontinue the violation.

(2) An order issued under this section shall:

(a) Describe the nature and location of the violation;

(b) Direct the person to abate the violation within a specified period of time;

(c) Explain procedures the county road official may follow if the violation creates an emergency; and

(d) Explain that a hearing will be held under ORS 368.266 if the violation is not abated.

(3) If a violation of ORS 368.256 is not abated within the time allowed by the order issued under this section, the county governing body shall hold a hearing described in ORS 368.266. [1981 c.153 §28]

368.265 [Repealed by 1981 c.153 §79]

368.266 Hearing on abatement of road hazard; notice. (1) If a hearing is required under ORS 368.261, the county road official shall establish a place, date and time for the hearing. The hearing will be held if the violation is not abated before the date of the hearing. Notice provided under this section shall include the date and time set for the hearing.

(2) The order described under ORS 368.261 shall be included as part of the notice of hearing under this section. Notice of hearing under this section shall be given by service under ORS 368.401 to 368.426 to:

(a) The owner of the land that is the source of the violation; and

(b) Any persons lawfully occupying that land during the time of the violation if the county road official has reason to know of the occupancy.

(3) At the hearing the county governing body shall determine the person responsible for violation of ORS 368.256 and shall order that person to abate the violation within a time fixed by the county governing body, which time shall not be less than 10 days. [1981 c.153 §29]

368.270 [Repealed by 1981 c.153 §79]

368.271 Abatement of road hazard by county. (1) A county road official may abate a violation of ORS 368.256 at any time if any of the following occur:

(a) If the period of time established for abatement of the violation under ORS 368.266 passes and the person ordered to abate the violation has not done so within that time.

(b) If a reasonable attempt to provide service under ORS 368.266 has been made and no owner or lawful occupant of the property has been located and served.

(c) If the county road official determines that the violation creates a substantial risk of damage, injury or other emergency condition that requires abatement without delay and without notice or hearing. A county road official is not required to comply with ORS 368.261 and 368.266 when the county road official abates a violation under this paragraph.

(2) A county road official may take any reasonable actions under this section to abate the violation of ORS 368.256.

(3) A county and its officers, agents and employees are exempt from liability for any reasonable acts performed under this section, including, but not limited to, any reasonable trespass or conversion of personal property.

(4) If a county road official performs any acts under this section, the county road official shall file a written report with the county governing body. The report shall contain:

(a) An explanation of the acts performed;

(b) The reasons for performing the acts described;

(c) The costs incurred in abating the violation; and

(d) Any other information required by the county governing body. [1981 c.153 §30]

368.275 [Repealed by 1981 c.153 §79]

368.276 Hearing, notice and costs when county abates road hazard. (1) Upon receipt of a report under ORS 368.271, a county governing body shall establish a time, place and date for a hearing to assess costs for acts performed under ORS 368.271 and to determine persons liable for payment of those costs.

(2) Notice of the hearing shall be provided by service under ORS 368.401 to 368.426 to:

(a) The person determined under ORS 368.266 to be in violation of ORS 368.256; or

(b) If no determination of violation has been made under ORS 368.266, the owner of the land that is the source of the violation and to any persons lawfully occupying that land during the time of the violation.

(3) After consideration of matters presented at the hearing, the county governing body shall issue an order:

(a) Establishing costs to be paid; and

(b) Directing the person the county governing body determines to be responsible for payment of the costs to pay the costs within the time established by the county governing body, which time shall not be less than 60 days.

(4) If the county governing body cannot establish responsibility for payment of costs under this section, the owner of the property that is the source of the violation of ORS 368.256 shall be responsible for payment unless the owner can establish that there was no reasonable method for the owner to con-

trol, stop or remove the cause of the violation.

(5) The county governing body shall provide for notice of the results of the hearing to persons ordered to pay costs by service under ORS 368.401 to 368.426. Any person who does not pay costs as directed by an order under this section is liable for those costs. [1981 c.153 §31]

368.280 [Repealed by 1981 c.153 §79]

368.281 County recovery of costs for road hazard abatement; lien. (1) The county governing body may recover costs ordered paid under ORS 368.276, by:

(a) Bringing an action for recovery of the costs in any court of competent jurisdiction; or

(b) If the person ordered to pay costs owns real property within the county, filing a copy of the order with the county clerk to be entered as a lien upon the real property of that person within the county.

(2) If a lien is filed under subsection (1)(b) of this section:

(a) That lien, when docketed, is prior and superior to all other liens or charges on the property except taxes; and

(b) If the costs ordered to be paid under ORS 368.276 are not paid within the time established by the county governing body in the order, the county governing body shall cause the lien to be foreclosed as provided in ORS chapter 88.

(c) The county governing body may increase the county road budget by the amount of costs recovered or to be recovered under this section. [1981 c.153 §32]

368.285 [Repealed by 1981 c.153 §79]

368.290 [Amended by 1981 c.153 §65; renumbered 368.116]

368.295 [Amended by 1955 c.247 §1; repealed by 1981 c.153 §79]

368.300 [Repealed by 1981 c.153 §79]

368.305 [Repealed by 1981 c.153 §79]

368.310 [1969 c.296 §2; renumbered 368.121]

VACATION OF COUNTY PROPERTY

368.326 Purpose of vacation proceedings; limitation. ORS 368.326 to 368.366 establish vacation procedures by which a county governing body may vacate a subdivision, part of a subdivision, a public road, a trail, a public easement, public square or any other public property or public interest in property under the jurisdiction of the county governing body. The vacation procedures under ORS 368.326 to 368.366:

(1) Shall not be used by the county governing body to vacate property or an interest in property that is within a city.

(2) Are an alternative method to the method established under ORS chapter 92 for the vacation of a subdivision. [1981 c.153 §34]

368.331 Limitation on use of vacation proceedings to eliminate access. A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner. [1981 c.153 §35]

368.336 Abutting owners in vacation proceedings. Where the property proposed to be vacated under ORS 368.326 to 368.366 is a public road, a person owning property that abuts either side of the road is an abutting property owner for purposes of ORS 368.326 to 368.366 even when the county governing body proposes to vacate less than the full width of the road. [1981 c.153 §36]

368.341 Initiation of vacation proceedings; requirements for resolution or petition. (1) A county governing body may initiate proceedings to vacate property under ORS 368.326 to 368.366 if:

(a) The county governing body adopts a resolution meeting the requirements of this section;

(b) The person who holds title to property files with the county governing body a petition meeting the requirements of this section and requesting that the property be vacated; or

(c) The owner of property abutting public property files with the county governing body a petition meeting the requirements of this section and requesting vacation of the public property that abuts the property owned by the person.

(2) A county governing body adopting a resolution under this section shall include the following in the resolution:

(a) A declaration of intent to vacate property;

(b) A description of the property proposed to be vacated; and

(c) A statement of the reasons for the proposed vacation.

(3) Any person filing a petition under this section shall include the following in the petition:

(a) A description of the property proposed to be vacated;

(b) A statement of the reasons for requesting the vacation;

(c) The names and addresses of all persons holding any recorded interest in the property proposed to be vacated;

(d) The names and addresses of all persons owning any improvements constructed on public property proposed to be vacated;

(e) The names and addresses of all persons owning any real property abutting public property proposed to be vacated;

(f) Signatures, acknowledged by a person authorized to take acknowledgments of deeds, of either owners of 60 percent of the land abutting the property proposed to be vacated or 60 percent of the owners of land abutting the property proposed to be vacated; and

(g) If the petition is for vacation of property that will be redivided in any manner, a subdivision plan or partitioning plan showing the proposed redivision.

(4) The county governing body may require a fee for the filing of a petition under this section. [1981 c.153 §37]

368.346 Report, notice and hearing for vacation proceedings. Except as provided in ORS 368.351:

(1) When a vacation proceeding has been initiated under ORS 368.341, the county governing body shall direct the county road official to prepare and file with the county governing body a written report containing the following:

(a) A description of the ownership and uses of the property proposed to be vacated;

(b) An assessment by the county road official of whether the vacation would be in the public interest; and

(c) Any other information required by the county governing body.

(2) Upon receipt of the report under subsection (1) of this section, a county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

(3) Notice of the hearing under this section shall be provided under ORS 368.401 to 368.426 by posting and publication and by service on each person with a recorded interest in any of the following:

(a) The property proposed to be vacated;

(b) An improvement constructed on public property proposed to be vacated; or

(c) Real property abutting public property proposed to be vacated.

(4) During or before a hearing under this section, any person may file information with the county governing body that controverts any matter presented to the county governing body in the proceeding or that alleges any new matter relevant to the proceeding. [1981 c.153 §38]

368.351 Vacation without hearing. A county governing body may make a determination about a vacation of property under ORS 368.326 to 368.366 without complying with ORS 368.346 if:

(1) The county road official files with the county governing body a written report that contains the county road official's assessment that any vacation of public property is in the public interest; and

(2) The proceedings for vacation under ORS 368.326 to 368.366 were initiated by a petition under ORS 368.341 that contains the acknowledged signatures of owners of 100 percent of any private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated. The petition must indicate the owners' approval of the proposed vacation. [1981 c.153 §39]

368.356 Order and costs in vacation proceedings. (1) After considering matters presented under ORS 368.346 or 368.351, a county governing body shall determine whether vacation of the property is in the public interest and shall enter an order or resolution granting or denying the vacation of the property under ORS 368.326 to 368.366.

(2) An order or resolution entered under this section shall:

(a) State whether the property is vacated;

(b) Describe the exact location of any property vacated;

(c) Establish the amounts of any costs resulting from an approved vacation and determine persons liable for payment of the costs;

(d) Direct any persons liable for payment of costs to pay the amounts of costs established; and

(e) If a plat is vacated, direct the county surveyor to mark the plat as provided under ORS 271.230.

(3) When an order or resolution under this section becomes final, the county governing body shall cause the order to be recorded with the county clerk and cause copies of the order to be filed with the county surveyor and the county assessor. The order or resolution is effective when the order or resolution is filed under this subsection.

(4) Any person who does not pay costs as directed by an order under this section is liable for those costs. [1981 c.153 §40]

368.361 Intergovernmental vacation proceedings. (1) Notwithstanding ORS 368.326, a county governing body may vacate property that is under multiple public jurisdiction or that crosses and recrosses from public jurisdiction to public jurisdiction if:

(a) Vacation proceedings are initiated by each public body with jurisdiction;

(b) The public bodies proceed separately with vacation proceedings or conduct a joint proceeding; and

(c) Each public body reaches a separate decision about the proposed vacation.

(2) Each public body must reach a separate decision to vacate property under this section before the vacation may be completed. If each public body has determined that the property should be vacated, each public body shall issue a separate order or resolution vacating those portions of the property under their respective jurisdictions.

(3) Notwithstanding ORS 368.326, a county governing body may vacate property that is under the jurisdiction of the county and that is entirely within the limits of a city if that city, by resolution or order, concurs in the findings of the county governing body in the vacation proceedings.

(4) Public bodies vacating property under this section shall each use procedures for vacation that each uses for other vacation proceedings. [1981 c.153 §41; 1989 c.219 §1]

368.366 Ownership of vacated property. (1) When a county governing body vacates public property under ORS 368.326 to 368.366, the vacated property shall vest as follows:

(a) If the county holds title to the property in fee, the property shall vest in the county.

(b) If the property vacated is a public square the property shall vest in the county.

(c) Unless otherwise described in paragraph (a) or (b) of this subsection, the vacated property shall vest in the rightful owner holding title according to law.

(d) Except as otherwise provided in this subsection, the vacated property shall vest in the owner of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property.

(2) Notwithstanding subsection (1) of this section, a county governing body may determine the vesting of property vacated under ORS 368.326 to 368.366 in the order or resolution that vacates the property. [1981 c.153 §42]

NOTICE

368.401 General notice provisions. (1) ORS 368.401 to 368.426 establish standard methods for providing notice by service, posting or publication in actions or proceedings affecting real property. The methods established in ORS 368.401 to 368.426 for providing notice are applicable when notice is required by law to be made under ORS 368.401 to 368.426.

(2) ORS 368.401 to 368.426 do not:

(a) Limit the use of public moneys for providing notice or providing other information.

(b) Limit the persons to whom notice or information may be provided.

(c) Limit the manner in which notice may be provided.

(d) Apply where other methods for providing notice are specifically provided by law.

(e) Supersede any specific provision for providing notice that is part of any law requiring or permitting notice to be given under ORS 368.401 to 368.426. [1981 c.153 §43]

368.405 [Repealed by 1981 c.153 §79]

368.406 Notice by service. (1) When the law requires notice to owners of certain real property by service, the person providing notice by service may have notice personally served or may have the notice mailed.

(2) A person providing notice shall accomplish notice that is personally served by obtaining a signed acknowledgment of receipt of notice from:

(a) The person being served; or

(b) A person 18 years of age or older who resides at the address of the person being served.

(3) A person providing notice by mail shall accomplish notice by certified mail, return receipt requested, to the address of the person being served.

(4) A person's refusal to sign a receipt for notice that is personally served or mailed under this section is a waiver of any objection based on nonreceipt of the notice in any proceeding.

(5) Except where the person providing notice under this section has personal knowledge of a more appropriate address for the notice, the address to be used for notice personally served or mailed under this section is the address of the person to be served as shown on the tax rolls.

(6) A person serving notice under this section must serve notice at least 30 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §44]

368.410 [Repealed by 1981 c.153 §79]

368.411 Notice by posting. (1) Where the law requires notice by posting, the person providing notice shall post notices in no less than three places. The places where notice may be posted include any of the following:

(a) The property subject to the proceeding that is the subject of the notice; or

(b) Property within the vicinity of the property described in paragraph (a) of this subsection.

(2) Notice that is posted on property under this section must be plainly visible from a traveled public road.

(3) Notwithstanding subsection (1) of this section, a person providing notice under this section may post fewer than three notices if the small size of the property limits the value of the number of postings.

(4) A person posting notice under this section must post notice at least 20 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §45]

368.415 [Amended by 1953 c.229 §2; 1971 c.427 §1; 1981 c.153 §66; renumbered 368.041]

368.416 Notice by publication. (1) Where the law requires notice by publication, the person providing notice shall publish the notice in a newspaper of general circulation in the county where the property that is the subject of the proceeding is located.

(2) A person publishing notice under this section must publish the notice once at least 20 days before and once within 10 days of the date of the proceeding that is the subject of the notice. [1981 c.153 §46]

368.420 [Repealed by 1981 c.153 §79]

368.421 Record of notice. A person providing notice under any provision of ORS 368.401 to 368.426 shall complete and sign an affidavit containing a record of the procedure followed to provide notice under those sections. The person shall file the affidavit with the public body with jurisdiction over the proceeding that is the subject of the notice or in a place designated by that public body. [1981 c.153 §47]

368.425 [Repealed by 1981 c.153 §79]

368.426 Contents of notice. Any notice under ORS 368.401 to 368.426 must include all of the following:

(1) A short plain statement of the subject matter of the proceeding that requires the notice.

(2) A statement of matters asserted or charged or action proposed to be taken at the proceeding.

(3) An explanation of how persons may obtain more detailed information about the proceeding.

(4) A statement of any right to hearing afforded any parties under law.

(5) The time and place of any proceeding that will take place.

(6) A reference to particular sections of statute, charter, ordinance or rule that provide the jurisdiction and process for the proceeding that is the subject of the notice. [1981 c.153 §48]

368.430 [Repealed by 1981 c.153 §79]

368.435 [Repealed by 1981 c.153 §79]

368.440 [Repealed by 1981 c.153 §79]

368.445 [Repealed by 1981 c.153 §79]

368.450 [Repealed by 1981 c.153 §79]

368.455 [Repealed by 1981 c.153 §79]

368.460 [Repealed by 1981 c.153 §79]

368.465 [Repealed by 1981 c.153 §79]

368.470 [Repealed by 1981 c.153 §79]

368.475 [Repealed by 1981 c.153 §79]

368.480 [Repealed by 1981 c.153 §79]

368.485 [Amended by 1971 c.135 §2; repealed by 1981 c.153 §79]

368.490 [Repealed by 1981 c.153 §79]

368.495 [Repealed by 1981 c.153 §79]

368.500 [Repealed by 1981 c.153 §79]

368.505 [Repealed by 1981 c.153 §79]

368.510 [Repealed by 1981 c.153 §79]

368.515 [Repealed by 1981 c.153 §79]

368.520 [Repealed by 1981 c.153 §79]

368.525 [Repealed by 1981 c.153 §79]

368.530 [Repealed by 1981 c.153 §79]

368.535 [Repealed by 1981 c.153 §79]

368.540 [Amended by 1981 c.153 §67; renumbered 368.126]

368.545 [Repealed by 1961 c.556 §3]

368.546 [1961 c.556 §1; repealed by 1981 c.153 §79]

368.550 [Repealed by 1961 c.556 §3]

368.551 [1961 c.556 §2; 1973 c.244 §1; repealed by 1981 c.153 §79]

368.555 [Amended by 1967 c.256 §1; 1981 c.153 §68; renumbered 368.131]

368.560 [Repealed by 1981 c.153 §79]

368.565 [Amended by 1971 c.287 §2; repealed by 1981 c.153 §79]

368.570 [Repealed by 1981 c.153 §79]

368.575 [Amended by 1977 c.275 §2; repealed by 1981 c.153 §79]

368.580 [Amended by 1963 c.501 §2; repealed by 1981 c.153 §79]

368.582 [1963 c.501 §§3,4; repealed by 1981 c.153 §79]

368.585 [Repealed by 1981 c.153 §79]

368.590 [Repealed by 1981 c.153 §79]

368.595 [Repealed by 1981 c.153 §79]

368.600 [Amended by 1971 c.741 §35; 1979 c.873 §4; repealed by 1981 c.153 §79]

368.605 [Repealed by 1981 c.153 §79]

368.610 [Repealed by 1981 c.153 §79]

368.615 [Amended by 1957 c.12 §1; repealed by 1981 c.153 §79]

368.620 [Amended by 1957 c.575 §1; repealed by 1981 c.153 §79]

COUNTY ROAD FUNDS

368.705 General road fund; tax levy; use of fund. (1) In addition to a tax authorized by the electors of a county as provided by ORS 280.040 to 280.145 and by subsection (3) of this section, the county governing body of each county may levy an ad valorem tax on all taxable property within the county, which shall be set apart in the county treasury as a general road fund. The tax shall be paid in money. The tax shall be levied and collected in the same manner as other county taxes and subject to the limits set forth in ORS 310.150.

(2) The general road fund mentioned in subsection (1) of this section shall be used:

(a) In establishing, laying out, opening, surveying, altering, improving, constructing, maintaining and repairing county roads and bridges on county roads; or

(b) In like manner alone or in cooperation with the state on roads within the county known as state roads, or such roads or any portion thereof built in cooperation with the United States in accordance with the Act of July 11, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," or any other Act of Congress, rule or regulation of any department of the United States.

(3) Taxes levied pursuant to ORS 369.020 may be levied under the authority of this section if the county governing body transmits to the county assessor and county clerk with its notice of levy a certificate of the levy made pursuant to ORS 369.020 for the previous tax year together with its request to continue the former levy for market road purposes as a levy for county road purposes.

(4) No county funds derived from any ad valorem tax levy other than those mentioned in subsections (1) and (3) of this section shall be used or expended by the county governing body upon any roads or bridges except local option taxes levied under ORS 280.040 to 280.145. [Amended by 1963 c.9 §18; 1967 c.203 §1; 1973 c.240 §3; 1983 c.582 §1; 1987 c.667 §5; 1991 c.459 §388; 1999 c.21 §73]

368.707 Apportionment of local option taxes to cities. Local option taxes levied as provided by ORS 280.040 to 280.145 shall be apportioned and transferred to cities as provided by ORS 368.710. [1967 c.203 §3; 1999 c.21 §74]

368.710 Apportionment of general road fund; road taxes to be apportionable. (1) The tax imposed under ORS 368.705 shall be apportioned as follows:

(a) Not less than 50 percent of the tax shall be apportioned to the several road districts, including districts composed of incorporated cities and towns, in such proportion as the amount of taxable property in each district bears to the whole amount of taxable property in the county. The amount apportioned to any incorporated city or town shall be transferred to it to be expended under the management of its officials for the improvement and repair of county roads and for the improvement, repair and maintenance of improved streets within the boundaries of the city or town.

(b) The entire remaining revenue shall be applied to roads in such locality in the county as the county governing body directs.

(2) No road tax shall be included in any general fund levy or in any other fund in such a manner that it cannot be readily ascertained for apportionment as provided in this section. [Amended by 1991 c.459 §388a]

368.715 Using county funds for non-county roads during emergency. Notwithstanding the limitations in ORS 368.031 or any other statute that limits the expenditure of county funds for roads, the county governing body may expend available funds on other public roads during an emergency when, as a result of a disaster such as flood or other destructive force, a county road is closed because of destruction or disrepair of the county road caused by the disaster or, if no public road is available, on private property temporarily open to public use. [1965 c.270 §2; 1981 c.153 §69]

368.720 Using road funds outside of county. (1) The county governing body of any county may expend any portion of the funds apportioned to it from its share of funds derived under the Oregon motor vehicle law, or any other county money provided by law to be used in road construction, for the construction, maintenance and repair of streets, roads and highways in the state outside of the county.

(2) All such work of construction, maintenance or repair shall be done under an intergovernmental agreement that sets forth the terms under which the funds may be used and the party to the agreement that is responsible for the direction, supervision and maintenance of the work. [Amended by 1991 c.260 §1]

368.722 Expenditure of general road fund on city streets and bridges. Counties may expend funds received by the general road fund pursuant to ORS 294.060 on city streets and bridges under such terms and conditions as the county may determine pursuant to the provisions of ORS 373.260. [1975 c.292 §2]

368.725 [Repealed by 1981 c.153 §79]

368.730 [Repealed by 1953 c.158 §4]

368.735 [Repealed by 1953 c.158 §4]

368.740 [Repealed by 1953 c.158 §4]

368.805 [Repealed by 1981 c.153 §79]

368.810 [Repealed by 1981 c.153 §79]

368.815 [Repealed by 1981 c.153 §79]

368.820 [Repealed by 1967 c.454 §119]

368.905 [Repealed by 1981 c.153 §79]

MISCELLANEOUS PROVISIONS

368.910 Owner to repair sidewalks and curbs along road; county may repair if owner fails. (1) Whenever in an unincorporated area, sidewalks or curbs are constructed along county roads or are existing along roads taken over by the county, the owner of the abutting real property shall maintain and repair the sidewalks or curbs. If any such sidewalk or curb is out of repair, the county governing body shall send a notice by mail to the owner of the abutting property to repair the sidewalk or curb, setting forth the nature and extent of repairs and the time, not less than 30 days, within which they must be made.

(2) If the owner does not make the repairs within the time allowed, the county governing body may order the repairs to be made. The county governing body shall file the order for the repairs with the county clerk, the order describing the abutting property. The recorded order is notice that the described property is subject to a lien for the cost of the repairs, in an amount to be determined later by an order of the county governing body. The county clerk shall indorse upon the order the date of the filing and record and index the order in special books to be kept by the county clerk for such purpose.

368.915 Payment and reimbursement when county makes repairs. (1) After the repairs mentioned in ORS 368.910 have been completed the county governing body shall compute the cost to which may be added up to 10 percent of the cost for administration. Payment for the repairs shall be made from the general fund of the county.

(2) The fund drawn upon for the repairs shall be reimbursed by an assessment of the total cost against the abutting property. After the owner has been given notice and an opportunity to be heard, the county governing body shall by order determine the cost to be assessed against the abutting property. Notice of the determination of the assessment shall be mailed to the owner within 10 days after the cost is determined. The county governing body shall certify the order to the county assessor and shall record the order with the county clerk. The clerk shall indorse on the order the date of filing and record and index it in the special books kept by the clerk for such purpose.

368.920 Expense of repairs as lien on abutting property. The assessment mentioned in ORS 368.915 and interest are a lien upon the abutting property from the date of the filing with the county clerk of the order of the county governing body for the repairs under ORS 368.910. No transfer, sale or division of the abutting land, or change in its legal description, divests the lien from the whole of the original abutting land. Failure to enter the name of the owner or mistake in the name of the owner in the order for repairs in no way renders void any assessment and in no way affects the lien on the property described. The lien has priority over all other liens and encumbrances, except tax liens. Upon payment in full of the assessment and interest, the county sheriff shall enter satisfaction by a notation in the record kept by the county clerk, and the property is thereby discharged from the lien.

368.925 Delinquency in paying assessment for repairs; execution sale. (1) Thirty days after the notice of the determination of the assessment mentioned in ORS 368.915 is mailed to the owner, the entire amount is due and payable at the office of the county sheriff, and if not so paid shall be delinquent from that date and shall bear interest at the rate of eight percent per year until paid.

(2) One year from the date an assessment is delinquent, the county sheriff shall transmit to the county clerk a written description of the property, the name of the person to whom assessed, the amount of the assessment and the interest due. The county clerk shall issue a writ of execution thereon, directed to the sheriff of the county. The sheriff shall proceed to collect the unpaid assessment by advertising and selling the property in the manner provided by law for the sale of real property on execution, but no property shall be sold for a sum less than the amount of the unpaid assessment plus interest and the cost of advertising and sale.

368.930 [Amended by 1973 c.518 §4; repealed by 1981 c.153 §79]

368.935 [Repealed by 1965 c.500 §2]

368.940 [1965 c.500 §1; repealed by 1969 c.429 §6]

368.942 Posting notices, signs or pictures on structures within county road right of way prohibited. Except as provided in ORS 368.950, no person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever within the limits of the right of way of any county road any written, printed or painted advertisement, bill, notice, sign, picture, card or poster, except within the limits of any incorporated city through which the county road runs. [1973 c.462 §2]

368.945 Authority of county road official to remove unlawfully posted matter. A county road official may lawfully remove or destroy, without resort to legal proceedings, any advertisement, bill, notice, sign, picture, card or poster placed in violation of ORS 368.942. [1973 c.462 §3]

368.950 Applicability of ORS 368.942 and 368.945. ORS 368.942 and 368.945 do not apply to:

(1) The posting or maintaining of any notice required by law to be posted or maintained; or

(2) The placing and maintaining, within the limits of the right of way of any county road, of:

(a) Signs approved by the county governing body and giving information about scenic, historical, resort or recreational areas;

(b) Signs approved by the county governing body and giving information about community or civic enterprises of a noncommercial nature, or the proximity of tourist facilities, directions or distances for the information of the traveling public;

(c) Facility location signs of a public utility or telecommunications utility, when such signs are approved by the county governing body;

(d) Benches utilized as outdoor advertising signs, if approved by the county governing body; or

(e) Outdoor advertising signs on bus shelters erected or maintained for use by and convenience of customers of a mass transit district, a transportation district or any other public transportation agency, when such signs are approved by the county governing body. [1973 c.462 §4; 1987 c.403 §1; 1987 c.447 §143]

368.955 Posting notices, signs or pictures within view of county road on property of another without consent prohibited. No person may paste, paint, brand or in any manner whatever place or attach to any building, fence, gate, bridge, tree, rock, board, structure or anything whatever on the property of another within view of a county road, without the written consent of the owner or person entitled to possession of such property, any written, printed or painted advertisement, bill, notice, sign, picture, card or poster. [1973 c.462 §5]

368.960 Authority of property owner to remove unlawfully posted matter. The owner or person entitled to possession of any property described in ORS 368.955 may lawfully remove or destroy, without resort to legal proceedings, any advertisement, bill, notice, sign, picture, card or poster placed upon such property in violation of ORS 368.955. [1973 c.462 §6]

PENALTIES

368.990 Penalties. (1) Violation of ORS 368.251 or 368.256 is punishable, upon conviction, by a fine not exceeding $100 or by imprisonment in the county jail not exceeding 60 days, or both. Justice courts shall have concurrent jurisdiction with the circuit courts of such offenses.

(2) Violation of ORS 368.942 is punishable, upon conviction, for each violation by a fine of not more than $100 or imprisonment in the county jail for not more than 30 days or both. [Subsection (4) enacted as 1973 c.462 §7; 1981 c.153 §70]

Chapter 369

2003 EDITION

Ways of Public Easement

369.020 Designation of county market roads as ways of public easement

369.025 County market road within city

369.010 [Repealed by 1983 c. 327 §16]

369.020 Designation of county market roads as ways of public easement. On or before January 1, 1974, county courts of the respective counties or city councils of the respective cities may take action to designate former "county market roads" as ways of public easement. If no designation is made, such roads shall become a part of the respective county or city road systems as of that date. [1973 c.240 §2 (enacted in lieu of 369.110, 369.120, 369.130, 369.140, 369.150, 369.160, 369.170, 369.180, 369.190, 369.200, 369.220, 369.230, 369.240, 369.250, 369.260, 369.270, 369.280 and 369.290)]

369.025 County market road within city. Notwithstanding ORS 369.020 or any action pursuant thereto, a road within a city that was a designated county market road prior to January 1, 1974, shall be on the county road system until the county surrenders jurisdiction over the road within a city and the city accepts the county order and offer of surrender in the manner prescribed in ORS 373.270. [1975 c.362 §1]

369.110 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.110)]

369.120 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.120)]

369.130 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.130)]

369.140 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.140)]

369.150 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.150)]

369.160 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.160)]

369.170 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.170)]

369.180 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.180)]

369.190 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.190)]

369.200 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.200)]

369.210 [Repealed by 1981 c.153 §79]

369.220 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.220)]

369.230 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.230)]

369.240 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.240)]

369.250 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.250)]

369.260 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.260)]

369.270 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.270)]

369.280 [Repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.280)]

369.290 [Amended by 1965 c.512 §1; repealed by 1973 c.240 §1 (369.020 enacted in lieu of 369.290)]

369.410 [Repealed by 1981 c.153 §79]

369.420 [Repealed by 1981 c.153 §79]

369.430 [Repealed by 1981 c.153 §79]

369.440 [Repealed by 1981 c.153 §79]

369.450 [Repealed by 1981 c.153 §79]

369.460 [Repealed by 1981 c.153 §79]

369.470 [Repealed by 1981 c.153 §79]

369.480 [Repealed by 1981 c.153 §79]

Chapter 370

2003 EDITION

County Road Bonding Act

370.010 Authority to issue bonds

370.020 Road work plans, specifications and bids

370.031 Election procedure to determine issuance of bonds under ORS 370.010

370.120 County court's use of money raised by sale of bonds

370.130 Order declaring election results; contents and effect

370.140 Bond issuance, advertisement, sale and interest rate

370.150 Issuance of serial in lieu of term bonds

370.160 Option to issue callable term or serial bonds; notice of redemption

370.170 Special bond redemption funds

370.180 Tax levy for redemption fund and bond interest

370.200 Loan of redemption funds

370.240 Warrants in lieu of bonds

370.005 [Repealed by 1983 c.327 §16]

370.010 Authority to issue bonds. (1) Any county may issue bonds for the purpose of raising money to be used for the construction and maintenance of permanent roads in that county.

(2) All moneys raised under the provisions of this chapter shall be used in constructing permanent public roads in that county, which roads, except as otherwise provided by law, shall be constructed by the county court under its exclusive jurisdiction and such expert assistants as it may employ.

370.020 Road work plans, specifications and bids. The county court:

(1) Shall prepare plans and specifications of roads mentioned in ORS 370.010.

(2) Shall invite bids in conformity to such plans and specifications.

(3) May also receive and consider any and all bids in conformity to any plans and specifications furnished by any individual, firm or corporation offering to bid on such roads.

(4) May reject any and all bids.

370.030 [Repealed by 1983 c.350 §232 (370.031 enacted in lieu of 370.030)]

370.031 Election procedure to determine issuance of bonds under ORS 370.010. (1) This section establishes the procedure for determining whether a county shall issue bonds under ORS 370.010. The question shall be decided by election. The county court:

(a) May order the election on its own resolution; or

(b) Shall order the election when a petition is filed as provided in this section.

(2) The requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition in ORS 250.165 to 250.235.

(3) Notwithstanding subsection (2) of this section, if ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county charter or an ordinance adopted under the county charter.

(4) The order of the county court calling the election:

(a) Shall specify the amount of the bonds proposed to be issued, the length of time they shall run and the maximum rate of interest they shall bear; and

(b) May specify each road within the county to be built or improved by the money raised, the minimum amount to be expended on each road and the location of each road within the county, giving its beginning and terminus.

(5) Not later than the fourth day nor before the 15th day before an election under this section, the county court shall publish a notice of the election in the newspaper or newspapers designated under ORS 254.205. The notice shall state the date of the election, a ballot title and the information included in the order under subsection (4) of this section. The notice shall be published in at least one issue of the newspaper or newspapers. A notice under this section is in addition to the facsimile published under ORS 254.205.

(6) Only one election under this section may be held in a 12-month period. [1983 c.350 §233 (enacted in lieu of 370.030)]

370.040 [Repealed by 1983 c.350 §331a]

370.050 [Repealed by 1983 c.350 §331a]

370.060 [Repealed by 1983 c.350 §331a]

370.070 [Repealed by 1983 c.350 §331a]

370.080 [Repealed by 1973 c.549 §1 (370.082 enacted in lieu of 370.080)]

370.082 [1973 c.549 §2 (enacted in lieu of 370.080); repealed by 1983 c.350 §331a]

370.084 [1973 c.549 §3; repealed by 1983 c.350 §331a]

370.086 [1973 c.549 §4; repealed by 1983 c.350 §331a]

370.090 [Repealed by 1983 c.350 §331a]

370.100 [Repealed by 1983 c.350 §331a]

370.110 [Repealed by 1983 c.350 §331a]

370.120 County court's use of money raised by sale of bonds. If the county court in its order calling an election under ORS 370.031 designates the particular roads to be built or improved by the money raised by the sale of bonds, the county court shall not use any of the money raised upon any other road or for any other purpose than those mentioned in the order. If the order does not designate any particular roads to be built or improved by the money raised, then the county court may expend the money raised from the sale of the bonds to build, improve or maintain such permanent roads within the county as the county court considers proper. [Amended by 1983 c.350 §234]

370.130 Order declaring election results; contents and effect. If at any election under ORS 370.031 a majority of the electors voting at the election favors issuing the bonds, the county court shall enter an order in its journal declaring that fact. This order shall:

(1) Be conclusive as to the regularity of all the proceedings in reference to the matter.

(2) Designate the amount of the total assessed valuation of all the property within the county.

(3) Designate the amount of all the previous debts and liabilities of the county incurred for road purposes and remaining unpaid.

(4) Be prima facie evidence as to the amount of the assessed valuation and the indebtedness. [Amended by 1983 c.350 §235]

370.140 Bond issuance, advertisement, sale and interest rate. (1) After having entered the order as provided in ORS 370.130, the county court shall cause the bonds to be issued in denominations of $50 or multiples thereof, up to $1,000, advertise such amount of them for sale as in its judgment is necessary and thereafter from time to time make such additional sale of bonds so issued as is necessary.

(2) Bond sales shall be made through bids received upon such advertisement as the county court deems necessary to afford the best means of procuring the highest prices for the bonds.

(3) All bids shall be in writing and publicly opened at a time and place specified in the advertisement.

(4) Whatever other means of advertising the sale of bonds the county court may adopt, it shall advertise the sale for at least three weeks in two newspapers printed in the county, if there are that many, and if there is but one such newspaper, then in it.

(5) The bonds shall be sold to the highest bidder, but preference shall be given to the citizens of the county.

(6) If the county court is not satisfied with the bids, it may reject any or all of them.

(7) The county court shall determine the interest rate. [Amended by 1981 c.94 §34]

370.150 Issuance of serial in lieu of term bonds. After the issuance of bonds has been authorized by an election held in accordance with ORS 370.031, 370.120 and 370.130, the county court, in lieu of bonds redeemable only at the time stated in the notice, may issue bonds and, in the order providing for their issuance, reserve the right to redeem any or all of them serially each year. When bonds are issued with such reservation, the redemption fund provided for in ORS 370.170 may be used each year, as it is collected, for the redemption of such proportion or percentage of the bonds as will redeem all of them at the end of the time fixed in the prior proceedings for maturity of the bonds, instead of being kept and deposited as provided by law or loaned as provided in ORS 370.200 until the final maturity of the bonds. [Amended by 1967 c.451 §21; 1983 c.350 §236]

370.160 Option to issue callable term or serial bonds; notice of redemption. In its discretion, the county court further may issue either term bonds or the serial bonds mentioned in ORS 370.150 with the option of redeeming them on and after certain interest-paying dates specified by the county court in the bonds. Notice of redemption shall be given in the manner specified in the bonds, as provided in ORS 288.520. Newspaper publication of notice of redemption is not required for bonds that are in registered form. These callable bonds either may be called and paid pursuant to the optional redemption privilege or may be called and refunded pursuant to ORS 287.202 to 287.220. [Amended by 1997 c.171 §19]

370.170 Special bond redemption funds. Beginning with the fourth year after the bonds are sold the county court shall each year thereafter, until maturity of the bonds, set aside as a special fund for their payment such percentage of the face value of the bonds as at the date of their maturity shall aggregate their full face value. Where bonds are issued in different series maturing at different times a separate redemption fund shall be provided for each series.

370.180 Tax levy for redemption fund and bond interest. The amount necessary to provide the redemption fund and to pay the annual interest on outstanding bonds shall be added to the general levy of taxes as may be required, which tax shall be levied upon all the taxable property within the county.

370.190 [Repealed by 1967 c.451 §32]

370.200 Loan of redemption funds. Whenever there are sufficient funds on hand in the bond redemption fund, the county treasurer with the approval of the county court may loan any money in the bond redemption fund, secured by first mortgage on improved real estate within the county at six percent interest per year. All applications for such loans shall be made in writing to the county treasurer, shall state the amount of the loan applied for and the security offered and shall be numbered consecutively as received and passed upon by the county court. The county court shall require an abstract of title of property and a written opinion from the district attorney of the county concerning the validity of the title of the lands offered as security. The county court may authorize or reject any loan. No loan shall be made in excess of 50 percent of the assessed valuation of the property offered as security. No expense shall be incurred by the county in loaning any such funds.

370.210 [Repealed by 1967 c.451 §32]

370.220 [Repealed by 1967 c.451 §32]

370.230 [Repealed by 1967 c.451 §32]

370.240 Warrants in lieu of bonds. (1) After the issuance of bonds has been authorized by an election held in accordance with ORS 370.031, 370.120 and 370.130, the county court, in lieu of the issuance of any or all such bonds, may issue warrants drawn upon the county treasury for the purpose of securing any or all funds sought to be secured by the issuance of such bonds.

(2) These warrants shall be in denominations of $50, or multiples thereof up to $1,000, and shall bear the same rate of interest as the bonds would bear in lieu of which the warrants are issued.

(3) No such warrants shall become due at any specified time, but shall be redeemable by the county at any time in the same manner as other county warrants are redeemed or paid. [Amended by 1983 c.350 §237]

370.250 [Repealed by 1981 c.153 §79]

Chapter 371

2003 EDITION

Road Districts and Road Assessment Plans

GENERAL PROVISIONS

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371.650 Certification of assessment; recording order; lien

371.655 When assessment due, payable and delinquent; application of other statutes

371.660 Delinquent list; execution and sale

GENERAL PROVISIONS

371.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" includes board of county commissioners.

COUNTY ROAD DISTRICTS

371.055 Establishment of road districts. For the purpose of improving county roads, as defined in ORS 368.001, or public roads within the boundaries of a city or drainage district, numbered road districts may be formed from contiguous territory within the county. [Amended by 1971 c.727 §101; 1989 c.593 §3]

371.060 Drainage districts and cities as separate road districts. Every drainage district consisting of 5,000 acres or more, and every city, shall constitute a separate road district. The county court shall not divide such territory to include any of it in any other road district unless the people of the drainage district or city, by majority vote at an election held pursuant to law, vote that the territory be included by the county court in a road district established by the county court. The county court may include in the road district of any drainage district contiguous property adjoining or adjacent to such drainage district, but in no event shall the total area added by the county court be more than 50 percent of the area of the drainage district. [Amended by 2003 c.802 §101]

371.065 Construction, maintenance and repair in drainage road district; tax levy. Any construction, maintenance and repairs on roads within the boundaries of a drainage road district shall be only on such public roads, as defined in ORS 368.001, within the district as are designated by order of the board of supervisors of the drainage district. The board of supervisors of such drainage district may cooperate with the county court in construction, maintenance and repairs on roads within the boundaries of the drainage district, and for this purpose may levy in any one year a tax on every acre of land in the district in the proportion that the acre is benefited by the proposed construction, maintenance or repair, but in no event to exceed $1 for any one acre. The amount of the tax shall be certified to the county assessor of each county in which lands of the district are situated, and thereafter collected in the same manner as the annual installment of drainage tax is certified and collected. [Amended by 1981 c.153 §71]

371.067 Construction, maintenance and repair in city road district. Any construction, maintenance and repairs on roads within the boundaries of a city that constitutes an entire and separate road district under ORS 371.060 shall be only on such public roads, as defined in ORS 368.001, within the district as are designated by order of the governing body of the city. The governing body of the city may cooperate with the county court in construction, maintenance and repairs on roads within the boundaries of the city. [1989 c.593 §2; 2003 c.802 §102]

371.070 Islands as separate road districts. Any island or part thereof exceeding in area 12 square miles and located in any one county hereby is constituted a separate and distinct road district of the county.

371.075 Petition for road improvement or grade change; investigation and report; granting petition. Upon the petition of 12 or a majority of the resident freeholders of any road district, approved by the roadmaster, praying for a change in grade or other extensive improvements to a public road as defined in ORS 368.001, the county court shall instruct the county surveyor, engineer or roadmaster to proceed as soon as convenient to the place named in the petition and make such investigations, surveys or estimates as the county court requires and report the same in writing to the county court, setting forth all material matters necessary to fully advise the county court. If the county court determines in favor of such improvement, it shall grant the petition and proceed to make the change in grade or improvements. [Amended by 1981 c.153 §72]

371.080 [Repealed by 1989 c.593 §5]

371.085 [Amended by 1953 c.480 §3; repealed by 1989 c.593 §5]

371.090 [Amended by 1971 c.647 §64; 1983 c.350 §238; repealed by 1989 c.593 §5]

371.095 [Amended by 1953 c.480 §3; 1963 c.9 §19; 1971 c.647 §65; repealed by 1987 c.667 §8]

371.097 Levy of taxes; application of Local Budget Law. (1) A road district may assess, levy and collect each year an ad valorem tax on all taxable property within the road district.

(2) Ad valorem taxes authorized by this section shall be paid in money and shall be levied and collected in the same manner as other county taxes.

(3) Notwithstanding ORS 294.316 (5), 294.305 to 294.565 apply to the road district for each fiscal year in which ad valorem taxes are assessed and levied by the district. [1987 c.667 §2]

371.100 [Amended by 1953 c.480 §3; 1957 c.70 §1; 1967 c.609 §7; 1971 c.647 §66; 1983 c.350 §239; repealed by 1987 c.667 §8]

371.105 Tax as special fund; use of fund. (1) All tax moneys levied and collected by the road district shall be credited and kept as a special fund by the county treas-

urer to the account of the road district. No part of such fund shall be transferred or loaned.

(2) Except as provided in subsection (3) of this section, the whole amount of the tax moneys levied and collected by the road district shall be expended under the supervision of the county court upon roads within the road district boundary of the district voting the tax as the boundaries existed at the time the tax was voted, and not elsewhere.

(3) The fund collected from taxes levied and assessed by a road district comprising and constituted from a city, and from property situated within the city, shall be expended under the supervision of the governing body of the city and not under the supervision of the county court. This fund shall be paid over to the city by the county treasurer when collected. [Amended by 1983 c.350 §240; 1985 c.307 §3; 1987 c.667 §3; 1989 c.593 §4; 2003 c.802 §103]

371.107 [1985 c.307 §2; 1987 c.667 §4; repealed by 1997 c.541 §389]

371.110 Effect of change of district boundaries on road tax levy; filing boundary change with county assessor and Department of Revenue. (1) If the boundaries of any road district are changed after the levy of any road tax in or for such road district and before the expenditure of the tax, provision shall be made by the county court for such expenditure in the localities contemplated at the time of levy, notwithstanding the change in boundaries.

(2) For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [Amended by 2001 c.138 §19]

371.205 [Repealed by 1969 c.50 §1]

371.210 [Repealed by 1969 c.50 §1]

371.215 [Repealed by 1969 c.50 §1]

371.220 [Repealed by 1969 c.50 §1]

371.225 [Repealed by 1969 c.50 §1]

371.230 [Repealed by 1969 c.50 §1]

371.235 [Repealed by 1969 c.50 §1]

371.240 [Repealed by 1969 c.50 §1]

SPECIAL ROAD DISTRICTS

371.305 Authority to establish special road districts. Contiguous territory lying within any county and not incorporated within the limits of a city may be formed into, or included in, a special road district in the manner provided by ORS 371.305 to 371.360. [Amended by 1961 c.681 §1; 1965 c.498 §4; 2003 c.802 §104]

371.310 [Amended by 1965 c.498 §5; 1969 c.568 §1; repealed by 1971 c.727 §203]

371.315 [Repealed by 1971 c.727 §203]

371.318 Formation order to declare whether district board elected or appointed; change in method of selecting board; cost of election. (1) If a county court approves a petition for formation of a special road district, the order of the county court declaring the formation shall also declare, in addition to other matters specified in ORS 198.810, whether the commissioners of the district shall be appointed by the county court or elected by the electors of the district.

(2) When a special road district is situated within a county, the county court, by ordinance, may provide for a change in the method of selection of the commissioners of the district. The ordinance shall specify whether election or appointment shall be the method of selecting commissioners and shall prescribe the procedures for effecting the change.

(3) When a county court, by an order or ordinance described in this section, requires the commissioners of a special road district to be elected, the county shall pay the costs of conducting the elections at which the commissioners of the district are elected. [1999 c.764 §2]

371.320 [Repealed by 1971 c.727 §203]

371.323 Election of first commissioners. If a proposal for formation of a special road district is approved and the proposal specifies an elected district board of commissioners, members of the district board of commissioners shall be elected at the election held to form the district. [1999 c.764 §4]

371.325 [Repealed by 1971 c.727 §203]

371.330 Appointment of first commissioners. If a proposal for formation of a district is approved and the proposal specifies an appointed district board of commissioners, the county court shall appoint three persons with the qualifications described in ORS 371.338 (1) to be the first commissioners of the district and shall designate the term of office of each. [Amended by 1961 c.681 §2; 1965 c.498 §6; 1971 c.727 §102; 1999 c.764 §3]

371.335 [Repealed by 1971 c.727 §203]

371.336 Powers of district. A special road district may be formed for the purpose of improving roads within the district. A special road district has the power:

(1) To make contracts.

(2) To acquire, hold, receive and dispose of real and personal property.

(3) To sue and be sued.

(4) To exercise the power of eminent domain.

(5) To assess, levy and collect taxes on all taxable real property within the district.

(6) To do any other act necessary to carry out the purposes of ORS 371.305 to 371.360. [1961 c.681 §5; 1963 c.9 §20; 1965 c.498 §7; 1969 c.568 §2; 1971 c.727 §103; 1987 c.667 §6; 2003 c.802 §105]

371.338 District board of appointed commissioners; qualification; term; vacancies; oath. (1) The powers of a special road district are vested in a district board of commissioners consisting of three commissioners appointed by the county court. Each commissioner shall be an elector of the district. The term of office of a commissioner is three years commencing on January 1 of the year of appointment. Vacancies on the board shall be filled by the county court by appointment for the unexpired term.

(2) Notwithstanding the three-year term of office prescribed in subsection (1) of this section, of the commissioners first appointed to a board one commissioner shall be appointed for a term ending December 31 of the second year following the year in which that commissioner first takes office, one commissioner for a term ending December 31 of the year following the year in which that commissioner first takes office and one commissioner for a term ending December 31 of the year in which that commissioner takes office.

(3) Before entering upon the duties of office, a commissioner shall take and subscribe an oath to support the Constitution and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the commissioner's knowledge and ability. [1961 c.681 §6; 1983 c.83 §81]

371.340 [Repealed by 1961 c.681 §14]

371.342 Officers of appointed district board; meetings; records. As soon as possible after the first commissioners are appointed to the district board of commissioners, and thereafter during each January, the board shall meet and organize by selecting from their number a president, a secretary and a treasurer. The board shall hold one regular meeting each month at a time and place within the district designated by the board. All meetings of the board shall be open to the public and the records of the district shall be available for public inspection. [1961 c.681 §§7,8; 1969 c.344 §5; 1969 c.345 §7]

371.344 [1961 c.681 §9; 1963 c.9 §21; 1965 c.498 §8; 1973 c.796 §59; 1983 c.83 §82; 1983 c.350 §241; 1997 c.541 §384; repealed by 1999 c.632 §30]

371.345 [Amended by 1959 c.102 §1; 1961 c.681 §10; 1967 c.609 §8; 1971 c.647 §67; 1975 c.647 §32; repealed by 1983 c.350 §331a]

371.347 Alternative provisions for elected board of commissioners. When a special road district has an elected district board of commissioners, ORS 371.349 and 371.351 are effective in that district in lieu of ORS 371.338 and 371.342. [1999 c.764 §5]

371.349 District board of elected commissioners; qualification; term; vacancies; oath. (1) The powers of a special road district are vested in a district board of commissioners consisting of three commissioners elected by the electors of the district. Each commissioner shall be an elector of the district. The term of office of a commissioner is four years commencing on July 1 following the date of election. A commissioner may serve until a successor is elected and qualified. Vacancies on the board shall be filled by the district board by appointment for the unexpired term.

(2) Notwithstanding the four-year term of office prescribed in subsection (1) of this section, of the commissioners first elected to a board, the term of one commissioner shall end on June 30 of the second year following the year in which that commissioner first takes office.

(3) ORS chapter 255 governs the nomination and election of the commissioners of a special road district and the conduct of all elections in the district.

(4) Before entering upon the duties of office, a commissioner shall take and subscribe an oath to support the Constitutions and laws of the State of Oregon and of the United States, and to well and faithfully perform the duties of office to the best of the commissioner's knowledge and ability. [1999 c.764 §6]

371.350 [Amended by 1961 c.681 §11; 1971 c.647 §68; repealed by 1983 c.350 §331a]

371.351 Officers of elected district board; meetings; records. As soon as possible after the first commissioners are elected to the district board of commissioners, and thereafter during each July, the board shall meet and organize by selecting from their number a president, a secretary and a treasurer. The board shall hold one regular meeting each month at a time and place within the district designated by the board. All meetings of the board shall be open to the public and the records of the district shall be available for public inspection. [1999 c.764 §7]

371.353 Establishment of zones within special road district. The district board of a special road district located in a county of between 3,000 and 3,500 square miles and with a population of between 100,000 and 200,000 may seek elector approval to divide the district into zones for the purpose of imposing and levying property taxes at a different rate and amount on the assessed value of all taxable property in each zone. The establishment of zones within a district under ORS 371.353 to 371.357 must be based upon and reflect qualitative differences in the ser-

vices provided by the district to the residents and their property in each zone. [2001 c.553 §2]

371.354 Notice and public hearing. (1) The district board of a special road district seeking to establish tax zones under ORS 371.353 to 371.357 shall cause a notice of a public hearing relating to the formation of the tax zones to be published once a week for two successive weeks in the newspaper in general circulation in the district that, in the judgment of the district board, will afford the best notice to the residents of the district.

(2) The notice published under this section shall set forth:

(a) The resolve of the district board to divide the district into zones.

(b) The boundaries of the proposed zones.

(c) The estimated percentage of the total amount of ad valorem taxes of the district that will be collected in each zone.

(d) The date, hour and place of the hearing.

(e) That all interested persons may attend and shall be given a reasonable opportunity to be heard. [2001 c.553 §3]

371.355 [Amended by 1961 c.681 §12; repealed by 1971 c.647 §149]

371.356 Election to approve zones within special road district. (1) Following the notice required under ORS 371.354, the district board of a special road district seeking to establish tax zones shall conduct a public hearing at which district residents and property owners may testify about the proposed zones.

(2) Following the hearing, if the district board decides to proceed, the district board shall submit a measure to the electors of the district that establishes the zones and zone boundaries. The measure shall state the operating tax rates proposed to apply to each zone, stated as a percentage, not to exceed 100 percent, of the lesser of the district's statutory or permanent rate limit. The measure may contain any other provisions deemed necessary by the district board.

(3) The measure shall be approved and the tax zones established if a majority of district electors voting on the question vote in favor of the measure.

(4) If district electors establish tax zones within a road district pursuant to this section, the operating tax rate applicable to each zone may not be modified for three tax years following zone establishment.

(5) If tax zones within a road district are established under this section, zone boundaries may not be changed unless notice of the zone boundary change is given and elector approval of the change is obtained in the same manner as zones are established under ORS 371.353 to 371.357. [2001 c.553 §4]

371.357 Ad valorem taxation; operating tax rate limits. (1) If a special road district is divided into tax zones under ORS 371.353 to 371.357, the district board shall determine, make and declare each item of ad valorem property tax, as set forth in ORS 310.060 (2), for each zone when the district board adopts its budget for any fiscal year.

(2) The operating tax rate for each tax zone of the district may not exceed the lesser of the statutory or permanent rate limit for operating taxes of the district established under ORS 310.200 to 310.242 or section 11 (3), Article XI of the Oregon Constitution. [2001 c.553 §5]

371.359 Filing boundary change with county assessor and Department of Revenue. For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [2001 c.138 §21]

371.360 Deposit of tax proceeds in bank. (1) The proceeds of the tax levied and collected for the district shall be deposited in a bank or banks designated by the district board of commissioners. Such moneys shall be paid out only upon order of the board by checks or drafts signed by the president and treasurer of the board. All deposits of any district in any bank in excess of the amount protected by Federal Deposit Insurance Corporation insurance shall be secured by deposit of bonds of the United States.

(2) Any moneys on deposit in a county treasury in a special fund of a road district on August 9, 1961, shall be paid to the district board of commissioners for deposit as provided in subsection (1) of this section. [Amended by 1961 c.681 §13]

371.365 [Repealed by 1961 c.681 §14]

371.370 [Repealed by 1961 c.681 §14]

371.375 [1965 c.498 §2; repealed by 1971 c.727 §203]

371.380 [1965 c.498 §3; repealed by 1971 c.727 §203]

371.385 Certain tax limitations not in effect after August 22, 1969. If any district existing on August 22, 1969, had a tax limitation set forth in the petition for formation as provided by ORS 371.310, prior to amendment by section 1, chapter 568, Oregon Laws 1969, the limitation stated in such petition shall not be effective to limit the taxing authority of any such district after August 22, 1969. Such limitation shall be construed to be effective only to limit taxes levied prior to August 22, 1969, and after the formation of the district. [1969 c.568 §3]

Note: 371.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 371 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ROAD ASSESSMENT DISTRICTS

371.405 Definitions for ORS 371.405 to 371.535. As used in ORS 371.405 to 371.535:

(1) "County court" includes the board of county commissioners sitting for the transaction of general county business.

(2) "District" means a road assessment district organized under ORS 371.405 to 371.535. [Amended by 1955 c.227 §1; 1971 c.647 §69; 2003 c.802 §106]

371.410 Formation of road assessment district in counties with 19,000 to 25,000 population; effect of population increase. (1) A road assessment district may be formed in any county having a population of 19,000 and not more than 25,000, as shown by the decennial federal census, and shall consist of an area of more than 20,000 acres or an assessed valuation of taxable property of not less than $1 million, according to the last county assessment roll. A road assessment district may be formed to provide for the improvement, repair or reconstruction of the public roads within such area of land.

(2) A road assessment district formed under subsection (1) of this section shall continue in existence under the provisions of ORS 371.405 to 371.535 notwithstanding a growth in population exceeding 25,000, as shown by a subsequent decennial federal census, in the county where the road district was formed. [Amended by 1955 c.227 §2; 1971 c.727 §104; 1981 c.69 §1]

371.415 [Repealed by 1971 c.727 §203]

371.416 Election procedure; initiative and referendum. (1) ORS chapter 255 governs the following:

(a) The nomination and election of directors, except as provided in ORS 371.455.

(b) The conduct of district elections.

(2) The electors of a district may exercise the powers of the initiative and referendum regarding a district measure, in accordance with ORS 255.135 to 255.205. [1983 c.350 §243]

371.420 [Repealed by 1971 c.727 §203]

371.425 [Repealed by 1971 c.647 §149 and 1971 c.727 §203]

371.430 [Repealed by 1971 c.727 §203]

371.435 [Repealed by 1971 c.647 §149]

371.440 [Repealed by 1971 c.727 §191]

371.445 [Repealed by 1971 c.727 §203]

371.450 Election of district directors; terms; oath; qualifications; vacancies. (1) Except as provided in subsection (2) of this section, the term of director is four years.

(2) The three directors elected as the first district board shall determine by lot the length of term each shall hold. The term of one director shall expire June 30 next following the first regular district election and the terms of two directors shall expire June 30 next following the second regular district election.

(3) Within 10 days after receiving certificates of election, the directors shall take and file their official oath which shall be filed in the office of the directors.

(4) A director shall be an elector of the district and shall have resided within the proposed district for more than 30 days immediately prior to the date of the election.

(5) The board of directors shall fill any vacancy on the board by appointment as provided in ORS 198.320. [Amended by 1969 c.669 §6; 1971 c.647 §73; 1971 c.727 §§106,194; 1973 c.796 §60; 1975 c.647 §33; 1983 c.350 §244]

371.455 Nominees declared elected if number equals positions to be filled. After expiration of the time for filing nominations for a regular district election, if the board of directors determines that the number of candidates nominated equals the number of positions to be filled on the board, the district need not hold the election. Instead, the board of directors, within 10 days after expiration of the time for filing nominations, shall declare the candidate or candidates elected. [Amended by 1955 c.227 §3; 1971 c.647 §74; 1983 c.350 §245]

371.460 [Amended by 1963 c.364 §2; repealed by 1971 c.647 §149]

371.465 [Repealed by 1971 c.647 §149]

371.467 Special elections. Special elections may be called by resolution of the board of directors for any proper purpose. [1963 c.364 §1; 1971 c.647 §75]

371.470 Selection of board of directors' president and secretary; record of proceedings; meetings. (1) Within the first 10 days of July in each year next following their election, excepting the year immediately after the election upon organization, the board of directors shall meet and choose one of their number president of the board and elect some suitable person as secretary. The secretary, who may or may not be a member of the board of directors, shall hold office during the pleasure of the board.

(2) The board of directors shall keep a record of all its proceedings, which shall be open to the inspection of all owners of property within the district.

(3) The secretary shall be paid such amount as the board of directors shall fix.

(4) The board of directors shall hold a regular monthly meeting at a time fixed by it and entered in its records and such special

meetings as may be required for the proper transaction of business. Written notice of each special meeting shall be given to each member of the board at least 24 hours prior to the time of meeting, stating the particular business to come before such meeting. No business shall be transacted at special meetings other than as specified in the notice, unless by agreement of all the directors entered in the minutes. [Amended by 1955 c.227 §4; 1971 c.403 §5]

371.472 [1963 c.364 §4; repealed by 1969 c.345 §20]

371.475 General powers of board of directors. The board of directors has the following powers and authority, which are not exclusive but are a general outline of powers to be construed liberally:

(1) To examine, supervise, order, construct, direct and control the repair, construction, maintenance and reconstruction of all the roads and highways within the district, except primary and secondary state highways and other highways under the exclusive jurisdiction of the Department of Transportation, to the end that such roads and highways shall be kept in the best condition and state of repair possible within their power, authority and the financial condition of the district.

(2) To levy and collect assessments as provided in ORS 371.500 and 371.505.

(3) To have surveys, estimates and plans made for improvement, maintenance and reconstruction of the roads of the district.

(4) To request the county court of the county in which the district is situated to provide to the district the services of the county engineer for the work of the district, and, if the county court does not provide for such district a duly qualified engineer, registered by the state, who has had not less than two years' experience in the construction and maintenance of roads and highways, to employ a qualified engineer registered by the state, who has had not less than two years' experience in the construction and maintenance of roads and highways, until such time as the county court may comply with the request of the district.

(5) To designate roads within the district for construction, improvement or repair, to request the county court of the county in which the district is situated to provide the right of way for the roads and to construct, repair and improve the roads in accordance with the plans formulated by the engineer employed by the directors. If the board of directors certifies to the county court that funds are available to defray the cost of acquiring such rights of way and the construction, improvement or repair of the road, the county court thereupon shall acquire the necessary right of way and proceed with the necessary construction, repair or improvement at the expense of the road assessment district.

(6) To contract under ORS 366.572 (1) or 366.576 with the approval of the county court of the county in which the district is situated.

(7) To disburse by order signed by the president and the secretary the funds of the district in payment of the expenses of the district or for the costs of road improvement, maintenance or reconstruction.

(8) To sue or be sued in the name of the district.

(9) Any and all authority and power necessary to carry out the particular powers and purposes of ORS 371.405 to 371.535.

371.480 Contracts as to streets in cities. The board of directors may contract with any city within or adjacent to the district for the repair, improvement and reconstruction of streets or public ways within the city, where the improvement of the streets is a part of the general road system of the district. The contract shall be upon terms mutually agreeable to the board of directors of the district and the governing body of the city. [Amended by 2003 c.802 §107]

371.485 Authority of district over roads and highways. A road assessment district has authority over all roads and highways within the district, except state primary and secondary highways, and streets, alleys or public ways within a city within the district other than as provided by ORS 371.480. [Amended by 2003 c.802 §108]

371.490 [Repealed by 1969 c.344 §8]

371.495 Declaration of legislative intent. It is the intent of the legislature that the districts authorized by ORS 371.405 to 371.535 shall be special assessment districts and all taxable properties therein located shall be benefited in proportion to the assessed valuations of the various taxable properties therein as from time to time determined by the county assessment roll of the property. [Amended by 1955 c.227 §5]

371.500 Computing money to be raised by assessment; apportionment; assessment limited; tax not to interfere with others. (1) The board of directors, in each fiscal year, shall make a computation of the total amount of money to be raised by the district through assessments for the ensuing fiscal year of July 1 to June 30, next following, for any and all purposes whatsoever in carrying out the provisions of ORS 371.405 to 371.535, including estimated delinquencies on assessments. This amount of money, when determined by the board of directors, shall

be and constitute an assessment upon all the taxable property in the district and shall be apportioned by the board of directors to the property owned or held by each person, firm or corporation in proportion to the assessed valuation of all taxable property in the district as determined by the assessment roll of the county assessor last prepared.

(2) The assessment shall not exceed one-fourth of one percent (0.0025) of the real market value of the property, computed in accordance with ORS 308.207, unless authorized by a majority of those voting upon the proposition at a regular or special district election, but by such election no assessment in excess of one-fourth of one percent of the real market value of any property, over and above the one-fourth of one percent assessment above referred to, shall be levied in any one year.

(3) The levy of any tax under this section, ORS 371.505 or 371.515 shall not interfere with or prevent the county court from levying any tax for road purposes it may have the authority and power to do under any other law. [Amended by 1955 c.227 §6; 1963 c.9 §22; 1983 c.350 §246; 1991 c.459 §389]

371.505 Copy of assessment resolution to county assessor; duty of assessor; collection and accounting; separate fund. (1) The secretary of the board of directors shall, after the apportionment of the assessment, certify a copy of the resolution levying and apportioning the assessment, to the county assessor of the county in which the district is situated.

(2) The county assessor shall extend the assessment so made against all taxable property within the district in the same manner as county taxes are entered by the assessor on the assessment roll.

(3) The assessments shall be collected and accounted for and the collection enforced in the same manner as the taxes of the county, except that the tax collector shall collect and account for the district assessments separately.

(4) When paid to the county treasurer such moneys shall be held and carried in a fund to be designated "_____ Road Assessment Fund." All warrants of the district shall be drawn against and shall be paid from this fund. However, whenever the district secretary shall furnish bond as provided by ORS 198.220 the treasurer shall deliver all funds in the Road Assessment Fund to the secretary on demand. Thereafter the secretary shall disburse the funds on order of the board of directors. [Amended by 1955 c.227 §7; 1963 c.364 §3; 1969 c.345 §8; 1973 c.305 §15]

371.510 County assessor to furnish certificate of assessed valuation. The county assessor, upon request of the board of directors, shall furnish from time to time a certificate showing the total assessed valuation, according to the last completed assessment roll, of all the taxable property within the district. [Amended by 1955 c.227 §8]

371.512 Filing boundary change with county assessor and Department of Revenue. For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [2001 c.138 §23]

371.515 District to pay county for expenses; proceedings on default. The district shall pay the county for all the actual expenses and salary of the county engineer while the county engineer is engaged in work for and at the request of the board of directors, and for the cost of all work done by the county in the district at the request of the board of directors, which shall be the amount agreed upon between the county court and board of directors prior to the time such work is commenced or, if no agreement is made, the actual cost of the work done by the county, including a reasonable charge for depreciation of county equipment used. If, after written demand by the county court, the district fails to provide sufficient funds by taxation for the payment of all sums owing to the county, the county court may, by its order entered in its records, extend a special assessment against all the taxable property within the district in an amount sufficient to pay the amounts due the county. This assessment shall be extended upon the county tax roll and shall be assessed and collected in the same manner as the assessments levied by the district, but shall be credited by the county treasurer, when received, to a special fund, to be held for the payment of the indebtedness of the district to the county until such indebtedness is paid from this fund or other funds of the district. [Amended by 1955 c.227 §9]

371.520 District excluded from other districts; certain unexpended funds credited to district; city within district may make levies. (1) Upon the organization of a road assessment district the entire area thereof shall be excluded by such organization from any existing road district theretofore existing and shall not be included within any other road district thereafter created during the life of the road assessment district.

(2) Upon the organization of the road assessment district there shall be credited to it the portion of all special road district levies unexpended in the county treasurer's office,

or levied upon and uncollected, derived from the area within the road assessment district, except the amounts levied upon and remaining uncollected, or remaining unexpended in the county treasurer's office, derived from assessments upon property within a city included within the road assessment district, which shall be paid to the city as provided by law prior to June 16, 1945, for use by the city upon its local streets.

(3) The inclusion of a city within the road assessment district shall not prevent the city from levying general or special taxes or assessments upon the property within the city for the purpose of improvement, maintenance, repair or reconstruction of the city streets as authorized or permitted by law or the charter of the city. [Amended by 2003 c.802 §109]

371.525 [Repealed by 1971 c.727 §203]

371.530 Exclusion of land area from district. A petition for exclusion of land from a district shall be approved only if the exclusion of the land does not reduce the remaining area of the district to less than an area of 20,000 acres and not less than $1 million assessed valuation of taxable property according to the most recent assessment roll prepared by the county assessor. [Amended by 1955 c.227 §10; 1971 c.727 §107]

371.535 Disposition of funds of dissolved district. If a district is dissolved, all funds then on hand or proceeds of assessments theretofore levied shall be held by the county court for the benefit of the roads within the area theretofore within the boundaries of the district. [Amended by 1971 c.727 §108]

371.540 [1965 c.347 §2; repealed by 1971 c.727 §203]

371.545 [1965 c.347 §3; repealed by 1971 c.727 §203]

371.550 [1965 c.347 §4; repealed by 1971 c.727 §203]

371.555 [1965 c.347 §5; repealed by 1971 c.727 §203]

IMPROVEMENT OF STREETS AND ROADS IN UNINCORPORATED AREAS

371.605 Definitions for ORS 371.605 to 371.660. As used in ORS 371.605 to 371.660, unless the context requires otherwise:

(1) "Owner" means a vendee under a recorded land contract or if there is no such contract, the holder of the record title, which vendee or holder has a present interest equal to or greater than a life estate.

(2) "Engineer" means the county engineer, roadmaster, surveyor or other engineer selected by the county governing body.

(3) "Improvement" includes:

(a) The grading, graveling, paving or other surfacing of any road, or opening, laying out, widening, extending, altering, changing the grade of or constructing any road.

(b) The construction or reconstruction of sidewalks.

(c) The installation of ornamental street lights.

(d) The reconstruction or repair of any road improvement mentioned in this subsection.

(e) The acquisition, establishment, construction or reconstruction of any off-road motor vehicle parking facility.

(f) Installing, constructing, reconstructing, improving, extending or repairing lateral sewers, street mains, sewage disposal systems or similar facilities, and other facilities incidental thereto, within the right of way of a county road or public road.

(4) "Road," "county road" and "public road" have the meanings given those terms in ORS 368.001. [Amended by 1955 c.773 §1; 1973 c.461 §1; 1975 c.738 §2; 1983 c.305 §1]

371.610 Application of ORS 371.605 to 371.660; authority of county to supersede statutes. (1) ORS 371.605 to 371.660 do not apply to any state highway.

(2) The county governing body may designate any public road improved under ORS 371.605 to 371.660 as a county road without invalidating the assessments levied for the purpose of the improvements.

(3) Except as otherwise provided in this section, a county may supersede any provision in ORS 371.605 to 371.660 by enacting an ordinance under ORS 203.030 to 203.065 authorizing the use of assessments to finance local improvements, as defined in ORS 223.001, and providing a procedure for levying such assessments. [Amended by 1955 c.773 §2; 1959 c.656 §1; 1983 c.305 §2; 1987 c.615 §3; 1991 c.902 §111]

371.615 Petition or resolution for improvement of roads in unincorporated areas. Proceedings to cause any improvement to be made or constructed in an unincorporated area may be initiated by the county governing body by resolution or by a petition signed by not less than 60 percent of the owners of the land representing not less than 60 percent of the land abutting on the proposed improvement and presented to the county governing body asking for the improvement. The resolution or petition shall indicate where the improvement shall be made and describe the nature of the improvement desired. [Amended by 1955 c.773 §3; 1961 c.432 §1; 1971 c.327 §1; 1983 c.305 §3]

371.620 Signers of petition and objection in event of cotenancies. In case of tenants by the entireties, joint tenants or tenants in common the parcel of land is considered as having one owner, which owner

shall be deemed to have signed the petition provided for in ORS 371.615 or the objection provided for in ORS 371.630 only if every cotenant of the parcel has signed.

371.625 Investigation and estimation of cost of improvement by engineer. When the resolution is adopted or the petition is filed with it, the county court shall refer the resolution or petition to the engineer, who shall investigate the proposed improvement. If in the judgment of the engineer the improvement is feasible, the engineer shall make an estimate of the cost of the improvement and report the same to the county court. If the improvement is to be paid for in whole or in part by special assessments against property benefited by the improvement, the engineer shall include in the report:

(1) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited;

(2) The description and assessed value of each lot, parcel of land or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof; and

(3) Where the improvement petitioned for includes the construction and installation of lateral sewers, street mains or similar facilities, a separate statement of the estimated cost of the construction and installation of lateral sewers, street mains or similar facilities. [Amended by 1971 c.327 §2; 1973 c.461 §2]

371.630 Notice to owner of engineer's report; filing objections. (1) If the engineer makes a favorable report on the proposed improvement, the county court shall mail to the owner of each parcel of land to be assessed for the proposed improvement a written notice of the favorable report, the estimated cost of the improvement and the estimated amount of the assessment against the land of the owner. The notice shall require the owner to file with the county court within 20 days after the mailing of the notice, a written objection, if any, to the further prosecution of the improvement.

(2) If objections are received by the county court signed by more than 50 percent of the owners of land representing more than 50 percent of the total amount of the assessment for the proposed improvement, the proposed improvement shall, by order of the court, be declared abandoned and no new petition may be filed and no new resolution may be adopted for the improvement within a period of one year after the date of the order. [Amended by 1955 c.773 §4; 1971 c.327 §3]

371.635 Court order for improvement; recording; vacation of order and removal of lien. (1) If the number of objections mentioned in ORS 371.630 is not received, the county court may, by order describing the land to be assessed, direct the improvement to be made by contract, or by force account. If by contract, it shall be awarded in the same manner as provided for other contracted county road improvement.

(2) The county court shall record the order for the improvement with the county clerk. The recorded order is notice that the land described in the order is subject to a lien of an assessment for the cost of the improvement, in an amount to be determined later by an order of the county court. The county clerk shall indorse upon the order the date of the filing thereof, and shall record and index the same in the County Clerk Lien Record.

(3) If the proposed improvement described in the order of the county court is not commenced within two years after the order for the improvement is recorded, the county court may by a new order vacate its former order for the proposed improvement. The county court shall record with the county clerk the order vacating the former order for the proposed improvement. Thereupon the land described shall be free of such lien and the effect of the former order. The county clerk shall indorse upon the new order the date of the filing thereof, and shall record and index the same in the County Clerk Lien Record. [Amended by 1955 c.549 §1; 1955 c.773 §5; 1971 c.327 §4; 2001 c.577 §3]

371.640 Engineer to compile improvement cost; source of payment; reimbursement of source; additional work. (1) After the improvement has been made, inspected by the engineer and accepted by the county court, the engineer shall compile the total cost of the improvement. When compiling the total cost of the improvement, the engineer may add the actual and estimated future costs for engineering and administration. Where the improvement includes the construction and installation of lateral sewers, street mains or similar facilities, the engineer shall separately compile the total cost of those improvements.

(2) Payment of the cost of the improvement other than for the construction and installation of lateral sewers and street mains or similar facilities shall be made from the general road funds or from any funds available for the construction or improvement of county roads. Payment of the cost of the construction and installation of lateral sewers and street mains or similar facilities shall be made from any funds available to the county for such improvements.

(3) The funds expended for the improvement shall be reimbursed or the improvement warrants shall be retired to the extent of the proceeds of an assessment against the land benefited by the improvement, but no assessment shall be made against any operating railroad right of way without the consent of the owner thereof. Each landowner shall be assessed a portion of the cost of the improvement corresponding to the relative benefit to the land of the landowner from the improvement.

(4) All of the cost of improvements within intersections connected with any improvement under ORS 371.605 to 371.660 may be borne by the county.

(5) Unless notified to the contrary by the owner prior to the acceptance of bids for improvements under ORS 371.605 to 371.660, an existing driveway shall be reconstructed to the property line to conform with the new grade. Additional driveways or other road connections, including retaining walls, may be constructed simultaneously with the improvements, when a written request is filed with the county court prior to the acceptance of bids by the affected abutting landowners. The cost of the driveway and all requested work shall be charged to the abutting owner and added to the assessment against the land of the owner. [Amended by 1953 c.573 §2; 1955 c.773 §6; 1961 c.432 §2; 1971 c.327 §5; 1973 c.461 §3; 1987 c.615 §4]

371.642 Allocation of costs of sidewalk or curb construction and other improvements. Notwithstanding any provision to the contrary in ORS 371.605 to 371.660, the cost of construction of sidewalks under those sections shall be assessed in proportion to the front footage of the land or otherwise, as provided in those sections, to the owners of land abutting on the side of the street or road on which the sidewalks are constructed and fronting on such sidewalks. The cost of construction of all other improvements under those sections shall be assessed, in the manner provided in those sections, to the owners of land benefited by the improvement. [1955 c.773 §12; 1971 c.327 §6]

371.645 Engineer to ascertain assessment; hearing on objections; court order. (1) The engineer shall ascertain the amount of the assessment against each parcel of land assessed for the improvement and report the same to the county court.

(2) The county court by order shall thereupon set the time, not less than 10 days after the filing of the report, and place for a hearing of objections to the assessments as fixed in the report of the engineer.

(3) Not less than five days prior to the date of the hearing, the county court shall mail to the owner of each parcel of land proposed to be assessed, at the address of the owner as shown on the petition or on the latest tax roll of the county, a written notice of the time and place for the hearing of objections and of the amount of the proposed assessment against the land of the owner.

(4) After hearing objections, the county court shall by order find and determine from the evidence submitted the amount of assessment against each individual parcel of land. [Amended by 1955 c.773 §7; 1971 c.327 §7]

371.650 Certification of assessment; recording order; lien. (1) The county court shall certify a list and description of the ownership, stating the amount of assessment against each individual parcel of land, and shall record the order with the county clerk, who shall indorse thereon the date of the filing thereof and record and index it in the County Clerk Lien Record.

(2) The assessments and interest are a lien upon the land against which the same are assessed from the date of the filing with the county clerk of the order of the county court for the improvement, as provided in ORS 371.635. Each parcel of land is deemed to be benefited by the improvement to the full amount of the assessment levied thereon. No transfer, sale or division of any such parcel, or change in the legal description thereof, in any way divests the lien from the original parcel and the whole thereof. Failing to enter the name of the owner or a mistake in the name of the owner does not in any way render void any assessment and does not in any way affect the lien on the land described. The lien has priority over all other liens and encumbrances whatsoever, except tax liens.

(3) Upon payment of the assessment in full, the county court shall satisfy the same by recording the satisfaction of lien in the County Clerk Lien Record, and the parcel of land charged with such assessment is thereby discharged from the lien. [Amended by 1955 c.773 §8; 1959 c.656 §2; 2001 c.577 §4]

371.655 When assessment due, payable and delinquent; application of other statutes. (1) Except as provided in subsection (2) of this section, 30 days after the assessment is certified, the entire amount against each parcel of land shall be due and payable at the office designated by the governing body of the county and, if not so paid, shall be delinquent from that date and shall bear interest at a rate established by the governing body of the county.

(2) The owner of property assessed under ORS 371.605 to 371.660 shall have the right to apply for installment payment of the assessment as provided in ORS 223.210.

(3) The provisions of ORS 223.205 and 223.210 to 223.314 (Bancroft Bonding Act) and 223.770 relating to the assessment of property benefited by public improvements and to the issuance of bonds and other obligations for the cost of the improvements shall apply in so far as practicable and applicable in relation to the assessment by counties of the cost or any portion of the cost of improvements against the property benefited in accordance with ORS 371.605 to 371.660 and to the issuance of bonds and other obligations by the county. However, notwithstanding the provisions of ORS 223.295, in issuing bonds and other obligations under the provisions of this section, a county may incur indebtedness to an amount not exceeding.0375 of the latest real market valuation of the county.

(4) Where, in ORS 223.205 to 223.314 and 223.770, officials of local governments are referred to, the corresponding officials of counties where applicable and unless otherwise designated by charter shall perform the required functions. [Amended by 1955 c.773 §9; 1959 c.656 §3; 1961 c.432 §3; 1963 c.545 §1; 1965 c.227 §1; 1971 c.325 §3; 1981 c.322 §8; 1991 c.459 §391; 1991 c.902 §112; 1995 c.333 §17; 1997 c.249 §118; 2003 c.802 §64]

371.660 Delinquent list; execution and sale. (1) One year from the date an assessment for improvements under ORS 371.605 to 371.660 is delinquent, or, in case the assessment has been spread in semiannual installments, one year from the date any semiannual installment of the assessment is delinquent, the county court shall prepare a delinquent list of all assessments not wholly paid. The list shall contain a description of the land, the name of the person to whom assessed and the amount of the assessment and interest due.

(2) The county court shall transmit the list to the county clerk, who shall issue a writ of execution thereon, directed to the county court.

(3) The county court shall proceed to collect the unpaid assessments named in the list by advertising and selling each parcel of land in the manner provided by law for the sale of real property on execution, but no parcel shall be sold for a sum less than the amount of the unpaid assessment plus interest thereon and the cost of advertising and sale. [Amended by 1955 c.773 §10; 1959 c.656 §4; 1961 c.432 §4]

Chapter 372

2003 EDITION

Highway Lighting Districts

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372.010 Definitions. As used in this chapter unless the context requires otherwise:

(1) "County board" means board of county commissioners or county court of a county.

(2) "County" means the county in which the district, or the greatest length of highway to be illuminated, is located.

(3) "District" means a highway lighting district formed under this chapter.

(4) "District board" or "board of commissioners" means the governing body of a district.

(5) "Highway" means any road or way open to public travel.

(6) "Owner" or "landowner" means the holder of record title to real property or the vendee under a recorded land sale contract, if there is such a contract. [Amended by 1955 c.80 §1; 1971 c.514 §1; 1983 c.83 §83]

372.020 Authority to organize district. The abutting property owners or the electors resident along any highway may organize a highway lighting district for the purpose of illuminating the highway abutting their respective properties in the manner provided by this chapter. [Amended by 1971 c.514 §2; 1971 c.727 §109]

372.030 Location of district. A highway lighting district may be entirely outside the limits of a city or it may be both outside and inside such limits. The boundary lines of the district shall include only territory that abuts a portion, not less than 600 feet in length, of a highway. [Amended by 1971 c.514 §3]

372.040 Petition to organize district; contents. A petition for the formation of a district, in addition to other matters required, shall set forth:

(1) The number of owners of property abutting the highway within the proposed district.

(2) The estimated initial cost of the acquisition and installation of the lighting equipment and the easements or permits necessary to carry out the purposes of the proposed district.

(3) The estimated annual cost of maintenance and operation.

(4) Further information as appropriate to fully inform the public of the plan of illumination of the highway. [Amended by 1971 c.514 §4; 1971 c.727 §110]

372.045 County board as district governing board; filing petition; landowners as signatories; transfer of records and files. (1) The county board may be established as the governing board of a district. If the petition for formation filed under ORS 372.040 requests the county board to be the governing board of the district and the district is formed as provided by ORS 198.795 to 198.845, the county board shall act as the district board thereafter.

(2) After the formation of a district, the county board shall act as the district board if a petition is filed with the county board requesting that it do so. The petition may be presented by the district board or it may be presented by the landowners in the district. A petition presented by landowners shall be signed by landowners within the district owning not less than 50 percent of the front footage abutting the portion of highway included within the district. A copy of a landowners' petition shall be sent to the district board before it is filed with the county board. When a county board becomes the governing body of a district under this subsection, the district board shall turn over to the county board the books, records, files, assets and obligations of the district and upon the delivery thereof, the county board shall become and thereafter act as the district board. [1971 c.514 §20b; 1987 c.158 §65]

372.050 [Amended by 1971 c.514 §5; repealed by 1971 c.727 §203]

372.060 [Amended by 1971 c.514 §6; repealed by 1971 c.727 §203]

372.070 [Amended by 1971 c.514 §7; repealed by 1971 c.727 §203]

372.080 [Amended by 1971 c.514 §8; repealed by 1971 c.727 §203]

372.090 Inspection and report by engineer. Upon the filing of the petition for formation, the county board shall, by order, direct the county engineer to:

(1) Make an inspection and investigation of the proposed lighting project and of the area described in the petition with respect to feasibility and public convenience and necessity.

(2) File a report for the proposed district with the county board on or before a day specified in the order, but not later than the day fixed for the hearing on the petition. [Amended by 1965 c.85 §1; 1971 c.514 §9; 1971 c.727 §111]

372.100 [Amended by 1971 c.514 §10; repealed by 1971 c.727 §203]

372.110 [Amended by 1965 c.85 §2; 1971 c.514 §11; repealed by 1971 c.727 §203]

372.120 [Amended by 1971 c.514 §12; repealed by 1971 c.727 §203]

372.130 [Amended by 1971 c.514 §13; repealed by 1971 c.727 §203]

372.140 General powers of district. A highway lighting district may:

(1) Make contracts.

(2) Hold, receive and dispose of real and personal property within and without its described boundaries.

(3) Do all other acts and things requisite, necessary or convenient in carrying out the objects of the district or exercising the powers expressly conferred upon it by this chapter.

(4) Sue and be sued, plead and be impleaded in all actions and suits or other proceedings brought by or against it.

(5) Have and exercise within and without its boundaries the same rights and powers as other local governments as defined in ORS 174.116, in purchasing and selling real property and rights of way, to be exercised in the manner authorized.

(6) Purchase in the open market or obtain from other public utility corporations, electric energy for lighting purposes and poles, wires, conduits, lighting fixtures and all types of property necessary to enable the district to carry out its purposes.

(7) Enter into contracts with any person:

(a) For the construction, maintenance and operation, or any of these, of the lighting facilities or any one or more of such services.

(b) For the renewal, upkeep and maintenance of the lighting facilities or any part thereof.

(c) For the use of any lighting facilities if and when owned by such person.

(8) Contract with the state, by and through the Department of Transportation, and its successors in interest, with respect to any phases of the lighting of any highway within the district which is owned by the state or under its control. [Amended by 1971 c.514 §14; 2003 c.802 §110]

372.150 Illumination of state highways; cooperation with department. (1) The plans and specifications for the illumination of a state highway shall be submitted to and be approved by the Department of Transportation before a district is authorized to acquire the equipment for illumination or to install it on any state highway.

(2) A district shall maintain and operate illumination equipment on a state highway in cooperation with and with the approval of the Department of Transportation. [Amended by 1971 c.514 §15]

372.160 [Amended by 1971 c.514 §16; repealed by 1995 c.733 §74]

372.170 Power to assess, levy and collect taxes. (1) The district may assess, levy and collect assessments upon all real property situate within its boundaries and which is by law taxable for state and county purposes in each year, on any reasonable basis of assessment. However, the assessment shall not exceed $1 per each front foot of the property abutting on the highway, or portion thereof, proposed to be or lighted. The proceeds of the assessment shall be applied in carrying out the objects and purposes of the district.

(2) The district may also assess, levy and collect a special assessment upon all such property in an amount sufficient to pay the initial construction and installation cost. [Amended by 1965 c.21 §1; 1971 c.514 §17]

372.175 Filing boundary change with county assessor and Department of Revenue. For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225. [2001 c.138 §25]

372.180 Assessment, levy and collection procedure. (1) The district board each year shall estimate assessments needed, and the amount thereof shall be levied and returned to the county officer whose duty it is to extend the tax roll at the time required by law for other taxes to be levied and returned.

(2) All assessments levied by the district shall become payable at the same time, be collected by the same officer who collects county taxes and be turned over to the district according to law.

(3) The county officer whose duty it is to extend the county levy shall extend the levy of the district in the same manner as city taxes are extended. The district levy is subject to the limits set forth in ORS 310.150.

(4) Property shall be subject to sale for the nonpayment of assessments levied by the district in like manner and with like effect as in the case of county and state taxes. [Amended by 1971 c.514 §18; 1991 c.459 §392]

372.190 Exemption of railroad right of way from assessment. Except for railroad right of way that abuts on the highway at a grade crossing, railroad right of way shall not be subject to assessment by a district. [Amended by 1971 c.514 §19]

372.200 District commissioners; number; qualifications; appointment. (1) The power given to districts, except as otherwise provided by this chapter, is vested in and shall be exercised by a board of five commissioners. Except as provided by ORS 372.210, each commissioner shall be appointed to serve for a term of four years. The order by which the county board proclaims the formation of the district shall appoint five commissioners to serve as the first board of the district.

(2) Each commissioner shall be an elector of the district.

(3) Notwithstanding subsection (2) of this section, if there are fewer than 10 electors

registered in the district, the county board may appoint as commissioner any owner of land within the district who also is an elector of the state as defined in ORS 246.012. [Amended by 1971 c.514 §20; 1983 c.48 §1]

372.210 Organization; terms of commissioners; disqualification; vacancies. (1) Within 10 days after the issuance of the order proclaiming the formation of a district, the commissioners shall meet and organize by each first taking and subscribing an oath of office.

(2) After qualifying, the commissioners first appointed shall determine by lot the length of term each shall hold office. The term of one commissioner shall expire the first Monday in January next following the appointment of that commissioner and the terms of the other four shall expire one in one year, one in two years and two in three years after the first Monday in January next following their appointment.

(3) Each year during December the county board shall appoint a successor for any commissioner whose term expires the next following January.

(4) If a commissioner ceases to be an elector of the district, or if a commissioner who is not an elector of the district and who is appointed to serve under ORS 372.200 (3) or 372.360 (2) ceases to be an elector of the state or an owner of land within the district, the commissioner is automatically disqualified. If a vacancy occurs as provided by this subsection or for any other cause, the county board shall by order appoint a successor to hold office until the expiration of the predecessor's term. [Amended by 1969 c.669 §7; 1971 c.514 §21; 1983 c.48 §2]

372.220 Meetings and officers of board. (1) The district board shall hold meetings at the times and places within the district as it determines. It shall hold at least one regular meeting annually in January on a day to be fixed by the board. The board may hold special meetings as it may provide by rule.

(2) The board shall, at the time of organization, choose from the commissioners, a president, secretary and a treasurer, who shall hold their offices until the first regular meeting in January, or until a successor is appointed and qualified. The officers shall have the powers and perform the duties usual in such cases.

(3) A majority shall constitute a quorum to do business, and in the absence of the president any other member may preside at any meeting as provided by the rules of the board. [Amended by 1965 c.85 §3; 1971 c.514 §22]

372.230 [Repealed by 1969 c.345 §20]

372.240 District employees; expenses of board. The district board may employ engineers, superintendents, mechanics, clerks, secretaries or other persons as requisite, necessary or convenient, in carrying on any of its work, at a rate of remuneration fixed by the board. [Amended by 1971 c.403 §6; 1971 c.514 §23]

372.250 [Repealed by 1969 c.344 §8]

372.260 Deposit and withdrawal of district moneys; annual reports. (1) All moneys of a district shall be deposited in one or more banks designated by the district board. Moneys shall be paid out only when previously ordered by vote of the board and upon a check signed by the treasurer and countersigned by the president, or in the absence or inability of the president to act, by the secretary. A receipt or voucher, showing clearly the nature and items covered by each check drawn, shall be kept on file.

(2) Annual reports shall be made and filed by the president, secretary and treasurer, and at least once in each year a full and complete itemized statement of receipts and expenditures shall be published in a newspaper of general circulation, published in the county. [Amended by 1971 c.514 §24]

372.270 Preservation and inspection of records. All the proceedings of the district board shall be entered at large in a record book. All books, maps, plans, documents, correspondence, vouchers, reports and other papers and records pertaining to the business of the district shall be carefully preserved, and shall be open to inspection as public records. [Amended by 1971 c.514 §25]

372.280 Initiative and referendum in districts. The electors of a district may exercise the initiative and referendum powers with reference to legislation of the district, in accordance with ORS 255.135 to 255.205. [Amended by 1971 c.514 §26; 1983 c.350 §247]

372.290 [Repealed by 1971 c.514 §32 and 1971 c.727 §203; (372.450, 372.460, 372.470 and 372.480 enacted in lieu of 372.290)]

372.310 Petition for annexation of land to district. Land abutting a highway may be annexed to a highway lighting district. The petition shall set forth in addition to other matters the information required by ORS 372.040 as applied to the area proposed to be annexed. [1955 c.80 §3; 1971 c.514 §37; 1971 c.727 §112]

372.320 [1955 c.80 §4; 1971 c.514 §38; repealed by 1971 c.727 §203]

372.330 [1955 c.80 §5; 1971 c.514 §39; repealed by 1971 c.727 §203]

372.340 [1955 c.80 §6; 1971 c.514 §40; repealed by 1971 c.727 §203]

372.350 [1955 c.80 §7; repealed by 1971 c.514 §44 and 1971 c.727 §203]

372.360 Board for consolidated district; appointment. In an order of consolidation or merger of two or more districts, the county board:

(1) Shall appoint, except as provided in subsection (2) of this section, five electors of the surviving or successor district as members of the first district board of the consolidated district.

(2) May appoint, if there are fewer than 10 electors registered in the consolidated district, any owner of land within the district who is also an elector of the state as defined in ORS 246.012. [1955 c.80 §8; 1971 c.514 §41; 1971 c.727 §113; 1983 c.48 §3]

372.370 [1955 c.80 §9; 1971 c.514 §42; repealed by 1971 c.727 §203]

372.380 [1955 c.80 §10 1971 c.514 §43; repealed by 1971 c.727 §203]

372.400 Petition for withdrawal of territory from district; notice; hearing. (1) The landowners within a district may petition the county board for withdrawal of a designated and described contiguous area lying along the boundary of and included in the district.

(2) The county board, where it appears that the petition has been signed by 10 percent of the landowners representing not less than 10 percent of the front footage abutting the highway included in the district, shall fix a time and place for hearing the petition, which time shall be not less than 31 nor more than 50 days after the date of receipt thereof. At least 10 days prior to the hearing, the county board shall publish a notice thereof by two insertions in a newspaper of general circulation in the district. [1971 c.514 §28]

372.410 Petitioners to pay cost of notices and preparation of revised boundary descriptions. At the time of filing the petition for withdrawal, the petitioners shall deposit with the county clerk a sum of money sufficient to defray all the costs of publication and the expenses of preparing and filing with the county board the description of the boundaries of the district remaining, should such designated area be withdrawn. The petitioners shall have notice of the filing of the petition given in writing to the secretary of the district board and shall furnish the secretary with a copy of the petition as filed within five days after it is filed. [1971 c.514 §29]

372.420 Board to order withdrawal of territory if remonstrance not filed; grounds for denial or granting of petition. (1) If at the time and place set for hearing upon the withdrawal petition no remonstrance is filed, either orally or in writing, the county board shall enter an order withdrawing the designated and described contiguous area from the district. If at the hearing any remonstrance is filed and after the hearing the county board is satisfied that the petition should not be granted, then the board may deny the petition or it may change the boundaries of the area proposed to be withdrawn and grant the petition. The boundaries may be reduced if such boundary change will eliminate the remonstrance filed in whole or in part, and if the county board finds that:

(a) The lands withdrawn could not be benefited by the district; and

(b) The lands remaining in the district will meet the requirements of ORS 372.030.

(2) If the petition is granted, the county board shall enter an order withdrawing the area from the district. [1971 c.514 §30]

372.430 Withdrawn area not subject to subsequent assessments or taxes. The area withdrawn shall, after the date of entry of the withdrawal order, be free from assessments and taxes levied thereafter by the district. However, the withdrawn area shall be taxed for its proportionate share of any indebtedness existing at the time of the order. The proportionate share shall be based on the assessed valuation, according to the assessment roll in the year of the levy, of all property contained in the district immediately prior to the withdrawal. [1971 c.514 §31]

372.450 District dissolution petition or resolution. Dissolution of a district may be initiated:

(1) By a petition for dissolution of the district, filed with the district board, signed by the owners representing not less than 50 percent of the front footage abutting the highway included in the district.

(2) By resolution of the district board when it determines that it is in the best interests of the inhabitants of the district that the district be dissolved and liquidated. [1971 c.514 §33]

372.460 Board findings on proposed dissolution; proposed plan. (1) When the dissolution of a district is proposed, the board shall make findings of fact which shall include:

(a) The amount of each outstanding indebtedness, together with a general description thereof and the holders thereof, so far as known.

(b) The estimated cost of dissolution.

(c) The assets of the district.

(d) A detailed statement of all lands acquired by the district for delinquent taxes or delinquent assessments and the amount of the taxes and assessments on each parcel of land sold.

(e) All taxes or assessments unpaid and the amount upon each lot or tract of land and all other assets of the district.

(2) The board shall propose a plan of dissolution and liquidation which may include provision for transfer and conveyance of all assets of the district to any county service district organized under ORS chapter 451 which will assume all its outstanding indebtedness and undertake to continue to furnish service to the inhabitants of the district.

(3) The findings of fact and proposed plan of dissolution and liquidation shall be filed in the office of the county clerk of the county. [1971 c.514 §34]

372.470 Filing of dissolution plan with county board; notice; hearing. (1) When the district board has complied with ORS 372.460, it shall thereupon file the petition or resolution with the county board of the county and request dissolution of the district in accordance with the plan. No proposal shall be filed until the assent of all known holders of valid indebtedness against the district is obtained or provision is made in the plan for payment of the nonassenting holders.

(2) Upon the filing of the proposal, the county board shall fix a time for, and cause notice to be given of, a hearing on the petition. The hearing shall be held not less than 30 nor more than 50 days after the date the petition is filed with the board. Notice of the hearing shall be given by:

(a) Posting in three public places within the district not less than 15 days prior to the hearing; and

(b) Publication in some newspaper of general circulation in the district once a week for three successive weeks before the hearing, making three publications, the last publication being at least five days before the hearing.

(3) The notice shall state the time and the place of the hearing, that it is proposed to dissolve the district and that any interested person may appear and shall be given a reasonable opportunity to be heard. The notice shall give a brief summary of the proposed plan of dissolution and liquidation and state that a copy is on file at the office of the county clerk, available for inspection. [1971 c.514 §35]

372.480 Grounds for granting dissolution; assumption of district indebtedness; disposition of surplus; statement of dissolution. (1) After the hearing, if the county board determines it is in the best interest of the district to dissolve, it shall grant the petition and enter an order dissolving the district or the county board may deny the petition. If an order is entered dissolving the district, the district board shall thereupon constitute a board of trustees to dispose of the property of the district and pay its debts and obligations or procure releases thereof.

(2) If a county service district assumes all indebtedness of the highway lighting district and undertakes to continue to furnish service to the inhabitants pursuant to the plan of dissolution and liquidation, and if the consent of all the known holders of valid indebtedness against the district has been obtained or provision has been made in the plan for payment of the nonassenting holders, the board of trustees may convey to the county service district all assets of the highway lighting district as described by the district board under ORS 372.460 after paying and discharging the debts to, or procuring releases from, the nonassenting holders.

(3) Except as provided by subsection (2) of this section, any surplus funds remaining to the credit of the district, after payment of the indebtedness of the district, shall be turned over to the county treasurer to become a part of the general fund of the county. If the assets of the district are insufficient to pay the indebtedness, the board of trustees shall levy taxes, within the limits of the authority of the district, for the liquidation of such indebtedness.

(4) Upon completing liquidation of the highway lighting district, the board of trustees shall execute, under oath, a signed statement that the district has been dissolved and its affairs liquidated, which statement shall be filed in the office of the county clerk of the county. [1971 c.514 §36]

Chapter 373

2003 EDITION

Roads and Highways Through Cities

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STATE HIGHWAYS THROUGH CITIES

373.010 Routing and marking state highways through cities. Whenever the route of any state highway passes through the corporate limits of any city of this state, the Department of Transportation:

(1) Shall select and designate the streets of the city over which the state highway shall be routed.

(2) Shall erect and maintain such road and other signs on and along such streets at such places and of such material and design as it may select.

(3) May alter or change such routing when in its opinion the interests of the motoring public will be better served. [Amended by 1957 c.663 §2]

373.015 Notice and hearing before location, relocation or abandonment of state highway through cities. Before the Department of Transportation acquires within any incorporated city any new rights of way, or relocates or abandons any existing state highway within any incorporated city, the department shall by letter notify the mayor of such city of the action contemplated by the department, and, if any remonstrances or objections thereto are made by the mayor or the council of such city within 10 days after receipt of such letter, the department, or its designated representative, shall hold a public hearing at the city hall in such city, after having first given written notice thereof to the mayor at least 10 days prior thereto, and, at such public hearing, persons who favor or oppose the contemplated action shall be given an opportunity to be heard. [1955 c.447 §1]

373.020 Jurisdiction over streets taken over for state highway routing through cities; effect on public utility duties. (1) Complete jurisdiction and control of streets taken over by the Department of Transportation as provided in ORS chapter 366 and ORS 105.760, 373.010, 373.015, 373.030 and this section, is vested in the department and extends from curb to curb, or, if there is no regular established curb, then such control extends over such portion of the right of way as may be utilized by the department for highway purposes. Responsibility for and jurisdiction over all other portions of the street or road remains in the city.

(2) All cities retain the right to grant the privilege to open the surface of any such street or road, but all damage occasioned thereby shall promptly be repaired by the city, either itself or at its direction, and the responsibility for the cost thereof shall be upon the city permitting the opening.

(3) Cities retain the exclusive right to grant franchises over, beneath and upon any such street or road, and to control and regulate such franchises and the utilization thereof, but the department may utilize any storm sewers thereon or thereunder without cost or charge therefor by the city.

(4) Nothing contained in ORS chapter 366 and ORS 105.760, 373.010, 373.015, 373.030 and this section, relieves any public utility or telecommunications utility from the maintenance and repair of any street or portion thereof or the performance of any other obligation required under any franchise granted to it by any city. [Amended by 1979 c.186 §14; 1987 c.447 §121; 1995 c.79 §202]

373.030 Construction and maintenance of streets; consent of city for grade change. (1) The Department of Transportation may construct, reconstruct, pave and improve and shall repair and maintain streets and roads through cities where such streets or roads, or both:

(a) Form a link in the highway system of the state or constitute a connection between two such highways; and

(b) Have been designated by the department as the streets or roads over which there is routed state highway traffic.

(2) The department, however, shall not change or establish any grade of any such street or road without the consent of the governing body of the city.

373.040 [Amended by 1955 c.490 §1; renumbered 105.760]

373.050 Closing streets that intersect with state highways routed through city. (1) Whenever the Department of Transportation has located a highway in, into or through the corporate limits of a city upon or over an alignment or route not theretofore comprising a city street and has acquired the necessary rights of way therefor and constructed a highway thereover, or whenever the department, pursuant to ORS 373.010 has selected and designated streets over which to route a state highway within an incorporated city, the department may close any street at the point where it intersects or is intersected by the state highway or by the streets selected and designated as the route of a state highway, by a formal agreement with the municipal authorities of a city set out in a resolution or ordinance of the city, designating the particular streets to be closed by name and intersection.

(2) Before any municipal authorities enter into any such formal agreement with the department, such municipal authorities shall comply with all city ordinances or charter provisions pertaining to the closing of streets in the city.

(3) Before the street can be closed or dead-ended, the department shall, after in-

vestigation, find and declare by resolution that the closing of the street at the point of intersection is necessary in order to provide safety for the general public or will contribute to a more expeditious and orderly movement of traffic, or both.

373.060 State liable for street closing damages; proceedings on cause of action. (1) If by the closing of any street as provided in ORS 373.050, real property abutting on the intersected street between the point of intersection and the next street, but in no event beyond a point 300 feet from the point of intersection, is damaged, any person having any right, title or interest in any such real property has a cause of action against the state to enforce payment of such compensation or damages.

(2) Any such action may be commenced and prosecuted in the circuit court for the county in which such real property is situated. Any party to any such action has the right to appeal from the judgment of any circuit court to the Court of Appeals. Any person having or claiming any right, title or interest in such real property may join as party plaintiff or may intervene in any action involving real property in which the person claims an interest.

(3) The trial circuit court shall, in its general judgment, apportion such compensation as it may award among the various persons found by it to own or have some right, title or interest in such real property. The awarded compensation shall be apportioned according to the rules of law governing the distribution of awards made when real property is taken under the power of eminent domain.

(4) The liability of the state and of the municipality terminates wholly when the compensation thus determined is paid into court. Any cause of action granted by this section is barred unless it is commenced within six months after the street is closed and entrance from the street to the state highway or intersecting street is physically barred. [Amended by 1979 c.562 §13; 2003 c.576 §251]

USE OF CITY STREETS BY COUNTY

373.110 Connecting county road to state highway by road through city. (1) Whenever in its judgment it is necessary, for the purpose of connecting an existing county road with an existing state highway, that the connecting road be located, established and designated over property within the boundaries of a city, the county court or board of county commissioners may designate, locate, establish, construct and maintain the connecting road over property within the corporate limits of the city as a county road.

(2) The procedure for the establishment of the connecting road may be by petition of freeholders or by a resolution of the county court or board of county commissioners as provided by law for the establishment of county roads.

(3) In addition to the authority provided by law for the acquisition of rights of way, in the event the connecting road is established by petition of freeholders or by its resolution, the county court or board of county commissioners may acquire private property within the corporate limits of the city for rights of way for the connecting road by exercise of the power of eminent domain, under the procedure provided by law for exercise of the power of eminent domain by counties for the acquisition of private property for rights of way for county roads.

373.120 Connecting county roads by roads through certain cities. The county court or board of county commissioners may construct and pave streets and roads through cities of less than 2,500 population, as shown by the last federal census, where such streets and roads are for the purpose of connecting county roads and highways. [Amended by 1957 c.71 §1]

373.130 County use of city streets as bridge approach. Whenever any county constructs across any stream any bridge which is wholly or in part within the limits of any city within the county, the county may use as approaches for the bridge such portions as may be necessary of any street of the city leading to the bridge. The power, dominion and right of control over and to improve and maintain the portions of any street so used belong exclusively to the county.

POWERS OF CITIES RELATING TO ROADS AND HIGHWAYS

373.210 Improvement of through highways by certain cities. Any city having a population of less than 100,000 may provide for the improvement of any roads or streets within the limits of the city at the partial expense of the general fund of the city in the manner provided in ORS 373.220 and 373.230, where:

(1) Such roads or streets are parts of any general system of state or county roads or highways; or

(2) Such roads or streets directly connect with state or county roads or highways;

(3) Such roads or streets afford an outlet from the limits of the city to adjoining state or county roads or highways; or

(4) Such roads or streets provide the most accessible or generally traveled route

from within the city to beyond the limits of the city.

373.220 Procedure to authorize improvement. Whenever, by majority vote of the legislative authorities of a city mentioned in ORS 373.210 or by initiative vote by the people thereof, it is deemed advisable to construct or improve such designated roads or streets at the partial expense of the general fund of the municipality, the governing body shall so declare by ordinance, stating what portion of the cost shall be paid out of the general fund of the municipality and what portion shall be paid by assessment against property in the manner provided by charter or ordinance provisions of the city, unless the amount or proportion has been fixed by the initiative measure.

373.230 Charter or ordinance provisions governing improvement. Except as to the provision that a portion of the cost of the improvement mentioned in ORS 373.220 may be paid out of the general fund of the city, all other charter or ordinance provisions govern in the matter of the construction and improvement of such roads and streets.

373.240 General road fund of city. The general road fund of any city shall consist of the road money set apart for the city as a road district or otherwise, under the laws of the state, out of the road tax levied by the county, which the county treasurer shall pay to the city, and any other money placed in the road fund of the city by the orders of the city governing body.

373.250 Use of city road fund. The road fund mentioned in ORS 373.240:

(1) Shall be used by the city for the construction and repair of county roads and streets therein.

(2) May be used for the construction and repair of roads without a city having a population of less than 100,000 which lead directly to it.

(3) In carrying out such objects, may be used jointly with the county in which the city is located as provided in ORS 373.260.

373.260 Agreements between counties and cities as to acquisition of rights of way and road improvement. (1) The county court or the board of county commissioners of any county and the authorities of any city within the county may enter into an agreement for the construction, improvement or repair of, and the acquisition of right of way for:

(a) Any county road or city street within the corporate limits of the city.

(b) Any road without such city, if it has a population of less than 100,000, but leading directly to it.

(2) In the agreements the parties shall agree upon the proportion which each shall contribute toward such acquisition, construction, improvement or repair and upon the method and kind of acquisition, construction, improvement or repair to be made. [Amended by 1955 c.388 §1]

373.270 Transferring jurisdiction over county roads within cities. (1) Jurisdiction over a county road within a city may be transferred under this section whenever:

(a) The county governing body deems it necessary, expedient or for the best interest of the county to surrender jurisdiction over any county road or portion thereof within the corporate limits of any city; and

(b) The governing body of the city deems it necessary or expedient and for the best interests of the city to acquire jurisdiction over the county road or part thereof to the same extent as it has over other public streets and alleys of the city.

(2) To initiate a proceeding for the transfer of jurisdiction under this section, the county governing body, upon its own motion or upon the request of the city by its governing body, shall give notice by:

(a) Posting in three public places in the county, one of which shall be within the limits of the city; or

(b) Publishing the notice once a week for four successive weeks in some newspaper of general circulation in the county.

(3) Notice under this section shall give the time and place of hearing and a succinct statement of the proposed action requested and describing the road or portion thereof proposed to be surrendered by the county to the city with convenient certainty.

(4) At the time and place mentioned in the notice under this section or at such adjournment as it may fix, the county governing body shall hear the matter, consider any objections or testimony offered by any person interested and determine whether it is necessary, expedient or for the best interests of the county to surrender jurisdiction over the county road or portion thereof to the city.

(5) If a county governing body determines to surrender jurisdiction under this section and initiates action under this section:

(a) The county governing body shall make an order to that effect and offer to the city to surrender jurisdiction over the county road or portion thereof, and may limit the time for the acceptance of the offer; and

(b) The city by appropriate municipal legislation may within the time specified ac-

cept the county order and offer to surrender jurisdiction under this section.

(6) If a city governing body determines to initiate action under this section for the surrender of jurisdiction by a county over a county road:

(a) The city governing body may initiate the action by passage of appropriate municipal legislation that requests surrender and that may set any time or other limitations upon acceptance by the city of the surrender; and

(b) The county governing body may surrender jurisdiction of the county road without further action by the city if the county governing body adopts an order surrendering the county road that meets the limitations established by the city in its legislation.

(7) When a city adopts appropriate municipal legislation accepting a county governing body's order under subsection (5) of this section or when a county governing body adopts an order meeting city legislation under subsection (6) of this section:

(a) The jurisdiction of the county over the county road or portion thereof as a county road, or for its improvement, construction or repair shall cease;

(b) The full and absolute jurisdiction over the road for all purposes of repair, construction, improvement and the levying and collection of assessments therefor shall vest in the city; and

(c) The city shall have the same jurisdiction over the road or portion thereof as by its charter and the laws of the state are given or granted it over any of the public streets and alleys of such city.

(8) This section is applicable to all county roads, whether acquired by the county or the public by condemnation, defective condemnation and user, user or prescription or in any manner provided by law or in which the easement for road purposes is in the public. [Amended by 1981 c.153 §73]

373.280 Assessments made by city under belief county road was city street. No assessment made by any city for the improvement of any county road or portion thereof under the bona fide belief of its governing body that it was a public street of the city is invalid where the property owner has permitted the city to make the improvement or where the county has surrendered jurisdiction to the city within the time when the assessment is otherwise collectible by law, if within the time the assessment would be otherwise collectible the city acquires full jurisdiction over the county road or portion thereof as provided in ORS 373.270.

373.290 Amity given control of county roads and highways declared streets. The incorporated city of Amity, in Yamhill County, has exclusive control and jurisdiction over all county roads and highways within its corporate boundaries. Such county roads and highways are streets, subject to all the burdens and servitudes thereof. The control of such county roads and highways is excepted out of the jurisdiction of the County Court of Yamhill County.

373.300 Monmouth given control of certain highways declared streets. The city of Monmouth, in Polk County, has full and exclusive jurisdiction, power and control over all that part of the highway known as Monmouth Avenue from its intersection with Main Street north to the northeast corner of University Out Lot B located within the corporate limits of the city. Such highway is a street, subject to all the burdens and servitudes thereof. The control of such highway is excepted out of the jurisdiction of the County Court of Polk County.

373.310 Myrtle Point given jurisdiction over certain county roads declared streets. (1) The city of Myrtle Point, in Coos County, has absolute and complete jurisdiction over the following portions of the following county roads located within the corporate limits of the city:

(a) All that portion of any county roads within the corporate limits of the city, lying along First Street and the whole thereof, as such street is described upon the plat of the original town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(b) All that portion of the county roads within the corporate limits of the city, lying on or along Spruce Street and the whole thereof, as shown upon the plat of the original town (now city) of Myrtle Point and upon the plat of the first extension to the original town (now city) of Myrtle Point, now on file and of record in the office of the county clerk of Coos County.

(c) All that portion of the county roads within the corporate limits of the city, lying upon or along First Street, being Spruce Street extended, and the whole thereof, as shown upon the plats of Border & Bender's addition to the town (now city) of Myrtle Point, Border & Bender's extension to Border & Bender's addition to the town (now city) of Myrtle Point, Sengstacken's addition to the town (now city) of Myrtle Point and J. H. Roberts' addition to the town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(d) All that portion of any county roads within the corporate limits of the city, lying along Railroad Avenue and the whole thereof, as shown upon the plats of the first extension to the original town (now city) of Myrtle Point, Lehnherr's addition to the town (now city) of Myrtle Point, Brown's first addition to the town (now city) of Myrtle Point, Brown's second addition and Smith's addition to the town (now city) of Myrtle Point, now on file and of record in the office of the county clerk for Coos County.

(2) The city of Myrtle Point has jurisdiction over such portion of the roads in the same manner and to the same extent that it has jurisdiction over such streets, such portions to be streets of the city of Myrtle Point.

373.320 Salem given control of roads declared streets. All county roads or other roads under the jurisdiction of the county court of Marion or Polk County, within the corporate limits of the City of Salem, are streets of the city. The city has exclusive control and jurisdiction over all such roads. The county courts of Marion and Polk Counties have no jurisdiction thereof.

Chapter 374

2003 EDITION

Control of Access to Public Highways

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THROUGHWAYS

374.005 Policy and purpose of ORS 374.005 to 374.095. (1) The kind, character and volume of traffic now moving over public highways, the speed at which such traffic moves, the prime and essential factors such as speed, safety and convenience to which transportation of persons and property over public highways is entitled, the relation which such transportation bears to the transportation systems of other states and of the nation as a whole, the ever-increasing toll of injury to and death of persons and the destruction of and damage to property caused by and resulting from accidents on public highways constitute and are conditions and elements which demand of highway officials a program of highway designing, highway regulations, highway use and operation, highway controls and highway safeguards which will make possible and insure a degree of safety and convenience and a type and class of service not possible under existing law.

(2) To the end that human lives may be saved, property damage minimized, transportation by motor vehicle promoted and highway travel in general safeguarded, the legislature finds, determines and declares that ORS 374.005 to 374.095 is necessary for the preservation of public safety, the improvement and development of transportation facilities in the state, the protection of highway traffic from the hazards of unrestricted and unregulated entry from adjacent property, the elimination of hazards due to highway grade intersections and in general the promotion of public welfare.

374.010 "Throughway" defined. As used in ORS 374.005 to 374.095, "throughway" means a highway or street especially designed for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that their property abuts upon the throughway or for any other reason.

374.015 Department of Transportation to establish and maintain throughways; highways to be designated throughways. (1) The Department of Transportation, in addition to and without restricting, limiting or repealing any powers and authority which it now has, may lay out, locate, relocate, adopt, establish, construct, designate, maintain and supervise the use and operation of new highways known as throughways.

(2) Any relocated section of an existing highway and such portions of existing highways, which at the time they are designated as throughways have less than 10 commercial businesses abutting thereon catering to the motoring public in any one mile of such existing highway, may be designated and constructed as or converted into a throughway by the department. As used in this subsection, "relocated" means a highway or section thereof so located that for its construction an entirely new right of way is necessary.

(3) The authority and power of the department extends to and includes state highways within the corporate limits of cities, and with the approval of the municipal authorities may extend to and include city streets.

374.020 Interference with railroad facilities prohibited. No throughway shall be established upon or across the tracks, yards, station grounds or other operating properties of any common carrier railroad, or upon or across any industrial or business property served by railroad industrial trackage, or upon or across any property at such a location as to unduly interfere with the reasonable access of shippers, passengers or the public to railroad depots, team tracks or other facilities for receiving or delivering freight or passengers transported by railroad unless the Department of Transportation and the railroad agree on a proposed throughway project. [Amended by 1995 c.733 §94]

374.025 Change from throughway to highway. Any state highway or section thereof which has been located, established, designated and constructed as a throughway may, in whole or in part, be changed from a throughway to an ordinary highway by the Department of Transportation if in its judgment such action will best serve public needs.

374.030 Separation of throughways into separate roadways; ingress and egress. (1) The Department of Transportation may so design a throughway and so regulate, restrict or prohibit access thereto and use thereof as to best serve the traffic for which the throughway is intended. In this connection and for such purpose the department may divide and separate any throughway into separate roadways or lanes by the construction of raised curbings, central dividing sections or other physical separations, or by designating separate roadways or lanes by signs, markers or stripes and the proper lanes for traffic by appropriate signs, markers, stripes or other devices.

(2) After any highway has been so marked or designed no person has any right of ingress or egress to, from or across the highway to or from abutting lands, except at such points as may be designated by the department.

374.035 Acquisition of real property; effect of resolution. (1) The Department of Transportation may, in the name of the state, acquire by agreement, donation or exercise of the power of eminent domain, fee title to or any interest in any real property, including easements of air, view, light and access, which in the opinion or judgment of the department is deemed necessary for the construction of any throughway, the establishment of any section of an existing state road or highway as a throughway or the construction of a service road. The department may accomplish such acquisition in the same manner and by the same procedure as real property is acquired for state highway purposes, except that in case the acquisition is by proceedings in eminent domain the resolution required under such procedure shall specify, in addition to other provisions and requirements of law, that the real property is required and is being appropriated for the purpose of establishing, constructing and maintaining a throughway.

(2) A resolution adopted by the department stating and setting forth that a proposed highway is to be constructed as a throughway is conclusive evidence that the highway when constructed is a throughway with all the characteristics and incidents prescribed by and provided for in ORS 374.005 to 374.095.

374.040 Acquisition of land not immediately needed. Whenever it becomes necessary to acquire any real property for use in connection with the location, relocation, construction, reconstruction, improvement and maintenance of any throughway or section thereof or for a service road, the Department of Transportation may, in its discretion, acquire an entire lot, block or tract of land if by so doing the interests of the owner and the state will be best served, even though the entire tract is not immediately needed for the highway proper. This provision and authority shall apply to and be effective whether the real property is acquired by purchase, agreement or exercise of the power of eminent domain.

374.045 Payment for land acquired. The Department of Transportation may pay the cost incident to the acquisition of real property or any interest therein for the establishment, location and relocation of throughways and their construction, reconstruction and maintenance out of state highway funds in the same manner that such funds are disbursed for other highway purposes by the department.

374.050 Parties bringing eminent domain proceedings. In case an agreement provided for in ORS 374.080 has been entered into, proceedings in eminent domain for the acquisition of real property or any interest therein deemed necessary therefor, may be brought in the name of the state by the Department of Transportation, alone or jointly with any city, county or city and county which are parties to the agreement.

374.055 Evidentiary purposes of improvement plan. In any proceeding in eminent domain evidence of the entire plan of improvement is admissible for the purpose of determining:

(1) Value of property taken.

(2) All damages by reason of deprivation of right of access to any highway to be constructed, established or maintained as a throughway.

(3) The damages which, if the property sought to be condemned constitutes a part of a larger parcel, will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and by reason of the construction of the improvement in the manner proposed.

374.060 Power of Department of Transportation as to intersecting streets and roads. The Department of Transportation, with the official approval of municipal authorities of cities with respect to city streets and with the official approval of the county court or board of county commissioners of any county with respect to county roads, may:

(1) Close any street, highway or road at or near the point of its intersection with a throughway; or

(2) Make provision for carrying the street or road over or under the throughway; or

(3) Provide a connection with a throughway by means of a utility or service road to a suitable point of connection; and

(4) Do any and all work on the street, highway or road as is necessary therefor.

374.065 Intersection of throughways and county roads. (1) The Department of Transportation shall provide for the intersection of throughways by county roads running into or across throughways.

(2) Any county road may be closed at the points where it runs into or intersects the throughway if the consent of the county court or board of county commissioners of the county in which the road is located is first obtained.

(3) After the establishment of a throughway, no county road shall be constructed running into or intersecting the throughway unless its plans and specifications have first been submitted to and approved in writing by the department. This approval shall be made a matter of record by

the department and by the county court or board of county commissioners.

374.070 Throughways in cities; intersecting streets. (1) Should any portion or section of a throughway be within the corporate limits of a city, provision shall be made for access thereto from existing streets at points designated by the municipal authorities of the city. In the event plans and specifications are submitted to the municipal authorities of the city by the Department of Transportation and the municipal authorities fail to designate such points within 60 days thereafter, the designation may be made by the department.

(2) After establishment of any throughway in or through a municipality, no street shall be constructed turning into or intersecting the throughway unless the plans and specifications therefor have first been submitted to and approved in writing by the department and made a matter of official record.

(3) Nothing in this section prohibits the closing of any street at the point where it runs into or intersects any throughway by the proper municipal authorities in the manner provided by law.

374.075 Cooperation of municipal and county authorities with Department of Transportation. The municipal authorities of cities and the county court or board of county commissioners of any county may do anything or all things necessary to cooperate with the Department of Transportation for laying out, acquiring and constructing any section or portion of any street or highway within their respective jurisdiction as a throughway and to convert any existing street or highway into a throughway.

374.080 Agreements with federal government, counties and cities. The Department of Transportation may enter into cooperative agreements with the federal government and with any county or city for the location, adoption, construction and maintenance of a throughway either within or without the corporate limits of any city, with respect to highways under the exclusive jurisdiction of the department, roads under the jurisdiction of the county court or board of county commissioners and streets under the exclusive jurisdiction of cities, and may, in such agreements, agree upon the allocation of costs of the project, the manner and method of maintenance and all other relevant matters.

374.085 Severance by throughway of agricultural land. Wherever by the location, relocation, establishment and construction or reconstruction of a throughway under ORS 374.005 to 374.095 real property, title to which is held under one ownership, is severed and the land is being used for farm or other agricultural purposes, provision shall be made by the Department of Transportation for crossing the highway from one such tract to the other or compensation for the severance of the tract shall be paid. Should such tracts at any time cease to be held under one ownership, the department may terminate and discontinue the road crossings. No such connecting-road crossing shall be used for or in connection with the conduct of any roadside business or enterprise, but shall be available and used solely for passage from one of the severed tracts to the other.

374.090 Destruction by throughway of access to agricultural property. Whenever a throughway is located, relocated, constructed or reconstructed through or over farm or agricultural property and thereby all reasonable ingress and egress have been destroyed, the Department of Transportation shall provide access from the abutting properties to the throughway by a service road or by direct access, unless by agreement with the owners of the abutting properties access to the throughway has been waived by the property owner or has been acquired by the state by agreement or exercise of the power of eminent domain.

374.095 Utility roads where access to abutting property affected. If under ORS 374.005 to 374.095 any existing highway or section of existing highway is converted into a throughway, by reason thereof real properties then occupied and used are affected and such abutting real properties are dependent upon the existing highway or section of highway for ingress and egress, the Department of Transportation shall provide a utility or service road to serve the properties. This utility or service road shall be constructed and maintained by the state at state expense and shall follow a location or route immediately parallel to and adjoining the throughway. After the service or utility road has been constructed the abutting land owner's right of reasonable view shall not be impaired.

374.205 [Repealed by 1967 c.497 §7]

374.210 [Repealed by 1967 c.497 §7]

374.215 [Repealed by 1967 c.497 §7]

374.220 [Amended by 1957 c.459 §3; repealed by 1967 c.497 §7]

374.225 [Repealed by 1967 c.497 §7]

374.230 [Repealed by 1967 c.497 §7]

374.235 [Repealed by 1967 c.497 §7]

374.240 [Repealed by 1967 c.497 §7]

374.245 [Repealed by 1967 c.497 §7]

374.250 [Repealed by 1967 c.497 §7]

374.255 [Repealed by 1967 c.497 §7]

374.260 [Repealed by 1967 c.497 §7]

374.265 [Renumbered 374.335]

374.270 [Renumbered 374.340]

APPROACH ROADS, PRIVATE CROSSINGS AND OTHER FACILITIES UPON RIGHT OF WAY

(Temporary provisions relating to permit fee for utility facilities in right of way)

Note: Sections 2, 4 and 5, chapter 664, Oregon Laws 2001, provide:

Sec. 2. (1) Except as provided in subsection (2) of this section, the Department of Transportation may charge a permit fee to any person or corporation that, in accordance with ORS 758.010, constructs, maintains or operates water, gas, electric or communication service lines, fixtures or other facilities in the right of way of a state highway. The department shall adopt rules establishing a schedule for permit fees charged under this section, in accordance with the following:

(a) The fee schedule shall set fees in fixed amounts for various classes of permits. The classes of permits shall be based on the nature, size and extent of the facility and the costs of reviewing plans and supervising construction.

(b) The department may not adopt a fee that is greater than the reasonable costs to the department of issuing the permit and administering its terms. The amount of a fee may not include permit review costs incurred by any agency or state official other than the Department of Transportation.

(c) The department may not adopt a fee for a permit to construct, maintain or operate facilities to provide street lighting or other utility services to property owned or controlled by the department.

(2) The department may not charge a permit fee under this section if the costs to the department of issuing the permit and administering its terms may legally be paid from revenues described in section 3a (1), Article IX of the Oregon Constitution.

(3) The department shall adopt rules specifying the kinds of activities described in ORS 758.010 that may be allowed under a blanket permit. [2001 c.664 §2]

Sec. 4. (1) The Supreme Court has exclusive jurisdiction to review a circuit court judgment on the issue of whether the costs to the Department of Transportation in issuing a permit for activities described in ORS 758.010 and administering the terms of the permit may legally be paid from revenues described in section 3a (1), Article IX of the Oregon Constitution.

(2) A party to an action to determine whether the costs described in subsection (1) of this section may be paid from the described revenues may appeal a judgment in the case only by filing a notice of appeal directly with the Supreme Court within the time and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal under this subsection must note in the notice of appeal that the case is subject to this subsection. [2001 c.664 §4]

Sec. 5. Section 2 of this 2001 Act is repealed on January 2, 2006. [2001 c.664 §5]

374.305 Necessity of permission to build on rights of way. (1) No person, firm or corporation may place, build or construct on the right of way of any state highway or county road, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance, or substantially alter any such facility, thing or appurtenance or change the manner of using any such approach road without first obtaining written permission from the Department of Transportation with respect to state highways or the county court or board of county commissioners with respect to county roads.

(2) After written notice of not less than 10 days to the permittee and an opportunity for a hearing, the department with respect to crossings over a state highway and the county court or board of county commissioners with respect to crossings over a county road may abolish any crossing at grade by a private road or may alter or change any private road crossing when the public safety, public convenience and the general welfare require the alteration or change.

(3) As used in ORS 374.305 to 374.330:

(a) "Approach road" includes a private road that crosses a state highway or a county road.

(b) "Private road crossing" means a privately owned road designed for use by trucks which are prohibited by law from using state highways, county roads or other public highways. [Amended by 1955 c.424 §1; 1957 c.323 §1; 1967 c.497 §1]

374.307 Removal or repair of installation constructed without permission. (1) If any person, firm or corporation builds or constructs on the right of way of any state highway or county road any approach road or any other facility, thing or appurtenance without first obtaining the written permission required by ORS 374.305, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to such person, firm or corporation, at the expense of such person, firm or corporation, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by the rules and regulations. This expense may be recovered from such person, firm or corporation by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation, county governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the construction which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the person, firm or corporation which

caused the construction, and to the owner of the property on which the construction occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from any such person, firm or corporation in any court of competent jurisdiction. [1955 c.424 §5; 1979 c.873 §1]

374.310 Rules and regulations; issuing permits. (1) The Department of Transportation with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of such highways and roads for the purposes described in ORS 374.305. However, the department shall issue no permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits shall include such provisions, terms and conditions as in the judgment of the granting authority may be in the best interest of the public for the protection of the highway or road and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of the costs of any of the foregoing.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish public liability and property damage insurance in a sum fixed by the granting authority, which insurance shall also indemnify the members, officers, employees and agents of such authority from any claim that might arise on account of the granting of the permit and the crossing of the highway or road by vehicles operating under the permit; and the granting authority may also require the applicant to furnish indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority, indemnifying such authority for any damage to the highways or roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 may not be exercised so as to deny any property adjoining the road or highway reasonable access. In determining what is reasonable, the department or county court or board of county commissioners shall apply the following criteria:

(a) The access must be sufficient to allow the authorized uses for the property identified in the acknowledged local comprehensive plan.

(b) The type, number, size and location of approaches must be adequate to serve the volume and type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for the property. [Amended by 1955 c.424 §2; 1957 c.323 §2; 1967 c.497 §2; 1991 c.331 §59; 1997 c.249 §119; 1997 c.631 §467; 1999 c.974 §3; 2003 c.371 §1]

374.312 Rules regarding permits for approach roads; intergovernmental agreements. (1) The Department of Transportation shall adopt rules governing the process of application for and issuance of permits for approach roads to highways by owners of property abutting the highways. Rules adopted by the department shall include, but need not be limited to:

(a) The time within which a final decision, including resolution of all internal appeals, to grant or deny a permit must be made. The time may not be longer than 120 days unless the applicant and the department agree to an extension.

(b) Standards that will be used in making decisions as to whether to grant or deny a permit. Standards applicable to approach roads shall be based on a policy of using local road systems and state highways in a manner consistent with the local transportation system plan and the land uses permitted in the local comprehensive plan acknowledged under ORS chapter 197. In addition, the standards shall require consideration of safety and highway functionality.

(c) Criteria for determining what constitutes reasonable access as specified in ORS 374.310 (3).

(d) Procedures governing an appeal of denial of a permit, including but not necessarily limited to notice, guarantee of an impartial tribunal, burden of proof and admission and weight of evidence.

(e) A rule that an engineer with relevant experience will review and respond to evidence from a qualified expert that is submitted by an applicant.

(2) A permit decision for an approach road must be made on the basis of standards

and criteria in effect on the date that the application was filed.

(3) A permit decision for an approach road must be made on the record. The department shall adopt rules specifying the form of the record.

(4) The department and a local government may enter into an intergovernmental agreement setting provisions for and allowing the local government to issue access permits for regional and district state highways. The agreement must provide that permits issued by local governments will be consistent with the highway plan and administrative rules adopted by the department, with state statutes and with the local transportation system plan acknowledged under ORS chapter 197. The department shall adopt rules specifying the circumstances under which authority will be delegated to a local government.

(5) The department shall develop a program that allows a person that might be affected by the issuance of the permit, but that is not the owner of the property subject to the permit, to express concerns to the department prior to the issuance of the permit. For purposes of this subsection, persons that might be affected by the issuance of the permit are the city or county in which the road is located and any person that owns property adjacent to the proposed access. Nothing in this subsection gives a city, county or other person that might be affected standing to appeal any decision of the department regarding granting of the permit. [1999 c.974 §2; 2003 c.371 §2]

Note: 374.312 was added to and made a part of 374.305 to 374.330 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 1, chapter 972, Oregon Laws 1999, provides:

Sec. 1. It is the intent of the Legislative Assembly that the Department of Transportation, local governments and regional governments work collaboratively to achieve accessibility and mobility goals for a balanced transportation system. [1999 c.972 §1]

374.313 Claim for relief after closure of approach road; mediation; appraisal. (1) When the Department of Transportation closes an approach road for which a permit was issued under ORS 374.310 or denies an application for an approach road permit submitted pursuant to a grant or reservation of access contained in a contract, condemnation judgment or recorded deed, and the closure or denial is not the result of conditions contained in a contract, condemnation judgment, recorded deed or permit, a person holding an interest in the real property benefited by the access or proposed access may file a claim for relief as a contested case under ORS 183.415 to 183.500.

(2) Prior to issuing a final order in a contested case under subsection (1) of this section, the Director of Transportation may provide the opportunity for the parties to participate in mediation consistent with the applicable provisions of ORS 36.185 to 36.210. In any alternative dispute resolution proceeding, the director may authorize administrative remedies, including monetary damages or other relief, as determined by the department by rule, to address issues related to real property value, utility or use.

(3) In any proceeding under this section, any party may cause an appraisal of the subject property to be conducted. If the difference in value between a property owner's claim and an offer of monetary compensation by the department is less than $30,000, the director shall provide a simplified procedure for resolving the claim. The cost of conducting an appraisal may be shared by the parties when a mutually acceptable appraiser can be identified. [1999 c.972 §3]

Note: 374.313 was added to and made a part of 374.305 to 374.330 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

374.315 Construction under permits; maintenance after construction. All construction under the permits issued under ORS 374.310 shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing or appurtenance, they shall be maintained at the expense of the applicant and in accordance with the rules and regulations adopted pursuant to ORS 374.310.

374.320 Removal or repair of installation on right of way at expense of applicant. (1) Upon failure of the applicant to construct or maintain the particular approach road, facility, thing or appurtenance in accordance with the rules and regulations and the conditions of the permit, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to the applicant, at applicant's expense, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by such rules and regulations and the conditions of such permit. This expense may be recovered from the applicant by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation, county governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the non-

compliance which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the applicant, and to the owner of the property on which the noncompliance occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from the applicant in any court of competent jurisdiction. [Amended by 1955 c.424 §3; 1979 c.873 §2]

374.325 Effect of ORS 374.305 to 374.325. Nothing in ORS 374.305 to 374.325 shall:

(1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts or boards of county commissioners, the Department of Transportation or the Public Utility Commission by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes.

(2) Grant any right for the construction or placing of an approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance on the right of way of any highway. [Amended by 1957 c.323 §3]

374.330 Prior status preserved. (1) Nothing in ORS 374.305, 374.310 and 374.325, as such sections were amended by chapter 323, Oregon Laws 1957, shall be deemed to affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any highway prior to August 20, 1957.

(2)(a) Nothing in ORS 374.305 or 374.310 as such sections are amended by chapter 497, Oregon Laws 1967, shall be deemed to affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any state highway or county road prior to September 13, 1967.

(b) Except as provided in paragraph (a) of this subsection, private road crossings authorized by the Public Utility Commission under ORS 374.205 to 374.260 (1965 Replacement Part) are subject to ORS 374.305 to 374.330 after September 13, 1967. [1957 c.323 §4; 1967 c.497 §3]

374.335 Driving certain motor vehicles across public highway not deemed operation thereon. Where any private road crosses or is crossed by a public highway the driving of a motor vehicle across the public highway or upon the public highway for a distance of not to exceed 1,200 feet in the use of the private road shall not be subject to ORS 811.450, 815.155, 815.160, 815.170, 818.020, 818.060, 818.090, 818.110, 818.160, 818.300, 818.320, 818.340, 818.350, 818.400 and ORS chapter 825, provided such vehicle or vehicle use is:

(1) Subject to permit issued pursuant to ORS 374.310 or a person authorized by such permittee; or

(2) A farm tractor or implement of husbandry. [Formerly 374.265; 1971 c.391 §1; 1983 c.338 §923; 1987 c.158 §66]

374.340 Cattle crossings under public road. Any person owning, using or occupying lands on both sides of any public road is entitled to the privilege of making a crossing under the road for the purpose of letting the person's cattle and other domestic animals cross the road. A crossing may be installed as provided under ORS 374.305 to 374.330. [Formerly 374.270; 1981 c.153 §74]

374.345 Rules regarding turning onto state highway from approach road. The Department of Transportation shall adopt rules regulating the procedures and circumstances under which the department may restrict turning movements onto a state highway from an approach road for which a permit was issued under ORS 374.310 when the restriction is not required by contract, condemnation judgment, recorded deed or permit. [1999 c.972 §4]

374.350 Process for appeal of decisions regarding access to highways. The Department of Transportation shall establish a process through which persons affected by decisions of the department regarding access to highways may appeal the decisions. [1999 c.686 §3]

RIGHTS APPURTENANT TO PROPERTY ABUTTING CERTAIN HIGHWAYS AND ROADS

374.405 Access rights of property abutting on state highways. No rights in or to any state highway, including what is known as right of access, shall accrue to any real property abutting upon any portion of any state highway constructed, relocated or reconstructed after May 12, 1951, upon right of way, no part of the width of which was acquired prior to May 12, 1951, for public use as a highway, by reason of the real property abutting upon the state highway.

374.410 Department of Transportation to prescribe access rights of abutting property. In connection with any acquisition of real property for right of way of any state highway, the Department of Transportation shall prescribe and define the location, width, nature and extent of any right of access that may be permitted by the depart-

ment to pertain to real property described in ORS 374.405.

374.415 Action to prevent entering or leaving state highways in manner not authorized. The Department of Transportation may commence and prosecute to final determination any suit, action or proceeding in the name of the state by and through the department, which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any state highway mentioned in ORS 374.405, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.410.

374.420 County throughways; rights of abutting property owners. (1) The county court or board of county commissioners may acquire by purchase, agreement, donation or exercise of the power of eminent domain, fee title or any interest in real property, including easements of air, view, light and access, which is necessary for the construction of a throughway or the establishment of a section of an existing county road as a throughway.

(2) When right of way is acquired for a throughway after August 13, 1965, no rights in or to the throughway, including what is known as right of access, accrue to real property merely because the property abuts upon that part of the right of way so acquired. This subsection also applies to right of way acquired, prior to August 13, 1965, pursuant to ORS 374.420 to 374.430 (1963 Replacement Parts).

(3) "Throughway," as used in this section, means a proposed or existing county road especially designed for through traffic, which has been designated by resolution of the county court or board of county commissioners as a throughway, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, merely because of the fact that their property abuts upon the throughway or for any other reason. [Amended by 1965 c.364 §1]

374.425 County court to prescribe access rights of abutting property. In connection with the acquisition of real property for right of way for a throughway described in ORS 374.420, the county court or board of county commissioners may prescribe the location, width, nature and extent of any right of access that pertains to such real property. [Amended by 1965 c.364 §2]

374.430 Action to prevent entering or leaving county roads in unauthorized manner. The county court or board of county commissioners may commence and prosecute to final determination any suit, action or proceeding which in its judgment is necessary to enjoin and prevent any person, whether acting individually or by agent, from entering upon or departing from any throughway under its jurisdiction, mentioned in ORS 374.420, at any location, for any use or in any manner not authorized by any grant of a right of access, as provided in ORS 374.425. [Amended by 1965 c.364 §3]

PENALTIES

374.990 Penalty for violation of ORS 374.305 or of regulation adopted under ORS 374.310. In addition to the liability for expenses under ORS 374.307 and 374.320, violation of ORS 374.305 or of any rule or regulation adopted under ORS 374.310 is a misdemeanor. [1955 c.424 §6]

Chapter 376

2003 EDITION

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GENERAL PROVISIONS

376.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" means the governing body of the county, whether it is a county court or board of county commissioners.

376.105 [Repealed by 1979 c.862 §12]

376.110 [Repealed by 1979 c.862 §12]

376.115 [Repealed by 1979 c.862 §12]

376.120 [Repealed by 1979 c.862 §12]

376.125 [Repealed by 1979 c.862 §12]

376.130 [Repealed by 1979 c.862 §12]

376.135 [Repealed by 1979 c.862 §12]

376.140 [Repealed by 1971 c.743 §432]

376.145 [Repealed by 1979 c.862 §12]

STATUTORY WAYS OF NECESSITY

376.150 Definitions for ORS 376.150 to 376.200. As used in ORS 376.150 to 376.200:

(1) "Public road" means the entire right of way of any road over which the public has the right of use or any right of way held by the state or a political subdivision of the state for road purposes that is not open for public use.

(2) "Way of necessity" means:

(a) A road established under ORS 376.150 to 376.200 to provide motor vehicle access from a public road to land that would otherwise have no motor vehicle access; or

(b) A route established under ORS 376.150 to 376.200 to provide utility service access from an existing service location to a service point that would otherwise have no utility service access. [1979 c.862 §1; 1989 c.674 §1]

376.155 Petition to establish way of necessity; contents; requirements. (1) To establish a way of necessity under ORS 376.150 to 376.200, a landowner shall file a petition with the governing body of the county in which the land is located.

(2) A petition filed under this section shall contain a drawing and a narrative statement that contain all of the following information:

(a) The location and legal description of the property to be served by the proposed way of necessity.

(b) The location of all public roads located in the vicinity of the property to be served by the proposed way of necessity that are capable of being used to provide access to the property. The petition shall include the location of public roads that are not open for public use.

(c) A specific proposed location for the proposed way of necessity.

(d) Evidence showing the necessity for the establishment of a way of necessity.

(e) Evidence that either:

(A) The proposed way of necessity does not connect to a public road that has access rights acquired and limited by the state or county; or

(B) If the public road proposed for access by way of necessity has the limited access rights, the state or county is willing to grant permission to connect the proposed way of necessity to the public road.

(f) Evidence that the proposed way of necessity may be connected to the public road safely.

(g) Evidence that the specific location proposed for the way of necessity is the nearest practicable point for connection to a way of necessity to a public road.

(h) The names and addresses of the persons owning the land across which the way of necessity could be located.

(i) The petitioner's proposal for the amount of compensation to persons owning land across which the way of necessity is proposed to be located.

(j) Evidence that the petitioner does not have an existing easement or right to an easement to provide access to a public road.

(k) Evidence that the petitioner does not have any enforceable access to a public road. [1979 c.862 §2; 1991 c.936 §2]

376.160 Notice to landowners; investigation of proposed way; report to county governing body. (1) Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body shall:

(a) Provide for service of the petition on all persons owning land across which the way of necessity could be located; and

(b) Direct the county engineer, county surveyor or other persons appointed by the governing body to investigate the proposed way of necessity and to submit a written report to the county governing body.

(2) The report under subsection (1) of this section shall include:

(a) Possible alternate routes for ways of necessity to the property;

(b) A determination of whether the proposed way of necessity meets the requirements under ORS 376.150 to 376.200;

(c) The reasonableness of the way of necessity proposed in the petition; and

(d) A recommendation for a specific location and width for a way of necessity.

(3) Upon receipt of the report under subsection (2) of this section, the county governing body shall:

(a) Provide a copy of the report to the petitioner; and

(b) Serve a copy of the petition and report on all persons owning land across which the way of necessity is proposed to be located under the report or the petition.

(4) Service of the petition and report under this section shall be accomplished in the manner provided for service of summons in an action at law. If the report includes a recommendation for a route different than the route proposed in the petition, service on the affected parties shall include a copy of the petition. [1979 c.862 §3]

376.165 Deposit to cover county expenses. Upon receipt of a petition for a way of necessity filed under ORS 376.155, a county governing body may require the petitioner to deposit with the county an amount of money or other security to use for payment of county expenses incurred in the procedure for establishing the way of necessity or to assure that the expenses will be paid. If a deposit of money is required by the governing body, the deposit may be used to pay expenses and shall be deducted from the expenses ordered to be paid under ORS 376.175. [1979 c.862 §3a]

376.170 Filing of answer by landowner; reply to answer by petitioner. (1) Any person owning land across which a way of necessity is proposed to be established under ORS 376.150 to 376.200 may file an answer controverting any matter in the petition or report and alleging any new matter relevant to the proceedings. An answer filed under this subsection must be filed within 30 days after receipt of service of the petition and report. An answer shall be filed with the county governing body. The county governing body shall provide for service of the answer upon the petitioner in the manner provided for service of summons in an action at law.

(2) If an answer is filed under this section, the petitioner may file a reply controverting any matter presented in the answer. A reply filed under this section must be filed within 10 days after receipt of service of the answer by the petitioner. A reply shall be filed with the county governing body. The county governing body shall provide for service of the reply upon the person filing the answer in the manner provided for service of summons in an action at law. [1979 c.862 §4]

376.175 Order granting or denying way of necessity; contents; liability for costs; appeal. (1) Upon consideration of the matters and issues presented under ORS 376.150 to 376.200, the county governing body shall determine whether or not a need has been demonstrated for the granting of a way of necessity under ORS 376.150 to 376.200 and shall enter an order granting or denying the way of necessity.

(2) Any order entered under this section shall:

(a) State whether the way of necessity is granted or denied;

(b) Declare as established any way of necessity that is granted;

(c) Describe the exact location and width of any way of necessity established;

(d) Describe those uses that are permitted on any way of necessity established;

(e) Direct the petitioner to pay costs and reasonable attorney fees incurred by each owner of land whose land was subject to the petitioner's action for a way of necessity under ORS 376.150 to 376.200;

(f) Establish the amount of compensation due to any owner of land across which any way of necessity has been established and direct the petitioner to pay the compensation; and

(g) Establish the costs incurred by the county in the procedures for the way of necessity under ORS 376.150 to 376.200 and direct the petitioner to reimburse the county for those costs not already paid by petitioner.

(3) An order entered under subsections (1) and (2) of this section to provide for utility service, as set forth in ORS 376.150 (2)(b), shall conform to affected utility policy and standards.

(4) A petitioner shall pay any costs the petitioner is directed to pay under an order issued under this section within 60 days after entry of the order. The petitioner is liable for any costs not paid within the time established in this subsection. If more than one landowner joins in a petition for a way of necessity under ORS 376.155, every petitioner granted use of the way of necessity shall be jointly and severally liable for any costs ordered to be paid.

(5) Any party to the action for a way of necessity may contest any part of the order of the county governing body in an appeal filed with the circuit court within 30 days after entry of the order of the county governing body. [1979 c.862 §5; 1989 c.674 §2; 1991 c.936 §3]

376.180 Conditions for way of necessity. A way of necessity established under ORS 376.150 to 376.200 shall:

(1) Be located to cause the least possible damage to land across which it is located;

(2) Be fenced or gated if required by the county governing body;

(3) Not be connected to a public road in a location or manner that creates a traffic hazard or decreases the safety on the public road;

(4) Be established only for uses in connection with the property for which the way of necessity is sought;

(5) Not be subject to any use that is not described in the order establishing the way of necessity;

(6) Not exceed 30 feet in width unless authorized by the county governing body for engineering purposes;

(7) Not be connected to a public road where the rights of access to the road have been acquired by the state or a county unless the state or governing body of the county grants permission for the connection;

(8) Not be established if the property for which the way of necessity is sought has an existing enforceable access to a public road;

(9) Not be established if the petitioner for the way of necessity could acquire an easement for access to a public road through other legal action;

(10) Not be established for land that has been subdivided or partitioned in violation of ORS chapter 92;

(11) Not be established over land owned by the state or a political subdivision of the state unless permission is granted for the way of necessity under ORS 376.185; and

(12) Not be established for any land if the owner of the land had knowingly eliminated access to all public roads from the land by the sale of other land owned by the landowner. [1979 c.862 §6; 1991 c.936 §5; 1993 c.18 §91]

376.185 Way of necessity over public land. (1) A way of necessity may not be established under ORS 376.150 to 376.200 across land owned by the state or a political subdivision of the state without the consent of the governing body of the political subdivision or of the appropriate agency of the state. The governing body of a political subdivision of this state and any agency of the state shall not unreasonably withhold consent required under this subsection.

(2) Whenever a way of necessity is sought over land owned by the state or a political subdivision of the state, a copy of the petition for the way of necessity, of the county report and of the notice of hearing shall be forwarded by certified mail to:

(a) If the political subdivision owns the land, the governing body of the political subdivision.

(b) If the state owns the land, to the Department of State Lands and to each agency of the state that has use or control of the land. [1979 c.862 §7; 1993 c.98 §17]

376.190 Responsibility for maintenance of way of necessity; alteration limited. (1) A way of necessity that is established under ORS 376.150 to 376.200 shall be maintained and kept passable by the person owning the land for which the way of necessity is established. This subsection does not require the person to provide for maintenance of the way of necessity for uses or persons not specifically provided in the order establishing the way of necessity.

(2) A way of necessity established under ORS 376.150 to 376.200 shall not be altered or vacated except by the governing body of the county in which it is located and in a manner provided by law for the alteration or vacation of a public road.

(3) No county shall be required to work, improve, maintain or repair a way of necessity. [1979 c.862 §8; 1991 c.936 §5]

376.195 Subsequent partition of land receiving way of necessity requires government approval. Land for which a way of necessity is established under ORS 376.150 to 376.200 shall not be subsequently partitioned without the approval of the city or county governing body which has partitioning authority. [1979 c.862 §9]

376.197 Way of necessity to historic cemeteries. (1) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity for nonmotorized conveyance is established to any parcel that meets the criteria described in ORS 308A.125.

(2)(a) Notwithstanding any other provision of ORS 376.150 to 376.200, a way of necessity is established to a historic cemetery listed in accordance with the provisions of ORS 97.782.

(b) The way of necessity established under paragraph (a) of this subsection shall:

(A) Be designated by the owner of the land over which the way of necessity passes; and

(B) Be accessible, at reasonable times to be designated by the property owner for visitation, maintenance or research purposes, to the owner of the historic cemetery, to descendants of those persons buried in the historic cemetery and to persons interested in historical research. The reasonableness of the times designated by the property owner shall be based on the need of the property owner to make use of the property and the need of the historic cemetery visitors for family visitation, maintenance or research access to the historic cemetery. [1999 c.314 §46; 2001 c.364 §1; 2003 c.173 §9]

376.200 Transfer of jurisdiction over establishment of ways of necessity to circuit court; local court rules; procedure after transfer. (1) Notwithstanding any provision of ORS 376.150 to 376.200, a county governing body may adopt an ordinance removing the county governing body from jurisdiction over the establishment of ways of necessity under ORS 376.150 to 376.200.

(2) If the county governing body adopts an ordinance described in subsection (1) of this section, the circuit court of that county shall have jurisdiction of the establishment of ways of necessity for that county. Except as otherwise provided in this section, a court with jurisdiction of the establishment of ways of necessity under this section shall follow the procedures for establishment of a way of necessity provided under ORS 376.150 to 376.200. The court may adopt local court rules to supplement the procedures provided under ORS 376.150 to 376.200.

(3) Notwithstanding ORS 376.175, if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, an appeal from the decision of the court shall be to the Court of Appeals.

(4) Notwithstanding ORS 376.160 (1), if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon filing a petition the petitioner shall:

(a) Provide for service of the petition on all persons owning land across which the way of necessity could be located; and

(b) Post a bond or security deposit with the court clerk in an amount required by the court to pay for the cost of the investigation and report under subsection (5) of this section.

(5) If jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon receipt of a petition the court shall appoint a person to investigate the proposed way of necessity and submit a written report to the court and the petitioner. The cost of the investigation and report shall be charged against the bond or security deposit posted under subsection (4) of this section. If the bond or security deposit is more than the actual cost of the investigation and report, the difference shall be refunded to the petitioner. If the bond or security deposit is less than the actual cost of the investigation and report, the petitioner shall pay to the county governing body the amount of the deficiency. A judgment of the court shall not become final until the full cost of the investigation and report has been paid.

(6) Notwithstanding ORS 376.160 (3), if jurisdiction for establishment of ways of necessity is in the circuit court as provided under this section, upon receipt of the report under subsection (5) of this section, the petitioner shall serve a copy of the petition and report on all persons owning land across which the way of necessity is proposed to be located under the petition or report. [1979 c.862 §10; 1995 c.265 §1]

376.205 [Repealed by 1981 c.153 §79]

376.210 [Repealed by 1981 c.153 §79]

376.215 [Repealed by 1981 c.153 §79]

376.220 [Repealed by 1981 c.153 §79]

FOREST ROADS

376.305 Policy and purpose of Act. (1) It is declared that a substantial part of the forest resources of this state are now left unharvested and are lost by reason of the excessive cost of transportation thereof to market; that substantial forest areas can be economically managed, harvested and the products thereof transported to market only by use of certain county and public roads which the counties of this state are unable to construct, improve and maintain so as to enable their safe and economical use for such purposes.

(2) It is declared to be the public policy of this state to conserve and develop its natural resources, to encourage and facilitate the transportation of products of the forest and the salvage and utilization of such products now being wasted, and to develop and improve certain county and other public roads for such purposes.

376.310 Definitions for ORS 376.305 to 376.390. As used in ORS 376.305 to 376.390:

(1) "Forest road" means any county or public road, or part thereof, outside the corporate limits of a city, which is within or extends into or toward a mountainous or timbered area, and which is under the control and supervision of a county court of this state.

(2) "Contract forest road" means a forest road improved or maintained pursuant to a contract made under ORS 376.305 to 376.390.

(3) "Logging operator" means any person having the right to cut and remove timber or forest products in this state, or who is engaged or desirous of engaging in this state in the transportation of forest products, by motor vehicle, to market or processing plant.

(4) "Forest road contractor" means a logging operator who has entered into a contract under ORS 376.305 to 376.390 to improve or maintain, or improve and maintain, a contract forest road.

(5) "Motor vehicle" includes any motor vehicle with or without a trailer or semi-trailer.

(6) "Person" means any person, firm or corporation, or group or combination thereof.

376.315 Application to become forest road contractor. (1) Any logging operator desiring to become a forest road contractor may make application to the county court having jurisdiction and control over a forest road, to improve or maintain, or improve and maintain, such road.

(2) The application shall set forth:

(a) A description of the road and the termini thereof.

(b) If the applicant proposes to improve the road, a general statement of the improvements proposed to be made.

(c) If the applicant proposes to maintain the road, a general description of the maintenance work proposed to be done.

(3) The application shall be verified and signed by the applicant and filed in the office of the county clerk, together with an affidavit showing service thereof, either personally, by registered mail or by certified mail with return receipt, on the Public Utility Commission and on the Department of Transportation. [Amended by 1991 c.249 §29]

376.320 Hearing on application; posting, publishing, serving and proof of notice. (1) The county court shall:

(a) Fix a date for hearing the application.

(b) Cause a notice of the hearing to be posted at the place where the county court sessions are held and at three public places in the vicinity of the forest road specified in the application, for at least 30 days immediately prior to the date set for hearing.

(c) Cause notice of the hearing to be published in a newspaper published in the county and having general circulation therein, but if there is no such newspaper published in the county, then in any newspaper having general circulation in the county, for not less than once a week for two weeks immediately prior to the date set for the hearing.

(2) A copy of the notice shall be served personally, by registered mail or by certified mail with return receipt on the Public Utility Commission and on the Department of Transportation at least 15 days prior to the date set for hearing.

(3) Proof that the notice has been posted and served shall be made by affidavit and filed in the proceeding. [Amended by 1991 c.249 §30]

376.325 Signing and contents of notice. The notice of hearing shall be signed by the county clerk and shall state:

(1) The date the application was filed.

(2) The name of the applicant.

(3) The description of the forest road proposed to be improved or maintained, or both.

(4) The proposal for improvement or maintenance, or both, as set forth in the application.

(5) The time and place of hearing.

(6) That all persons interested may appear and be heard for or against the application.

376.330 Order approving application; service of order. After the hearing, the county court may, in its discretion, approve or disapprove the application. If the application is approved, a copy of the approving order together with a copy of the findings of the county court shall be served by the county clerk by registered mail or by certified mail with return receipt within 10 days after the order is made, upon the Public Utility Commission and the Department of Transportation. The county clerk shall file in the proceeding the certificate of such service. [Amended by 1991 c.249 §31]

376.335 Contracting with applicant. Any county court that has approved any such application may contract with the applicant, in accordance with ORS 376.305 to 376.390, and without advertisement for bids, for the improvement or maintenance, or both, of the forest road described in the application. The terms of the contract as to specifications of the work shall not be limited by the proposal for improvement or maintenance as contained in the application.

376.340 Bond and insurance of forest road contractor. (1) Before execution of any contract under ORS 376.305 to 376.390, the forest road contractor shall execute and file with the county clerk a performance bond in an amount to be fixed by the county court.

(2) The forest road contractor shall furnish, and have in force during the entire term of the contract, public liability and property damage insurance covering the operation and the operation of agents and subcontractors of the forest road contractor in the improvement, maintenance and use of the contract forest road in any amount that may be fixed in the contract, but the public liability insurance shall be for an amount of not less than $50,000 for bodily injuries to or death of one person and, subject to that minimum amount for each person, not less than $100,000 for bodily injuries to or death of more than one person in any one accident,

and the property damage insurance shall be for an amount of not less than $5,000 for injury to or destruction of property in any one accident. [Amended by 1953 c.370 §5; 1957 c.650 §14; 1983 c.740 §121]

376.345 Contents of forest road contract. Every contract entered into pursuant to ORS 376.305 to 376.390 shall:

(1) Describe the road and the termini thereof.

(2) Specify the width of the roadbed and contain reasonably complete specifications, prepared by the county roadmaster or other competent person, of the improvement and maintenance work to be done.

(3) Specify the time within which the improvement work other than maintenance shall be completed.

(4) Contain such provisions pertaining to maintenance as may be agreed upon by the parties.

(5) Obligate the forest road contractor to furnish all labor and materials required for the work the contractor has contracted to do.

(6) Provide that the same rights and privileges on the contract forest road as are available to the forest road contractor are available to any other logging operator:

(a) Upon approval by the county court;

(b) Upon the logging operator furnishing insurance as provided in ORS 376.340;

(c) Upon the logging operator reimbursing the forest road contractor for an equitable portion of the construction costs, if any, borne by the forest road contractor; and

(d) Upon the equitable sharing of the logging operator with the forest road contractor in the costs of maintaining the road, provision being made for either the specific rates therefor per 1,000 feet board measure of timber or equivalent of forest products transported over the road or, in the alternative, a formula for determining such rates with a provision for arbitration under ORS 36.600 to 36.740, in the event of disagreement between the forest road contractor and another logging operator respecting the application of the formula. [Amended by 2003 c.598 §41]

376.350 Filing copies of forest road contract. One copy of the contract shall be filed with the county clerk, one with the Public Utility Commission and one with the Department of Transportation.

376.355 Limitations on using motor vehicles to transport forest products over forest road; regulations and permits for crossing state highways. (1) During such term as may be specified in the contract, the forest road contractor and agents and subcontractors of the forest road contractor have the right and privilege to:

(a) Use and operate over the contract forest road, motor vehicles limited as to wheel base, weights, dimensions, tire widths and tire surfaces only as specified in the contract.

(b) Transport forest products upon such motor vehicles over the road, with loads limited as to gross weights, axle load weights, tire load weights, and load dimensions and heights only as specified in the contract.

(2) Whenever any forest road contractor operates any motor vehicle having a size or weight prohibited by or in excess of the limitations contained in any law pertaining to state highways, on a contract forest road which crosses a state highway, the Department of Transportation may adopt rules and regulations and issue permits for said motor vehicle to cross said state highway in the use of such contract forest road. Such rules and regulations and such permits may include, but need not be limited to, provisions for reinforcing and strengthening the highway and for the installation of signs and signals, and such other requirements as the Department of Transportation may deem necessary for the preservation of the highway and for the safety and best interest of the public. All construction and installations under such permits shall be under the supervision of the Department of Transportation and at the expense of the forest road contractor. [Amended by 1953 c.370 §5]

376.360 Signs giving notice of certain vehicles on forest road. In the event the forest road contractor is authorized by the provisions of the contract to operate vehicles or combinations of vehicles, including any load thereon, of any size or description not otherwise authorized by law, the county court shall erect and maintain signs giving notice thereof in a conspicuous manner and placed at each end of the forest road or section of forest road covered by the contract, and at such other places as may be necessary to inform and warn the public.

376.365 Persons having rights under forest road law and contract. During the term of the forest road contract, all exemptions, privileges and rights granted or provided for by ORS 376.305 to 376.390, and by the provisions of the contract made pursuant thereto, are limited to the forest road contractor, the agents and subcontractors of the forest road contractor, and to such other logging operators as may meet the provisions required to be included in the contract by ORS 376.345 (6). This section does not, however, prevent the use of the forest contract

road by the general public. [Amended by 1953 c.370 §5]

376.370 Supervision over forest road work by roadmaster. (1) All improvement and maintenance work done pursuant to a forest road contract shall be under the supervision of the county roadmaster of the contracting county.

(2) On request of the forest road contractor, the county roadmaster shall inspect any completed segment of the contract forest road, and if the county roadmaster determines the work to be in compliance with the contract the county roadmaster shall approve the completion in writing, deliver a copy of the approval to the contractor and file a copy with the county clerk. Except in case of fraud, the approval of the county roadmaster shall be conclusive proof that the work approved is in compliance with the contract.

376.375 Contract liability of forest road contractor. The liability of any forest road contractor for failure to improve or maintain the contract forest road or any bridge or culvert thereon in accordance with the contract is limited to the contracting county.

376.380 Assignment of forest road contract. Any forest road contractor may assign the forest road contract in its entirety, with approval of the contracting county court and not otherwise. A copy of each assignment shall be filed with the county clerk. A copy of the assignment together with a copy of the resolution of the county court approving the assignment shall be delivered or sent by registered mail or by certified mail with return receipt to the Public Utility Commission and the Department of Transportation. [Amended by 1991 c.249 §32]

376.385 Paying over fines, penalties and forfeited security deposits to county treasurer. All fines and penalties collected, or security deposits forfeited, under ORS 376.990, shall be paid by the court or judicial officer collecting the same to the county treasurer of the county within which the violation occurred. The county treasurer shall credit moneys so received to the general road fund of the county. [Amended by 1991 c.67 §92; 1999 c.1051 §270]

376.390 Payment of taxes and fees by forest road contractor. Nothing in ORS 376.305 to 376.390 relieves the forest road contractor or agents or subcontractors of the forest road contractor from payment of any taxes or fees prescribed by law, except that, with respect to a motor vehicle operated upon a contract forest road by a forest road contractor, or agent or subcontractor of the forest road contractor, the road tax mileage fees prescribed by ORS 825.474, 825.476, 825.480 and 825.484 shall be assessed upon the declared combined weight of the motor vehicle or 76,000 pounds, whichever is less. [Amended by 1953 c.370 §5]

CONDEMNATION OF LAND FOR FOREST PRODUCT WAYS

376.505 Filing statement of route and bond; right of entry. (1) Any person, firm or corporation that requires land for transportation of the raw products of the forest may file with the county clerk of the county in which the land is located:

(a) A statement showing the approximate route of any proposed road or railway and a general description of the tract that the road or railway may travel.

(b) At the time of filing the statement, a bond in such sum as may be fixed by order of the county court, conditioned upon the payment to the owners of the lands required for the road or railway of any and all damage that the owners may sustain by reason of entry upon the land for the survey or location of the road or way.

(2) When the bond has been filed, such person, firm or corporation shall have the right to enter upon the tract for the purpose of examining, locating or surveying the line of the road or logging railroad. [Amended by 2003 c.14 §162]

376.507 Definition of "transportation of the raw products of the forest." As used in ORS 376.505 to 376.540 "transportation of the raw products of the forest" includes ingress to and egress from forestland solely for the purpose of management, protection, growth and conservation of forest crops by thinning, reseeding, brush control and other forest management operations. [1975 c.723 §2]

376.510 Right to acquire and condemn land for logging road. Any such person, firm or corporation has the right to acquire and own all lands reasonably necessary for the logging road or way to promote the transportation of logs or the raw products of the forest. If such person, firm or corporation is unable to agree with the owners of the land over which the logging railroad is necessary, as to the amount of compensation to be paid therefor, such person, firm or corporation has the right to condemn so much of the land necessary for the logging railroad, road or ways as may be necessary for the use thereof, and may maintain the suit for condemnation in the circuit court of the county wherein the lands are located. No land shall be taken until compensation has been assessed and tendered.

376.515 Property subject to appropriation. No more lands shall be appropriated under ORS 376.505 to 376.540 than are reasonably necessary for the purposes specified therein. No building nor the land upon which it is situated, which is exempt from execution as a homestead under the laws of the state, nor any land belonging to the homestead owner within 100 feet of the building, shall be so appropriated.

376.520 Condemnation procedure. Procedure for condemnation under ORS 376.505 to 376.540 shall be as set forth in ORS chapter 35. [Amended by 1971 c.741 §23]

376.525 Assessment of damages. In assessing damages under ORS 376.510, full compensation shall be allowed for the value of the land appropriated and all other injury and damage which the owner may suffer by reason of the appropriation of the land.

376.530 Fencing appropriated land. The person, firm or corporation appropriating land under ORS 376.505 to 376.540, and the successors and assigns of the person, firm or corporation, shall fence with a good and suitable fence both sides of the lands appropriated, in the event the lands are used for agricultural purposes, and shall take such other means and precautions reasonably necessary to protect the adjoining lands not appropriated from damage or injury by reason of the use of the lands appropriated.

376.535 Use of appropriated property; reversion on disuse. (1) Any property acquired under ORS 376.505 to 376.540 shall be used exclusively for the purposes set forth therein or such incidental purposes as may be necessary to the continued carrying out of such purposes.

(2) Whenever the use of property as contemplated in ORS 376.505 to 376.540 ceases for a period of two years, it shall revert to the original owner, or the heirs or assigns of the original owner, but in assessing damages the amount allowed shall not be in any manner lessened or decreased by reason of the possibility that the lands may so revert to their original owner.

(3) The limitations set out in this section shall not apply to or run against any interest acquired by the state.

376.540 Logging roads. Any logging road which is necessary for the transportation of a single tract of timber is within ORS 376.505 to 376.540, whether it is a common carrier or otherwise. Such road is not under the jurisdiction of the Department of Transportation unless the owners thereof declare it a common carrier. [Amended by 1997 c.275 §5]

MISCELLANEOUS WAYS

376.605 [Amended by 1971 c.741 §26; repealed by 2001 c.388 §1]

376.610 [Repealed by 1981 c.153 §79]

376.615 [Repealed by 1981 c.153 §79]

376.620 Skyline, logging line, ferry skyline or cable footbridge; authorization and regulation by land board. (1) When authorized by the Department of State Lands, it is lawful for any person, firm or corporation to construct, maintain and operate a skyline, high lead logging line, ferry skyline or cable footbridge across any navigable river, bay, inlet or other navigable waters within the state, not inconsistent with any Act of Congress regulating the construction of bridges across navigable waters. The structures shall be so constructed as not to interfere unnecessarily with the navigation of such navigable waters.

(2) The Department of State Lands may make and enforce such regulations and restrictions as it deems necessary to carry out the purposes of this section and may make reasonable charges for any services rendered in connection therewith.

PEDESTRIAN MALLS

376.705 Definitions for ORS 376.705 to 376.825. Unless the context otherwise requires, the definitions contained in this section shall govern the construction of ORS 376.705 to 376.825.

(1) "City" includes every county, city, and city and county within this state. "The city" means the particular county, city, or city and county, acting pursuant to ORS 376.705 to 376.825.

(2) "Legislative body" means the legislative body of the city.

(3) "Street" as used in the definitions of the terms "city streets," "mall intersection" and "intersecting streets," defined in subsections (4), (6) and (7) of this section, means any public street, road, highway, alley, land, court, way or place of any nature open to the use of the public.

(4) "City street," as used with regard to streets located within a city or city and county, means any street located within the city or city and county, except a freeway, state highway, or county highway. "City street," as used with regard to streets located within a county, means any street, located within the county, except a throughway as defined in ORS 374.010 or state highway as defined in ORS 373.010.

(5) "Pedestrian mall" means one or more city streets, or portions thereof, on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be

used exclusively or primarily for pedestrian travel.

(6) "Mall intersection" means any intersection of a city street constituting a part of a pedestrian mall with any street, which intersection is itself part of the pedestrian mall.

(7) "Intersecting street" means any street which meets or crosses a pedestrian mall at a mall intersection but includes only those portions thereof on either side of a mall intersection which lie between the mall intersection and the first intersection of the intersecting street with a public street or highway open to vehicular traffic.

(8) "Assessment roll" means the assessment roll or rolls used by the county for purposes of city ad valorem taxes on real property.

(9) "Improvements" means the improvements referred to in ORS 376.720 (1). [1961 c.666 §2]

376.710 Legislative findings; short title. (1) The Legislative Assembly hereby finds and declares that in certain areas in cities, and particularly in retail shopping areas thereof, there is need to separate pedestrian travel from vehicular travel and that such separation is necessary to protect the public safety or otherwise to serve the public interest and convenience. The Legislative Assembly further finds and declares that such objective can, in part, be accomplished by the establishment of pedestrian malls pursuant to ORS 376.705 to 376.825.

(2) ORS 376.705 to 376.825 may be cited as the Pedestrian Mall Law of 1961. [1961 c.666 §§1,3]

376.715 Construction of Pedestrian Mall Law; validity of proceedings. (1) ORS 376.705 to 376.825 and all of their provisions shall be liberally construed to the end that their purpose may be effective.

(2) Any proceedings taken pursuant to ORS 376.705 to 376.825 shall not be held invalid for failure to comply with the provisions of ORS 376.705 to 376.825, if the acts done and proceedings taken are not invalid under the state or federal constitutions. [Enacted as part of 1961 c.666 §5]

376.720 Powers of city with respect to pedestrian mall. (1) The legislative body of a city shall have the power:

(a) To establish pedestrian malls.

(b) To prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

(c) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall.

(d) To construct on city streets which have been or will be established as a pedestrian mall improvements of any kind or nature necessary or convenient to the operation of such city streets as a pedestrian mall, including but not limited to paving, sidewalks, curbs, gutters, sewers, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, child care facilities, display facilities, information booth, public assembly facilities and other structures, works or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing city-owned works, improvements or facilities on such city streets.

(e) To pay, from general funds of the city or other available moneys or from the proceeds of assessments levied on property benefited by any such improvements, the whole or any portion of the cost of such improvements.

(f) To do any and all other acts necessary or convenient for the accomplishment of the purposes of ORS 376.705 to 376.825, including the power to rent, lease or license to any individual firm or corporation any portion of the pedestrian mall for service concessions, commercial uses or otherwise, providing that in any term of use exceeding 60 days, the city shall first advertise for bids therefor by publication not less than once a week for two consecutive weeks in a newspaper of general circulation in the city, making two publications thereof.

(2) The powers granted in ORS 376.705 to 376.825 to prohibit, in whole or in part, vehicular traffic on any city street shall be in addition to and not limited by the powers granted by any other law. [1961 c.666 §4; subsection (2) enacted as part of 1961 c.666 §5; 1971 c.506 §1]

376.725 Resolution for establishment of mall; general contents of resolution. When the legislative body shall determine that the public interest and convenience require the establishment of a pedestrian mall and that vehicular traffic will not be unduly inconvenienced thereby, it may adopt a resolution declaring its intention to establish such pedestrian mall. Such resolution shall contain:

(1) The determination and declaration referred to above.

(2) A general description of the city streets, or portions thereof, which are proposed to be established as a pedestrian mall.

(3) A general description of the mall intersections.

(4) A general description of the intersecting streets.

(5) A statement that the legislative body proposes to adopt an ordinance prohibiting, in whole or in part, vehicular traffic on such pedestrian mall. If vehicular traffic is proposed to be prohibited only in part, the resolution shall also contain a general statement of the exceptions proposed to be made. Such exceptions may include exceptions in favor of public, emergency, utility and other classes of vehicles, may include exceptions in favor of all or certain classes of vehicles during certain days or during portions of days, and may include other exceptions of any kind or nature.

(6) A general statement of the source or sources of moneys proposed to be used to pay damages, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall.

(7) A day, hour and place for the hearing by the legislative body of protests and objections to the establishment of the proposed pedestrian mall, and a statement that any and all persons having any objection to the establishment of the proposed pedestrian mall may file a written protest with the city recorder at any time not later than the hour so fixed for the hearing.

(8) A statement that any person owning or having any legal or equitable interest in any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall may file a written claim of damages with the city recorder at any time not later than the hour so fixed for hearing; that such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed. [1961 c.666 §6]

376.730 Description of proposed mall and intersecting streets. In such resolution any street may be described by referring thereto by its lawful or official name, or the name by which it is commonly known, and the pedestrian mall, the mall intersections and the intersecting streets may be described by reference to a map or plat thereof on file in the office of the city recorder. [1961 c.666 §7]

376.735 Contents of resolution when landowners to be paid for damages by assessments on benefited property. In such resolution the legislative body may propose to pay the whole or any part of damages based on claims filed pursuant to ORS 376.755 (2), if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall from the proceeds of assessments levied upon lands benefited by the establishment of the pedestrian mall. In such cases the resolution shall also contain:

(1) General description of the district (which may consist of noncontiguous portions) within which lie the lands deemed by the legislative body to be benefited by the establishment of the proposed pedestrian mall. Such district may be described by metes and bounds.

(2) A statement that an assessment will be levied pursuant to ORS 376.705 to 376.825 to pay the whole or a stated portion of the damages based on claims filed pursuant to ORS 376.755 (2), if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall and the costs and expenses in connection with proceedings or actions taken pursuant to ORS 376.705 to 376.825.

(3) If bonds are to be issued, a statement that bonds to represent unpaid assessments will be issued, and the interest rate, or maximum interest rate, and term, or maximum term, of any such bonds. [1961 c.666 §8]

376.740 Contents of resolution when improvements are proposed. If, in connection with the initial establishment of a pedestrian mall, the legislative body proposes to make any improvements of the kind or type referred to in ORS 376.720 (1)(d), such resolution shall also contain:

(1) A general description of the improvements proposed to be made. Such description may be made (but is not required to be made) in any manner permitted or provided in any law under which such improvements are to be made or financed.

(2) A general statement of the source or sources of moneys proposed to be used to pay the costs and expenses of such improvements. [1961 c.666 §9]

376.745 Resolution to be published and posted. (1) The resolution of intention shall be published in a newspaper of general circulation published within the county, city or city and county, as the case may be. The first publication shall be not less than 60 days prior to the date fixed therein for hearing. In a city where no such newspaper is published, the resolution shall instead be so published in a newspaper of general circulation published in the county in which the city is located.

(2) Copies of the resolution headed "Notice of Intention to Establish a Pedestrian Mall" in letters at least one-half inch in

height shall be posted not more than 300 feet apart as follows:

(a) On all city streets, or portions thereof, proposed to be established as a pedestrian mall.

(b) On all intersecting streets.

(c) If assessments are to be levied as contemplated by ORS 376.735, then upon all open streets within the district described in the resolution pursuant to such section.

(3) Copies shall be posted not less than 60 days prior to the hearing. [1961 c.666 §§10,11; 2003 c.14 §163]

376.750 Copies of resolution to be mailed to affected persons. (1) A copy of the resolution shall be mailed, postage prepaid, not less than 60 days prior to the hearing to each person to whom any of the following described lands is assessed as shown on the last equalized assessment roll, at the address of the person as shown upon such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any of such lands whose name and address and a designation of the land in which the person is interested is on file in the office of the city clerk or county clerk, as the case may be. Such lands are as follows:

(a) All parcels of land abutting upon any portion of the pedestrian mall or any portion of any intersecting street.

(b) If assessments are to be levied as contemplated by ORS 376.735, then all parcels of land within the assessment district described in the resolution pursuant to such section.

(2) The legislative body may determine that such resolution shall also be mailed to such other persons as it may specify. [1961 c.666 §12]

376.755 Objections to mall; claims for damages; right to damages not created. (1) Not later than the hour set for hearing any interested person may, severally or with others, file with the city recorder written objection to the establishment of the proposed pedestrian mall or to the extent of any district described pursuant to ORS 376.735, or both. Any protest or objection may be withdrawn at any time by written notice of such withdrawal filed with the city recorder with the same effect as if it had never been made.

(2) Not later than the hour set for hearing any person owning, or having any legal or equitable interest in, any real property which might suffer legal damage by reason of the establishment of the proposed pedestrian mall may file with the city recorder a written claim of damages. Such written claim must describe the real property as to which the claim is made, must state the exact nature of the claimant's interest therein, must state the nature of the claimed damage thereto, and must state the amount of damages claimed. Any such claim may be withdrawn by the claimant at any time by written withdrawal with the same effect as if it had never been filed.

(3) Anything in ORS 376.705 to 376.825 to the contrary notwithstanding, nothing in ORS 376.705 to 376.825 shall be construed or interpreted as creating any right in any person to damages or compensation by reason of the establishment of a pedestrian mall, it being the intention of the Legislative Assembly in enacting ORS 376.705 to 376.825 to provide an orderly method for the determination and payment only of such damages and compensation as are required by the Constitutions of the State of Oregon and the United States of America. In this connection the Legislative Assembly hereby expressly declares that it is its intention that to the extent to which the establishment of a pedestrian mall is justifiable as an exercise of the police power for which no compensation is constitutionally required, no damages or compensation shall be allowed in any action. [1961 c.666 §§13,14,24]

376.760 Effect of objections by landowners. (1) If the owners of lands abutting on the proposed pedestrian mall representing 10 percent of the frontage on the proposed pedestrian mall have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and shall terminate the proceedings for such establishment. In such event no proceeding under ORS 376.705 to 376.825 for the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such termination.

(2) If assessments are to be levied as contemplated by ORS 376.735, then if the owners of more than 10 percent of the area of land included within the district described in the resolution of intention and subject to assessment have made written objection to the establishment of the proposed pedestrian mall, the legislative body shall so find and in that event the legislative body may continue with proceedings for the establishment of the pedestrian mall but shall have no power to make any assessment upon benefited property to pay damages. In such event no proceeding under ORS 376.705 to 376.825 for the levy of assessments upon benefited property to pay damages in connection with the establishment of the same or substantially the same pedestrian mall shall be commenced within one year after such finding. [1961 c.666 §§16,17]

376.765 Changing boundaries when assessments to be levied under ORS 376.735; notice; objections. (1) If assessments are to be levied as contemplated by ORS 376.735, then at the hearing the legislative body may change the boundaries of the proposed district by adding thereto land which in its opinion will be benefited by the establishment of the pedestrian mall or by excluding from the district lands which in its opinion will not be so benefited. If the legislative body proposes any such change it shall take proceedings as required by this section and shall continue the hearing to the time fixed for hearing objections to the proposed change.

(2) No such change shall be made except after notice of intention to do so, given by at least one insertion in the newspaper in which the resolution of intention was published, describing the proposed change and specifying the time for hearing objections, which shall not be less than 30 days after publication of the notice. If the change proposed is one to include additional land in the district, a copy of such notice shall be mailed to each person to whom land proposed to be added is assessed as shown on the last equalized assessment roll, at the address of the person as shown on such roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any such lands whose name and address and a designation of the land in which the person is interested is on file in the office of the county clerk. Such notice shall be mailed at least 25 days prior to the time set for hearing objections.

(3) Written objection to any proposed changes may be filed with the city recorder at any time up to the hour fixed for hearing objections to such changes. [1961 c.666 §18]

376.770 Allowing claims for damages; payment. (1) At the hearing on the resolution of intention the legislative body may allow any claim for damages made pursuant to ORS 376.755 (2). Any such allowance shall be for the full amount of damages claimed in the written claim except that the legislative body, with the written consent of the claimant, may allow a claim for a lesser amount.

(2) The right of any claimant to payment of the amount of any allowed claim shall be contingent upon the final establishment of the pedestrian mall but all allowed claims must be paid by the city, from such source as the legislative body may determine, before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall, pursuant to ORS 376.705 to 376.825. [1961 c.666 §20]

376.775 Hearing objections, claims and protests; waiver; decision; continuations. (1) At the hearing all objections and protests shall be heard and considered, and all claims shall be heard and considered.

(2) Any objections or protests, whether to the things proposed by the resolution of intention or to any changes proposed pursuant to ORS 376.765, not made at the time and in the manner provided by ORS 376.705 to 376.825 are deemed voluntarily waived, and the proceedings under ORS 376.705 to 376.825 shall not be attacked on any ground not stated in a written objection filed as provided in ORS 376.705 to 376.825.

(3) Except in the case of a majority protest, as provided in ORS 376.760, the legislative body may sustain or deny any or all objections or protests and its determination is final.

(4) The hearing may be continued from time to time by order entered on the minutes. [1961 c.666 §§15,19]

376.780 Resolution after hearing; fixing boundaries. (1) Following the conclusion of the hearing, the legislative body shall by resolution either abandon the proceeding taken pursuant to ORS 376.705 to 376.825 or determine that the pedestrian mall shall be established.

(2) If assessments are to be levied as contemplated by ORS 376.735, then in the resolution provided for in subsection (1) of this section, the legislative body shall fix and establish the boundaries of the district as finally determined. [1961 c.666 §§21,25]

376.785 Judicial proceedings to determine unsettled claims for damages; satisfaction prior to traffic prohibition. (1) If following the hearing the legislative body shall determine that the pedestrian mall shall be established, and if at that time there remain any written claims for damages which have not been allowed pursuant to ORS 376.770 or which have not been withdrawn, the legislative body shall direct that an action or actions be brought in the circuit court of the county in which the city is located in the name of the city by the city attorney, for a determination of the damages, if any, to which the claimant may legally be entitled because of the establishment of the pedestrian mall. Such action shall be in the nature of a proceeding in eminent domain for the condemnation of the right or rights in real property, the taking of which by the establishment of the pedestrian mall results in the damages claimed. In such action the amount set forth in the claim relating thereto shall not constitute a limitation upon the amount which may be pleaded, proved or recovered.

(2) Except as may otherwise be provided in ORS 376.705 to 376.825, such action and proceeding shall be governed so far as the same may be made applicable by those provisions of ORS chapter 35 relating to actions and proceedings in eminent domain. In any such action the resolution adopted under ORS 376.780 (1) shall be conclusive evidence of the public necessity of the proposed pedestrian mall; that the property or rights in property to be taken are necessary therefor, and that the pedestrian mall is planned and located in the manner which will be compatible with the greatest public good and the least private injury.

(3) The judgment in any such action shall be satisfied and a final order taken before vehicular traffic is prohibited, in whole or in part, on the pedestrian mall pursuant to ORS 376.705 to 376.825. [1961 c.666 §§22,23]

376.790 Assessment of damages and other expenses against benefited lands. After all claims for damages filed pursuant to ORS 376.755 (2) have been finally determined, by allowance by the legislative body, by withdrawal, or by a judgment in an action or actions brought pursuant to ORS chapter 35, and the full amount of damages to be paid has accordingly been finally determined, all or part of the total amount of such damages (but not exceeding such part thereof as may be specified in the resolution of intention), together with all costs and expenses incurred in connection with any proceedings or actions taken pursuant to ORS 376.705 to 376.825, may be assessed against the lands within the district and subject to assessment in proportion to the benefits to be derived from the establishment of the pedestrian mall. [1961 c.666 §26]

376.795 Manner of assessment; sale of bonds representing unpaid assessments. (1) Such assessment may be levied and bonds to represent unpaid assessments issued and sold substantially in the manner provided in ORS 223.005 to 223.105 and 223.205 to 223.930, and to the extent applicable, such law shall govern as to the preparation of the assessment, the lands subject to assessment, the hearing upon the assessment and the notice thereof, the confirmation and recordation of the assessment, the lien of the assessments, the notice of recordation, the collection of assessments, the issuance, sale and delivery of bonds upon unpaid assessments, the term of the bonds, the maximum interest rate thereon, the collection and enforcement of such bonds and all other matters to the extent applicable and except as provided in ORS 376.705 to 376.825.

(2) In so applying the provisions of ORS 223.005 to 228.105 and 223.205 to 223.930, the following provisions and exceptions shall apply:

(a) The limits provided by such law on the amount of the assessment shall not apply.

(b) The legislative body shall provide for the form of the bonds and of the principal and interest coupons to be attached thereto.

(c) The legislative body may provide that the redemption provision of the bonds shall require the payment of such premium as the legislative body may specify. [1961 c.666 §§27,28]

376.800 Special fund for payment of damages and expenses; use of surplus. (1) All collections of assessments and all proceeds of the sale of bonds issued upon unpaid assessments shall be placed in a special fund and used exclusively for the payment of the damages, if any, and expenses for which the assessments were levied.

(2) If there is a surplus in such special fund, the legislative body may expend such surplus for the improvement or operation of the pedestrian mall. [1961 c.666 §29]

376.805 Payment of damages and other expenses from sources other than assessments and bonds. Notwithstanding the fact that the proceedings under ORS 376.705 to 376.825 have provided that assessments are to be levied as contemplated by ORS 376.735, the legislative body, at any time and either before or after the adoption of the resolution provided for in ORS 376.780 (1), may determine that such assessments shall not be levied. In lieu thereof the legislative body may provide for the payment of all or any part of the amounts referred to in ORS 376.790, out of general funds of the city or out of any other available funds. [1961 c.666 §30]

376.810 Ordinance establishing mall; contents. Following the adoption of the resolution provided for in ORS 376.780 (1), and as soon as moneys have been fully provided for the payment of all claims, if any, allowed pursuant to ORS 376.770, and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant to ORS chapter 35, the legislative body may adopt an ordinance establishing the pedestrian mall. Such ordinance shall contain:

(1) A general description of the pedestrian mall and a declaration and determination that the same is finally established. The mall as finally established shall be substantially the same as that described in the resolution of intention.

(2) Rules and regulations prohibiting vehicular traffic on such pedestrian mall subject to such exceptions as the ordinance may provide. Such rules and regulations and such

exceptions shall be substantially in accordance with the statements made in the resolution of intention.

(3) Such additional rules and regulations as the legislative body may determine pertaining to the interpretation, operation and enforcement of the rules and regulations referred to in subsection (2) of this section, and otherwise pertaining to the use, operation, maintenance of the pedestrian mall.

(4) Such provisions as the legislative body may determine pertaining to the operative date or dates of any of such rules or regulations. [1961 c.666 §31]

376.815 Adoption of ordinance; payment of claims, damages and compensation. (1) Such ordinance shall be adopted and published in the manner, and shall take effect, as provided by law or charter for other ordinances of the city. Such ordinance shall be subject to referendum in the same manner as other ordinances of the city.

(2) No payment of allowed claims or damages or compensation awarded by any court shall be made until such ordinance is in effect but all such allowed claims, damages and compensation shall be paid before the rules and regulations provided in such ordinance become operative. [1961 c.666 §§32,33]

376.820 Jurisdiction over mall; abandonment or modification. (1) Proceedings under ORS 376.705 to 376.825 and the adoption of such ordinance notwithstanding, the city and its legislative body shall retain its police powers and other rights and powers relating to the city streets constituting a part of the pedestrian mall. No action taken pursuant to ORS 376.705 to 376.825 shall be interpreted or construed to be a vacation or abandonment, in whole or in part, of any city street or any right therein, it being intended that the establishment of a pedestrian mall pursuant to ORS 376.705 to 376.825 be a matter of regulation only.

(2) Nothing in ORS 376.705 to 376.825 shall be interpreted or construed to prevent the city and its legislative body, at any time subsequent to the adoption of the ordinance provided for in ORS 376.705 to 376.825, from abandoning the operation of the pedestrian mall, from changing the extent of the pedestrian mall, or from changing or repealing any of the rules and regulations pertaining to the pedestrian mall. [1961 c.666 §34]

376.825 Improvements on mall; payment of costs. (1) The city and its legislative body shall have the power to improve a pedestrian mall as provided in ORS 376.720 (1)(d), and for the accomplishment, in whole or in part, of that purpose may use ORS 223.005 to 223.105 and 223.205 to 223.930 or any similar special assessment law. Any work or improvement permitted by such statutes shall be deemed to be work or improvement permitted to be done under any such Act or law. The city may also pay the whole or any part of the cost and expenses of improving a pedestrian mall from its general funds or from any other available money and may let contracts for the work in any manner permitted by law or charter.

(2) A pedestrian mall established or to be established pursuant to ORS 376.705 to 376.825 may be so improved either concurrently with the proceedings taken under ORS 376.705 to 376.825 for the establishment of the pedestrian mall or at any time subsequent to the establishment of the city mall, but no contract for the work or improvement shall be awarded until moneys have been fully provided for the payment of all claims allowed pursuant to ORS 376.770 and for the payment of all damages and compensation, if any, awarded in any action or actions brought pursuant hereof. If in connection with the establishment of a pedestrian mall and concurrently with the proceedings taken pursuant to ORS 376.705 to 376.825, the legislative body proposes to improve the proposed pedestrian mall and for that purpose uses ORS 223.005 to 223.105 and 223.205 to 223.930 or any similar special assessment law, the legislative body may combine any part of the proceedings taken pursuant to ORS 376.705 to 376.825 with any part of the proceedings taken under any such special assessment law, to the end that duplication of ordinances, resolutions, notices, hearings and other acts or proceedings may be avoided. [1961 c.666 §§35,36]

PENALTIES

376.990 Penalties. (1) Operation of a motor vehicle by any person over a contract forest road in violation of the contract provisions as to equipment, weight, width, length or height, is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both. The definitions in ORS 376.310 apply to this section.

(2) Violation by any person of any of the provisions of ORS 376.305 to 376.390 is punishable, upon conviction, by a fine not exceeding $400 or by imprisonment in the county jail not exceeding one year, or both. [Amended by 1971 c.743 §361]

Chapter 377

2003 EDITION

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377.010 [Amended by 1959 c.382 §1; repealed by 1981 c.153 §79]

377.020 [Repealed by 1981 c.153 §79]

TREES

377.030 Destruction or removal of trees on state highways without permission prohibited. No person shall dig up, cut down, injure, destroy or in any manner remove any trees growing upon the right of way of any state highway without first procuring the written consent of the Department of Transportation.

377.040 Application to department to remove trees along state highways. Whenever any person, firm or corporation, including any public, municipal or private corporation and any privately or publicly owned utility or cooperative association, desires to dig up, cut down, injure, destroy or in any manner remove any trees growing upon the right of way of any state highway, such person shall file with the Department of Transportation an application in writing, setting forth the reasons and purpose for the removal or destruction of the trees.

377.050 Consent of department for removal of trees along state highways. (1) Upon the filing of the application mentioned in ORS 377.040 the Department of Transportation may, if in its judgment and discretion the destruction or removal of the trees will not mar or in any way affect the scenic beauty of or otherwise harm, injure or affect the highway, issue a permit authorizing the cutting down, digging up, removal or destruction of the trees under such conditions and in such manner as the department may in such permit designate.

(2) Such permits may be granted when it becomes necessary to cut or remove brush and tree growth which otherwise would be hazardous to the operation or maintenance of lines for the transmission of electric energy or communication, or which would impair the efficiency of the service of such lines to the public, but such cutting or removal shall be done in such manner as not substantially to impair the scenic beauty of the highway.

HISTORIC AND SCENIC HIGHWAYS

377.100 Study of highway system; designation of historic and scenic highways. The Oregon Transportation Commission shall conduct a study of the historic, scenic and cultural values of the state highway system. The study required by this subsection is subject to the following:

(1) In developing the study the commission shall appoint a volunteer citizen advisory committee to advise the commission on the study.

(2) The study shall identify and evaluate areas of the state highway system for their historic, recreational or scenic significance.

(3) The study shall designate highways, portions of highways or highway related structures as historic and scenic highways. [1983 c.552 §1; 1985 c.260 §1]

377.105 Effect of designation as historic and scenic highway. When a highway, portion of a highway or highway related structure is designated as an historic and scenic highway under ORS 377.100, the Oregon Transportation Commission and the Department of Transportation:

(1) Shall provide for the rehabilitation, restoration, maintenance and preservation of those features of the highway or structure that have historical, engineering, recreational, scenic or tourist related significance, whenever prudent and feasible.

(2) May consult with the State Historic Preservation Officer, state historic organizations and other appropriate groups or organizations to determine how to best rehabilitate, restore, maintain and preserve the significant features of the highway or structure.

(3) In all highway planning and funding considerations, shall provide for the continuance of the significant features of the highway or structure, whenever prudent and feasible.

(4) As the commission determines appropriate, may arrange for and provide for posting of signs, consistent with ORS 377.700 to 377.840, 810.200 and 810.210, to inform the traveling public of the location and significant features of the highway or structure.

(5) Shall not dismantle, destroy, abandon, significantly transform or sell the highway or structure or any portion thereof or take any other action that will adversely affect the preservation of the highway or structure as an historic and scenic highway when it is prudent or feasible not to take such action.

(6) May provide for bypass highways to divert damaging traffic from use of the highway or structure or provide other means of limiting or diverting use of the highway or structure by damaging traffic.

(7) Are directed to seek and may accept and use for the purposes of this section and ORS 377.100 contributions, gifts, grants and moneys from any source, public or private.

(8) May hold hearings that have been given appropriate public notification before any significant action is taken relating to a highway, portion of a highway or highway related structure that is so designated.

(9) Shall consider aesthetics and environmental effects when the only alternative to rehabilitation or restoration is to replace a portion of a highway or highway related structure so designated. [1983 c.552 §2; 1985 c.16 §461; 1985 c.260 §2]

377.110 [1955 c.541 §1; repealed by 1959 c.309 §22]

377.115 [1959 c.309 §1; 1965 c.219 §1; repealed by 1971 c.770 §31]

377.120 [1955 c.541 §2; repealed by 1959 c.309 §22]

377.125 [1959 c.309 §2; 1963 c.400 §1; 1965 c.219 §2; repealed by 1971 c.770 §31]

377.130 [1955 c.541 §3; repealed by 1959 c.309 §22]

377.135 [1959 c.309 §3; 1965 c.219 §3; repealed by 1971 c.770 §31]

377.140 [1955 c.377 §14; 1959 c.94 §1; repealed by 1959 c.309 §22]

377.145 [1959 c.309 §4; 1965 c.219 §4; repealed by 1971 c.770 §31]

377.150 [1955 c.541 §4; repealed by 1959 c.309 §22]

377.155 [1959 c.309 §5; 1965 c.219 §5; repealed by 1971 c.770 §31]

377.160 [1955 c.541 §5; repealed by 1959 c.309 §22]

377.165 [1959 c.309 §6; repealed by 1971 c.770 §31]

377.170 [1955 c.541 §15; repealed by 1959 c.309 §22]

377.175 [1959 c.309 §7; 1965 c.219 §6; repealed by 1971 c.770 §31]

377.178 [1965 c.219 §13; repealed by 1971 c.770 §31]

377.180 [1955 c.541 §6; repealed by 1959 c.309 §22]

377.181 [1961 c.615 §13; 1965 c.219 §7; repealed by 1971 c.770 §31]

377.185 [1959 c.309 §8; 1961 c.615 §9; 1965 c.219 §8; repealed by 1971 c.770 §31]

377.190 [1955 c.541 §7; repealed by 1959 c.309 §22]

377.195 [1959 c.309 §9; 1961 c.615 §10; 1965 c.219 §9; repealed by 1971 c.770 §31]

377.200 [1955 c.541 §8; repealed by 1959 c.309 §22]

377.205 [1959 c.309 §10; 1961 c.615 §11; repealed by 1965 c.219 §10 (377.206 enacted in lieu of 377.205)]

377.206 [1965 c.219 §11 (enacted in lieu of 377.205); repealed by 1971 c.770 §31]

377.210 [1955 c.541 §9; repealed by 1959 c.309 §22]

377.215 [1959 c.309 §11; 1963 c.400 §2; 1965 c.219 §14; repealed by 1971 c.770 §31]

377.220 [1955 c.541 §10; repealed by 1959 c.309 §22]

377.225 [1959 c.309 §12; 1963 c.400 §3; 1965 c.219 §15; repealed by 1971 c.770 §31]

377.230 [1955 c.541 §11; repealed by 1959 c.309 §22]

377.235 [1959 c.309 §13; 1963 c.400 §4; 1965 c.219 §16; repealed by 1971 c.770 §31]

377.240 [1955 c.541 §12; repealed by 1959 c.309 §22]

377.245 [1959 c.309 §14; 1963 c.400 §5; 1965 c.219 §17; repealed by 1971 c.770 §31]

377.250 [1955 c.541 §16; repealed by 1959 c.309 §22]

377.255 [1959 c.309 §15; 1961 c.615 §14; 1963 c.400 §6; 1965 c.219 §18; repealed by 1971 c.770 §31]

377.260 [1955 c.541 §18; repealed by 1959 c.309 §22]

377.265 [1959 c.309 §16; 1963 c.400 §7; 1965 c.219 §19; repealed by 1971 c.770 §31]

377.270 [1955 c.541 §17; repealed by 1959 c.309 §22]

377.275 [1959 c.309 §17; 1963 c.400 §8; 1965 c.219 §20; repealed by 1971 c.770 §31]

377.280 [1955 c.541 §13; 1957 c.465 §2; repealed by 1959 c.309 §22]

377.285 [1959 c.309 §18; 1961 c.615 §15; 1963 c.400 §9; 1965 c.219 §21; repealed by 1971 c.770 §31]

377.295 [1959 c.309 §19; 1963 c.400 §10; 1965 c.219 §22; repealed by 1971 c.770 §31]

377.305 [1959 c.309 §20; 1963 c.400 §11; repealed by 1971 c.770 §31]

377.310 [Repealed by 1953 c.335 §1]

377.320 [Repealed by 1953 c.335 §1]

377.330 [Repealed by 1953 c.335 §1]

377.340 [Repealed by 1971 c.770 §31]

377.350 [Repealed by 1971 c.770 §31]

377.360 [Amended by 1957 c.663 §3; repealed by 1971 c.770 §31]

377.405 [1961 c.615 §1; 1963 c.400 §12; repealed by 1971 c.770 §31]

377.410 [1961 c.615 §5; 1963 c.400 §13; repealed by 1971 c.770 §31]

377.415 [1961 c.615 §§7,16; repealed by 1971 c.770 §31]

377.420 [1961 c.615 §§2,4; repealed by 1971 c.770 §31]

377.425 [1961 c.615 §8; 1963 c.400 §14; repealed by 1971 c.770 §31]

377.430 [1961 c.615 §6; repealed by 1971 c.770 §31]

SCENIC AREAS

377.505 Definitions for ORS 377.505 to 377.540. As used in ORS 377.505 to 377.540:

(1) "Public highway" means the entire width between the boundary lines of every state highway as defined in ORS 366.005.

(2) "Scenic area" means an area adjacent to or along a segment of a public highway that is within a federal or state park, is a site of historical significance or affords a view of unusual natural beauty, and has been established as a scenic area under the provisions of ORS 377.505 to 377.545 (1975 Replacement Part). [1961 c.614 §1; 1963 c.400 §15; 1965 c.219 §23; 1967 c.590 §13; 1977 c.578 §3; 1979 c.186 §15]

377.510 Signs visible from public highways regulated; junkyards prohibited; exceptions. (1) No sign which is visible from a public highway shall be erected or maintained in an area which has been established by final order as a scenic area except:

(a) Directional or other official signs or notices.

(b) Signs advertising the sale or lease of the property upon which they are located.

(c) Signs advertising only the name or nature of the business being conducted on, or the products, facilities, goods or services being sold, supplied or distributed on or from the premises on which the signs are located.

(d) Signs approved by the Director of Transportation, or the authorized representative of the director, erected and maintained by a public utility or telecommunications utility for the purpose of giving warning of the location of an underground cable or other installations.

(e) Signs identifying incorporated or unincorporated communities, erected in compliance with ORS 377.715 and 377.756 to 377.758, that are designed to complement the scenic quality of the area in which they are erected. Signs located in snow zones may be more than eight feet in height to compensate for snow if approved by the director.

(2) Unless adequately screened as provided in ORS 377.620 (3)(a) or unless located within a zoned industrial area, no junkyard shall be established which is visible from a public highway where the area immediately adjacent to the public highway has been established by final order as a scenic area. [1961 c.614 §7; 1965 c.219 §24; 1967 c.590 §14; 1987 c.447 §122; 1991 c.287 §1; 1993 c.741 §45]

377.515 Removal of nonconforming signs deferred. Any sign lawfully maintained in a scenic area prior to the establishment of the area as a scenic area and not included within the exceptions of ORS 377.510, shall be removed by the owner thereof prior to seven years following the establishment of the area as a scenic area, unless the sign is required to be removed at an earlier date, pursuant to other state laws. [1961 c.614 §8; 1965 c.219 §25; 1967 c.590 §15]

377.520 [1961 c.614 §2; 1963 c.400 §16; 1965 c.219 §26; repealed by 1977 c.578 §5]

377.521 Status of previously designated scenic areas. All scenic areas designated prior to October 4, 1977, shall continue to retain their designation as scenic areas. [1977 c.578 §2]

Note: 377.521 was enacted into law by the Legislative Assembly but was not added to ORS 377.505 to 377.540 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

377.525 [1961 c.614 §4; 1963 c.400 §17; 1969 c.314 §30; repealed by 1977 c.578 §5]

377.530 [1961 c.614 §5; 1963 c.400 §18; repealed by 1977 c.578 §5]

377.535 [1961 c.614 §6; 1963 c.400 §19; repealed by 1977 c.578 §5]

377.540 Director of Transportation to enforce orders and render administrative assistance. The Director of Transportation shall take appropriate action for the administration and enforcement of orders issued under the provisions of ORS 377.505 to 377.545 (1975 Replacement Part). [1961 c.614 §10; 1963 c.400 §20; 1977 c.578 §4; 1993 c.741 §46]

377.545 [1961 c.614 §9; repealed by 2001 c.750 §7]

JUNKYARDS

377.605 Definitions for ORS 377.605 to 377.655. As used in ORS 377.605 to 377.655, unless the context requires otherwise:

(1) "Department" means the Department of Transportation.

(2) "Director" means the Director of Transportation.

(3) "Federal-aid primary system" means the federal-aid primary system in existence on June 1, 1991, and any highway that is not on such system but that is on the National Highway System.

(4) "Interstate System" means every state highway that is part of the National System of Interstate and Defense Highways established by the department in compliance with section 103(e) of title 23, United States Code.

(5) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, wrecked, scrapped or ruined motor vehicles, or motor vehicle parts, iron, steel or other old or scrap ferrous, or nonferrous material, metal or nonmetal materials.

(6) "Junkyard" means any establishment or place of business where there is accumulated on the premises eight or more motor vehicles or an equivalent volume of junk that is maintained, operated or used for storing, keeping, buying or selling of junk and the term includes automobile graveyards, garbage dumps and scrap metal processing facilities.

(7) "Maintain" means to allow to exist.

(8) "Main traveled way" means the through traffic lanes, exclusive of frontage roads, auxiliary lanes and ramps.

(9) "State highway" or "state highway system" means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

(10) "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

(11) "Zoned industrial area" is an area adjacent to a state highway or public highway which is zoned for industrial use under authority of state law. [1967 c.590 §3; 1979 c.186 §16; 1979 c.210 §1; 1993 c.741 §47]

377.610 Public policy on junkyards. The Legislative Assembly hereby finds and declares that establishment, maintenance and operation of junkyards along public highways should be controlled in accordance with the provisions of ORS 377.605 to 377.655 in order to protect the public investment in such highways, promote the safety and recreational value of public travel on such highways, preserve natural beauty and aesthetic features of such highways and adjacent areas, and maintain the qualifications of this state for its share of federal-aid highway funds payable under title 23, United States Code, and in furtherance of the purposes previously established under ORS 366.556 to 366.578. [1967 c.590 §2]

377.615 Director's authority to promulgate regulations, enter agreements with federal government. (1) The Director of Transportation shall promulgate such regulations as are necessary to carry out the provisions of ORS 377.605 to 377.655. Except where federal law or rules and regulations require otherwise as a condition to receipt of federal granted funds, the rules shall be promulgated pursuant to ORS chapter 183.

(2) The director is authorized to enter into any necessary agreements with the United States Government or any officer or agency thereof authorized to make agreements pursuant to title 23, United States Code, relating to the control of junkyards in areas adjacent to the state highway system. [1967 c.590 §4; 1993 c.741 §48]

377.620 Restrictions on maintaining or establishing junkyard along highway. (1) Except as provided in subsection (3) of this section, no junkyard in existence on June 30, 1967, may be maintained after June 30, 1967, within 1,000 feet of the nearest edge of the right of way of:

(a) The Interstate System.

(b) The federal-aid primary system.

(c) Other state highways, unless permitted by the Director of Transportation and subject to rules adopted by the director.

(2) Except as provided in subsection (3) of this section, no junkyard shall be established after June 30, 1967, within 1,000 feet of the nearest edge of the right of way of any state highway or which is visible from any public highway, as defined by ORS 377.505, where the area immediately adjacent to the public highway retains designation as a scenic area pursuant to ORS 377.521.

(3) Except as provided in ORS 377.510 relating to location of junkyards within or adjacent to designated scenic areas, this section does not prohibit the establishment or maintenance along state highways of the following junkyards:

(a) Junkyards that are hidden or adequately screened by the terrain or other natural objects, or by plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the state highway, in accordance with regulations promulgated by the director.

(b) Junkyards located in zoned industrial areas.

(4) No owner or operator of a junkyard shall place any junk on a state highway right of way. [1967 c.590 §5; 1975 c.262 §1; 1983 c.740 §122; 1993 c.741 §49]

377.625 Screening junkyard located in restricted area. (1) Any junkyard which is in existence on June 30, 1967, less than 1,000 feet from the nearest edge of the right-of-way line and visible from the main traveled way of the Interstate System or the federal-aid primary system and is not in a zoned industrial area, may be screened by the Director of Transportation, if economically and otherwise feasible, at locations on the highway rights of way or in areas outside of the rights of way acquired for such purposes by the Department of Transportation.

(2) Any junkyard which is in existence on June 30, 1967, less than 1,000 feet from the nearest edge of the right-of-way line and which is visible from the main traveled way of any state highway other than the Interstate System or federal-aid primary system and is not in a zoned industrial area, may be screened by the director when it is financially, economically and otherwise feasible. The screening may be located on the highway rights of way or in areas outside the rights of way acquired for such purposes by the department. [1967 c.590 §6; 1979 c.210 §2; 1993 c.741 §50]

377.630 Removing junkyard from restricted area. (1) Where a junkyard is in existence on June 30, 1967, less than 1,000 feet of the nearest edge of the right-of-way line of the Interstate System or federal-aid primary system, is not in a zoned industrial area, and cannot be effectively screened as provided in ORS 377.625 (1), then the Department of Transportation may secure such interests in land as may be necessary to relocate, remove or dispose of the junkyard and may pay for the cost of relocation, removal or disposal thereof, as set forth in ORS 377.640.

(2) Where a junkyard is in existence less than 1,000 feet of the nearest edge of the right-of-way line and visible from the main traveled way of any state highway which becomes a part of the Interstate System or federal-aid primary system and is not in a zoned industrial area, the junkyard may be screened as provided in subsection (1) of this section or may be relocated, removed or disposed of by the department after the portion of the state highway involved becomes a part of the Interstate System or the federal-aid primary system, as provided in subsection (1) of this section.

(3) Where a junkyard is in existence on June 30, 1967, less than 1,000 feet of the nearest edge of the right-of-way line of any state highway other than the Interstate System or federal-aid primary system, is not in a zoned industrial area, and cannot be effectively screened as provided in ORS 377.625 (2), then the department may, in its discre-

tion, secure such interests in lands as may be necessary to relocate, remove or dispose of the junkyard. [1967 c.590 §7; 1979 c.210 §3]

377.635 Junkyard in violation of restrictions declared a public nuisance; authority to abate; when junk placed on state highway right of way. (1) Any junkyard which comes into existence after June 30, 1967, and which is in violation of ORS 377.620, is hereby found and declared to be a public nuisance. The Director of Transportation, 30 days after written notice is mailed to the person owning or operating the junkyard, may institute, on behalf of the Department of Transportation any legal proceedings the director considers necessary to prevent the violation of ORS 377.620.

(2) Whenever the owner or operator of a junkyard places junk on state highway right of way adjacent to or in the immediate vicinity of the junkyard, the director, 10 days after written notice is mailed to the person owning or operating the junkyard, may remove and store the junk. Junk placed on a highway right of way adjacent to or in the vicinity of a junkyard is prima facie evidence that it has been placed there by the owner or the operator of the junkyard. After 30 days of storage, unless claimed sooner by the owner, the director may sell or otherwise dispose of the junk by sale or otherwise. When removal is performed by the director, the director shall not be liable for conversion of any personal property and the director may collect the director's cost for removal, storage and sale or disposal from the person owning the junk. [1967 c.590 §8; 1975 c.262 §2; 1979 c.210 §4; 1993 c.741 §51]

377.640 Acquisition of land necessary to screen or relocate junkyards. The Department of Transportation may acquire by purchase, agreement, donation, or the exercise of the power of eminent domain, such lands or interest in lands as may be necessary for the screening or the relocation, removal or disposal of junkyards. In exercising the power of eminent domain the department shall be governed by the provisions of ORS chapter 35. [1967 c.590 §9; 1971 c.741 §36]

377.645 Expenditure of moneys to screen or relocate junkyards prior to availability of federal matching funds. (1) The Department of Transportation may expend moneys appropriated to the department for the purposes of the screening, relocating, removal or disposal of junkyards as provided in ORS 377.625 to 377.640, except that the department may not use moneys that are subject to the provisions of section 3a, Article IX of the Oregon Constitution. Moneys appropriated for the purposes specified in this subsection may be expended by the department unless and until federal-aid matching funds are appropriated and made available to the state for such similar purposes as provided in section 136, title 23, United States Code.

(2) All money received by the Director of Transportation under ORS 377.505, 377.510, 377.515 and 377.605 to 377.655 shall be credited to the State Highway Fund. [1967 c.590 §§10,11; 1983 c.338 §924; 1993 c.741 §52; 2001 c.750 §1]

377.650 Personal property not junk as nuisance; disposition of property; liability. Any personal property not coming within the definition of junk, except a vehicle as defined in ORS 801.590, which is deposited, left or displayed on a state highway is hereby found and declared to be a public nuisance. The Director of Transportation may do any of the following with respect to personal property declared to be a nuisance by this section:

(1) Ten days after written notice is mailed to the person owning the personal property, the director may institute on behalf of the Department of Transportation any legal proceedings the director considers necessary to prevent the violation of this section.

(2) Ten days after written notice, the director may remove the personal property and store it. After 30 days of storage, unless claimed sooner by the owner, the director may sell or otherwise dispose of the personal property. Where removal is performed by the director, the director shall not be liable for any conversion of personal property and may collect the cost for removal, storage and sale or disposal of the personal property from the person owning it.

(3) If the property is a sign, as defined under ORS 377.710, that is portable or if the property has been repeatedly deposited, left or displayed in violation of this section, the director may follow the procedures under ORS 377.655. This subsection applies notwithstanding any other provision of this section. [1975 c.262 §4; 1983 c.338 §925; 1985 c.110 §1; 1993 c.741 §53; 1999 c.59 §102]

Note: The amendments to 377.650 by section 73, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

377.650. Any personal property not coming within the definition of junk, except a vehicle as defined in ORS 801.590 or a manufactured structure as defined in ORS 446.561, that is deposited, left or displayed on a state highway is hereby found and declared to be a public nuisance. The Director of Transportation may do any of the following with respect to personal property declared to be a nuisance by this section:

(1) Ten days after written notice is mailed to the person owning the personal property, the director may institute on behalf of the Department of Transportation any legal proceedings the director considers necessary to prevent the violation of this section.

(2) Ten days after written notice, the director may remove the personal property and store it. After 30 days of storage, unless claimed sooner by the owner, the director may sell or otherwise dispose of the personal property. Where removal is performed by the director, the director shall not be liable for any conversion of personal property and may collect the cost for removal, storage and sale or disposal of the personal property from the person owning it.

(3) If the property is a sign, as defined under ORS 377.710, that is portable or if the property has been repeatedly deposited, left or displayed in violation of this section, the director may follow the procedures under ORS 377.655. This subsection applies notwithstanding any other provision of this section.

377.655 Rules for removal and disposition of signs and property in violation of ORS 377.650. (1) The department shall adopt rules consistent with this section to provide procedures for the removal and disposition of portable signs or personal property that has been repeatedly left, deposited or displayed in violation of ORS 377.650.

(2) Rules adopted by the department under this section may provide for any of the following:

(a) A reduction in the times required for notice of violation, opportunity for hearing, opportunity to remove the violation and removal of the violation.

(b) Removal of the violation without prior notice if the person committing the violation has been given prior notice of the violation. If removal is provided under this paragraph, opportunity for hearing must be provided by the rules within five days after the removal.

(c) Any other rules concerning removal and disposition of such violations that the department determines will reduce the repeating of such violations. [1985 c.110 §2]

MOTORIST INFORMATION SIGNS

(General Provisions)

377.700 Short title. ORS 377.700 to 377.840 and 377.992 shall be known and may be cited as the Oregon Motorist Information Act of 1971. [1971 c.770 §1]

377.705 Policy. To promote the public safety; to preserve the recreational value of public travel on the state's highways; to preserve the natural beauty and aesthetic features of such highways and adjacent areas; to provide information about and direct travelers to public accommodations, services for the traveling public, campgrounds, parks, recreational areas, and points of scenic, historic, cultural and educational interest, it is the policy of this state and the purpose of ORS 377.700 to 377.840 and 377.992:

(1) To establish official information centers and motorist informational signs, including sign plazas in appropriate locations for the convenient arrangement of those signs.

(2) To provide for publication and distribution of official guidebooks and other publications.

(3) To prohibit the indiscriminate use of other outdoor advertising.

(4) To provide motorists, where feasible, a telephone emergency, information and reservation system for lodging. [1971 c.770 §2; 1999 c.877 §1]

377.707 Identifying location of signs on construction plans; repair or replacement of damaged signs. (1) The Department of Transportation shall ensure that all construction and engineering plans for state highways identify the locations of motorist informational signs, tourist oriented directional signs and logo signs. The department shall adopt written plans for protecting the signs from damage during construction.

(2) If any sign specified in subsection (1) of this section is damaged, destroyed or lost as a result of work on a highway done by the department, the department shall repair or replace the sign. [2001 c.402 §2]

Note: 377.707 was added to and made a part of 377.700 to 377.840 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

377.708 Effect on certain signs of transfer of jurisdiction over state highway. (1) As part of the negotiation process between the Department of Transportation and another road authority concerning transfer of jurisdiction over a state highway from the department to the other road authority, the department shall identify any tourist oriented directional signs and logo signs on the state highway that will be affected by the transfer. If there are such signs, the department shall notify the Travel Information Council of the proposed transfer of jurisdiction.

(2) When signs described in subsection (1) of this section are identified, the road authority that will receive jurisdiction over the state highway shall, as part of the negotiation process, agree in writing to protect the signs from destruction or removal. The transfer of jurisdiction may not take place until the receiving road authority has entered into the written agreement described in this subsection.

(3) After the transfer of jurisdiction, the Travel Information Council shall retain authority over signs on the highway as though the highway were still a state highway.

(4) After a transfer of jurisdiction over a state highway from the department to another road authority, the council shall notify the receiving road authority of any request

for a new sign and shall request approval of the sign's location from that road authority. [2003 c.388 §2]

Note: 377.708 was added to and made a part of 377.700 to 377.840 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

377.710 Definitions for ORS 377.700 to 377.840. As used in ORS 377.700 to 377.840 unless the context otherwise requires:

(1) "Back-to-back sign" means a sign with multiple display surfaces mounted on a single structure with display surfaces visible to traffic from opposite directions of travel.

(2) "Business identification sign" means a sign not exceeding 32 square feet that identifies a business and that displays only information necessary to adequately describe the business and the direction and distance to the business.

(3) "Commercial or industrial zone" means an area, adjacent to a state highway, that is zoned for commercial or industrial use by or under state statute or local ordinance.

(4) "Council" means the Travel Information Council created by ORS 377.835.

(5) "Cutout" means every type of display in the form of letters, figures, characters or other representations in cutout or irregular form attached to and superimposed upon a sign.

(6) "Department" means the Department of Transportation.

(7) "Directional sign" means a sign:

(a) Identifying and containing directional information to one or more public places owned or operated by federal, state or local governments or one of their agencies;

(b) Identifying and containing directional information to publicly or privately owned natural phenomena or historic, cultural, scientific, educational and religious sites; or

(c) Identifying and containing directional information to areas of natural scenic beauty or areas naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

(8) "Director" means the Director of Transportation.

(9) "Display surface" means the area of a sign made available for the purpose of displaying the advertising or informational message.

(10) "Double-faced sign" means a sign with multiple display surfaces with two or more separate and different messages visible to traffic from one direction of travel.

(11) "Erect" means to construct, build, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish.

(12) "Federal-aid primary system" or "primary highway" means the federal-aid primary system in existence on June 1, 1991, and any highway that is not on such system but that is on the National Highway System.

(13) "Freeway" means a divided arterial highway with four or more lanes available for through traffic with full control of access and grade separation at intersections.

(14) "Governmental unit" means the federal government, the state, or a city, county or other political subdivision or an agency thereof.

(15) "Interstate highway" or "interstate system" means every state highway that is a part of the National System of Interstate and Defense Highways established pursuant to section 103(e), title 23, United States Code.

(16) "Logo" means a symbol or design used by a business as a means of identification of its products or services.

(17) "Logo sign" means a sign located on highway right of way on which logos for gas, food, lodging and camping are mounted.

(18) "Maintain," "maintained," "maintaining" or "maintenance" includes painting, changing advertising or information on display surfaces, adding or removing a cutout, routine repairs necessary to maintain the sign in a neat, clean, attractive and safe condition, and the term includes allowing to exist.

(19) "Main-traveled way" means the through traffic lanes, exclusive of frontage roads, auxiliary lanes and ramps.

(20) "Motorist informational sign" means a sign erected in a safety rest area, scenic overlook or sign plaza and maintained under the authority of ORS 377.700 to 377.840 to inform the traveling public about public accommodations, services for the traveling public and points of scenic, historic, cultural, scientific, outdoor recreational and educational interest.

(21) "Nonconforming sign" means a sign that is subject to, but does not comply with, the provisions of ORS 377.700 to 377.840.

(22) "On-premises sign" means a sign designed, intended or used to advertise, inform or attract the attention of the public as to:

(a) Activities conducted on the premises on which the sign is located; or

(b) The sale or lease of the premises on which the sign is located.

(23) "Outdoor advertising sign" means a sign designed, intended or used to advertise, inform or attract the attention of the public as to:

(a) Goods, products or services which are not sold, manufactured or distributed on or from the premises on which the sign is located;

(b) Facilities not located on the premises on which the sign is located; or

(c) Activities not conducted on the premises on which the sign is located.

(24) "Protected area" means an area located within 660 feet of the edge of the right of way of any portion of an interstate highway constructed upon any part of right of way, the entire width of which was acquired by the State of Oregon subsequent to July 1, 1956, and which portion or segment does not traverse:

(a) A commercial or industrial zone within the boundaries of a city, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate highway is subject to municipal regulation or control; or

(b) Other areas where land use, as of September 21, 1959, is established as industrial or commercial pursuant to state law.

(25) "Reconstruction" means replacing a sign totally or partially destroyed, increasing its size or performing any work, except maintenance work, that alters or changes a sign authorized to exist under the provisions of ORS 377.700 to 377.840.

(26) "Relocation" includes, but is not limited to the removal of a sign from one situs together with the erection of a new sign upon another situs as a substitute therefor.

(27) "Rest area" means an area established and maintained within or adjacent to a state highway right of way by or under public supervision or control for the convenience of the traveling public, and includes safety rest areas, scenic overlooks or similar roadside areas.

(28) "Secondary highway" means any state highway other than an interstate highway or primary highway.

(29) "Sign" means any sign, display, message, emblem, device, figure, painting, drawing, placard, poster, billboard or other thing that is designed, used or intended for advertising purposes or to inform or attract the attention of the public, and the term includes the sign structure, display surface and all other component parts of a sign; when dimensions of a sign are specified, the term includes panels and frames; and the term includes both sides of a sign of specified dimensions or area.

(30) "Sign area" means the overall dimensions of all panels capable of displaying messages on a sign structure.

(31) "Sign plaza" means a structure erected and maintained by or for the department or the Travel Information Council, adjacent or in close proximity to a state highway, for the display of motorist information.

(32) "Sign regulations for protected areas" means regulations promulgated by the department applicable to signs erected within protected areas prior to, and in effect on, July 2, 1971, or amendments to such regulations promulgated by the department.

(33) "Sign structure" or "structure" means the supports, uprights, braces, framework and display surfaces of a sign.

(34) "State highway," "highway" or "state highway system" means the entire width between the boundary lines of the right of way of every state highway, as defined by ORS 366.005, and the terms also include the interstate system and the federal-aid primary system.

(35) "Tourist oriented directional sign" means a sign erected on state highway right of way to provide business identification and directional information for services and activities of interest to tourists.

(36) "Traffic control sign or device" means an official route marker, guide sign, warning sign, or sign directing or regulating traffic, which has been erected by or under the order of the department.

(37) "Tri-vision sign" means an outdoor advertising structure that contains display surfaces composed of a series of three-sided rotating slats arranged side by side, either horizontally or vertically, that are rotated by an electromechanical process, capable of displaying a total of three separate and distinct messages, one message at a time, provided that the rotation from one message to another message is no more frequent than every eight seconds and the actual rotation process is accomplished in four seconds or less.

(38) "V-type sign" means two signs erected independently of each other with multiple display surfaces having single or multiple messages visible to traffic from opposite directions, with an interior angle between the two signs of not more than 120 degrees and the signs separated by not more than 10 feet at the nearest point.

(39) "Visible" means capable of being seen without visual aid by a person of normal visual acuity, whether or not legible from the main-traveled way of any state highway.

(40) "Waiver" means an agreement executed between the owner of a sign, the owner of the property on which the sign is located and the department which provides

that those signs erected adjacent to an interstate or primary highway after October 22, 1965, shall be removed, with partial compensation or no compensation, as provided by the agreement. [1971 c.770 §3; 1973 c.790 §1; 1974 c.33 §1; 1975 c.336 §1; 1977 c.265 §1; 1983 c.111 §1; 1987 c.336 §2; 1993 c.741 §54; 1999 c.877 §2]

377.712 Issuance of permits for certain preexisting signs. (1) Notwithstanding the provisions of ORS 377.700 to 377.780, the owner of any outdoor advertising sign in existence on June 12, 1975, located in a commercial or industrial zone in existence on June 12, 1975, that meets all requirements for obtaining an outdoor advertising sign permit as set out in ORS 377.700 to 377.780 and for which the owner had not secured an outdoor advertising permit as required by ORS 377.725 prior to June 12, 1975, either because of ignorance of the requirements of ORS 377.725 or because the area, road or street adjacent to which the sign was situated was not, at that time, designated as a state highway, shall be entitled to the issuance of an outdoor advertising sign permit by the Department of Transportation upon application by the owner of the sign and the payment of the fee established by the department under ORS 377.729.

(2) Notwithstanding the provisions of ORS 377.700 to 377.780, the owner of any outdoor advertising sign visible from a road or street that is designated as a state highway after February 19, 1990, is entitled to the issuance of an outdoor advertising sign permit for the sign upon application by the owner of the sign, payment of the fee established by the department under ORS 377.729 and receipt of the affidavit required under ORS 377.723, if the sign was legally located within a commercial or industrial zone at the time of designation as a state highway. [1977 c.265 §7; 1993 c.376 §1; 2001 c.104 §127; 2001 c.750 §4]

Note: 377.712 was enacted into law by the Legislative Assembly but was not added to or made a part of any series in ORS chapter 377 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Signs, Generally)

377.715 Application of ORS 377.700 to 377.840; prohibition against erection or maintenance of certain signs not in compliance with law. ORS 377.700 to 377.840, and the rules adopted pursuant thereto, apply to outdoor advertising signs, on-premises signs and directional signs erected or maintained outside the right of way along state highways and visible to the traveling public from a state highway. A person may not erect or maintain an outdoor advertising, on-premises or directional sign visible to the traveling public from a state highway, except where permitted outside the right of way of a state highway, unless it complies with the provisions of ORS 377.505 to 377.540, 377.700 to 377.840, and the rules adopted pursuant thereto, and with applicable federal requirements as of October 23, 1999, including any statute, regulation or contract. A person may not erect or maintain an outdoor advertising sign, directional sign or on-premise sign on the right of way of a state highway. [1971 c.770 §8; 1973 c.790 §2; 1974 c.33 §2; 1975 c.336 §2; 1983 c.111 §2; 1987 c.336 §3; 1999 c.877 §3]

377.720 Prohibited signs; exceptions. A sign may not be erected or maintained if it:

(1) Interferes with, imitates or resembles any official traffic control sign, signal or device, or attempts or appears to attempt to direct the movement of traffic.

(2) Prevents the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signs and approaching or merging traffic.

(3) Contains, includes or is illuminated by any flashing, intermittent, revolving, rotating or moving light or moves or has any animated or moving parts. This subsection does not apply to:

(a) A traffic control sign.

(b) Signs, displays, devices or portions thereof with lights that may be changed at intermittent intervals by electronic process or remote control providing only public service information such as time, date, temperature, weather or similar information.

(c) Signs, displays, devices or portions thereof with lights that may be changed at intermittent intervals by electronic process or remote control and that advertise activities conducted on the premises where the sign, display or device is located.

(d) A tri-vision sign, if allowed specifically for Oregon, in writing, by the United States Department of Transportation.

(4) Has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a state highway, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of a motor vehicle or otherwise to interfere with the operation thereof.

(5) Is located upon a tree, or painted or drawn upon a rock or other natural feature.

(6) Advertises or calls attention to a business or other activity or a profession, commodity, product, service or entertainment no longer carried on, produced, sold or offered.

(7) Advertises activities that are illegal under any state or federal law applicable at the location of the sign or of the activities.

(8) Is not maintained in a neat, clean and attractive condition and in good repair.

(9) Is not able to withstand a wind pressure of 20 pounds per square foot of exposed surface.

(10) Is on a vehicle or trailer that is located on public or private property. This subsection does not apply to a vehicle or trailer used for transportation by the owner or person in control of the property. [1971 c.770 §15; 1973 c.790 §3; 1977 c.256 §2; 1981 c.392 §1; 1999 c.877 §4]

377.723 Affidavit of city or county necessary for issuance of sign permit; requirements of affidavit. Notwithstanding any other provision of ORS 377.700 to 377.840, the Department of Transportation shall not issue a permit under ORS 377.725 or 377.767 unless the applicant for the permit submits affidavits that meet the following requirements:

(1) The applicant must submit an affidavit from each city or county that would have jurisdiction over the proposed sign.

(2) Each affidavit must contain a certification by the respective city or county that the proposed sign would comply with all applicable ordinances, plans, rules and other requirements of the city or county.

(3) Each affidavit must be on a form prepared by the department. [1981 c.329 §2; 1987 c.336 §4; 1993 c.741 §55]

377.725 Permit; application; fee; revocation; cancellation; transfer. (1) Unless an annual permit has been issued therefor, an outdoor advertising sign or a directional sign shall not be erected, maintained or replaced by any person.

(2) A person may apply for a permit to the Director of Transportation on forms furnished by the director. The permit application shall include a precise description of the sign and such other information as the director considers necessary or desirable to determine compliance with ORS 377.700 to 377.840. The director shall issue a permit for a sign that complies with ORS 377.700 to 377.840. A valid permit may be transferred to another person upon written notice to the director.

(3) A permit shall not be issued for an outdoor advertising sign or a directional sign located adjacent to an interstate highway or freeway unless the director determines that access to the sign from the interstate highway or freeway can be obtained without violating the access control line of the interstate highway or freeway.

(4) A permit shall be renewed annually on the first day of January. Application for renewal of a permit shall be filed prior to expiration of the term of the permit. If application for renewal of a permit is filed within 30 days after the expiration of the term, the permit shall be granted if any additional fee specified by the department in rules adopted under ORS 377.729 is paid at the time the application is filed. Any permit not renewed in accordance with this section shall be canceled.

(5) Permit fees for purposes of this section are as established by the department by rule under ORS 377.729.

(6) A permit shall be issued for one year. The applicable fee shall accompany the permit application. A fee shall not be prorated for a fraction of a year or be refunded if the sign is removed.

(7) Advertising or information on the display surface of a sign may be changed or cutouts may be attached or removed within the sign area without obtaining a permit. However, a permit shall be obtained if the sign is reconstructed.

(8) A reconstruction permit may be issued for the addition of another face on the opposite side of an existing, conforming sign under permit, that is no larger than the existing sign face.

(9) The director shall cancel a permit and require removal of the sign as provided by ORS 377.775 if the director finds a sign has been erected, maintained or serviced from the highway right of way at any portion of the right of way where the Department of Transportation has acquired rights of access to the highway or rights of access have not accrued to the abutting property. In addition, the department may recover from the owner of the sign or person erecting, maintaining or servicing the sign, the amount of damage to landscaping, sodding, fencing, ditching or other highway appurtenances resulting from such acts.

(10) The director may revoke a permit, unless a corrected application is filed or the sign is brought into compliance within 30 days after written notice thereof is mailed to the permittee, if the director finds:

(a) The applicant has knowingly supplied materially false or misleading information in the application for a permit or renewal thereof; or

(b) The sign covered by the permit is in violation of ORS 377.700 to 377.840.

(11) The director shall cancel a permit immediately upon failure of a permittee to erect or maintain the sign as described by the permit application and to attach a permit

tag thereto within 120 days after the date of issuance of the permit therefor.

(12) The director shall assign to every permit when issued for an outdoor advertising sign and a directional sign a permit plate with an identification number. The permittee shall attach the applicable permit plate to the sign so as to be visible from the adjacent state highway. The absence of a permit plate or failure to renew the permit annually is prima facie evidence that the sign does not comply with ORS 377.700 to 377.840.

(13) Except as otherwise provided in ORS 377.712 and 377.765, no permits shall be issued for the erection of any new outdoor advertising sign after June 12, 1975.

(14) The director may establish more than one class or type of sign permit as necessary or desirable to carry out ORS 377.700 to 377.840. [1971 c.770 §23; 1973 c.790 §4; 1974 c.33 §3; 1975 c.336 §4; 1977 c.265 §2; 1985 c.553 §1; 1993 c.376 §2; 1993 c.741 §56; 1999 c.877 §5; 2001 c.750 §5; 2003 c.126 §1]

377.726 Business identification signs and outdoor advertising signs; permit criteria; rules. (1) Permits may be issued under ORS 377.725 for the following signs visible from state highways, except those highways on the interstate system:

(a) Notwithstanding the provisions of ORS 377.725 (13), business identification signs and benches utilized as outdoor advertising signs.

(b) Notwithstanding the provisions of ORS 377.715, 377.725 (13) and 377.770, outdoor advertising signs on bus shelters erected or maintained for use by and convenience of customers of a mass transit district, a transportation district or any other public transportation agency.

(2) The annual fee for a permit under this section shall be established by the Department of Transportation by rule as provided in ORS 377.729.

(3) The Oregon Transportation Commission shall establish, by administrative rule, the number, size and location of the signs and the criteria for the issuance of permits under this section. [1977 c.265 §8; 1979 c.146 §3; 1981 c.308 §2; 1999 c.877 §6; 2001 c.750 §6]

377.727 Requirements for directional signs; rules. In addition to the provisions of ORS 377.725, directional signs shall meet the following requirements:

(1) The maximum area shall be 150 square feet; the maximum height shall be 20 feet; and the maximum length shall be 20 feet. Dimensions and area under this subsection shall be computed to include border and trim, but exclude supports.

(2) No directional sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate system or other freeway measured along the interstate highway or freeway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled ways.

(3) No directional sign may be located within 2,000 feet of a rest area, park land or scenic area.

(4) No directional sign shall be located within one mile of any other directional sign facing the same direction of travel.

(5) No more than two directional signs pertaining to the same attraction or activity and facing in the same direction of travel may be erected along a single route approaching the attraction or activity.

(6) No directional signs located adjacent to the interstate system shall be located more than 75 air miles from the attraction or activity.

(7) The message on a directional sign shall be limited to identification and name of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route number or exit numbers. Descriptive words or phrases describing the activity or its environs are prohibited. However, one standard size graphic may be placed on each sign if not prohibited by federal statutes or regulations.

(8) Privately owned activities or attractions eligible for directional signing are limited to the following: Natural phenomena, scenic attractions, historic, educational, cultural, scientific and religious sites, and outdoor recreational areas.

(9) To be eligible for directional signing, privately owned attractions or activities must be nationally or regionally known, and of outstanding interest to the traveling public. The Department of Transportation shall, by rule, develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for directional signing. Because viticultural areas defined by the Bureau of Alcohol, Tobacco and Firearms are scenic attractions and cultural sites that are regionally known and of outstanding interest to the traveling public, viticultural areas meet the qualifications under this subsection and subsection (8) of this section for directional signing.

(10) The Department of Transportation shall adopt such rules as it deems necessary to carry out the provisions of this section. [1974 c.33 §8; 1999 c.663 §1]

377.729 Fees for sign permits and business licenses; rules. The Department of Transportation may adopt rules establishing permit fees for purposes of ORS 377.725

and fees for an outdoor advertising business license issued under ORS 377.730. Fees established by the department shall be designed to recover the cost to the department of regulating signs that are outside the right of way of a highway but are visible from the highway. [1985 c.553 §4; 1987 c.336 §1; 2001 c.750 §2]

377.730 License for business of maintaining or erecting signs; fee; application; revocation; suspension. (1) A person shall not engage in the business of erecting or maintaining outdoor advertising signs for other persons without first obtaining an annual license therefor from the Director of Transportation and paying the annual license fee established by the Department of Transportation by rule as provided in ORS 377.729.

(2) An application for a license or renewal thereof shall be made on a form furnished by the director, shall contain such pertinent information as the director may require and shall be accompanied by the applicable annual fee. A license granted under this section expires on June 30 of each year. The fee shall not be prorated. The director shall by certified mail send to each licensee a notice of expiration of license and a renewal application form not less than 30 days before the date of expiration.

(3) If the director finds that an applicant has knowingly provided materially false or misleading information in the application or that a licensee has violated any of the provisions of ORS 377.700 to 377.840, the director may revoke, suspend for a period of up to one year or refuse to renew the license unless a corrected application is filed or the violation ceases, within 30 days after written notice to do so is mailed to the applicant or licensee. During the suspension of a license, the licensee may continue in business, but shall not erect or reconstruct any sign requiring a permit under ORS 377.700 to 377.840. [1971 c.770 §22; 1973 c.790 §5; 1993 c.741 §57; 2001 c.750 §3]

377.735 Exemptions from sign permit requirements; historic signs; rules. (1) If applicable federal requirements as of October 23, 1999, are met, the permit requirements of ORS 377.700 to 377.840 do not apply to:

(a) Signs of a governmental unit, including but not limited to traffic control or regulatory devices, legal notices or warnings.

(b) A temporary sign on private property if:

(A) The sign does not exceed 12 square feet;

(B) The sign is not on a permanent base;

(C) The sign does not remain in place for a period of more than 60 days in a calendar year, except that a sign erected by a resident on the resident's residential property may remain in place for longer than 60 days in a calendar year;

(D) No person receives compensation for displaying the sign; and

(E) The sign complies with ORS 377.720.

(c) On-premises signs.

(2) The Department of Transportation may adopt rules that, for good cause shown, allow a person displaying a temporary sign to obtain a variance from the restrictions in subsection (1)(b) of this section. The department shall not consider the content of the sign in deciding whether to allow a variance.

(3) The department shall adopt rules for the approval and preservation of historic signs. Rules adopted under this subsection may not be based on or allow consideration of the content of the signs.

(4) The department shall adopt rules for the installation and maintenance of permanent signs that do not exceed six square feet and that provide information for the safety or convenience of the public.

(5) ORS 377.700 to 377.840 do not apply to an outdoor advertising sign erected or maintained within a city more than 660 feet from the nearest edge of the right of way of a state highway, unless the sign is designed to be viewed primarily from the state highway. [1971 c.770 §14; 1973 c.790 §6; 1975 c.336 §5; 1977 c.265 §3; 1987 c.336 §5; 1993 c.741 §58; 1999 c.877 §7]

377.740 ORS 377.700 to 377.840 not intended to authorize signs prohibited by other governmental units. Nothing in ORS 377.700 to 377.840 and 377.992 is intended to permit a person to erect or maintain any sign that is prohibited by any governmental unit. [1971 c.770 §25]

377.745 Limitation on form and size of signs. (1) An outdoor advertising sign shall not exceed:

(a) A length of 48 feet;

(b) A height, excluding foundation and supports, of 14 feet; or

(c) A sign area of 825 square feet.

(2) In determining the dimensions of a sign or sign area under this section:

(a) Cutouts that project beyond the borders of a sign shall be included in measuring the area of a sign, but not the height or length of a sign. The sign area of cutouts shall be no more than 20 percent of the area of the sign to which attached.

(b) The limitations apply to each side of a back-to-back sign.

(c) The size limitations apply to each sign forming a V-type sign.

(d) The size limitations apply separately to each of the three display surfaces on a

tri-vision sign. [1971 c.770 §20; 1973 c.790 §7; 1999 c.877 §8]

377.750 Spacing between signs. (1) For the purpose of applying the spacing provided by subsection (2) of this section:

(a) Distances shall be measured lineally along the highway and parallel to the center line of the highway.

(b) A back-to-back, double-faced, V-type or tri-vision sign shall be considered one sign.

(c) Distance from an interchange shall be measured from a point departing from or entering onto the main-traveled way.

(2) Minimum spacing between outdoor advertising signs shall be:

Type of highway where erected	Minimum space between signs on same side of highway (in feet)	Minimum space from interchange (in feet)
Interstate Highway		
Inside cities	500	None
Outside cities	2,000	500
Freeway		
Inside cities	500	None
Outside cities	1,000	500
Other state highway		
Inside cities	100	None
Outside cities	500	None

[1971 c.770 §21; 1973 c.790 §8; 1997 c.249 §120; 1999 c.877 §9]

377.755 [1971 c.770 §13; 1973 c.790 §9; 1974 s.s. c.33 §4; 1977 c.256 §1; repealed by 1987 c.336 §7]

377.756 Permits for signs erected by city or unincorporated community. (1) The Department of Transportation shall issue permits for the erection of signs authorized by ORS 377.756 to 377.758. Subject to subsections (2) and (3) of this section, permits shall be issued at no cost to any city or county that applies or to any nonprofit or civic applicant approved by a city or county. Each permit entitles the holder of the permit to erect one sign in accordance with this section.

(2) Each city may be given permits under this section entitling the city to erect not more than two signs that are visible from state highways and that are within the city limits or, pursuant to a memorandum of understanding with appropriate federal authorities, are no more than one mile outside of the city limits. The permits may be given directly to the city or may be given to a nonprofit or civic organization designated by the city governing body.

(3) Each county may be given permits under this section entitling each unincorporated community identified in the county comprehensive plan, as defined in ORS 197.015, to erect not more than two signs that are visible from state highways and that are within one mile of the community growth boundary as designated by the county. The permits may be given directly to the county or, if the county governing body so authorizes, to an unincorporated community or a nonprofit or civic organization designated by the county governing body.

(4) The department may not issue more than 200 permits under this section. [1987 c.631 §2]

377.757 Requirements for signs authorized by ORS 377.756; payment of cost of sign. (1) A sign authorized by ORS 377.756 shall not exceed 48 square feet in size and may not have a vertical or horizontal dimension of more than eight feet. Nothing in this subsection affects size requirements for signs of a governmental unit that are authorized under ORS 377.735.

(2) Signs erected pursuant to ORS 377.756 to 377.758 shall be kept in good repair and shall be clean and attractive.

(3) A county may require an unincorporated community authorized to erect a sign under ORS 377.756 to 377.758 to pay for the cost of erecting and maintaining the sign.

(4) If a city or county obtains a permit under ORS 377.756 for a nonprofit or civic organization, the city or county may require the organization to pay the cost of erecting and maintaining the sign.

(5) Signs erected pursuant to ORS 377.756 to 377.758 shall conform to the provisions of ORS 377.720. [1987 c.631 §§3,4]

377.758 Notification by federal authorities of illegal sign; consequences. If appropriate federal authorities notify the Department of Transportation that the erection of a sign pursuant to any of the provisions of ORS 377.756 to 377.758 is contrary to any federal law, the department shall cease issuing permits and shall cause any signs erected pursuant to ORS 377.756 to 377.758 to be removed. [1987 c.631 §5; 2001 c.104 §128]

377.760 [1971 c.770 §26; 1973 c.790 §10; repealed by 1987 c.336 §7]

377.765 Status of previously existing signs; removal upon payment of compensation. (1) Outdoor advertising signs in existence on June 12, 1975, and lawfully located within commercial or industrial zones in existence on June 12, 1975, and outdoor advertising signs visible from a road or street that is designated as a state highway after February 19, 1990, lawfully located within a commercial or industrial zone at the time of designation as a state highway, may remain. Subject to the provisions of ORS 377.700 to 377.840, such signs may be main-

tained, reconstructed and relocated. However, such signs shall not be relocated unless a relocation permit has been issued therefor pursuant to ORS 377.767. No permit may be issued to relocate an outdoor advertising sign that was not in existence on June 12, 1975, except that signs that are visible from a road or street that is designated as a state highway after February 19, 1990, and that were lawfully located within a commercial or industrial zone at the time of designation as a state highway, may be relocated within the same section of the road or street.

(2) All outdoor advertising signs which are lawfully located outside of a commercial or industrial zone and visible from an interstate highway or a primary highway shall be removed forthwith upon payment of just compensation as provided by ORS 377.780.

(3) Upon payment of just compensation any outdoor advertising sign located in a scenic area designated pursuant to ORS 377.505 to 377.540 may be removed forthwith.

(4) Where an outdoor advertising sign was reconstructed under a waiver, upon payment of just compensation for that portion of the value which is not covered by the waiver, such outdoor advertising sign may be removed forthwith.

(5) Outdoor advertising signs in existence on July 1, 1971, which are lawfully located outside of a commercial or industrial zone in existence on July 1, 1971, and visible from a secondary highway and not within a scenic area existing on July 1, 1971, or thereafter designated a scenic area may be removed only upon payment of just compensation as provided in ORS 377.780. Such a sign may, upon payment of such just compensation, be removed forthwith. It may not be reconstructed or replaced if destroyed by natural causes and it may not be moved to a different location.

(6) Subject to subsection (2) of this section, every outdoor advertising sign erected since October 22, 1965, pursuant to a waiver, adjacent to an interstate highway or a primary highway and outside of a commercial or industrial zone shall be removed forthwith, without payment of compensation, unless an owner of such a sign or signs, within 10 days after April 18, 1973, enters into an agreement transferring title to the signs to the state. Such an agreement may provide for the leasing back of such signs and for a scheduled removal which shall be not later than December 31, 1975.

(7) If a secondary highway existing on July 2, 1971, is subsequently designated as an interstate or primary highway, outdoor advertising signs not conforming to the provisions of ORS 377.700 to 377.840 shall be removed upon payment of just compensation.

(8) If any other highway is designated as an interstate or primary highway, a nonconforming outdoor advertising sign lawful before such designation but nonconforming thereafter shall be removed upon payment of just compensation.

(9) Upon the construction or designation of a secondary highway, after July 2, 1971, an outdoor advertising sign lawfully in existence and not regulated under ORS 377.700 to 377.840 prior to such construction or designation shall be governed by subsection (5) of this section.

(10) Any outdoor advertising sign lawfully in existence outside of a city on July 2, 1971, beyond 660 feet from the nearest edge of the right of way of an interstate or primary highway and designed to be viewed primarily from such highway shall be removed by July 1, 1976, without compensation. [1971 c.770 §18; 1973 c.28 §1; 1973 c.790 §11; 1975 c.336 §7; 1993 c.376 §3]

377.767 Relocation of existing outdoor advertising sign; conditions. A permit shall be issued for the relocation of an outdoor advertising sign lawfully erected in a commercial or industrial zone in existence on June 12, 1975, if the site lease for said sign is terminated for any reason. The existing sign may be relocated in any commercial or industrial zone upon the following conditions:

(1) The sign that is relocated shall not have a sign size larger than that specified in the permit for the sign located on the site on which the lease was terminated. However, a sign 250 square feet or more may be increased to the maximum size allowed by the provisions of ORS 377.700 to 377.840 if not relocated so as to be visible from Interstate Highway 5, Interstate Highway 205, or Interstate Highway 84.

(2) The site for the relocated sign is not within the distances set out below, on the same side of the highway, from a site from which an outdoor advertising sign was purchased pursuant to the provisions of ORS 377.700 to 377.840.

Types of Highway	Distance in Either Direction from Site
Interstate	2000 feet
Freeway	1000 feet
Other State Highway	500 feet

(3) Where a sign is relocated in a commercial or industrial zone which first came into existence after January 1, 1973, the site shall be within 750 feet of a developed commercial or industrial area, as measured parallel to the centerline of the highway. For

the purposes of ORS 377.710, 377.715, 377.725, 377.735, 377.770, 377.773, 377.780, 377.800 and 377.845 and this section, a "developed commercial or industrial area" shall include only the land occupied by a building, parking lot, storage or processing area of a commercial or industrial use and on the same side of the highway.

(4) After October 4, 1977, no permit shall be issued to relocate a sign more than 100 miles from the site of an existing sign as of September 1, 1977, as measured along public streets, roads or highways between that site and the proposed new site.

(5) In accordance with applicable provisions of ORS chapter 183, the Department of Transportation may adopt rules to:

(a) Prohibit the erection of signs, including relocation of signs, along any portion of U.S. Highway 101 if the signs or the erection of such signs would violate federal scenic byway laws or regulations or conditions of federal grants relating to scenic byways.

(b) Establish design standards for signs on any highway or portion of highway that is designated a scenic byway by the Oregon Transportation Commission.

(6) If the sign that is relocated is relocated as a tri-vision sign, three equivalent permits must be issued for the sign and the sign must meet all requirements of this section. [1975 c.336 §9; 1977 c.265 §4; 1983 c.226 §1; 1993 c.268 §1; 1997 c.249 §121; 1999 c.877 §10]

377.768 Effect of relocation permit on existing sign permit; duty of director. Notwithstanding any provision in ORS 377.700 to 377.840 to the contrary:

(1) Issuance of a permit under ORS 377.767 to relocate a sign for which a permit has been issued under ORS 377.725 shall not cancel the original permit issued under ORS 377.725 except as provided in this section. The applicant for the permit to relocate shall surrender the original permit to the Director of Transportation upon issuance of the permit to relocate. Upon completion of the relocation of the sign, the person holding the permit for relocation of the sign shall notify the director.

(2) The director shall retain any permit surrendered under subsection (1) of this section. If the director:

(a) Is notified that the relocation of the sign is completed within 120 days after the issuance of the permit for relocation, the director shall cancel the original permit.

(b) Cancels the permit for relocation of the sign because the relocation of the sign is not completed within 120 days as required under ORS 377.725, the director shall return the original permit for the sign to the person whose permit for relocation of the sign is canceled.

(3) A permit that is returned under subsection (2) of this section remains valid and retains all rights under ORS 377.725 of a permit that has not been surrendered under this section. [1979 c.146 §2; 1993 c.741 §59]

377.770 Signs in protected, commercial or industrial areas. (1) Signs and outdoor advertising signs erected or maintained within protected areas shall comply with the sign regulations for protected areas. If any provision of ORS 377.700 to 377.840 or rules promulgated pursuant thereto are more restrictive than the sign regulations for protected areas, the more restrictive provision or rule applies.

(2) In addition to the requirements provided by subsection (1) of this section, and subject to ORS 377.505 to 377.540, 377.720, 377.725, 377.745, 377.750 and 377.767:

(a) Outdoor advertising signs in existence on June 12, 1975, may be maintained, reconstructed or relocated in commercial or industrial zones. Within cities, an outdoor advertising sign shall not be erected more than 660 feet from the nearest edge of the right of way if such sign is designed to be viewed primarily from a state highway.

(b) The Legislative Assembly declares it is the paramount policy of this state to prohibit outdoor advertising signs except those in existence on June 12, 1975, in commercial or industrial zones established on June 12, 1975, except as provided by ORS 377.765 and 377.767. [1971 c.770 §19; 1973 c.790 §12; 1974 c.33 §5; 1975 c.336 §10]

377.773 When sign abandoned; removal. Any outdoor advertising sign which does not have copy on the display surface for a period of six months shall be deemed to have been abandoned by the owner thereof and becomes a noncomplying sign subject to removal by the Director of Transportation under the procedure set forth in ORS 377.775. [1974 c.33 §7; 1975 c.336 §11; 1993 c.741 §60]

377.775 Removal procedure for noncomplying signs; ownership issues at hearing; disposition of removed signs; costs of removal. (1) Any sign that fails to comply with ORS 377.700 to 377.840 hereby is declared to be a public and private nuisance. In addition to the penalties provided by ORS 377.992 for violation thereof, such a sign may be removed by the Director of Transportation or the duly authorized representative of the director as provided by this section. The director may enter upon private property and remove the sign without incurring any liability therefor.

(2) If a noncomplying sign does not bear the name and address of its owner or if the

owner is not readily identified and located, the director may remove it immediately.

(3)(a) If a noncomplying sign bears the name and address of its owner or if the owner of the sign is readily identified and located, the director shall notify the owner that the sign is in violation of ORS 377.700 to 377.840 and that the owner has 30 days from the date of the notice within which to make the sign comply, to remove the sign or to request a hearing before the director within the time specified in the notice.

(b) If the sign is not made to comply or is not removed and if the owner does not request a hearing within the time required, or if the owner after a hearing fails to comply with the final order in the proceedings, the director or the duly authorized representatives of the director may remove and destroy or otherwise dispose of the sign.

(4)(a) If the person who receives notice under subsection (3) of this section intends to raise issues regarding ownership interests in the sign or its appurtenances in a hearing requested under subsection (3) of this section, the request for hearing must include notice that the person intends to raise those issues and must contain the names and addresses of all persons who have ownership interests in the sign or its appurtenances.

(b) If the person requesting the hearing under subsection (3) of this section fails to include notice of intent to raise issues regarding ownership interests, the person may not raise the issues in the hearing. In addition, the person who requested the hearing may not raise issues regarding ownership interests of any person whose name and address the person who requested the hearing has failed to provide as required by paragraph (a) of this subsection.

(c) For purposes of this subsection, an ownership interest includes, but is not limited to:

(A) An interest in the land on which the sign is located, in the sign structure and in the sign face; and

(B) A right to operate the sign, whether the right is created by lease, operating agreement or otherwise.

(5) The director shall, after removing a sign in accordance with subsection (2) of this section, place it in storage for 30 days while the director makes a further effort to find its owner. If the owner cannot be found within that time, the director may, without incurring any liability therefor, destroy or otherwise dispose of the sign. If the owner is found within that time, the owner may be required to remove the sign from storage; and if the owner is found at any time, the director may recover from the owner the cost of storage. The cost of storage is in addition to the cost of removal payable under subsection (6) of this section.

(6) The owner is liable for, and the director shall collect, the costs of removing a sign. Costs shall be determined by the director on the basis of actual costs of removal or on a square-foot flat fee basis.

(7) If a sign does not bear the name and address of its owner, the advertisement thereon of the goods, products, facilities, services or business of a person or commercial enterprise is prima facie evidence of ownership of the sign by that person or commercial enterprise. [1971 c.770 §17; 1973 c.790 §13; 1977 c.265 §5; 1993 c.741 §61; 2001 c.508 §2]

377.777 Action to enjoin person from violation of ORS 377.700 to 377.840. If the Department of Transportation has issued three or more final orders in a 12-month period finding that a person has violated one or more provisions of ORS 377.700 to 377.840, the Director of Transportation may file an action for injunctive relief to enjoin the person, or any other entity substantially controlled or directed by the person, from further violating ORS 377.700 to 377.840. The action may be filed in the Circuit Court for Marion County or in the circuit court of the county that is the principal place of business or residence of the person the director seeks to enjoin. [2001 c.508 §5]

Note: 377.777 was added to and made a part of 377.700 to 377.840 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

377.780 Removal of outdoor advertising signs; payment of compensation; value determinations. (1) Where the Department of Transportation elects to remove and pay for a sign visible from secondary highways pursuant to ORS 377.765 (5), just compensation shall be paid upon the removal thereof.

(2) For the purposes of ORS 377.700 to 377.840, the department may acquire by purchase, agreement, donation or exercise of the power of eminent domain land or an interest in land or a sign. It shall pay just compensation for:

(a) The taking from the owner of such lawfully placed sign all right, title, leasehold and interest in such sign; and

(b) The taking from the owner of the real property on which the sign is located the right to place such sign thereon.

(3) When the department is required under ORS 377.700 to 377.840 to make payment therefor to remove a sign, the payment shall be for the value of the items specified by subsection (2) of this section, as determined by the department. In determining value, the

department shall use the accepted appraisal method customarily used in such cases or the method prescribed by federal regulations, if any, applicable to such appraisals or payments, whichever results in the lowest valuation. However, in any case, the department shall so appraise such signs or rights taken by whatever method may be required to avoid imposition of a reduction in the amount of federal highway funds the state otherwise would be eligible to receive. [1971 c.770 §16; 1973 c.790 §14; 1975 c.336 §12]

377.785 [1971 c.770 §5; 1973 c.790 §15; 1983 c.324 §36; 1985 c.104 §4; renumbered 285.163 in 1991]

377.787 Contracts to study motorist information needs; council to establish sign programs. (1) The Travel Information Council may enter into contractual or other agreements with other governmental agencies of this state or an independent contractor to study various ways of providing information deemed necessary to the motoring public by signs, information centers or other means. The council may also enter into contractual or other agreements with other governmental agencies of this state or an independent contractor for the construction of experimental signs or displays to provide information deemed necessary to the motoring public.

(2) Notwithstanding any other provisions of ORS 377.700 to 377.840, the Travel Information Council shall institute logo sign and motorist informational sign programs on the state highway system and adopt any rules necessary to carry out such programs. [1979 c.478 §§5,7]

377.790 Construction, maintenance and operation of tourist and motorist informational signs. Pursuant to the terms of a written agreement between the Department of Transportation and the Travel Information Council:

(1) The department shall furnish, erect and maintain motorist informational signs, logo signs, tourist oriented directional signs and sign plazas as requested by the council. Such signs shall be erected and maintained at locations the council considers appropriate. The department may contract for the furnishing, erection and replacement of all such sign plazas, logo signs, tourist oriented directional signs and motorist informational signs to be erected upon a state highway, in tourist information centers, rest areas or other places.

(2) In carrying out its responsibilities under ORS 377.700 to 377.840 the council may enter into contractual or other agreements with a city, county or other governmental agency of this state or with an independent contractor providing for the erection, maintenance, administration and operation of sign plazas, logo signs, tourist oriented directional signs and motorist informational signs and collection of the permit fees charged therefor, or for other matter authorized under ORS 377.700 to 377.840 requiring council consideration. When soliciting contracts for goods or professional services, the council shall:

(a) Require that an independent contractor, city, county or other governmental agency of the state submit a competitive bid;

(b) Review bids submitted;

(c) Select the contractor; and

(d) Enter into a written contract with the selected contractor, subject to contract specifications established by the department. [1971 c.770 §6; 1973 c.790 §16; 1983 c.111 §3; 1993 c.745 §7; 2003 c.14 §164]

377.795 Allocation of costs of telephone informational system; webpage fee; disposition of receipts. (1) Whenever the Travel Information Council establishes a telephone reservation system for lodging accommodations or other travel services at a sign plaza, the costs thereof shall be apportioned among the subscribing motels, hotels, trailer parks, campgrounds or providers of other travel services on a per room or other equitable basis.

(2)(a) Whenever the council establishes a tourist and motorist information Internet webpage, or cooperates with the Department of Transportation or another public or private entity to provide information about travel services through an Internet webpage, the council may charge a fee for advertisement by, or information provided on the Internet webpage on behalf of, the providers of travel services.

(b) The council may not place an advertisement for a provider of travel services on an Internet webpage identified as a department webpage. The department may place a link to the council's Internet webpage on an Internet webpage identified as a department webpage.

(3) If the council and the Department of Transportation decide to use the telephone system or the tourist and motorist information Internet webpage for emergency or other services, an appropriate portion of the overall telephone and Internet costs shall be borne by the department.

(4) Receipts shall be deposited monthly, before the 10th day of the month, to the Travel Information Council account required by ORS 377.840.

(5) The council may enter into one or more contracts providing for the promotion and sale of logos, motorist informational signs, sign plazas, subscriptions to the telephone reservation service and subscriptions

to the tourist and motorist information Internet webpage. [1971 c.770 §7; 1973 c.790 §17; 1993 c.745 §8; 2001 c.296 §1; 2003 c.14 §165]

377.800 Tourist and motorist informational signs; logo signs; sign plazas. For the convenience and information of the traveling public, a person may upon obtaining a permit therefor display messages as may be allowed by rule adopted by the Travel Information Council for the particular type of sign on a motorist informational sign, tourist oriented directional sign, logo sign or at a sign plaza. [1971 c.770 §9; 1973 c.790 §18; 1975 c.336 §13; 1983 c.111 §4]

377.805 Form of tourist and motorist informational signs; use of logo signs. (1) The Travel Information Council shall by regulation prescribe the size, shape, color, lighting, and lettering of and manner of displaying messages on tourist oriented directional signs, logo signs and motorist informational signs.

(2) When appropriate, logo signs, tourist oriented directional signs and motorist informational signs shall be displayed in tiers or on panels. With the approval of the Director of Transportation, the council shall specify the types of locations where such a sign or panel may be erected or maintained, and the size, shape, lighting and other characteristics of the panels, including the location of signs thereon. Tiers or panels may be established at reasonably spaced intervals or at sign plazas.

(3) Distinctive signs shall be allowed to the extent considered practicable by the council. Logo signs shall be the primary means used to indicate the availability of one or more brands of motor fuel. Logos shall be of the shape, color and wording customarily used by the company. Logo signs and tourist oriented directional signs shall be placed adjacent to the traveled portion of the highway so as to be easily read by motorists without slowing or stopping. [1971 c.770 §10; 1973 c.790 §19; 1983 c.111 §5; 1993 c.741 §62]

377.810 [1971 c.770 §12; repealed by 1973 c.790 §27]

377.820 Application for tourist or motorist informational sign permit; investigation; disposition. (1) An application for a tourist oriented directional sign, logo sign or a motorist informational sign permit shall be submitted to the Travel Information Council on a form prescribed by the council. The application shall set forth the name and address of the applicant; the name, nature and location of the business or activity; the location where a tourist oriented directional sign, logo sign or a motorist informational sign is desired; and such other information as the council may require. The applicant shall tender with the application the permit fee required under ORS 377.825 for each sign requested.

(2) Upon receipt of an application for a tourist oriented directional sign, logo sign or a motorist informational sign, the council shall refer the application to the Department of Transportation. Upon receipt of the application the department shall do all the following:

(a) Notify any city in which a sign is proposed to be located of the proposed location and composition of the sign and seek comments from the city.

(b) Investigate the facts and make a report to the council with its recommendations thereon.

(c) Not recommend approval of an application unless the requested location conforms to the requirements prescribed by the council under ORS 377.805 and, if applicable, unless the applicant is complying with all statutes and rules of the State Health Officer regarding restaurants and places of public accommodation.

(d) Notify the council promptly in writing of the results of its investigation and its recommendations and the reasons for any recommended disapproval.

(3) If the council approves the application it shall issue the permit and forward the original to the applicant and a copy thereof to the director. If it is not approved, the council shall return the application and fee, stating the reasons for disapproval and giving the applicant opportunity to correct any defects or to be heard within 30 days by the council and to present evidence, with or without counsel at the applicant's discretion. Upon written request, the council shall hear the matter and notify the applicant of its findings and decision. The applicant may then appeal in the manner provided by ORS chapter 183. [1971 c.770 §24; 1973 c.790 §20; 1983 c.111 §6; 1983 c.523 §1a; 1993 c.741 §63]

377.825 Fees for sign applications, maintenance costs and reinstallation. (1) An applicant for a logo sign, tourist oriented directional sign or a motorist informational sign shall pay to the Travel Information Council an initial permit fee and an annual renewal fee which shall be determined for each year by the council in advance of such year.

(2) The council may establish a fee schedule for maintenance costs.

(3) The council may establish a fee for reinstallation of a sign that has been removed. [1971 c.770 §27; 1973 c.790 §21; 1983 c.111 §7; 1991 c.525 §1; 1999 c.38 §1]

377.830 Limitation on motorist informational sign permits; use of logo signs. Notwithstanding any other provisions of ORS 377.700 to 377.840, the Travel Information Council shall not issue, for any one place or business eligible therefor, more than two permits for motorist informational or logo signs for one direction of travel on a state highway leading to the place or business. Where a logo is available it shall be used and shall be one of the two allowable signs. [1971 c.770 §11; 1973 c.790 §22; 1983 c.111 §8]

(Administration)

377.835 Creation of Travel Information Council as semi-independent state agency; members; qualifications; appointment; terms; chairperson; quorum; rulemaking authority. (1) The Travel Information Council is created as a semi-independent state agency.

(2) The Travel Information Council shall consist of 11 members. One shall be the chairperson of the Oregon Transportation Commission or a person within the Department of Transportation designated by the chairperson and 10 appointed members as follows: Two members from among the lodging, restaurant and recreation industries; one member from the vehicular service industry; one member from the outdoor advertising industry; one member from the electrical sign industry; and five members from the public at large. The public at-large members shall be appointed from among the residents of each congressional district. None of the public at-large members shall have any financial interest in any restaurant, hotel, motel, recreational facility, garage, oil company or other vehicular service industry, or in any advertising business other than shares of stock that are traded on a national stock exchange.

(3) The 10 appointed members shall be appointed by the Governor. Each shall be appointed to serve for a term of four years but a member may be removed at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause the Governor shall make an appointment to become effective immediately for the unexpired term. Five shall be appointed biennially on July 2 in odd-numbered years.

(4) The council shall select one of its members as chairperson, another as vice chairperson and a third as secretary. Six members shall constitute a quorum for the transaction of business. The council shall meet quarterly at a time and place to be determined by the chairperson. The chairperson or any three members of the council may call a special meeting upon not less than one week's written notice to the other members. All members are entitled to expenses as provided by ORS 292.495.

(5) The council may, in accordance with ORS chapter 183 and consistent with ORS 377.700 to 377.840, adopt and from time to time amend and repeal rules relating to tourist oriented directional signs, logo signs and motorist informational signs and all other matters necessary and appropriate to carry out its responsibilities under ORS 377.700 to 377.840. The sign rules for protected areas in effect on July 2, 1971, shall be continued in effect unless modified by the commission. All such rules shall be consistent with federal laws and regulations relating to highways. The Director of Transportation shall take appropriate action for the administration and enforcement of orders issued and rules adopted under ORS 377.700 to 377.840.

(6) The commission may continue or amend any existing agreements and may enter into new agreements with the United States or any agency thereof authorized to make agreements under section 131, title 23, United States Code relating to the regulation, control and removal of signs within or adjacent to the Interstate and Federal Aid Systems.

(7) The council shall be under the administrative control of a director who is appointed by and who holds office at the pleasure of the council. The director of the Travel Information Council may appoint all subordinate officers and employees of the council and may prescribe their duties and fix their compensation. The director of the Travel Information Council may delegate to any subordinate officer or employee any administrative duty, function or power imposed upon the council by or pursuant to law. [1971 c.770 §4; 1973 c.790 §23; 1981 c.545 §5; 1983 c.111 §9; 1993 c.741 §§64,64a; 1997 c.632 §6]

377.836 Application of certain statutes to Travel Information Council. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this section, the provisions of ORS chapters 240, 276, 279, 282, 283, 291, 292 and 293 do not apply to the Travel Information Council. The council is subject to all other statutes governing a state agency that do not conflict with ORS 377.700 to 377.840, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183. Subject to the requirements of ORS chapters 238 and 238A, the council's employees are members of the Public Employees Retirement System.

(2) The following shall apply to the council:

(a) ORS 279.800 to 279.830;

(b) ORS 282.210 to 282.230; and

(c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630. [1993 c.745 §4; 1997 c.249 §122; 2003 c.733 §77]

Note: The amendments to 377.836 by section 268, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

377.836. (1) Except as otherwise provided by law, and except as provided in subsection (2) of this section, the provisions of ORS chapters 240, 276, 279, 279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Travel Information Council. The council is subject to all other statutes governing a state agency that do not conflict with ORS 377.700 to 377.840, including the tort liability provisions of ORS 30.260 to 30.300 and the provisions of ORS chapter 183. Subject to the requirements of ORS chapters 238 and 238A, the council's employees are members of the Public Employees Retirement System.

(2) The following shall apply to the council:

(a) ORS 279A.250 to 279A.290;

(b) ORS 282.210 to 282.230; and

(c) ORS 293.235, 293.240, 293.245, 293.611, 293.625 and 293.630.

377.837 [1973 c.790 §26; repealed by 1983 c.111 §10]

377.838 Authority of director of Travel Information Council. (1) Except as provided in subsection (2) of this section, in carrying out the duties, functions and powers of the Travel Information Council, the director of the Travel Information Council may contract with any state agency for the performance of such duties, functions and powers as the council considers appropriate.

(2) The director of the Travel Information Council shall not, without the prior approval of the council:

(a) Award any contract for goods or professional services in excess of $25,000; or

(b) Authorize any expenditure of moneys in excess of $25,000.

(3) The council shall file with the Governor and the Legislative Assembly an annual report of the activities and operations of the council. [1993 c.745 §5; 1993 c.741 §64b]

377.840 Travel Information Council account; budget process; disposition of moneys received. (1) All moneys collected or received by the Travel Information Council shall be deposited into a Travel Information Council account established in a depository bank insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. In a manner consistent with the requirements of ORS chapter 295, the chairperson of the council shall insure that sufficient collateral secures any amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Subject to the chairperson's approval, the council may invest moneys collected or received by the council. Investments made by the council are limited to the types of investments listed in ORS 294.035. Interest earned from any amounts invested shall be made available to the council in a manner consistent with the council's approved biennial budget.

(2) Subject to the approval of the chairperson or director of the Travel Information Council, all necessary council expenses shall be paid from the moneys collected or earned by the council.

(3)(a) The Travel Information Council shall adopt a budget on a biennial basis using the classifications of expenditures and revenues required by ORS 291.206 (1). However, the budget shall not be subject to review and approval by the Legislative Assembly or to future modification by the Emergency Board or Legislative Assembly.

(b) The council shall adopt a budget only after a public hearing thereon. At least 15 days prior to any public hearing on the budget, the council shall give notice of the hearing to all persons known to be interested in the proceedings of the council and to any person who requests notice.

(4) All expenditures from the Travel Information Council account are exempt from any state expenditure limitation. The Travel Information Council shall follow generally accepted accounting principles and keep such other financial and statistical information as may be necessary to completely and accurately disclose the financial condition and financial operations of the council as may be required by the Secretary of State.

(5) As used in this section, "depository bank" has the meaning given in ORS 295.005. [1971 c.770 §29; 1973 c.790 §24; 1987 c.57 §1; 1987 c.336 §6; 1993 c.741 §64c; 1993 c.745 §6; 1995 c.245 §12; 2003 c.405 §7]

377.845 Use of funds by Department of Transportation after repayment of highway fund. After the Travel Information Council has repaid the State Highway Fund for all moneys advanced or owed it may then utilize any funds received in excess of expenses to reimburse the Department of Transportation for such part of the cost of providing public service information in sign plazas in rest areas as the council may decide and also for the acquisition of outdoor advertising signs located outside of commercial or industrial zones adjacent to secondary highways. The Travel Information Council

may enter into such agreements with the department as are necessary to carry out the provisions of this section. [1975 c.336 §15]

PENALTIES

377.990 [Amended by 1953 c.335 §2; subsection (4) of 1957 Replacement Part enacted as 1955 c.541 §19; repealed by 1959 c.309 §22]

377.992 Penalties. (1)(a) A person who violates any provision of ORS 377.510 or 377.700 to 377.840 or any regulation of the Travel Information Council adopted pursuant thereto is subject to a civil penalty of up to $100 per day for each day of violation. Except as otherwise provided in paragraph (b) of this subsection, the maximum penalty under this subsection for a violation is $3,000 per sign.

(b) A person who violates ORS 377.725 is subject to a civil penalty of up to $100 per day for each day of violation, up to a maximum amount established by the Department of Transportation by rule.

(c) Civil penalties under this subsection shall be imposed in the manner provided by ORS 183.745.

(2) Violation of the conditions and provisions of a permit procured under ORS 377.050 by any person having procured the permit is punishable, upon conviction, by a fine of not more than $100, or imprisonment in the county jail for not more than 30 days or both.

(3) Violation of ORS 377.030 to 377.050, 377.510, 377.620 (2) or 377.635 is punishable, upon conviction, by a fine of not more than $100, or imprisonment in the county jail for not more than 30 days, or both. [1971 c.770 §28; 2001 c.508 §3]

377.995 [1959 c.309 §21; subsection (5) enacted as 1961 c.615 §17; subsection (6) enacted as 1961 c.614 §11; subsection (7) enacted as 1967 c.590 §12; repealed by 1971 c.770 §31]

CHAPTERS 378 TO 380

[Reserved for expansion]

Chapter 381

2003 EDITION

Interstate Bridges

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381.005 Construction, acquisition and maintenance of Columbia River bridges. The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Columbia River to the State of Washington.

381.010 Agreements for carrying out powers. For the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.005 to 381.080 or any other law, the Department of Transportation in the name of the state may make and enter into agreements with:

(1) The Government of the United States or any of its agencies.

(2) The State of Washington.

(3) Any county, municipality, port or other political subdivisions or agencies of the State of Washington.

(4) Any county, municipality, port or any other political subdivisions of this state.

(5) Any persons, associations, corporations, domestic or foreign.

381.015 Contents of agreement. Any agreement made or contract entered into pursuant to the authority of ORS 381.005 to 381.080 shall, among other things, contain express provisions with respect to:

(1) The site of the bridge.

(2) The maximum financial obligation assumed by each of the contracting parties.

(3) The estimated cost of the structure with its approaches and connecting roads.

(4) The sources from which all the funds are to be obtained or derived.

(5) Whether the bridge is to be operated free to the public or as toll bridge.

(6) Any other appropriate matters or provisions consistent with the prudent principles of economy and good business.

381.020 Using funds available for bridge expenses; reimbursement. The Department of Transportation may pay out of state highway funds or any other funds available to it any part of the cost of the construction, purchase, maintenance, operation, repair, reconstruction and improvement of any bridge mentioned in ORS 381.005 assessed and allocated to this state. In the event the bridge is operated as a toll bridge, then the share of toll revenues accruing to this state shall be applied by the department to reimburse the state highway funds for expenditures made in connection with the bridge.

381.025 Loans for bridge construction or acquisition; security. The construction, purchase or acquisition of any bridge under ORS 381.005 to 381.080 may be financed in whole or in part by loans obtained from the United States Government or any of its agencies or from any other sources. As security for the payment of such loans, the bridge and its approaches and its revenues over and above the cost of its maintenance and operation may be hypothecated or pledged, but no such hypothecation or pledge of revenues shall constitute in any manner or to any extent be made or become a general obligation of the state.

381.030 Acceptance of funds from United States and gifts. (1) The Department of Transportation may accept from the United States or any of its agencies such funds as are available to this state for any of the purposes contemplated by ORS 381.005 to 381.080, and enter into such contracts and agreements with the United States or any of its agencies as may be necessary, proper and convenient, not contrary to the laws of this state.

(2) The department may accept from any source any grant or donation of land or any gift of money or other valuable thing made to the state for any of the purposes contemplated by ORS 381.005 to 381.080.

381.035 Selection of bridge sites. The parties contracting for the construction of any bridge under ORS 381.005 to 381.080 shall select and agree upon sites, but no such bridge shall be constructed unless it connects or provision is made for connection with a state and federal highway in this state and a state and federal highway in the State of Washington.

381.040 Survey, plans and specifications for bridge construction. Before any bridge is constructed under ORS 381.005 to 381.080, the Oregon Department of Transportation and the Director of Highways of the State of Washington or other lawful constituted authority shall cause a complete survey to be made, complete plans and specifications and design to be prepared and an estimate of the cost of the structure, including rights of way, approaches and connecting roads, to be prepared and submitted to the Bureau of Public Roads of the United States or other lawful constituted authority for approval.

381.045 Provision in bridge plans for rail traffic; contracting with railroad companies. (1) Preparation of the specifications and designs of any bridge constructed under ORS 381.005 to 381.080 may give consideration to and include provisions for facilities and accommodations for traffic by

rail as well as for traffic by motor vehicle, team, pedestrian or other regular highway traffic.

(2) If provision is made for rail traffic, then the agencies under whose jurisdiction and control the bridge has been constructed may contract with any railroad companies for the use of the part of the bridge constructed to accommodate traffic by rail. The contract may be upon such terms and conditions as the interested parties may agree.

381.050 [Repealed by 1975 c.771 §33]

381.055 [Repealed by 1969 c.197 §1]

381.060 [Repealed by 1975 c.771 §33]

381.065 Procuring rights of way. Rights of way necessary on the Oregon side of the Columbia River for the construction of any bridge under ORS 381.005 to 381.080, together with the approaches and connecting roads or highways, may be procured by the Department of Transportation in the same manner and in accordance with the procedure provided by ORS chapter 35. [Amended by 1971 c.741 §27]

381.070 Operation of bridge as free or toll bridge. (1) Any bridge constructed, purchased or otherwise acquired under ORS 381.005 to 381.080 may be operated free to the public or as a toll bridge.

(2) If any such bridge is operated as a toll bridge, the revenues derived as a result of the tolls and charges collected shall, after deducting necessary operating and other appropriate or proper charges, be divided equally between the State of Oregon and the State of Washington.

(3) If any such bridge is operated as a toll bridge, then the Oregon Department of Transportation may, in cooperation with the Director of Highways of the State of Washington or any other properly designated authority, employ and pay the necessary help for the collection of tolls and may do anything and everything necessary for the proper and efficient operation of the bridge as a toll bridge.

381.075 Bridge, connecting road and approaches as state highway. The connecting road and approaches to any bridge mentioned in ORS 381.005, on the Oregon side of the Columbia River, together with the bridge to the center of the channel of the river, shall be part of the Oregon state highway system and shall be so declared and designated by the Department of Transportation by an appropriate resolution duly adopted and entered in the minutes and records of the department.

381.080 ORS 381.005 to 381.075 as cumulative. The authority conferred by ORS 381.005 to 381.075 is cumulative and in addition and supplemental to the authority conferred by any other law.

381.085 [Repealed by 1953 c.389 §7]

381.086 Portland-Vancouver interstate bridge may be operated as toll bridge. The interstate bridge now existing over the Columbia River between Portland, Oregon, and Vancouver, Washington, may be operated by the Department of Transportation as a toll bridge for the purpose of creating revenue to be used as set forth in ORS 381.092. [1953 c.389 §1]

381.088 Tolls and franchise fees. The Department of Transportation may impose and collect tolls and franchise fees for the use of said bridge by all vehicles, pedestrians, public utilities and telecommunications utilities, including power, light, telephone and telegraph wires, and water, gas and oil pipes. [1953 c.389 §2; 1987 c.447 §123]

381.090 Agreements for carrying out ORS 381.086 to 381.094. The Department of Transportation is authorized to make and enter into agreements, in the name of the State of Oregon, with the federal government or any of its agencies, any state which borders the State of Oregon, any county, municipality, port or other political subdivisions of such bordering state or the State of Oregon, and any person, association or corporation, for the purpose of carrying out or putting into effect the provisions of ORS 381.086 to 381.094. Such agreements shall contain express provisions with respect to the financial or other obligations assumed by the parties to the agreement, and may provide for the sharing and distribution of tolls and franchise fees between or among such parties. [1953 c.389 §3]

381.092 Uses of tolls and fees collected. The revenues derived from the imposition and collection of tolls and franchise fees for the use of said bridge shall be used for the purpose of paying the cost and incidental expenses of construction of a new bridge, including approaches thereto, across the Columbia River adjacent to said existing interstate bridge, including payment of principal, interest and financing costs of bonds issued for the purpose of obtaining funds for the construction of said new bridge, and the cost of maintaining and operating both of said bridges while said bridges are operated as toll bridges. [1953 c.389 §4]

381.094 Operation of bridge as free bridge. The said existing interstate bridge shall be operated as a free bridge whenever all bonds and interest thereon issued for the purpose of obtaining funds to be used for

construction of a new bridge adjacent to said existing interstate bridge have been paid. [1953 c.389 §5]

381.096 Construction, acquisition and maintenance of Snake River bridges. The Department of Transportation in the name of the state may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over the Snake River into the State of Idaho, and may acquire any real property necessary for any such bridge, together with approaches and connecting roads, on both sides of the river. [1955 c.85 §1]

381.098 Agreements for carrying out powers granted by ORS 381.096. For the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.096 or any other law, the Department of Transportation in the name of the state may make and enter into agreements with:

(1) The Government of the United States or any of its agencies.

(2) The State of Idaho.

(3) Any county, municipality, port or other political subdivisions or agencies of the State of Idaho.

(4) Any county, municipality, port or any other political subdivisions of this state.

(5) Any persons, associations, corporations, domestic or foreign. [1955 c.85 §2]

381.100 Contents of agreements. Any agreement made or contract entered into pursuant to the authority of ORS 381.098 shall, among other things, contain express provisions with respect to:

(1) The site of the bridge.

(2) The maximum financial and other obligations assumed by each of the contracting parties.

(3) The estimated cost of the structure with its approaches and connecting roads.

(4) The sources from which all the funds are to be obtained or derived.

(5) Any other appropriate matters or provisions consistent with the prudent principles of economy and good business. [1955 c.85 §3]

381.110 Use without toll of Columbia River Bridge at Astoria by members of Coast Guard and dependents. (1) Officers and enlisted personnel of the United States Coast Guard who are assigned to duty at any station, shore establishment or other facility within 25 miles from the Columbia River Bridge at Astoria and the spouses and dependent children of such officers and enlisted personnel shall be allowed to pass free through the tollgates of that bridge. Any vehicle in the charge of the member of the United States Coast Guard or a spouse or dependent child of such member shall also pass without charge over the bridge.

(2) The Department of Transportation shall enter into an agreement with the United States Coast Guard for the purpose of carrying out subsection (1) of this section. The agreement shall contain express provisions with respect to the obligations assumed by the parties to the agreement and shall provide for the manner by which individuals entitled to the benefits granted by this section shall identify themselves when crossing the bridge.

(3) As used in this section, "dependent child" means any individual under 18 years of age who is not married, otherwise emancipated or self-supporting. [1989 c.264 §5]

INTERSTATE BRIDGES UNDER LOCAL JURISDICTION

381.205 Construction, acquisition and maintenance of interstate bridges by counties, cities, towns and ports. Each county, city, town or port of this state adjoining or bordering on any interstate river or stream of water may construct, reconstruct, purchase, rent, lease or otherwise acquire, improve, operate and maintain bridges over any interstate river or stream of water to any adjoining state.

381.210 Agreements for carrying out powers of counties, cities, towns and ports. For the purpose of carrying out or putting into effect the right, power and authority granted by ORS 381.205 to 381.305 or any other law, each of the public bodies or agencies mentioned in ORS 381.205 may make and enter into any agreements with:

(1) The Government of the United States or any of its agencies.

(2) The State of Oregon or any of its agencies.

(3) Any adjoining state, the county, municipality, port or other political subdivision or agency of such adjoining state.

(4) The Oregon Department of Transportation.

(5) Any persons, associations, corporations, domestic or foreign.

381.215 Independent or cooperative action. In carrying out ORS 381.205 to 381.305, each of the counties, cities, towns or ports mentioned in ORS 381.205 may act independent of or in conjunction with each other upon such terms and conditions as may be agreed upon by the contracting parties.

381.220 Contents of agreement. Any agreement made or contract entered into pursuant to the authority of ORS 381.205 to 381.305 shall, among other things, contain express provisions with respect to:

(1) The site of the bridges.

(2) The maximum financial obligation assumed by each of the contracting parties.

(3) The estimated cost of the structure with its approaches and connecting roads.

(4) The sources from which all the funds are to be obtained or derived.

(5) Whether the bridge is to be operated free to the public or as a toll bridge.

(6) Any other appropriate matter or provision consistent with the prudent principles of economy and good business.

381.225 Using funds available to public body for bridge expenses. Any county, city, town or port mentioned in ORS 381.205 may pay out of its respective funds or any other funds available to any of them, all or any part of the cost of the construction, reconstruction, purchase, maintenance, operation or repair of any bridge authorized by ORS 381.205 to 381.305.

381.227 Employment and compensation of attorneys. Whenever any county undertakes the construction or acquisition of an interstate bridge or ferry pursuant to ORS 381.205 to 381.305, the county court or board of county commissioners may employ and pay reasonable compensation to attorneys, including the district attorney of the county, for services heretofore or hereafter performed in connection with the construction or acquisition of such bridge or ferry. Such compensation, which in the case of the district attorney shall be in addition to any other compensation allowed by law, shall be payable solely out of the funds received from the sale of bonds for the construction or acquisition of the bridge or ferry or the revenues derived from the operation thereof. [1953 c.44 §1]

381.230 Using bond proceeds for bridge expenses; security. The construction, purchase, acquisition, operation or maintenance of any bridge or of its approaches authorized by ORS 381.205 to 381.305 may be financed in whole or in part through the issuance and sale of revenue bonds. As security for the payment of the bonds, the total or any part of the revenues from any such bridge may be hypothecated and pledged by the governing authorities purchasing, constructing, operating or maintaining the bridge without the necessity of the electors of the political subdivisions authorizing the same. However, no such hypothecation or pledge of revenues, or the issuance of the revenue bonds shall constitute in any manner, or to any extent be made to constitute, a general obligation of any county, city, town or port making the pledge.

381.235 Formal requirements and conditions of bonds. Revenue bonds mentioned in ORS 381.230:

(1) Shall be made to mature at such times and bear such annual rate of interest, payable semiannually, as the authority issuing them may determine.

(2) May have coupons attached representing the interest payments.

(3) Shall contain a recital that the bonds and the interest thereon shall be limited in payment to the special fund to be derived from tolls or other income from the bridge.

(4) May contain such other terms and conditions and be in such form and signed by such official or officials as the authority issuing the bonds shall determine, but the coupons attached to the revenue bonds need bear only the facsimile signature of the officer designated to sign the coupons.

381.237 Issuance of refunding revenue bonds. (1) Any county, city, town or port mentioned in ORS 381.205, heretofore or hereafter issuing its revenue bonds under ORS 381.205 to 381.305, may thereafter issue and sell its refunding revenue bonds for the purpose of refinancing and redeeming such outstanding revenue bonds at maturity pursuant to redemption provisions, or at any time before maturity either with the consent of the holders thereof or if the bonds shall so provide.

(2) In determining the amount of refunding revenue bonds to be issued:

(a) Due credit shall be given for the application of any sinking funds available for the payment of such outstanding revenue bonds, less appropriate reserves deemed necessary to be retained on account of the refunding revenue bonds.

(b) There may be included in determining such amount the costs and expenses in connection with the issuance and sale of the refunding revenue bonds, the premium, if any, to be paid on any of the revenue bonds to be refunded, the unpaid interest to accrue on the revenue bonds to be refunded prior to the retirement thereof, and the cost of any improvements to the bridge then determined by the governing authority to be necessary or advisable.

(3) The refunding revenue bonds shall be secured in the same manner and be payable from the same source as the revenue bonds refinanced and redeemed as may be otherwise provided in the resolution adopted by the governing authority of the county, city, town or port, but in no event shall such re-

funding revenue bonds constitute general obligations of the county, city, town or port, nor an indebtedness or liability within the meaning of any constitutional limitation or provision. [1953 c.648 §2]

381.239 Revenue bonds and refunding revenue bonds are negotiable instruments; not deemed general obligations of issuer. All revenue bonds and refunding revenue bonds issued under ORS 381.205 to 381.305 shall be negotiable instruments under the law merchant, notwithstanding they shall be payable solely from the revenues pledged for that purpose. None of such bonds shall be deemed a charge upon the tax or other revenues of the issuing entity. [1951 c.648 §4]

381.240 Incurring indebtedness for bridge expenses; issuing voted bonds. Any and all of the counties, cities, towns or ports mentioned in ORS 381.205, independently or in conjunction with each other, may incur indebtedness and issue negotiable bonds therefor in order to obtain funds for the whole or any part of the cost of the construction, reconstruction, purchase, acquisition or maintenance of the bridges authorized by ORS 381.205 to 381.305 when so authorized by the electors of the county, city, town or port. The proposition to incur such indebtedness and to issue bonds therefor may be submitted to the electors of the political subdivision at any general or special election.

381.245 Payment of bond principal and interest with bridge tolls. If any bridge constructed, purchased or otherwise acquired under ORS 381.205 to 381.305 is operated as a toll bridge, and the revenues or any part thereof derived as a result of the tolls and charges collected have been pledged and revenue bonds issued, in fixing and determining the amount of tolls to be charged consideration shall be given, among other things, to the amount necessary to be received to pay the interest upon the revenue bonds and to provide for the retirement of the principal of the bonds. Provisions shall be made for the application of the revenue so received to the payment of the interest and principal of the revenue bonds as their respective payments become due.

381.250 Acceptance of funds from United States and gifts. In carrying out ORS 381.205 to 381.305 each of the counties, cities, towns or ports mentioned in ORS 381.205 may:

(1) Accept from the United States or any of its agencies such funds as are available for any of the purposes contemplated by ORS 381.205 to 381.305, and enter into such contracts and agreements with the United States or any of its agencies as may be necessary, proper and convenient, not contrary to the laws of this state.

(2) Accept from any source any grant or donation of land or any gift of money or other valuable thing made available for any of the purposes contemplated by ORS 381.205 to 381.305.

381.255 Selection of bridge sites. The parties contracting for the construction of any bridges under ORS 381.205 to 381.305 shall select and agree upon sites, but no such bridge shall be constructed unless it connects or provision is made for connection with a state and federal highway in this state and any state or federal highway in the adjoining state.

381.260 Plans and specifications for bridge construction. Before any bridge is constructed by any of the counties, cities, towns or ports mentioned in ORS 381.205, the authorities desiring to construct the same shall select the location of the bridge and prepare the plans and specifications and the estimated cost of the structure, including rights of way, approaches and connecting roads.

381.265 Provision in bridge plans for rail traffic; contracting with railroad companies. (1) Preparation of the specifications and designs of any bridge constructed under ORS 381.205 to 381.305 may give consideration to and include provisions for facilities and accommodations for traffic by rail as well as for traffic by motor vehicle, team, pedestrian or other regular highway traffic.

(2) If provision is made for rail traffic, then the agencies under whose jurisdiction and control the bridge has been constructed may contract with any railroad companies for the use of the part of the bridge constructed to accommodate traffic by rail. The contract may be upon such terms and conditions as the interested parties may agree.

381.270 Bids for bridge construction. Competitive bids shall be invited for the construction of any bridge mentioned in ORS 381.260 in conformity with the plans, specifications and design. The call for bids shall require that each bidder accompany the bid with a certified check or a bidder's bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the amount of not less than five percent of the amount of the bid. The contract, if awarded, shall be awarded to the bidder adjudged to be the lowest and best, responsible bidder. Any and all bids may be rejected and refused if it appears to be the best interest of the general public. [Amended by 1991 c.331 §60; 1997 c.631 §468]

381.275 Contracts made in name of authority authorizing work. All contracts made and entered into for the construction, purchase, acquisition, reconstruction, improvement or repair of any bridge mentioned in ORS 381.205 shall be made in the name of the authority authorizing performance of the work.

381.280 Bond required with certain contracts. There shall be required, in connection with all contracts mentioned in ORS 381.275 and involving the employment of labor and materials, a satisfactory bond in a sum not less than 50 percent of the total amount of the contract. The bond:

(1) Shall be conditioned upon the faithful performance of the contract.

(2) Shall contain a condition that the contractor shall promptly, as due, make payments to all persons supplying the contractor, or the subcontractors, labor and materials of the contractor for the performance of the work, and that such contractor shall pay all contributions or amounts due to the State Industrial Accident Fund from such contractor or subcontractors of the contractor incurred in the performance of the contract.

(3) May contain such other conditions or provisions as the Oregon authority performing the work or the lawful constituted authority of the adjoining state may require.

381.285 Power to exercise eminent domain. Any county, city, town or port mentioned in ORS 381.205 may exercise the power of eminent domain to carry out any of the provisions of ORS 381.205 to 381.305 in accordance with the procedure provided in ORS chapter 35. [Amended by 1971 c.741 §28]

381.290 Operation of bridge as free or toll bridge. Any bridge constructed, purchased or otherwise acquired and operated under ORS 381.205 to 381.305 may be operated free to the public or on toll. If operated on toll, the revenues therefrom may be pledged as provided in ORS 381.230.

381.295 Bridge, connecting road and approaches as state highway. The connecting road and approaches to any bridges mentioned in ORS 381.205, on the Oregon side of the interstate river, together with the bridge to the center of the channel of the river, shall be part of the Oregon state highway system and shall be so declared and designated by the Department of Transportation by an appropriate resolution duly adopted and entered in the minutes and records of the department.

381.300 Acquisition and operation of interstate ferry by bridge authority. In the event that any county, city, town or port mentioned in ORS 381.205 has purchased or acquired or agreed to purchase or acquire any ferry which is being operated in carrying passengers and freight over and across any interstate river or stream at or in proximity to the site or location of a bridge constructed or to be constructed under ORS 381.205 to 381.305, the authority constructing the bridge may:

(1) Enter into an agreement with the political subdivision which has acquired or agreed to acquire the ferry, succeeding to its rights upon such terms and conditions as may be mutually agreed to by the interested parties.

(2) Operate the ferry free to the public or on tolls. If operated on tolls the revenues derived therefrom may be pledged and revenue bonds issued and sold in the same manner as provided in ORS 381.230 and 381.235 for the pledging of the tolls received from bridges and issuing revenue bonds thereon and therefor.

381.302 Acquiring and operating interstate ferry by bridge authority as part of cost of acquiring interstate bridge. (1) Whenever any county, city, town or port mentioned in ORS 381.205, heretofore or hereafter determines through its governing authority to construct a bridge under ORS 381.205 to 381.305, it may, as a part of the cost of the bridge, include and acquire any then existing and operating ferry, with appurtenant properties, which the governing body determines to be serving the same area to be served by the proposed bridge and the continued operation of which would adversely affect the traffic on the bridge.

(2) Any ferry thus acquired may be operated by the authority constructing such bridge free or on tolls, and if operated on tolls, the tolls charged shall be pledged to the payment of its revenue bonds and interest thereon issued on account of the bridge. Tolls thus collected shall be sufficient to meet all operating costs and expenses, including insurance, maintenance and a reasonable depreciation, and such payments as may have been determined by the governing authority to be necessary to apply on the amortization of the principal and interest of the revenue bonds during the period pending the completion and opening of the bridge.

(3) Upon the opening of such bridge to traffic, and thereafter while the bridge is open to traffic, no ferry thus acquired shall operate. The property used in the operation of any such ferry may be sold or disposed of by the governing authority in such manner

as will protect the bridge from the competition thereof.

(4) Acquisition of any such ferry may be made upon such terms as the governing authority shall determine, and the acquisition price may be made payable not later than the time of the opening of the bridge.

(5) Whenever the governing authority of the county, city, town or port determines to proceed in accordance with this section to acquire any ferry as a part of the cost of a bridge, and to thereafter operate such ferry as permitted by this section, it may do so regardless of whether such ferry operates from a point within the boundaries of the county, city, town or port, provided that there has been received a report of engineers indicating the advisability of the acquisition of such ferry in connection with the construction and operation of the bridge. [1953 c.648 §3]

381.305 Authority conferred by ORS 381.205 to 381.300 is supplemental authority. The authority conferred by ORS 381.205 to 381.300 is in addition and supplemental to the authority conferred by any other law.

INTERSTATE BRIDGES FINANCED BY COUNTY BONDS

381.405 "Construct," "construction" and "county court" defined. As used in ORS 381.405 to 381.520:

(1) "Construct" includes repair, maintain, improve or other words of similar meaning.

(2) "Construction" includes repair, maintenance, improvement or other words of similar meaning.

(3) "County court" means the county court of the county in which the bridge mentioned in the context is situated, and includes the board of county commissioners or other constituted authorities in the county having control of bridge construction.

381.410 Interstate bridges as permanent roads. Bridges over rivers and bodies of water forming interstate boundaries are permanent roads and include approaches and viaducts leading thereto.

381.415 Counties given state power to construct bridges. For the purposes of ORS 381.405 to 381.520 the right, power and authority of the state to construct bridges, viaducts and roadways over navigable streams and the beds thereof or upon any state lands is granted and given to all counties.

381.420 County financing construction of interstate bridges. Counties may borrow money for the purpose of constructing interstate bridges and issue bonds to evidence such indebtedness.

381.425 [Repealed by 1991 c.220 §15]

381.430 [Repealed by 1991 c.220 §15]

381.435 [Repealed by 1991 c.220 §15]

381.440 Bond election; petition requirements; debt limitation. (1) This section establishes the procedure for determining whether a county shall issue bonds for the construction of an interstate bridge under ORS 381.420. The question shall be decided by election. The county court:

(a) May order the election on its own resolution; or

(b) Shall order the election when a petition is filed as provided in this section.

(2) The order of the county court calling the election shall set out the amount of bonds proposed to be issued, the length of time they shall run and the maximum rate of interest they shall bear.

(3) The requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition in ORS 250.165 to 250.235.

(4) Notwithstanding subsection (3) of this section, if ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county charter or an ordinance adopted under the county charter.

(5) Notwithstanding subsection (1) of this section, if the county debt for the construction of permanent roads already incurred or authorized, together with the new debt sought to be created by the petition, exceeds two percent of the assessed valuation of the county, then the county court shall not call an election under this section.

(6) An election under this section shall be held on a date specified in ORS 203.085. The election shall be conducted under ORS chapters 246 to 260.

(7) A county may hold no more than one election under this section in any 12-month period. [Amended by 1983 c.350 §248]

381.445 [Repealed by 1983 c.350 §331a]

381.450 [Repealed by 1983 c.350 §331a]

381.455 [Repealed by 1983 c.350 §331a]

381.460 [Repealed by 1983 c.350 §331a]

381.465 [Repealed by 1983 c.350 §331a]

381.470 [Repealed by 1983 c.350 §331a]

381.475 [Repealed by 1983 c.350 §331a]

381.480 [Repealed by 1983 c.350 §331a]

381.485 [Repealed by 1983 c.350 §331a]

381.490 County bonding committee. The county court is created a bonding committee of the county. The judge of the county court or chairperson of the board of county commissioners shall be chairperson and the

county clerk shall be secretary of the bonding committee.

381.495 Duties and powers of bonding committee. If the electors of the county approve the issuance of bonds, the bonding committee shall arrange to issue and sell the bonds. The bonding committee may arrange the form, details and sale of the bonds in a manner consistent with ORS 381.405 to 381.520. [Amended by 1983 c.350 §249]

381.500 Terms and conditions of bonds. (1) The bonds mentioned in ORS 381.420 shall:

(a) Be in denominations of $100 or more, but not exceeding $1,000.

(b) Run not to exceed 30 years from the date of issuance.

(c) Bear interest at a rate not to exceed six percent per year, payable on January 1 and July 1.

(d) Have interest coupons attached to them, one coupon for each interest payment that will be made.

(e) Be signed by the judge of the county court or chairperson of the board of county commissioners and the county clerk. The interest coupons shall bear the printed facsimile signatures of the county judge or chairperson of the board of county commissioners and the county clerk.

(f) Be sealed with the seal of the county.

(g) Bear the certificate of the county treasurer over the signature of the county treasurer that they have been registered in the office of the county treasurer, naming the date of register.

(2) The bonds and interest coupons shall:

(a) Be lithographed or printed on good bond paper.

(b) Be made payable to bearer, in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States.

(c) Be paid by the county treasurer upon presentation at the office of the county treasurer or at the fiscal agency of the state in New York City, upon the date of payment named thereon.

381.505 Registering bonds. The county treasurer shall keep a register of all the bonds issued or sold under ORS 381.405 to 381.520, noting therein the number of bonds, amount, date of issuance, date of sale and such facts as in the judgment of the county treasurer serve to keep an accurate record of the bonds so issued and sold.

381.510 Bond advertisement and sale. (1) The bonding committee shall advertise in one newspaper in the county, if there is one, in one leading newspaper in Portland, Oregon, and in one leading financial newspaper in New York City for two weeks before any sale of bonds, the fact of the sale, inviting bids for the bonds and stating such facts as will interest prospective purchasers. For example, the date and place of sale, the terms of sale, the character of the bonds, the amount, interest and denomination of the bonds, the fact that all bids must be accompanied by a certified check for five percent of the amount of the bid, that any and all bids may be rejected, that the bonds may be sold only for cash, not below par, and to the highest bidder and such other facts as may in the judgment of the bonding committee procure the most advantageous sale of the bonds may be stated.

(2) All bids to purchase bonds shall be sealed and accompanied by a certified check for five percent of the amount of the bid. The bonding committee may reject any and all bids.

(3) No bonds authorized by ORS 381.420 shall be sold for less than par or for anything but cash.

381.515 Custody and disbursement of bond proceeds. The proceeds of all the bonds sold under ORS 381.405 to 381.520 shall be paid into the county treasury and shall go into a special bridge fund. Such proceeds shall be disbursed for the purposes for which the bonds are issued.

381.520 Tax to pay bond interest and principal. The county court shall, at the time of making the annual tax levy upon the previous year's assessment, levy a tax on all the taxable property in the county sufficient to pay the outstanding bonds at maturity and the interest on all outstanding bonds for the current year. The proceeds derived from the tax shall be used only for the payment of the principal and interest of the bonds. Such proceeds shall be paid by the county treasurer to the bearer of the bonds or sent to the fiscal agency at New York City for the payment of the interest coupons upon presentation as provided in ORS 381.500.

INTERSTATE BRIDGES FINANCED BY CITY BONDS

381.605 City construction, operation and financing of interstate bridges. Incorporated cities may construct, maintain and operate toll bridges over rivers and bodies of water forming interstate boundaries, and for such purpose may borrow money and issue and sell bridge bonds to evidence such indebtedness.

381.610 [Repealed by 1983 c.350 §250 (381.611 enacted in lieu of 381.610)]

381.611 Bond election; petition requirements. (1) This section establishes the procedure for determining whether a city shall issue bonds for the construction of an interstate bridge under ORS 381.605. The question shall be decided by election. The city council:

(a) May order the election on its own resolution; or

(b) Shall order the election when a petition is filed as provided in this section.

(2) The order of the city council calling the election shall set out the amount of bonds proposed to be issued, the length of time they shall run and the maximum rate of interest they shall bear.

(3) The requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition in ORS 250.265 to 250.346, except that notwithstanding ORS 250.325, the council shall not consider adoption or rejection of the measure before submitting the measure to the city electors.

(4) Notwithstanding subsection (3) of this section, if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the city charter or an ordinance adopted under the city charter.

(5) An election under this section shall be held on a date specified in ORS 221.230. The election shall be conducted under ORS chapters 246 to 260. [1983 c.350 §251 (enacted in lieu of 381.610)]

381.615 Majority vote required. The council may issue and sell bonds for the purpose mentioned in ORS 381.605 only upon the approval of a majority of those voting on the question. [Amended by 1983 c.350 §252]

381.620 [Repealed by 1983 c.350 §331a]

381.625 [Repealed by 1983 c.350 §331a]

381.630 [Repealed by 1983 c.350 §331a]

381.635 Duties and powers of council. If the electors of the city approve the issuance of bonds, the council shall arrange to issue and sell the bonds. The council may arrange and provide the form, terms and sale of the bonds, consistent with ORS 381.605 to 381.670. [Amended by 1983 c.350 §253]

381.640 Terms and conditions of bonds. (1) The bonds mentioned in ORS 381.605 shall:

(a) Be in denominations of $100 or more, but not exceeding $1,000.

(b) Run not to exceed 30 years from the end of the respective issues thereof.

(c) Bear interest at a rate not to exceed six percent per year, payable on January 1 and July 1.

(d) Have interest coupons attached to them, one coupon for each interest payment that will be made.

(2) The bonds and interest coupons shall:

(a) Be lithographed or printed on good bond paper.

(b) Be made payable to bearer, in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States.

(c) Be paid by the city treasurer upon presentation at the office of the city treasurer or at the fiscal agency of the state in New York City, upon the date of payment named thereon.

(d) Be signed by the mayor and city recorder. The interest coupons shall bear the printed facsimile signatures of the mayor and city recorder.

(e) Be sealed with the seal of the council.

(f) Bear the certificate of the city treasurer, over the signature of the city treasurer, that they have been registered in the office of the city treasurer, naming the date of registry.

381.645 Registering bonds. The city treasurer shall keep a register of all the bonds issued or sold under ORS 381.605 to 381.670, noting therein the number of bonds, amount, date of issuance, date of sale and such facts as in the judgment of the city treasurer serve to keep an accurate record of the bonds so issued and sold.

381.650 Bond advertisement and sale. (1) The bonds shall be advertised and sold to the highest bidder for cash.

(2) The council shall advertise in one newspaper, if there is one, in the county in which the municipality is located, in one leading newspaper in Portland, Oregon, and in one leading financial newspaper in New York City for two weeks before any sale of bonds, the fact of the sale, inviting bids for the bonds and stating such facts as will interest prospective purchasers. For example, the date and place of sale, the terms of sale, the character of the bonds, the amount of interest and denomination of the bonds, the fact that all bids must be accompanied by a certified check for five percent of the amount of the payment, that any and all bids may be rejected, that the bonds may be sold for cash only and to the highest bidder and such other facts as may in the judgment of the council procure the most advantageous sale of the bonds may be stated.

(3) All bids to purchase bonds must be sealed and accompanied by a certified check for five percent of the amount of the bid. The council may reject any and all bids.

381.655 Custody and disbursement of bond proceeds. The proceeds of all the bonds sold under ORS 381.605 to 381.670 shall be paid into the city treasury and shall go into a special bridge fund. Such proceeds shall be disbursed for the purposes for which the bonds are issued.

381.660 Use of tolls to pay bonded indebtedness and bridge maintenance. (1) Tolls shall be fixed, charged and collected for passage over the bridge mentioned in ORS 381.605, and shall be so fixed and adjusted as to provide a fund sufficient to pay the principal and interest of the bonds issued for such bridge and an additional fund to pay the cost of maintaining, repairing and operating such bridge.

(2) The tolls, except such part thereof as may be necessary to pay the cost of maintaining, repairing and operating the bridge, shall be placed in a special fund, which is pledged to and charged with the payment of the bonds and the interest thereon.

381.665 Tax for bridge expense not paid by tolls. Should the tolls and revenues procured for the use of the bridge be insufficient to pay the cost of maintaining, repairing and operating the bridge and the interest and principal upon bonded indebtedness as it accrues, the city council may each year levy and collect taxes upon all property, real and personal, situated within the boundaries of the municipality and which is by law taxable for state and other purposes, sufficient to provide for such deficit, subject, however, to charter provisions and the provisions of the Oregon Constitution with respect to debt limitations.

381.670 Plans for bridge construction; bids; awarding contract. (1) The council shall cause to be prepared surveys, plans, specifications and estimates for the materials to be used and the manner and method of construction of any bridge constructed under ORS 381.605 to 381.670.

(2) The council shall invite bids for the construction of any such bridge in conformity with the plans and specifications.

(3) The council shall award the contract to the lowest and best responsible bidder, but any and all bids may be rejected if it appears to the best interests of the general public. [Amended by 1971 c.659 §5]

MISCELLANEOUS PROVISIONS

381.805 Governor as chairperson of board constructing interstate bridge. Whenever, under the provisions of any law of this state, a bridge or viaduct is constructed across the boundary line of this state into an adjoining state, with funds provided by both this state and such adjoining state, or by any county or district of this state and such adjoining state, or by this state and any county or district of such adjoining state, or by any county or district of this state and any county or district of such adjoining state, the Governor of this state is, for the purpose of carrying on and conducting negotiations and making agreements and contracts with such adjoining state, county or district, in connection with the bridge, ex officio a member and chairperson of any board of commissioners or any official body empowered under the law of this state to construct the bridge.

381.810 Powers of board constructing interstate bridge. The commissioners or official body mentioned in ORS 381.805 may enter into any and all contracts with the adjoining state, county or district, jointly, for the purpose and object of constructing, maintaining and operating the bridge, for the fixing of tolls thereon and the granting of franchises, not inconsistent with any Act of Congress regulating the construction of bridges across navigable streams or regulating interstate commerce. No exclusive or perpetual franchise shall ever be granted over the bridge.

381.815 Limitation on use of bridge funds. Nothing in ORS 381.805 and 381.810 authorizes the use of any funds provided for the construction, maintenance or operation of the bridge mentioned in ORS 381.805, beyond the just proportion of construction cost and expenses of maintenance and operation, due against this state or any county or district thereof.

381.820 Interstate bridges of other states or subdivisions made tax exempt. Every bridge which passes over a river or body of water forming a boundary between this state and another state, and which has been constructed or acquired and is being operated by such other state or by any county, city or other municipality thereof, shall, together with its approaches, be exempt from all property and other taxes in this state, if such other state exempts from all taxation every such interstate bridge, together with its: approaches, constructed or acquired and being operated by this state or by any county, city or other municipality thereof.

Chapter 382

2003 EDITION

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382.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" includes board of county commissioners.

BRIDGES UNDER DEPARTMENT OF TRANSPORTATION

382.105 Construction and operation of toll bridges by Department of Transportation. Whenever in the judgment of the Department of Transportation the construction of a bridge over any stream, river, bay, arm of the ocean or other body of water on any state highway, federal aid highway, any highway constituting a direct or immediate extension thereof or a connection between two state highways or federal highways is necessary in order to afford adequate convenience and a safe means of travel for the public and such bridge should be constructed and operated as a toll bridge, then the department may:

(1) Construct the bridge.

(2) Pay in the first instance the cost and expense out of highway funds.

(3) Thereafter replenish or reimburse the state highway funds with tolls received as a result of the use and operation of the toll bridge.

382.110 Financing toll bridge construction by bonds or other source. Funds for the construction of any toll bridge by the Department of Transportation shall be procured from the sale of bonds authorized to be issued and sold for highway construction, but if no bonds are available for the purpose, then funds available from any other source may be used.

382.115 Fixing toll rates; removal of tolls. (1) The Department of Transportation may determine and fix the rate of toll to be charged for transit over any toll bridge mentioned in ORS 382.105, which rate shall be sufficient to reimburse the highway funds for the initial outlay of costs.

(2) As soon as sufficient funds have been received from tolls collected for the use of such bridge to reimburse the highway funds the bridge shall be operated as a free bridge.

382.120 Bridges on Oregon Coast Highway. (1) The Department of Transportation may operate free of tolls any of the bridges constructed pursuant to the terms and provisions of chapter 9, Oregon Laws 1933, Second Special Session.

(2) The Department of Transportation may pay, in whole or in part, out of any highway revenues subject to the control of the department the principal of and interest on the bonds issued pursuant to the terms and provisions of chapter 9, Oregon Laws 1933, Second Special Session.

(3) This section shall not abrogate or impair the obligations of any bonds or of any contract with the purchaser or holder of any or all of the bonds issued or of any other contract made pursuant to the terms and provisions of chapter 9, Oregon Laws 1933, Second Special Session.

(4) The authority conferred by this section is cumulative, in addition and supplemental to the authority conferred by any other law. In so far as this section is inconsistent with any other law this section is controlling.

382.125 Required approval of plans for bridges over navigable waters. (1) No bridge shall be constructed over or across any navigable water wholly or in part within this state or over lands lying between high and low water on any navigable stream within or forming the boundary of this state unless and until the plans, and the elevation and clearance of the bridge, are first approved by the Department of Transportation, except that:

(a) Such approval is not required when the bridge is located wholly within the corporate limits of a city of over 100,000 population.

(b) If such bridge is to be constructed by a county, the elevation and clearance but not the plans of the proposed bridge must first be approved.

(2) If such bridge is located within the limits of any port district existing under the laws of this state or between any such port district and the Pacific Ocean, it shall not be constructed unless and until the plans, elevation and clearance of the bridge are first approved by the board of commissioners of the port district. [Amended by 1963 c.602 §1; 1981 c.153 §75]

382.205 Using county funds for bridges. If the money provided by ORS 368.705 is expended and an emergency arises demanding immediate action by it, the county court may in its discretion apply any moneys in the county treasury, not otherwise appropriated, toward defraying the expense of building or repairing bridges on any of the county or state roads within the county or over streams forming boundaries between the county and any other county.

382.210 [Amended by 1963 c.602 §2; repealed by 1981 c.153 §79]

382.215 [Repealed by 1981 c.153 §79]

382.220 [Repealed by 1971 c.659 §6]

382.225 [Repealed by 1981 c.153 §79]

382.230 [Repealed by 1981 c.153 §79]

382.235 [Repealed by 1981 c.153 §79]

382.240 [Repealed by 1981 c.153 §79]

382.245 [Repealed by 1981 c.153 §79]
382.250 [Repealed by 1981 c.153 §79]
382.255 [Repealed by 1981 c.153 §79]
382.260 [Repealed by 1981 c.153 §79]
382.265 [Repealed by 1981 c.153 §79]
382.270 [Repealed by 1981 c.153 §79]
382.275 [Repealed by 1981 c.153 §79]
382.280 [Repealed by 1981 c.153 §79]
382.285 [Repealed by 1981 c.153 §79]

MULTNOMAH COUNTY BRIDGES

382.305 Operation of bridges across Willamette River by Multnomah County. (1) The Board of County Commissioners of Multnomah County shall operate and maintain all bridges, as defined in subsection (2) of this section, together with the approaches thereof, erected, owned by or leased to the City of Portland or Multnomah County, across the Willamette River within the boundaries of Portland, and the City of Portland shall surrender and deliver possession and control of such bridges, except as provided in ORS 382.310 to 382.330, to the board of county commissioners.

(2) As used in ORS 382.305 to 382.330, "bridge" means the bridges and parts thereof.

382.310 Powers of Multnomah County as to Willamette River bridges. (1) The Board of County Commissioners of Multnomah County shall:

(a) Maintain, keep in good condition and repair and operate the bridges and their approaches. The lighting of the bridges and their approaches is a part of the duty to maintain and operate such bridges; and the board may enter into contracts for such lighting.

(b) Operate, maintain and keep in good condition all parts of the bridges owned by the city or leased by the city or by the board of county commissioners.

(2) The Board of County Commissioners of Multnomah County shall, at the cost and expense of the county:

(a) Employ, hire and discharge, from time to time, agents, workers, laborers and servants, as it deems necessary in the conduct, maintenance, repair and operation of the bridges and their approaches.

(b) Make needful rules and regulations for the operation and maintenance of the bridges, but such rules and regulations shall be subject to the exercise by the City of Portland of such police power and authority as the city has under its charter with respect to the bridges owned by the city.

(3) The Board of County Commissioners of Multnomah County may enter into agreements or leases for the use by the public, for highway purposes and for the operation of street cars thereon, of the upper highway deck of the bridges constructed across the Willamette River in Portland, by persons or corporations other than the City of Portland.

382.312 [1975 c.436 §4; repealed by 1993 c.741 §147]

382.315 Agreements with public service corporations for use of Willamette River bridges. If the Board of County Commissioners of Multnomah County makes an agreement or lease for the use of the upper deck of any bridge constructed across the Willamette River within Portland and if any public service corporation operating a street car line within Portland desires to maintain and operate its street cars over the upper deck of the bridge so leased, the board of county commissioners may agree with the public service corporation upon the terms and compensation for such use. If they are unable to agree, the amount of compensation to be paid by the public service corporation shall be the same as may at such time be fixed or charged by the City of Portland for the use of other bridges across the Willamette River by public service corporations.

382.320 [Repealed by 1969 c.429 §6]

382.325 Powers of Portland as to Willamette River bridges. The City of Portland, Oregon, may:

(1) Regulate traffic upon and across the bridges and their approaches constructed by the City of Portland.

(2) Lay and maintain upon the bridges and their respective approaches constructed by the City of Portland all rails and tracks necessary, desirable or convenient for the operation of street cars thereon.

(3) Provide for the use of the bridges and their approaches constructed by the City of Portland and rails and tracks thereon by street cars propelled by electrical and other motive power, and the carrying of passengers on such street cars.

(4) Make contracts with and grant rights, privileges and franchises to any persons, firms or corporations for the use of the bridges and their approaches, and rails and tracks by cars, street cars and trains, the carrying of passengers thereon and for charging and collecting fares and tolls under such rights, privileges and franchises.

(5) Contract for, agree upon and charge and collect rents and other compensation for such use by cars, street cars and trains, and the Board of County Commissioners of Multnomah County shall have no right to establish or collect rents or other compensation for the use of the bridges by cars, street cars and trains.

(6) Exercise all other power and authority over the bridges and their approaches not

expressly conferred by ORS 382.305 to 382.330 on Multnomah County.

382.330 Operation of Adams Street-Glisan Street bridge in Portland. (1) The Board of County Commissioners of Multnomah County shall operate, maintain and repair the bridge existing on February 25, 1913, across the Willamette River from Adams Street on the east side of the river to Glisan Street on the west side of the river, in Portland, subject to the terms and provisions of the lease executed by the Oregon-Washington Railroad and Navigation Company, party of the first part, and the City of Portland, party of the second part, dated October 9, 1912, and filed with the city auditor on October 19, 1912.

(2) The board of county commissioners may, from time to time, enter into leases or agreements with the owners of such bridge for the use of the upper deck and its approaches for highway purposes by the public and the operation of street cars thereon.

(3) In the event that no public service corporation makes any contract or agreement with the City of Portland for the operation of its street cars over the upper deck of such bridge or its approaches prior to February 25, 1913, the compensation to be paid by the public service corporation shall be fixed by and paid to the City of Portland, subject to the lease mentioned in subsection (1) of this section.

382.335 Definitions for ORS 382.335 to 382.425. As used in ORS 382.335 to 382.425:

(1) "Board of county commissioners" means the Board of County Commissioners of Multnomah County and includes the constituted authorities of Multnomah County having control of road construction, maintenance and operation.

(2) "Construct" includes repair, maintain, improve or other words of similar meaning.

(3) "Construction" includes repair, maintenance, improvement, reconstruction or other words of similar meaning.

382.340 Bridges over Willamette River and Slough as permanent roads. Bridges over the Willamette River in Portland, Oregon, and the Willamette Slough within Multnomah County are permanent roads and include approaches and viaducts leading thereto.

382.345 Multnomah County constructing and financing Willamette River bridges. Multnomah County may borrow money for the purpose of constructing and reconstructing bridges across the Willamette River in Portland, Oregon, and Willamette Slough within Multnomah County and issue bonds to evidence such indebtedness.

382.350 Petition and order for bond election; debt limitation. Whenever a petition therefor, signed by not less than 10 percent of the electors of Multnomah County and stating the amount of the proposed bond issue is filed with the county clerk, the board of county commissioners shall, subject to ORS 382.355 and 382.360, order an election to determine whether or not the county shall issue bonds for the construction of the bridge mentioned in ORS 382.345. However, if the county debt for the construction of permanent roads already incurred or authorized, together with the new debt sought to be created by the petition, exceeds six percent of the assessed valuation of all the property in the county, then the board of county commissioners shall disregard the petition.

382.355 Filing and presentation of petition; order of board of county commissioners. (1) The petition mentioned in ORS 382.350 shall be filed with the county clerk and presented to the board of county commissioners at or before its next regular session.

(2) The board of county commissioners shall examine the petition as soon as it is presented. If it is satisfied that the petition substantially conforms to the requirements of ORS 382.370 and contains the names and post-office addresses, places of residence and precincts of the requisite number of electors as required by ORS 382.350, the board of county commissioners shall make an order directing that a special election be called and held in the county for the purposes specified in the petition at a time to be then fixed by the board of county commissioners, which shall not be less than 30 nor more than 40 days after the date of making the order and not more than 90 days after the day of filing the petition.

(3) If the board of county commissioners determines either that the petition does not substantially conform to the requirements of ORS 382.370 or that it does not contain names and post-office addresses, places of residence and precincts of the requisite number of electors as required by ORS 382.350, it shall make an order declaring that fact, particularly designating the defects and refusing to order a special election.

382.360 Appeals from orders of board of county commissioners. (1) There shall be no appeal from the order mentioned in ORS 382.355 (2).

(2) Within 10 days after the entry of the order mentioned in ORS 382.355 (3), any one or more of the petitioners may appeal to the circuit court in the same manner as appeals are taken from the county court in actions at law, except that the notice of appeal, if not entered in the journal at the time the

order is made, shall be served on the county clerk and no appeal bond shall be required.

(3) If the circuit court upon appeal is satisfied that the board of county commissioners should have ordered an election, the circuit court shall direct the board of county commissioners to proceed as if it had declared the proceedings sufficient. If upon appeal the circuit court decides that the judgment of the board of county commissioners was correct it shall make an order affirming the judgment of the board of county commissioners. There shall be no appeal from the judgment of the circuit court.

382.365 Majority vote to authorize bond issue. The bonds mentioned in ORS 382.345 shall be issued only upon approval of a majority of those voting at any election for the same.

382.370 Form of petitions, notices and ballots. Petitions for bridge bond elections, bridge bond election notices and ballots shall be in substantially the same form as prescribed by ORS 381.440. [Amended by 1983 c.350 §254]

382.375 Election; laws applicable. (1) Elections for the issuance of the bonds may be held at any general election or at any time, subject to the time limitations of ORS 382.355 (2).

(2) The laws of this state governing special and general elections in so far as they do not conflict with ORS 382.335 to 382.425 apply to elections under ORS 382.335 to 382.425.

382.380 Order declaring bond election result. If at any such general or special bridge bond election a majority of the electors voting at such election votes in favor of issuing the bonds, the board of county commissioners shall enter an order in its journal declaring that fact. The order shall be absolutely conclusive as to the regularity of all the proceedings in reference to the matter.

382.385 County commissioners submitting bond issue on own motion. The board of county commissioners of its own motion may submit the question of issuing bonds for the purposes mentioned in ORS 382.345 at any general election. This may be done by an order of the board of county commissioners, entered in the journal at least 40 days next preceding any general election. The order shall set out the amount of bonds proposed to be issued, the length of time they shall run and the maximum rate of interest they shall bear. After having entered such order the board of county commissioners shall proceed to submit the question to the electors of the county in the same manner and with like effect as upon the petition mentioned in ORS 382.350.

382.390 Arrangement by county commissioners for bond issuance and sale. Thirty days after the entry upon the records of the order mentioned in ORS 382.380, or if the election is contested, within 30 days after the final determination of such contest, the board of county commissioners shall arrange to issue such bonds as were authorized at the election and shall thereafter, as soon as may in its judgment be deemed expedient, issue and sell the bonds. The board of county commissioners may arrange the form, details and sale of the bonds consistently with ORS 382.335 to 382.425.

382.395 Terms and conditions of bonds. (1) The bonds mentioned in ORS 382.345 shall:

(a) Be in denominations of $100 or more, but not exceeding $1,000.

(b) Run not to exceed 30 years from the date of their respective issuance.

(c) Bear interest at a rate determined by the board of county commissioners, payable semiannually.

(d) Have interest coupons attached to them, one coupon for each interest payment that will be made.

(e) Be signed by the chairperson of the board of county commissioners and the county clerk. The interest coupons shall bear the printed facsimile signatures of the chairperson of the board of county commissioners and the county clerk.

(f) Be sealed with the seal of the county.

(g) Bear the certificate of the county treasurer over the signed statement that they have been registered in the treasurer's office, naming the date registered.

(h) Be issued in series and mature serially.

(2) The bonds and interest coupons shall:

(a) Be lithographed or printed on good bond paper.

(b) Be made payable to bearer, in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States.

(c) Be paid by the county treasurer upon presentation at the treasurer's office or at the fiscal agency of the state in New York City, upon the date of payment named thereon.

(3) Subject to subsections (1) and (2) of this section, denominations of the bonds, dates of maturity and dates when interest is payable may be determined by the board of county commissioners. [Amended by 1981 c.94 §35]

382.400 Registering bonds. The county treasurer shall keep a register of all the bonds issued or sold under ORS 382.335 to 382.425, noting therein the number of bonds, amount, date of issuance, date of sale and such facts as in the judgment of the county treasurer serve to keep an accurate record of the bonds so issued and sold.

382.405 Bond advertisement and sale. (1) The board of county commissioners shall advertise in one newspaper in the county outside of Portland, if there is one, in one leading newspaper in Portland, Oregon, and in one leading financial newspaper in New York City for two weeks before any sale of bonds, the fact of the sale, inviting bids for the bonds and stating such facts as will interest prospective purchasers. For example, the date and place of sale, the terms of sale, the character of the bonds, the amount, interest and denomination of the bonds, the fact that all bids must be accompanied by a certified check for five percent of the amount of the bid, that any and all bids may be rejected, that the bonds may be sold only for cash, not below par, and to the highest bidder and such other facts as may in the judgment of the board of county commissioners procure the most advantageous sale of the bonds may be stated.

(2) All bids to purchase bonds shall be sealed and accompanied by a certified check for five percent of the amount of the bid. The board of county commissioners may reject any and all bids.

(3) No bonds authorized by ORS 382.345 shall be sold for less than par or for anything but cash.

382.410 Custody and disbursement of bond proceeds. The proceeds of all the bonds sold under ORS 382.335 to 382.425 shall be paid into the county treasury and shall go into a special bridge fund. Such proceeds shall be disbursed for the purposes for which the bonds are issued.

382.415 Paying bond principal and interest with tax or motor license fund. (1) The board of county commissioners shall, at the time of making the annual tax levy upon the previous year's assessment, levy a tax on all the taxable property in the county sufficient to pay the outstanding bonds at maturity and the interest on all outstanding bonds for the current year. The proceeds derived from the tax shall be used only for the payment of the principal and interest of the bonds. Such proceeds shall be paid by the county treasurer to the bearer of the bonds or sent to the fiscal agency at New York City for the payment of the interest coupons upon presentation, as provided in ORS 382.395.

(2) The board of county commissioners in its annual budget has the option of providing for the application of all or part of the proceeds of the county motor license fund to all or part of the payments of principal and interest on bridge bonds maturing in the ensuing year. In case this option is exercised and such other provision is made for meeting the debt requirement, in whole or in part, then the tax levy authorized by subsection (1) of this section shall only be for such amount, if any, as may be necessary over and above this other provision of funds.

382.420 Title and control of bridge. Upon the completion of any bridge constructed under ORS 382.335 to 382.425, title thereto and full control thereof shall be vested in Multnomah County, control to be exercised on behalf of the county by the board of county commissioners.

382.425 County clerk as clerk of county commissioners; records of proceedings. In all proceedings relative to the bonds or to bridge construction, the County Clerk of Multnomah County shall be the clerk of the board of county commissioners. The records of all proceedings shall be recorded in the books of the county clerk.

CITY BRIDGES

382.505 Erection and maintenance of bridges by cities. Each incorporated city in this state may erect and maintain bridges across navigable or other water within or without the boundaries of the city when found necessary or convenient and take such action and proceedings as are suitable for obtaining the approval of the proper authorities of the United States Government therefor.

382.605 [Repealed by 1969 c.50 §1]
382.610 [Repealed by 1969 c.50 §1]
382.615 [Repealed by 1969 c.50 §1]
382.620 [Repealed by 1969 c.50 §1]
382.625 [Repealed by 1969 c.50 §1]
382.630 [Repealed by 1969 c.50 §1]
382.635 [Repealed by 1969 c.50 §1]
382.640 [Repealed by 1969 c.50 §1]
382.645 [Repealed by 1969 c.50 §1]
382.650 [Repealed by 1969 c.50 §1]
382.655 [Repealed by 1969 c.50 §1]
382.660 [Repealed by 1969 c.50 §1]
382.665 [Repealed by 1969 c.50 §1]
382.670 [Repealed by 1969 c.50 §1]
382.675 [Repealed by 1969 c.50 §1]
382.705 [Repealed by 1969 c.50 §1]
382.710 [Repealed by 1969 c.50 §1]
382.715 [Repealed by 1969 c.50 §1]
382.720 [Repealed by 1969 c.50 §1]
382.725 [Repealed by 1969 c.50 §1]

382.730 [Repealed by 1969 c.50 §1]
382.735 [Repealed by 1969 c.50 §1]
382.740 [Repealed by 1969 c.50 §1]
382.745 [Repealed by 1969 c.50 §1]
382.750 [Repealed by 1969 c.50 §1]
382.755 [Repealed by 1969 c.50 §1]
382.760 [Repealed by 1969 c.50 §1]
382.765 [Repealed by 1969 c.50 §1]
382.770 [Repealed by 1969 c.50 §1]
382.775 [Repealed by 1969 c.50 §1]
382.780 [Repealed by 1969 c.50 §1]
382.785 [Repealed by 1969 c.50 §1]

Chapter 383

2003 EDITION

Toll Roads and Toll Bridges

TOLL ROADS

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383.385 Port of St. Helens toll bridge

383.386 Contracts for bridge; title

TOLL ROADS

383.001 Findings. The Legislative Assembly finds that:

(1) The development, improvement, expansion and maintenance of an efficient, safe and well-maintained system of roads, highways and other transportation facilities is essential to the economic well-being and high quality of life of the people of this state.

(2) Public sources of revenues, including federal funding, to provide an efficient transportation system have not kept pace with the state's growing population and growing transportation needs, and all available alternative sources of funding should be utilized to supplement available public sources of revenues.

(3) Because public funding sources are not providing the state with sufficient funds to meet all of its transportation needs, private funding should be encouraged as an additional source of funding for transportation projects and facilities.

(4) Various alternatives for utilizing the funds of private entities in the acquisition, design, construction, reconstruction, operation and maintenance of transportation facilities exist, including arrangements whereby private entities obtain exclusive agreements to design, build, own, lease or operate with private funds all or a portion of transportation projects and facilities in exchange for the right to receive certain revenues generated from the operation and utilization of such transportation projects and facilities.

(5) Another important alternative for the funding of transportation facilities is the use of federal funds pursuant to 23 U.S.C. 129(a), as amended by section 112 of the Intermodal Surface Transportation Efficiency Act of 1991, which established a program authorizing federal participation in construction of publicly or privately owned toll highways, bridges and tunnels.

(6) The federal legislation allows for a mix of federal funding and private funding of transportation facilities, allowing the states to leverage available federal funds as a means for attracting private capital.

(7) Legislation for the utilization of private funding of transportation facilities should be flexible enough to permit the Department of Transportation to obtain the advantages of any available alternative under which the acquisition, design, construction, reconstruction, operation, maintenance and repair of transportation facilities can be financed in whole or in part or in combination by any available sources of private or public funding.

(8) The funding of transportation facilities through the imposition of tolls on those who use such facilities is a fair and impartial means of assessing the costs of improvements against those who most benefit from such improvements, and is consistent with public policy.

(9) Joint endeavors of public and private entities do the following:

(a) Take advantage of private sector efficiencies in designing, constructing and operating transportation projects.

(b) Allow for the rapid formation of capital necessary for funding transportation projects.

(c) Require continued compliance with environmental requirements and applicable state and federal laws that all publicly financed projects must address. [1995 c.668 §1]

383.003 Definitions for ORS 383.003 to 383.027. As used in ORS 383.003 to 383.027:

(1) "Department" means the Department of Transportation.

(2) "Private entity" means any nongovernmental entity, including a corporation, partnership, company or other legal entity, or any natural person.

(3) "Related facility" means any real or personal property that:

(a) Will be used to operate, maintain, renovate or facilitate the use of the tollway;

(b) Will provide goods or services to the users of the tollway; or

(c) Can be developed efficiently when tollways are developed and will generate revenue that may be used to reduce tolls or will be deposited in the State Tollway Account.

(4) "Toll" means any fee or charge for the use of a tollway.

(5) "Tollway" means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or other paved surface or structure specifically designed as a land vehicle transportation route, the construction, operation or maintenance of which is wholly or partially funded with toll revenues resulting from an agreement under ORS 383.005.

(6) "Tollway project" means any capital project involving the acquisition of land for, or the construction, reconstruction, improvement, installation, development or equipping of, a tollway, related facilities or any portion thereof.

(7) "Unit of government" means any department or agency of the federal government, any state, or any agency, office or department thereof, and any city, county, district, port or other public corporation organized and existing under statutory law or under a voter-approved charter. [1995 c.668 §2]

383.005 Agreements for tollway projects; operation of projects. (1) For purposes of the acquisition, design, construction, reconstruction, operation or maintenance and repair of tollway projects, the Department of Transportation may enter into any combination of contracts, agreements and other arrangements with any one or more private entities or units of government, or any combination thereof, including but not limited to the following:

(a) Design-build contracts with private entities pursuant to which a portion or all aspects of the design, construction and installation of all or any portion of a tollway project are accomplished by the private entity;

(b) Lease agreements, lease-purchase agreements and installment sale arrangements for the lease, sale or purchase of real and personal property for tollway projects by the state from private entities or units of government or by private entities or units of government from the state;

(c) Licenses, franchises or other agreements for the periodic or long-term operation or maintenance of a tollway project;

(d) Financing agreements for a tollway project pursuant to which the department makes any loan, grant, guaranty or other financing arrangement with a private entity or unit of government; and

(e) Agreements for purchase or acquisition of fee ownership, easements, rights of way or any other interests in land upon which a tollway project is to be built.

(2) The department may operate tollway projects and impose and collect tolls on any tollway project the department operates. Any private entity or unit of government that operates a tollway project pursuant to an agreement with the department may impose and collect tolls on the tollway project. [1995 c.668 §3; 2001 c.844 §7]

383.007 [1995 c.668 §3a; 1997 c.390 §1; 1997 c.671 §3; repealed by 2001 c.844 §9]

383.009 State Tollway Account; sources; uses. (1) There is hereby established the State Tollway Account as a separate account within the State Highway Fund. The State Tollway Account shall consist of:

(a) All moneys and revenues received by the Department of Transportation from or made available by the federal government to the department for any tollway project or for the operation or maintenance of any tollway;

(b) Any moneys received by the department from any other unit of government or any private entity for a tollway project or from the operation or maintenance of any tollway;

(c) All moneys and revenues received by the department from any loan made by the department for a tollway project pursuant to ORS 383.005, and from any lease, agreement, franchise or license for the right to the possession and use, operation or management of a tollway project;

(d) All tolls and other revenues received by the department from the users of any tollway project;

(e) The proceeds of any bonds authorized to be issued under ORS 383.023 for tollway projects;

(f) Any moneys that the department has legally transferred from the State Highway Fund to the State Tollway Account for tollway projects;

(g) All moneys and revenues received by the department from all other sources that by donation, grant, contract or law are allocated or dedicated for tollway projects; and

(h) All interest earnings on investments made from any of the moneys held in the State Tollway Account.

(2) Moneys in the State Tollway Account may be used by the department for the following purposes:

(a) To finance preliminary studies and reports for any tollway project;

(b) To acquire land to be owned by the state for tollways and any related facilities therefor;

(c) To finance the construction, renovation, operation, improvement, maintenance or repair of any tollway project;

(d) To make grants or loans to a unit of government for tollway projects;

(e) To make loans to private entities for tollway projects;

(f) To pay the principal, interest and premium due with respect to, and to pay the costs connected with the issuance or ongoing administration of any bonds or other financial obligations authorized to be issued by, or the proceeds of which are received by, the department for any tollway project;

(g) To provide a guaranty or other security for any bonds or other financial obligations, including but not limited to financial obligations with respect to any bond insurance, surety or credit enhancement device issued or incurred by the department, a unit of government or a private entity, for the purpose of financing a single tollway project or any related group or system of tollways or related facilities; and

(h) To pay the costs incurred by the department in connection with its oversight, operation and administration of the State Tollway Account, the proposals and projects

submitted under ORS 383.015 and the tollway projects financed under ORS 383.005.

(3) For purposes of securing bonds authorized by ORS 383.023 or providing a guaranty, surety or other security authorized by subsection (2)(g) of this section, the department may:

(a) Irrevocably pledge all or any portion of the amounts that are credited to, or are required to be credited to, the State Tollway Account;

(b) Establish subaccounts in the State Tollway Account, and make covenants regarding the credit to and use of amounts in those accounts and subaccounts; and

(c) Establish separate trust funds or accounts and make covenants to transfer to those separate trust funds or accounts all or any portion of the amounts that are required to be deposited in the State Tollway Account.

(4) Notwithstanding any other provision of ORS 383.001 to 383.027 and 383.315, the department shall not pledge any funds or amounts at any time held in the State Tollway Account as security for the obligations of a private entity unless the department has entered into a binding and enforceable agreement that provides the department reasonable assurance that the department will be repaid, with appropriate interest, any amounts that the department is required to advance pursuant to that pledge.

(5) The State Tollway Account is continuously appropriated to the department for purposes authorized by this section. [1995 c.668 §4]

383.010 [Repealed by 1981 c.153 §79]

383.011 Contract terms regarding entry into possession by Department of Transportation; eminent domain. (1) Every contract, agreement or other arrangement between the Department of Transportation and any private entity pursuant to which a private entity owns, leases or operates a tollway shall provide that, if an event occurs that seriously jeopardizes or impairs the continued availability and operation of the tollway, the department shall be entitled to enter into and take possession of the tollway and to exercise all of the rights attendant to such possession, including the right to receive all tolls and other revenues of the tollway, subject to any obligations incurred for the tollway, and the right to operate, maintain, repair and reconstruct the tollway.

(2) The department may exercise the power of eminent domain to acquire property for tollway projects, regardless of whether the property will be owned in fee simple by the department. [1995 c.668 §5; 2001 c.844 §2]

383.013 Tollway design. (1) The design of each tollway shall at least meet the minimum design standards generally applicable, at the time the Department of Transportation authorizes the tollway, to the state and other units of government authorized to build and own roads, highways, bridges, tunnels, railways and related facilities.

(2) In considering the design of a tollway, the department shall solicit the recommendation of all units of government having jurisdiction over any of the territory encompassing or adjacent to the proposed route of the tollway. The department shall consider the present and future needs of local transit authorities and whether the proposed tollway project should be expanded to include the acquisition of land or rights of way for future mass transit needs or for future expansion due to projected population growth.

(3) In considering the design of a tollway, the department shall solicit the recommendation of state and local parks departments to consider whether parks or campsites for travelers or bicyclists should be incorporated into the tollway design. The department may enter into agreements for the use of state and local funding for the acquisition and construction of such parks and campsites. The land on which such parks and campsites shall be located may be owned or leased in any manner in which any other tollway property may be owned or leased and shall be managed by any entity chosen by the department for such purpose, including the entity that operates or maintains the tollway. The allocation of revenues derived from the ownership or operation of any park or campsite shall be in accordance with any arrangement the department deems desirable. [1995 c.668 §6; 2001 c.844 §3]

383.015 Initiation of project; fees; rules; conditions for authorization; studies. (1) Tollway projects may be initiated by the Department of Transportation, by a unit of government having an interest in the installation of a tollway, or by a private entity interested in constructing or operating a tollway project. The department shall charge an administrative fee for reviewing and considering any tollway project proposed by a private entity, which the department shall establish by rule. All such administrative fees shall be deposited into the State Tollway Account.

(2) The department shall adopt rules pursuant to which it will consider authorization of a tollway project. The rules shall require consideration of:

(a) The opinions and interests of units of government encompassing or adjacent to the

path of the proposed tollway project in having the tollway installed;

(b) The probable impact of the proposed tollway project on local environmental, aesthetic and economic conditions and on the economy of the state in general;

(c) The extent to which funding other than state funding is available for the proposed tollway project;

(d) The likelihood that the estimated use of the tollway project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the tollway project, including the repayment of any loans to be made from moneys in the State Tollway Account;

(e) With respect to tollway projects, any portion of which will be financed with state funds or department loans or grants:

(A) The relative importance of the proposed tollway project compared to other proposed tollways; and

(B) Traffic congestion and economic conditions in the communities that will be affected by competing tollway projects; and

(f) The effects of tollway implementation on community and local street traffic.

(3) Notwithstanding any other provision of ORS 383.001 to 383.027 and 383.315, no tollway project shall be authorized unless the department finds that either:

(a) Based on the department's estimate of present and future traffic patterns, the revenues generated by the tollway project will be sufficient, after payment of all obligations incurred in connection with the acquisition, construction and operation of such tollway project, to ensure the continued maintenance, repair and reconstruction of the tollway project without the contribution of additional public funds; or

(b) The revenues generated by the tollway project will be at least sufficient to pay its operational expenses and a portion of the costs of its construction, maintenance, repair and reconstruction, and the importance of the tollway project to the welfare or economy of the state is great enough to justify the use of public funding for a portion of its construction, maintenance, repair and reconstruction.

(4) If the department finds that a proposed tollway project qualifies for authorization under this section, the department may conduct or cause to be conducted any environmental, geological or other studies required by law as a condition of construction of the tollway project. The costs of completing the studies for any proposed tollway project may be paid by moneys in the State Tollway Account, provided that any such payment shall constitute a loan against the proposed tollway project and shall be reimbursed to the State Tollway Account as a part of the permanent financing for the project. [1995 c.668 §7; 1997 c.390 §2]

383.017 Awarding of contracts for tollway projects; rules for awarding rest area concessions; application of certain laws. (1) The Department of Transportation may award any contract, franchise, license or agreement related to a tollway project, other than a concession for the provision of goods or services at a rest area, under a competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation without regard to any other laws concerning the procurement of goods or services for projects of the state.

(2) When using a competitive process for the award of a tollway project contract, the department shall consider the following factors in addition to the proposer's estimate of cost:

(a) The quality of the design, if applicable, submitted by a proposer. In considering the quality of the design of a tollway project, the department shall take into consideration:

(A) The structural integrity of the design, including the probable effect of the design on the future costs of maintenance of the tollway;

(B) The aesthetic qualities of the design, including such factors as the width of lane separators, landscaping and sound walls;

(C) The traffic capacity of the design;

(D) The aspects of the design that affect safety, such as the lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and the changes in elevation; and

(E) The ease with which traffic will be able to pass through the toll collection facilities.

(b) The extent to which small businesses will be involved in the tollway project. The department shall encourage participation by small businesses to the maximum extent the department determines is practicable. As used in this paragraph, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for

nonconstruction firms over the last three years.

(c) The financial stability of the proposer and the ability of the proposer to provide funding for the tollway project and surety for its performance and financial obligations with respect to the tollway project.

(d) The experience of the proposer and its subcontractors in building and operating projects such as the tollway project.

(e) The terms of the financial arrangement proposed or accepted by the proposer with respect to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate of return from its operation or maintenance of the tollway.

(3)(a) The department may adopt rules and procedures for the award of franchises, licenses, leases or other concessions for rest areas without regard to any other laws concerning the procurement of goods or services for projects of the state. All such franchises, licenses, leases or other concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to maintain the subject premises in accordance with all applicable state and federal health and safety standards, to maintain one or more policies of casualty and property insurance and adequate workers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or claims that are levied, assessed or charged against the premises or concession or that may become a lien upon the premises. The rules shall encourage participation by small businesses to the maximum extent the department determines is practicable. The department may grant any small business a 10 percent or greater bid advantage in any bidding process for a concession.

(b) As used in this subsection, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $300,000. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $300,000 over the last three years. "Small business" also does not include a franchise of any business that has average aggregate annual gross receipts in excess of $300,000 over the last three years.

(4) Notwithstanding any other provision of this section, the department may use any method for the award of any contract, franchise, license or agreement that is necessary to comply with the requirements of any grant or other funding source.

(5) If public funds are involved in the project, construction of a tollway project shall be subject to the prevailing wage requirements of ORS 279.348 to 279.380.

(6) For purposes of complying with applicable state and local land use laws, including statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215, 221, 222 and 227, and any requirement imposed by the Land Conservation and Development Commission, a tollway project shall be treated as a project of the department and not as a project of any other person or entity.

(7) Tollways, and any related facilities that would normally be purchased, constructed or installed by the department if the tollway were a conventional highway that was constructed and operated by the department, shall be exempt from ad valorem property taxation.

(8) Tollways are considered state highways for purposes of law enforcement and application of the Oregon Vehicle Code. [1995 c.668 §8]

Note: The amendments to 383.017 by section 269, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

383.017. (1) The Department of Transportation may award any contract, franchise, license or agreement related to a tollway project, other than a concession for the provision of goods or services at a rest area, under a competitive process or by private negotiation with one or more entities, or by any combination of competition and negotiation without regard to any other laws concerning the procurement of goods or services for projects of the state.

(2) When using a competitive process for the award of a tollway project contract, the department shall consider the following factors in addition to the proposer's estimate of cost:

(a) The quality of the design, if applicable, submitted by a proposer. In considering the quality of the design of a tollway project, the department shall take into consideration:

(A) The structural integrity of the design, including the probable effect of the design on the future costs of maintenance of the tollway;

(B) The aesthetic qualities of the design, including such factors as the width of lane separators, landscaping and sound walls;

(C) The traffic capacity of the design;

(D) The aspects of the design that affect safety, such as the lane width, the quality of lane markers and separators, the shape and positioning of ramps and curves and the changes in elevation; and

(E) The ease with which traffic will be able to pass through the toll collection facilities.

(b) The extent to which small businesses will be involved in the tollway project. The department shall encourage participation by small businesses to the maximum extent the department determines is practicable. As used in this paragraph, "small business" means an independent business with fewer than 20 employees

and with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $1 million for construction firms or $300,000 for nonconstruction firms over the last three years.

(c) The financial stability of the proposer and the ability of the proposer to provide funding for the tollway project and surety for its performance and financial obligations with respect to the tollway project.

(d) The experience of the proposer and its subcontractors in building and operating projects such as the tollway project.

(e) The terms of the financial arrangement proposed or accepted by the proposer with respect to franchise fees, license fees, lease payments or operating expenses and the proposer's required rate of return from its operation or maintenance of the tollway.

(3)(a) The department may adopt rules and procedures for the award of franchises, licenses, leases or other concessions for rest areas without regard to any other laws concerning the procurement of goods or services for projects of the state. All such franchises, licenses, leases or other concessions shall require the franchisee, licensee, lessee or concessionaire, as applicable, to maintain the subject premises in accordance with all applicable state and federal health and safety standards, to maintain one or more policies of casualty and property insurance and adequate workers' compensation insurance, and to pay and discharge all taxes, utilities, fees and other charges or claims that are levied, assessed or charged against the premises or concession or that may become a lien upon the premises. The rules shall encourage participation by small businesses to the maximum extent the department determines is practicable. The department may grant any small business a 10 percent or greater bid advantage in any bidding process for a concession.

(b) As used in this subsection, "small business" means an independent business with fewer than 20 employees and with average annual gross receipts over the last three years not exceeding $300,000. "Small business" does not include a subsidiary or parent company belonging to a group of firms that are owned and controlled by the same individuals and that have average aggregate annual gross receipts in excess of $300,000 over the last three years. "Small business" also does not include a franchise of any business that has average aggregate annual gross receipts in excess of $300,000 over the last three years.

(4) Notwithstanding any other provision of this section, the department may use any method for the award of any contract, franchise, license or agreement that is necessary to comply with the requirements of any grant or other funding source.

(5) If public funds are involved in the project, construction of a tollway project shall be subject to the prevailing wage requirements of ORS 279C.800 to 279C.870.

(6) For purposes of complying with applicable state and local land use laws, including statewide planning goals, comprehensive plans, land use regulations, ORS chapters 195, 196, 197, 198, 199, 215, 221, 222 and 227, and any requirement imposed by the Land Conservation and Development Commission, a tollway project shall be treated as a project of the department and not as a project of any other person or entity.

(7) Tollways, and any related facilities that would normally be purchased, constructed or installed by the department if the tollway were a conventional highway that was constructed and operated by the department, shall be exempt from ad valorem property taxation.

(8) Tollways are considered state highways for purposes of law enforcement and application of the Oregon Vehicle Code.

383.019 Agreements between department and private entities regarding maintenance of tollways. (1) Every agreement between the Department of Transportation and a private entity pursuant to which the private entity owns or operates a tollway and is entitled to collect the revenues therefrom shall require that the tollway be maintained in a safe condition and be returned to the state in a safe and serviceable condition without need of any repair or reconstruction.

(2) Every agreement between the department and a private entity pursuant to which the private entity owns or operates a tollway and is entitled to collect the revenues therefrom shall provide for the establishment and funding of a maintenance, repair and reconstruction trust fund that is designed to ensure that adequate funds will be available to maintain and repair the tollway, so that the tollway will be surrendered to the department in good condition without need of repair or reconstruction. [1995 c.668 §9]

383.020 [Repealed by 1981 c.153 §79]

383.021 [1995 c.668 §10; repealed by 2001 c.844 §9]

383.023 Revenue bonds for tollway projects. (1) In accordance with the applicable provisions of ORS 286.010, 286.020, 286.105 to 286.135 and ORS chapter 288, the State Treasurer, at the request of the Department of Transportation, may issue revenue bonds for the purpose of financing a tollway project, provided that such bonds shall never constitute a debt or general obligation of the department or of this state or any of its political subdivisions, but shall be payable solely from the revenues, amounts, funds and accounts described in ORS 383.009 (3).

(2) The proceeds of revenue bonds issued under this section may be used by the department or loaned to a private entity or a unit of government for the purpose of financing any portion of the capital costs related to the construction of a tollway project, including costs of the acquisition of interests in land upon which the tollway project will be constructed, to provide a financial reserve required under any federal funding agreement and for the payment of the costs of issuing the bonds and funding bond reserves.

(3) The bonds authorized by this section may be issued by the department as taxable bonds or as tax-exempt bonds under the income tax laws of the United States.

(4) Notwithstanding the status of the bonds for federal income tax purposes, interest paid to the owners of the bonds shall be exempt from personal income taxes imposed by this state.

(5) When issuing bonds authorized by this section, the department and the State Treasurer may make covenants with bondholders regarding the imposition and regulation of tolls, the making of loans and grants funded from the State Tollway Account, the use of amounts required to be deposited in the State Tollway Account and the issuance of additional bonds. [1995 c.668 §11]

383.025 Certain information provided to Department of Transportation exempt from disclosure. Sensitive business, commercial or financial information presented to the Department of Transportation by a private entity for the purpose of determining the feasibility of the entity's participation in a tollway project is exempt from disclosure under ORS 192.410 to 192.505. [2001 c.844 §5]

383.027 Issuance of revenue bonds by municipality for tollway project. (1) In accordance with the provisions of ORS 288.805 to 288.945, a municipality, as defined in ORS 288.805, may issue revenue bonds for the purpose of financing a tollway project.

(2) A nonprofit corporation organized under Oregon law may issue revenue bonds for the purpose of financing a tollway project. [2001 c.844 §6]

383.030 [Repealed by 1981 c.153 §79]

383.040 [Repealed by 1981 c.153 §79]

383.050 [Repealed by 1981 c.153 §79]

383.060 [Repealed by 1981 c.153 §79]

383.070 [Repealed by 1981 c.153 §79]

383.080 [Repealed by 1981 c.153 §79]

383.090 [Repealed by 1981 c.153 §79]

383.100 [Repealed by 1981 c.153 §79]

383.110 [Repealed by 1981 c.153 §79]

383.120 [Repealed by 1981 c.153 §79]

383.130 [Repealed by 1981 c.153 §79]

383.140 [Repealed by 1981 c.153 §79]

383.210 [Repealed by 1981 c.153 §79]

383.220 [Amended by 1971 c.741 §29; repealed by 1981 c.153 §79]

383.230 [Repealed by 1981 c.153 §79]

383.240 [Repealed by 1981 c.153 §79]

383.250 [Repealed by 1981 c.153 §79]

383.260 [Repealed by 1981 c.153 §79]

383.270 [Repealed by 1981 c.153 §79]

383.280 [Repealed by 1981 c.153 §79]

TOLL BRIDGES

(Generally)

383.310 Constructing and operating toll bridges. It is lawful to construct, maintain and operate toll bridges upon state highways in the manner set forth in and pursuant to ORS 382.105 to 382.115 and 383.315 to 383.380, and not otherwise.

383.315 Exception to ORS 383.310. Notwithstanding any provision of law to the contrary, nothing in ORS 382.105 to 382.115 and 383.315 to 383.380 applies to toll bridges constructed, maintained or operated under the provisions of ORS 383.003 to 383.027. [1995 c.668 §13]

383.320 Permission of Department of Transportation for toll bridges. Before any toll bridge is constructed or construction commenced over any stream, river, bay, arm of the ocean or other body of water upon any state highway, federal aid highway, any highway constituting a direct or immediate extension thereof, connection between two state highways or federal aid highways or any highway over which travel might be diverted from a state or federal highway, application shall first be made to the Department of Transportation for a permit to construct, operate and maintain the bridge. If, in the judgment of the department, the interest of the public will be served by the construction of the toll bridge, the Department of Transportation may, in its judgment and discretion, grant a permit for the construction, maintenance and operation of the toll bridge upon such terms and conditions and under such regulations as the department deems proper, not inconsistent with ORS 382.105 to 382.115 and 383.310 to 383.380.

383.330 Purchase of toll bridges by Department of Transportation. The permit issued by the Department of Transportation for the construction of the toll bridge shall, among other things, contain a clause and provision to the effect that the state, through the department, may, at any time after three years from date of the construction and operation of the bridge, acquire the bridge, all right, title or interest therein and the approaches thereto, by paying to the owners the reasonable cash value of the bridge and approaches, not to exceed in any event the original construction cost, less reasonable depreciation. In determining the price to be paid for the bridge there shall be taken into account:

(1) The amounts expended in constructing and keeping in repair the bridge.

(2) Other necessary expenses incurred in and about the bridge.

(3) As an offset, the amount or sum of money received by the owners of the bridge as profits or tolls.

383.340 Submitting bridge plans to Department of Transportation. If, in the judgment of the Department of Transportation, such permit should be granted, the department shall, before issuing a permit and before the construction of the bridge has

been commenced, require the applicant to submit to the department the location, design, plans and specifications for the construction of the bridge, together with such drawings and maps as may be required for a full understanding of the subject. The construction of the bridge shall not be commenced until such location, design, plans, specifications, drawings and maps have been approved by the department.

383.350 Inspector of bridge construction; compensation. Whenever the Department of Transportation grants a permit for the construction of a toll bridge as provided in ORS 383.320, the department shall maintain on the bridge during construction an inspector, who shall have authority to require the construction of the bridge in harmony with the plans, specifications and design approved by the department. The compensation or wages to be paid the inspector shall be fixed by the Department of Transportation, but such compensation, together with the subsistence of the inspector, shall be paid by the applicant to whom the permit for construction of the bridge has been issued.

383.360 Toll rates determined by Department of Transportation. The Department of Transportation shall fix and determine the rates of toll that may be charged, collected or received for transit over such bridge, and may change such rates at any time circumstances and conditions warrant.

383.370 Keeping and filing records of expense, tolls and profits. (1) The owners of the toll bridge shall keep an accurate statement or account of the moneys expended in the construction of any such toll bridge and keeping it in repair, including any sums paid for lands appropriated as necessary in connection with the construction of the bridge. Such statement or account shall be verified and a copy filed annually with the Department of Transportation.

(2) The owner of such bridge shall likewise keep an accurate account of the tolls received for transit over the toll bridge or of other profits accruing to the owner. Such owner shall file semiannually with the Department of Transportation a verified copy of such account.

383.380 Status of bridge. When completed and opened for public travel such toll bridge is a part of the state highway system and shall be under the jurisdiction and control of the Department of Transportation.

(Port of St. Helens)

383.385 Port of St. Helens toll bridge. (1) In addition to the powers otherwise conferred on ports in this state, the Port of St. Helens is authorized, in consultation with the Department of Transportation, to plan, finance, construct, acquire, operate, own and maintain a toll bridge in Columbia County situated at or near the site of the Lewis and Clark Bridge.

(2) The Port of St. Helens may plan, finance, construct, acquire, operate, own and maintain an undivided interest in the toll bridge described in subsection (1) of this section jointly with the Port of Longview in Washington.

(3) The construction and operation of a toll bridge authorized under this section shall be subject to regulation by the Department of Transportation as provided in ORS 383.386. [1997 c.671 §1]

383.386 Contracts for bridge; title. (1) Except as otherwise provided in this section, the tollway project described in ORS 383.385 for a toll bridge in Columbia County shall be carried out in the manner set forth in ORS 383.003 to 383.027.

(2) For purposes of the acquisition, design, construction, reconstruction and operation of a toll bridge in Columbia County, the Department of Transportation, in partnership with the Washington State Department of Transportation, may enter into any combination of contracts, agreements and other arrangements with the Port of St. Helens and the Port of Longview, including but not limited to the contracts and agreements described in ORS 383.005 (1).

(3) The title to all legal interests in the bridge constructed and operated under agreements authorized by this section may remain permanently in the Port of St. Helens and the Port of Longview. [1997 c.671 §2; 2001 c.844 §8]

Chapter 384

2003 EDITION

Ferries

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GENERAL PROVISIONS

384.005 "County court" defined. As used in this chapter, unless the context requires otherwise, "county court" includes board of county commissioners.

FERRIES UNDER DEPARTMENT OF TRANSPORTATION

384.105 Department of Transportation to acquire and operate or license ferries. Whenever the Department of Transportation finds and determines that the operation of a ferry across any stream, river, bay, arm of the ocean or other body of water is necessary and convenient in connection with the use of any state highway, the department may acquire, construct, establish, maintain and operate the ferry. The department may operate the ferry under a contract, or with its own employees or under a license or permit granted by the department, the license or permit to contain such conditions, requirements, terms and provisions as to the department seem best. The maintenance or operation of any such ferry is subject, however, to the federal laws and requirements governing navigation.

384.110 Ferry approaches and other appurtenances. The Department of Transportation may itself, or under a cooperative agreement with any county, construct the necessary approaches, ramps, docks, wharves, ferry slips or other such appurtenances as are necessary for the maintenance and operation of a ferry mentioned in ORS 384.105, or the department may require the construction of such approaches, ramps, docks, wharves, ferry slips and other necessary approaches by the licensee in the event that the ferry is operated under a license or permit.

384.115 Cooperation between Department of Transportation and counties as to ferries. In the acquisition, establishment, construction or operation of a ferry mentioned in ORS 384.105, the Department of Transportation and the county court of any county within which is located any stream, river, bay, arm of the ocean or other body of water over which it is contemplated and found necessary to operate ferries, may enter into a cooperative agreement for the acquisition, construction, operation or maintenance of the ferry upon such terms and conditions as the county court and the department agree. When the ferry is operated under a cooperative agreement between the county court and the department, the cost and expense incident to the acquisition, construction, operation or maintenance of the ferry shall be apportioned between the county and the state in such manner and amount as is agreed upon.

384.120 Discretion as to ferry operation with county and charging tolls. It is discretionary with the Department of Transportation whether a ferry mentioned in ORS 384.105 be operated by the state. If operated by the state and the county under a cooperative agreement, it is discretionary with the Department of Transportation and the county court whether the ferry be operated as a free public ferry or as a charge or toll ferry.

384.125 Funds from which ferry expense paid. When a ferry mentioned in ORS 384.105 is acquired, constructed, operated and maintained by the Department of Transportation alone, the entire cost and expense may be paid out of the State Highway Fund. If the ferry has been acquired, constructed and is being operated and maintained under a cooperative agreement between the state and a county, the proportion of the cost and expense to be borne by the state, as agreed upon, shall be paid out of the State Highway Fund and the proportion to be paid by the county shall be paid out of county road funds.

384.130 Fixing ferriage rates. (1) The Department of Transportation may fix, alter and establish from time to time the rate of ferriage to be levied and collected, and may, in its judgment, whenever circumstances warrant and require, alter or change any such rate.

(2) Whenever the Department of Transportation grants a license to keep and operate a ferry across any stream, river, bay, arm of the ocean or other body of water, the department shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the body of water, having due regard to the width, situation and location of the body of water and the damages and difficulties incident to the operation of the ferry.

384.135 Posting ferriage rates. Every person licensed to keep and operate a ferry as provided in ORS 384.105 shall post in some conspicuous place near the ferry landing a written or printed list of the rates of ferriage which are chargeable under the orders of the Department of Transportation. The list of rates shall at all times be written or printed in a plain, legible manner and posted so near the place where persons pass across the ferry that it may be readily read.

384.140 Bond or letter of credit of ferry licensee. Persons licensed by the Department of Transportation to maintain and operate a ferry under ORS 384.105 to 384.150 shall be required to furnish a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in such amount as the department requires.

The bond or letter of credit shall be conditioned upon the faithful compliance with and performance of all the conditions, requirements and provisions contained in the license, and shall be in such form as the department may prescribe. The bond or letter of credit shall be made payable to the state. [Amended by 1991 c.331 §61; 1997 c.631 §469]

384.145 Revocation of ferry licenses. (1) If any keeper or operator of a ferry at any time demands and receives more than the amount designated for ferrying or fails to keep or perform the conditions of the license or contract, the Department of Transportation may revoke the license or permit and may require the keeper or operator to discontinue further operation of the ferry.

(2) If at any time the keeper of a ferry mentioned in ORS 384.105 neglects or refuses to post and keep up the list of the rates of ferriage mentioned in ORS 384.135, the Department of Transportation may cancel and revoke the license.

384.150 Ferry as part of state highway system. Any ferry operated and maintained as provided in ORS 384.105 to 384.145 is part of the state highway system.

384.205 [Repealed by 1981 c.126 §6]

384.210 [Repealed by 1981 c.126 §6 and 1981 c.153 §79]

384.215 [Repealed by 1967 c.344 §10 and 1967 c.497 §7]

384.220 [Repealed by 1967 c.344 §10]

384.225 [Repealed by 1967 c.344 §10]

384.230 [Repealed by 1967 c.344 §10]

384.235 [Repealed by 1967 c.344 §10]

384.240 [Repealed by 1967 c.344 §10]

384.245 [Repealed by 1967 c.344 §10]

384.250 [Repealed by 1967 c.344 §10]

384.255 [Repealed by 1967 c.344 §10]

384.260 [Repealed by 1967 c.344 §10]

384.265 [Repealed by 1967 c.344 §10]

384.270 [Repealed by 1967 c.344 §10]

384.275 [Repealed by 1967 c.344 §10]

384.280 [Repealed by 1967 c.344 §10]

384.285 [Repealed by 1953 c.9 §2]

INTERSTATE FERRIES UNDER DEPARTMENT OF TRANSPORTATION, COUNTIES, CITIES, TOWNS AND PORTS

384.305 Operation of interstate ferries by Department of Transportation, counties, cities, towns or ports. The state acting by and through the Department of Transportation, and any county, city, town or port of the State of Oregon adjoining or bordering on any interstate river or stream of water, is each and every one authorized to:

(1) Establish, maintain and operate ferry service in and to any adjoining state, and for such purpose may acquire by gift, purchase, lease, contract, agreement, condemnation or otherwise, real, personal and mixed property, rights, rights of way, approaches, licenses, privileges and easements, equipment and facilities in the State of Oregon or any adjoining state, necessary or convenient for the proper construction, maintenance and operation of any such ferry service or services; or

(2) Contract with others for the purpose of operating and maintaining such ferry service.

384.310 Independent or joint action. In carrying out the provisions of ORS 384.305 to 384.360, the Department of Transportation, and each of the counties, cities, towns or ports mentioned in ORS 384.305, may act independent of or in conjunction with each other upon the terms and conditions agreed upon by the contracting parties.

384.315 Agreements for carrying out powers of interstate ferry authorities. For the purpose of carrying out or putting into effect any right, power and authority granted by ORS 384.305 to 384.360 or any other law, the Department of Transportation, and each and all of the public bodies or agencies mentioned in ORS 384.305, may make and enter into agreements with:

(1) The Government of the United States or any of its agencies.

(2) Any adjoining state, its county, municipality, port or other political subdivisions or agencies.

(3) Any persons, associations, corporations, domestic or foreign.

384.320 Use of funds for interstate ferry expenses. The Department of Transportation, and any county, city, town or port mentioned in ORS 384.305, may pay out of its respective funds, or any other funds to any of them available, all or any part of the cost of the construction, maintenance and operation of the ferry service.

384.325 Loans for interstate ferry acquisition and operation; security. The construction, purchase, maintenance and operation of any ferry service under ORS 384.305 to 384.360 may be financed in whole or in part by loans obtained from the United States Government or any of its agencies, or from any other sources. As security for the payment of such loans the revenues derived from the ferry service, over and above the cost of its maintenance and operation, may be hypothecated or pledged, but no such hypothecation or pledge of revenues shall constitute in any manner, or to any extent be made to constitute, a general obligation

of the State of Oregon, or of any county, city, town or port making the pledge.

384.330 Issuing revenue certificates for interstate ferry expenses. For the purpose of procuring funds, when necessary, with which to construct, maintain and operate the ferry service, the authority constructing, maintaining and operating the service may issue and sell revenue certificates, which shall not be the general obligation of the authority issuing them but shall be redeemable and payable solely from revenues accruing from the ferry service, over and above the cost of operating and maintaining the service. Such certificates may be purchased by the State of Oregon.

384.335 Acceptance of funds from United States and gifts. The Department of Transportation, and every other public body and agency mentioned in ORS 384.305 may:

(1) Accept from the United States or any of its agencies, such funds as are available to this state or to any such public body or agency, for any of the purposes contemplated by ORS 384.305 to 384.360, and enter into such contracts and agreements with the United States or any of its agencies as may be necessary, proper and convenient, and not contrary to the laws of the state.

(2) Accept from any source any grant or donation of land, any gift of money or any other valuable thing, made to the state or any such county, city, town or port, for any of the purposes contemplated by ORS 384.305 to 384.360.

384.340 Eminent domain. The Department of Transportation, and any county, city, town or port mentioned in ORS 384.305 to 384.360, may exercise the power of eminent domain to carry out any of the provisions of ORS 384.305 to 384.360, in accordance with the procedure provided in ORS chapter 35. [Amended by 1971 c.741 §30]

384.345 Operation of interstate ferry free or on toll. Any ferry constructed, purchased or otherwise acquired and operated under ORS 384.305 to 384.360 may be operated free to the public or on toll. If operated on toll, the revenues derived therefrom may be pledged as provided in ORS 384.305 to 384.360.

384.350 Use of interstate ferry by federal government. If any ferry constructed, maintained and operated under ORS 384.305 to 384.360 is needed by the United States for any purpose in connection with national defense, then the authority which constructed and is maintaining and operating the ferry may sell it to the United States or may, by contract, make the ferry available to the United States.

384.355 Location of interstate ferry; part of state highway system. Any ferry service maintained and operated under ORS 384.305 to 384.360 shall connect, or provision shall be made for such connection, with a state and federal highway in this state and a state and federal highway in the adjoining state to which the ferry service is maintained. Such ferry service is a part of the Oregon highway system.

384.360 ORS 384.305 to 384.355 as supplementary authority. The authority conferred by ORS 384.305 to 384.355 is in addition and supplemental to the authority conferred by any other law.

384.365 Contract or contributions for interstate ferries by counties. Whenever the county court of any county determines that the construction or maintenance of a ferry in a state adjoining such county or connecting the county with the adjoining state, where there is then no ferry licensed and maintained, is a necessity or convenience to the citizens of the county, the county court may enter into a contract for the construction or maintenance of such ferry or make contributions deemed advisable toward the construction or maintenance thereof.

OREGON-WASHINGTON COOPERATIVE INTERSTATE FERRIES

384.405 Oregon-Washington cooperative interstate ferry service. The Department of Transportation, in the name of this state, if and when it appears to the department to be for the best interest of this state and the citizens thereof, may enter into a written agreement with the State of Washington, by and through its Director of Highways or other lawfully constituted authority, whereby there shall be established and maintained ferry service for the transportation of persons and property across the Columbia River at such sites or locations as are mutually agreed upon by the Oregon Department of Transportation and the Director of Highways of the State of Washington.

384.410 Location of ferry. No ferry service shall be established or maintained under ORS 384.405 to 384.440 unless it connects a state and federal highway in the State of Oregon with a state and federal highway in the State of Washington.

384.415 Manner of ferry acquisition and operation. For the purpose of carrying out the objects of ORS 384.405 to 384.440 the Department of Transportation, acting jointly with the State of Washington, may:

(1) Purchase, acquire and operate ferries between such places; or

(2) Lease, rent or hire and operate ferries; or

(3) Contract with others for the operation of ferries between such places.

384.420 Payment of Oregon's share of ferry expense. This state shall not be obligated to pay, nor shall it pay for such ferry service, whether furnished by the facilities owned, acquired or operated by the state jointly or under contract with others, any sum in excess of 50 percent of the total cost of the service. The Department of Transportation may pay Oregon's part of the cost of the ferry service out of state highway funds in the same manner that other disbursements are made out of such funds.

384.425 Ferry as part of state highway system. Any ferry operated under ORS 384.405 to 384.440 and the approach roads thereto on the Oregon side of the Columbia River are a part of the state highway system and shall be so declared and designated by an appropriate resolution entered in the minutes of the Department of Transportation.

384.430 Rules and regulations as to ferry operation. (1) The Department of Transportation shall, jointly with the proper officials of the State of Washington, for the protection of the general public and for the safeguarding of the interests of the State of Oregon, its officers, agents and employees, prescribe all necessary rules and regulations for the proper and efficient operation of any ferry mentioned in ORS 384.405.

(2) The operation of any ferry under ORS 384.405 to 384.440 shall conform in all respects to all federal or state laws, rules or regulations.

384.435 Liability and other insurance for ferry service. The Department of Transportation may, for the use and benefit of the state, its officers, agents or employees and of the general public, carry public liability insurance if ferries mentioned in ORS 384.405 are owned and operated by the state. The department shall require such public liability insurance if the ferry service is provided under contract with others. In addition to such public liability insurance the department may require such other insurance as in the department's judgment the interest of the state and the general public require.

384.440 Free ferry operation. Any ferry operated under ORS 384.405 to 384.440 may be operated free of tolls.

384.445 Ferry between Umatilla, Oregon, and Plymouth, Washington. (1) The County Court of Umatilla County, Oregon, and the Department of Transportation, in cooperation, may enter into such agreement, as in their judgment is advisable, with the County Court of Benton County, Washington, and the Director of Highways of the State of Washington, for the establishment, maintenance and operation of a public ferry across the Columbia River between Umatilla, Oregon, and Plymouth, Washington, and for connecting the ferry with and making it a part of the state highway systems of Oregon and Washington.

(2) The County Court of Umatilla County, Oregon, and the Department of Transportation may use such portions of the county and state road funds as in their discretion they deem advisable for such purpose.

(3) Such public ferry and county road connecting it with the state highway hereby are made a part of the Oregon state highway system.

Chapter 391

2003 EDITION

Mass Transportation

LIGHT RAIL TRANSIT

391.090 Legislative findings; use of lottery moneys for light rail project; policy and intent

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LIGHT RAIL TRANSIT

391.090 Legislative findings; use of lottery moneys for light rail project; policy and intent. The Legislative Assembly finds that:

(1) The development, acquisition and construction of light rail systems and their attendant rights of way, equipment and facilities in the urban and metropolitan areas of the State of Oregon do and will accomplish the purpose of creating jobs and furthering economic development in Oregon by, among other advantages:

(a) Providing an important element of the public infrastructure that provides the basic framework for continuing and expanding economic activity in this state;

(b) Increasing the economy and efficiency of public transportation, improving the attractiveness of urban and metropolitan areas to new businesses and supporting the operations and prosperity of existing businesses in those areas by making those businesses more accessible to their customers and employees;

(c) Alleviating the inefficiencies of congestion and crowding associated with, and reducing the burdens of expansion and maintenance of, existing public transportation systems and facilities, as well as reducing energy consumption and air pollution fostered by the use of motor vehicles; and

(d) Creating employment opportunities in urban and metropolitan areas through the funding of projects for the development and construction of the light rail systems.

(2) Additionally, the provision of state and local moneys for the proposed Westside corridor light rail project identified in ORS 391.120 (2)(a) will encourage the contribution of otherwise unavailable federal matching grant moneys, the use of which will, for the reasons stated in subsection (1) of this section, forward the purpose of creating jobs and furthering economic development in Oregon.

(3) Based on the legislative findings described in this section, the use of net proceeds from the operation of the state lottery for the support of the Westside corridor light rail project, as provided in ORS 391.130, is an appropriate use of state lottery funds under section 4 (3), Article XV of the Oregon Constitution and ORS 461.510.

(4) It is the intent and policy of the Legislative Assembly to insure the funding and support of the Westside corridor light rail project identified in ORS 391.120 (2)(a) in the manner provided in ORS 391.130 to 391.150, to the extent required for the state to realize the benefit of all federal matching funds made available for that project, and to the extent necessary to complete the project. [1991 c.575 §1]

391.100 Light Rail Construction Fund; purpose; requirements for expenditures from fund. (1) There is created as a fund the Light Rail Construction Fund separate and distinct from the General Fund. The moneys in the fund and the interest earnings of the fund are appropriated continuously to the Department of Transportation for the purpose of financing that part of the Banfield Transitway Project that includes construction of a light rail system from the City of Portland to the City of Gresham to be routed along the corridor in which the Banfield Freeway, Interstate Highway 205 and East Burnside Street are located.

(2) No moneys shall be expended for construction from the fund created by subsection (1) of this section unless the Director of Transportation determines that the following conditions have occurred no later than the last day of June 1983:

(a) The United States Department of Transportation, subject to the appropriations process and to the satisfaction of the Joint Committee on Ways and Means or the Emergency Board, if the Legislative Assembly is not in session, has committed sufficient moneys to complete the Banfield Transitway Project; and

(b) The Tri-County Metropolitan Transportation District has entered into a binding, enforceable agreement with the State of Oregon in which:

(A) During the construction of the Banfield Transitway Project, the district agrees not to request or accept any state General Fund moneys for the light rail construction portion of that project other than those moneys appropriated to the fund created in this section by the Sixtieth Legislative Assembly;

(B) The district agrees to provide not less than $2,930,000 of the total funding for the light rail construction part of the Banfield Transitway Project; and

(C) In any instance where the actual expenditures for the light rail portion of the Banfield Transitway Project fall short of the estimated expenditures for the project, those moneys, other than federal moneys, that are not required for the project shall remain in the fund established by this section.

(3) The Director of Transportation shall certify the unobligated balance of the fund created by this section and that unobligated balance shall revert to the General Fund in accordance with the following:

(a) If at any time the Director of Transportation determines that the conditions required under subsection (2) of this section

will not occur within the required time under that subsection, the director shall certify the unobligated balance of the fund and the unobligated balance shall revert.

(b) If the Director of Transportation determines that the conditions required under subsection (2) of this section have occurred and moneys from the fund are expended on the Banfield Transitway Project, the director shall certify the unobligated balance after the project is accepted by the Director of Transportation and all claims, suits and actions arising out of the project have been resolved. [1979 c.586 §1; 1981 c.262 §1]

391.110 Legislative findings; Regional Light Rail Extension Construction Fund. (1) The Legislative Assembly finds that economic growth and livability depend on a solid transportation infrastructure to aid in the production and distribution of goods and services and the efficient movement of people.

(2) The Legislative Assembly also finds that an efficient surface transportation system in our metropolitan areas must balance highways and arterial roads with mass transit and light rail facilities. Mass transit and light rail improvements can lessen the cost of highway expansion, reconstruction and maintenance by significantly decreasing traffic flow.

(3) Therefore, the Legislative Assembly shall establish the Regional Light Rail Extension Construction Fund as a means of facilitating the development of a balanced surface transportation system that includes the appropriate application of highways, light rail and mass transit. [1989 c.868 §2]

391.120 Regional Light Rail Extension Construction Fund; purpose; requirements for expenditures from fund; reversion of unobligated balance. (1) The Regional Light Rail Extension Construction Fund, separate and distinct from the General Fund, is established in the State Treasury. All moneys in the fund are appropriated continuously to the Department of Transportation for the purposes specified in this section. Interest received on moneys credited to the Regional Light Rail Extension Construction Fund shall accrue to and become part of the Regional Light Rail Extension Construction Fund.

(2) The Department of Transportation may expend moneys in the Regional Light Rail Extension Construction Fund to finance the preliminary engineering phase, final design phase, advanced right of way acquisition phase or construction and acquisition of equipment and facilities phase of projects for extensions to the Tri-County Metropolitan Transportation District's light rail system, as designated in the Regional Transportation Plan adopted by the metropolitan service district in 1989, as amended from time to time. The Director of Transportation may enter into written agreements with the Tri-County Metropolitan Transportation District that commit the department to pay anticipated funds from the Regional Light Rail Extension Construction Fund to the district for the purpose of financing such costs of extending the district's light rail system, including servicing any obligations entered into by the district to finance the costs of extending the district's light rail system, which written agreements may provide for the remittance of such funds on such periodic basis, in such amounts, over such period of years and with such priority over other commitments of such funds as the director shall specify in the commitment. Any such written agreements or commitments, when executed by the director and accepted by the district, shall be solely conditioned upon actual funds available in the Regional Light Rail Extension Construction Fund and shall be valid, binding and irrevocable in accordance with its terms, subject only to the requirements of subsection (3) of this section. The extensions to the light rail system for which projects may be authorized and financed from the Regional Light Rail Extension Construction Fund include:

(a) The Westside corridor.

(b) The Interstate 5 North corridor.

(c) The Interstate 205 corridor.

(d) The Milwaukie corridor.

(e) The Barbur corridor.

(f) The Lake Oswego corridor.

(g) Appropriate branches to the Banfield corridor.

(h) Appropriate branches to the corridors specified in paragraphs (a) to (f) of this subsection.

(3) Notwithstanding any written agreement entered into by the Director of Transportation under subsection (2) of this section, no moneys shall be expended from the Regional Light Rail Extension Construction Fund for the preliminary engineering phase, final design phase, advanced right of way acquisition phase or construction and acquisition phase of projects unless the Director of Transportation determines:

(a) That all state and local approvals are in place for the phase of the specific project for which funding is being sought;

(b) That assurances are in place for obtaining all moneys, other than moneys for which the determination is being made, necessary to enable completion of the phase of the specific project for which funding is be-

ing sought and that the Tri-County Metropolitan Transportation District has agreed to provide an amount of money equal to that being provided by the Regional Light Rail Extension Construction Fund for the phase of the specific project for which money is being sought;

(c) With respect to the phase of the specific project for which funding is being sought, that the body of local officials and state agency representatives designated by the metropolitan service district which functions wholly or partially within the Tri-County Metropolitan Transportation District and known as the Joint Policy Advisory Committee on Transportation has certified that the phase of the specific project is a regional priority; and

(d) With respect to construction phases of any project, the elements of the project that are designated for state participation and an estimated total amount of the state's funding obligation.

(4) When the actual expenditures for a phase of a specific light rail project fall short of the estimated expenditures for the project, those moneys, other than federal moneys, that are not required for that phase of the project shall remain in the Regional Light Rail Extension Construction Fund for use in completing other projects described in subsection (2) of this section.

(5) On or before August 31 in each year, the Director of Transportation shall certify to the Governor and the State Treasurer whether or not there existed, as of the end of the immediately preceding fiscal year, an unobligated balance of moneys in the Regional Light Rail Extension Construction Fund that was derived from the moneys required to be transferred to the Regional Light Rail Extension Construction Fund under ORS 391.130. If the Director of Transportation certifies that there existed such an unobligated balance of moneys derived from the moneys required to be transferred to the Regional Light Rail Extension Construction Fund under ORS 391.130, an amount equal to the unobligated balance as of the end of the immediately preceding fiscal year shall revert to the Administrative Services Economic Development Fund created by ORS 461.540, and the State Treasurer shall credit such amount to that fund on or before the September 15 next following the date of the certification by the Director of Transportation.

(6) The Director of Transportation shall certify the unobligated balance of the Regional Light Rail Extension Construction Fund, and that unobligated balance shall revert to the Administrative Services Economic Development Fund created by ORS 461.540 if the Director of Transportation determines that all projects referred to in subsection (2) of this section have been completed and the projects have been accepted by the Director of Transportation and all claims, suits and actions arising out of the projects have been resolved.

(7) For purposes of subsections (5) and (6) of this section, moneys in the Regional Light Rail Extension Construction Fund derived from the moneys required to be transferred to the Regional Light Rail Extension Construction Fund under ORS 391.130 shall be obligated to the extent such moneys are needed to fund the amounts committed to be paid in the current or any future fiscal year under any written agreement or commitment entered into by the Director of Transportation under subsection (2) of this section or to pay any amounts owing under or with respect to any revenue bonds issued under ORS 391.140.

(8) The Department of Transportation may deduct from the Regional Light Rail Extension Construction Fund the costs associated with administering the fund. [1989 c.868 §3; 1991 c.575 §6]

391.125 Regional Light Rail Extension Bond Account; purpose. (1) The Regional Light Rail Extension Bond Account is created as a separate and distinct subaccount in the Regional Light Rail Extension Construction Fund. In each fiscal year in which any amounts of principal or interest are due and payable on any revenue bonds issued under ORS 391.140, the Director of Transportation shall cause to be transferred from the Regional Light Rail Extension Construction Fund to the Regional Light Rail Extension Bond Account an amount, which, when added to the moneys on deposit in the account that are available to be used for such purpose, shall be sufficient to pay when due all amounts of principal and interest coming due on such bonds in that fiscal year.

(2) All moneys on deposit from time to time in the Regional Light Rail Extension Bond Account, together with all investment earnings thereon, shall be pledged and are continuously appropriated to the payment of the bonds issued under ORS 391.140. All investment earnings on moneys on deposit from time to time in the Regional Light Rail Extension Bond Account shall be retained in that account and applied to pay the principal of and interest on bonds issued under ORS 391.140. [1991 c.575 §3]

391.130 Allocation of lottery moneys to Regional Light Rail Extension Construction Fund; authorized expenditures; end of allocations upon certification by Director of Transportation. (1) In each fiscal year beginning with the fiscal year

commencing July 1, 1991, there is allocated, from the Administrative Services Economic Development Fund created by ORS 461.540, the amount of $8 million. However, commencing with the first fiscal year next following the fiscal year in which bonds are first issued under ORS 391.140, there shall be allocated from such fund the amount of $10 million in each fiscal year. In each fiscal year after bonds are first issued, the Director of Transportation shall certify any funds allotted in excess of amounts necessary to pay the annual debt service on the outstanding bonds and to fund the amounts committed to be paid in the current or any future fiscal year under any written agreement or commitment entered into by the Director of Transportation pursuant to ORS 391.120 (2). The certified amount shall immediately be returned to the Administrative Services Economic Development Fund. All amounts allocated under this section shall be transferred to the Regional Light Rail Extension Construction Fund established by ORS 391.120.

(2) The annual amounts required to be transferred to the Regional Light Rail Extension Construction Fund under subsection (1) of this section, together with all investment earnings on the amounts on deposit from time to time in the Regional Light Rail Extension Construction Fund, are continuously appropriated only for the purposes of:

(a) Funding the Westside corridor extension of light rail referred to in ORS 391.120; and

(b) Paying the principal and interest on revenue bonds issued under ORS 391.140.

(3) Except as provided in subsection (4) of this section, and notwithstanding any other provision of law, the annual allocation made by this section shall be satisfied and credited as and when net proceeds from the operation of the state lottery are received and before any other allocation, appropriation or disbursement of the net proceeds from the operation of the state lottery is made in the applicable fiscal year.

(4) For purposes of this section, net proceeds from the operation of the state lottery in each fiscal year include all revenues derived from the operation of the state lottery in each fiscal year less:

(a) The revenues used in that fiscal year for the payment of prizes and the expenses of the state lottery as provided in section 4 (4)(d), Article XV of the Oregon Constitution, ORS 461.500 (2) and 461.510 (3) and (4); and

(b) The revenues required to be applied, distributed or allocated as provided in ORS 461.543.

(5) The transfer of moneys to the Regional Light Rail Extension Construction Fund authorized by this section shall cease when the Director of Transportation certifies in writing that transfers of moneys under this section are no longer necessary because:

(a) Moneys in the Regional Light Rail Extension Construction Fund are sufficient for the payment of all amounts committed to be paid under all written agreements or commitments entered into between the Director of Transportation and the Tri-County Metropolitan Transportation District pursuant to ORS 391.120 with respect to the Westside corridor extension of light rail referred to in ORS 391.120 (2)(a), and to pay all amounts of principal of and interest on the outstanding revenue bonds issued under ORS 391.140; and

(b) The Westside corridor extension of light rail referred to in ORS 391.120 (2)(a) has been completed and such project has been accepted by the Department of Transportation, and all claims, suits and actions arising out of such project that could create a liability payable out of the moneys in the Regional Light Rail Extension Construction Fund have been resolved.

(6) The Director of Transportation shall deliver a copy of such certification to the Governor and the State Treasurer. Upon receipt of the director's written certification that transfer of moneys to the Regional Light Rail Extension Construction Fund under this section is no longer necessary, the State Treasurer shall thereafter credit moneys received by the Regional Light Rail Extension Construction Fund under this section to the Administrative Services Economic Development Fund created by ORS 461.540. [1991 c.575 §2; 1993 c.18 §92; 1997 c.249 §124]

391.140 Revenue bonds for specified light rail project; amount; purpose; issuance by State Treasurer; pledge of revenues. (1) In accordance with any applicable provisions of ORS 286.010, 286.020, 286.105 to 286.135 and ORS chapter 288, the State Treasurer, at the request of the Director of Transportation, shall issue revenue bonds from time to time in an aggregate amount not to exceed:

(a) The principal sum of $115 million;

(b) The costs incurred in connection with the issuance of the bonds and other administrative expenses of the State Treasurer in connection with the issuance of the bonds; and

(c) The amount of any reserves determined to be necessary or advantageous in connection with the revenue bonds.

(2) The Director of Transportation shall submit to the State Treasurer from time to time written requests to issue the revenue bonds in amounts sufficient to provide in a

timely fashion the moneys required to fund the obligations of the Department of Transportation under any written agreements or commitments entered into under ORS 391.120 (2) for the purpose of financing the state share of the costs of the Westside corridor light rail project identified in ORS 391.120 (2)(a).

(3) Moneys received from the issuance of revenue bonds, including any investment earnings thereon, may be expended only for the purpose of financing the costs of development, acquisition and construction of the Westside corridor light rail project identified in ORS 391.120 (2)(a), and to pay the costs of issuing the bonds and other administrative expenses of the State Treasurer in carrying out the provisions of ORS 391.120 and this section, including the funding of any reserves determined to be necessary or advantageous in connection with the revenue bonds.

(4) Notwithstanding ORS 288.825 or any other provision of law, revenue bonds issued under this section, regardless of whether issued in one or more issues, shall be secured equally and ratably by the pledge of moneys described in this subsection and ORS 391.130. The bonds shall be secured by a pledge of, and a lien on, and shall be secured and payable only from, moneys on deposit from time to time in the Regional Light Rail Extension Construction Fund established by ORS 391.120. The revenue bonds shall not be a general obligation of this state, and shall not be secured by or payable from any funds or assets of this state other than the moneys on deposit from time to time in the Regional Light Rail Extension Construction Fund.

(5) The moneys in the Regional Light Rail Extension Bond Account shall be used and applied by the Director of Transportation to pay when due the principal of and interest on any revenue bonds issued under this section.

(6) The interest on all revenue bonds issued under this section and on any refunding and advance refunding bonds issued under ORS 286.051 is exempt from personal income taxation imposed by this state under ORS chapter 316.

(7) The proceeds derived from the issuance and sale of the revenue bonds, including any proceeds required to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds, shall be deposited in a special, segregated subaccount of the Regional Light Rail Extension Construction Fund. The moneys on deposit from time to time in the subaccount, including any investment earnings thereon, shall be disbursed as needed for the purposes described in subsection (3) of this section upon the written request of the Director of Transportation. [1991 c.575 §4]

391.150 Joint management of specified light rail project; contracting procedures. (1) The Department of Transportation and the Tri-County Metropolitan Transportation District shall jointly manage the construction phases of the Westside corridor light rail project. The final project management plans of the managing agencies shall provide that the district shall manage and oversee construction of the light rail right of way and facilities and that the department shall manage and oversee the construction of highway improvements related to the extension of the light rail system. The department and the district shall describe in a memorandum of understanding or grant agreement the functions and responsibilities assigned to each of the managing agencies and shall establish an organizational and management system for the project under which significant actions during the construction phase occur only with the knowledge of both of the managing agencies.

(2) Subject to ORS chapter 279 and any applicable prohibitions against preferences in contracts related to the construction phase of the Westside corridor light rail project, the managing agencies shall develop procedures that afford qualified businesses in Oregon the opportunity to compete for project contracts to the maximum extent feasible and consistent with federal laws and regulations governing Federal Transit Administration grants.

(3) The managing agencies shall seek the cooperation and assistance of contracting and construction associations in this state when establishing the contracting procedures for the Westside corridor light rail project. The managing agencies shall also establish and implement programs to provide contracting and construction businesses with information relating to the project.

(4) The managing agencies, to the maximum extent feasible, shall encourage disadvantaged business enterprises to bid for contracts and to otherwise participate in the Westside corridor light rail project. [1991 c.575 §5; 1993 c.741 §65]

Note: The amendments to 391.150 by section 271, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

391.150. (1) The Department of Transportation and the Tri-County Metropolitan Transportation District shall jointly manage the construction phases of the Westside corridor light rail project. The final project management plans of the managing agencies shall provide that the district shall manage and oversee con-

struction of the light rail right of way and facilities and that the department shall manage and oversee the construction of highway improvements related to the extension of the light rail system. The department and the district shall describe in a memorandum of understanding or grant agreement the functions and responsibilities assigned to each of the managing agencies and shall establish an organizational and management system for the project under which significant actions during the construction phase occur only with the knowledge of both of the managing agencies.

(2) Subject to ORS chapters 279, 279A, 279B and 279C and any applicable prohibitions against preferences in contracts related to the construction phase of the Westside corridor light rail project, the managing agencies shall develop procedures that afford qualified businesses in Oregon the opportunity to compete for project contracts to the maximum extent feasible and consistent with federal laws and regulations governing Federal Transit Administration grants.

(3) The managing agencies shall seek the cooperation and assistance of contracting and construction associations in this state when establishing the contracting procedures for the Westside corridor light rail project. The managing agencies shall also establish and implement programs to provide contracting and construction businesses with information relating to the project.

(4) The managing agencies, to the maximum extent feasible, shall encourage disadvantaged business enterprises to bid for contracts and to otherwise participate in the Westside corridor light rail project.

391.160 [1995 s.s. c.3 §1; repealed by 1997 c.800 §23]

391.165 [1995 s.s. c.3 §2; 1997 c.249 §125; repealed by 1997 c.800 §23]

391.170 [1995 s.s. c.3 §3; repealed by 1997 c.800 §23]

391.175 [1995 s.s. c.3 §8; repealed by 1997 c.800 §23]

391.180 [1995 s.s. c.3 §6; repealed by 1997 c.800 §23]

391.185 [1995 s.s. c.3 §4; repealed by 1997 c.800 §23]

391.190 [1995 s.s. c.3 §5; repealed by 1997 c.800 §23]

391.195 [1995 s.s. c.3 §13; repealed by 1997 c.800 §23]

391.200 [1995 s.s. c.3 §7; repealed by 1997 c.800 §23]

391.205 [1995 s.s. c.3 §9; repealed by 1997 c.800 §23]

391.210 [1995 s.s. c.3 §11; repealed by 1997 c.800 §23]

391.215 [1995 s.s. c.3 §11a; repealed by 1997 c.800 §23]

391.220 [1995 s.s. c.3 §12; repealed by 1997 c.800 §23]

391.225 [1995 s.s. c.3 §14; repealed by 1997 c.800 §23]

391.230 [1995 s.s. c.3 §15; repealed by 1997 c.800 §23]

391.235 [1995 s.s. c.3 §16b; repealed by 1997 c.800 §23]

391.300 [1995 s.s. c.3 §32; repealed by 1996 c.13 §4]

COLUMBIA RIVER LIGHT RAIL TRANSIT COMPACT

391.301 Ratification of compact. The Legislative Assembly of the State of Oregon hereby adopts and ratifies the Columbia River Light Rail Transit Compact set forth in ORS 391.306, and the provisions of the compact are hereby declared to be the law of this state upon such compact becoming effective as provided in Article XXII of the compact. [1996 c.13 §1]

391.305 [1995 s.s. c.3 §33; repealed by 1996 c.13 §4]

391.306 Columbia River Light Rail Transit Compact. The provisions of the Columbia River Light Rail Transit Compact are as follows:

ARTICLE I

Columbia River Light Rail Transit Authority Established

The States of Oregon and Washington establish by way of this interstate compact an independent, separate regional authority, which is an instrumentality of both of the signatory parties hereto, known as Columbia River Light Rail Transit Authority (hereinafter referred to as the "Authority"). The Authority shall be a body corporate and politic, and shall have only those powers and duties granted by this compact and such additional powers as may hereafter be conferred upon the Authority by the acts of both signatories.

ARTICLE II

Definitions

As used in this compact, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

(1) "C-TRAN" means the Clark County Public Transportation Benefit Authority based in Clark County, Washington, or any successor agency or authority.

(2) "Major feeder system" means all bus or other transit services provided by C-TRAN or Tri-Met that are or are planned to be connected with the South North light rail transit line, to accommodate the transfer of passengers to or from the light rail line and to transport light rail passengers between the light rail station and their trip origin or trip destination.

(3) "Signatory" or "signatory state" means the State of Oregon or the State of Washington.

(4) "South North light rail transit line" means the light rail line directly connecting portions of Clackamas County, Oregon, Portland, Oregon and Clark County, Washington as may be extended from time to time, including any segment thereof, and also including, without limitation, all light rail vehicles, rights-of-way, trackage, electrification, stations, park-and-ride facilities, maintenance facilities, tunnels, bridges and equipment, fixtures, buildings and structures incidental to or required in connection with the performance of light rail service between portions of Clackamas County, Oregon, Portland, Oregon and Clark County, Washington. The South North light rail transit line shall

include a system that comprises any future light rail lines and transit facilities that cross the jurisdictional lines of the signatory states.

(5) "Transit facilities" means all real and personal property necessary or useful in rendering transit service by means of rail, bus, water and any other mode of travel including, without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicles, stations, terminals, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service.

(6) "Transit service" means the transportation of persons and their packages and baggage by C-TRAN, Tri-Met or the Authority by means of transit facilities.

(7) "Tri-Met" means the Tri-County Metropolitan Transportation District based in Portland, Oregon, or any successor agency or authority.

ARTICLE III

Purpose and Functions

The purpose of the Authority is:

(1) To generally cause the South North light rail transit line to be designed, engineered, financed, constructed and developed consistently with the applicable regional transportation and land use plans and the locally preferred alternative selected pursuant to regulations of the Federal Transit Administration or the regulations of any successor federal agency or authority;

(2) To facilitate the operation and maintenance of the South North light rail transit line;

(3) To coordinate C-TRAN and Tri-Met activities to implement and operate the major feeder system that serves the South North light rail transit line;

(4) To coordinate C-TRAN and Tri-Met activities to implement and operate buses or other transit facilities that serve bi-state trips; and

(5) To serve only such other regional transit purposes and to perform such other regional transit functions as the signatories may authorize.

ARTICLE IV

Powers

The Authority has the power to:

(1) Sue and be sued, plead and be impleaded in all actions, suits or proceedings, brought by or against it.

(2) Adopt suitable rules and regulations not inconsistent with this compact, the Constitution and laws of the United States or the constitutions and laws of the signatories. The Authority may adopt rules and regulations that:

(a) Govern its activities;

(b) Add specificity to its powers and duties;

(c) Interpret legislation that is applicable to the Authority; and

(d) Resolve inconsistencies resulting from the application of the laws and regulations of both signatories.

(3) Acquire, maintain, control, and convey easements, licenses, and other limited property rights for the purpose of constructing the South North light rail transit line. However, the Authority shall not have the power to own real property.

(4) Receive and accept federal, state, regional or local payments, appropriations, grants, gifts, loans, advances, credit enhancements, credit guarantees and other funds, properties and services as may be transferred or made available to the Authority by either signatory, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual. Any funds received by the Authority from any source may be commingled and expended to carry out the purposes and functions of the Authority without regard to any law of the signatories that requires expenditure of appropriated funds within the fiscal period for which the appropriation is made.

(5) Disburse funds for its lawful activities and to make grants or loans to C-TRAN or Tri-Met.

(6) Enter into agreements with:

(a) C-TRAN or Tri-Met to provide planning, engineering, design, administration, construction management or other services needed for the development of the South North light rail transit line;

(b) C-TRAN, Tri-Met or, except with regard to matters specified in paragraph (a) of this subsection, private entities for the construction of the South North light rail transit line;

(c) C-TRAN, Tri-Met or, except with regard to matters specified in paragraph (a) of this subsection, private entities for the construction of bridges over or tunnels under navigable streams and bodies of water to be owned individually or jointly by the States of Oregon and Washington;

(d) C-TRAN or Tri-Met for the management, operation, and maintenance of the South North light rail transit line;

(e) C-TRAN or Tri-Met providing for acquisition by C-TRAN, Tri-Met or other public

entities of the property rights needed for the South North light rail transit line and related activities;

(f) C-TRAN, Tri-Met or private entities to purchase, lease or otherwise acquire the materials, equipment and vehicles needed for the construction and implementation of the South North light rail transit line; and

(g) C-TRAN or Tri-Met to implement the decisions of the Authority.

(7) Delegate any of its powers and duties to any political subdivision or governmental agency.

(8) Resolve any disputes between C-TRAN and Tri-Met over the operation of the South North light rail transit line or the major feeder system. However, the Authority shall not have the power to require from C-TRAN and Tri-Met capital improvements to the South North light rail transit line or the major feeder system.

(9) To the extent allowed by law, encourage, assist and facilitate public and private development along the South North light rail transit line.

(10) Perform all other necessary and incidental functions.

(11) Exercise such additional powers as shall be conferred on it by Act of the federal Congress or jointly by the signatories.

ARTICLE V

Board Membership

The Authority shall be governed by a board of six directors consisting of three members of the C-TRAN governing body and three members of the Tri-Met governing body. Directors representing C-TRAN and Tri-Met shall be appointed by their respective governing bodies.

ARTICLE VI

Terms of Office

Board members shall serve terms of four years, unless terminated earlier by the governing body of the appointing transit agency.

ARTICLE VII

Compensation of Directors

The directors shall serve without compensation. The directors may be reimbursed for the necessary expenses incurred in the performance of their duties pursuant to adopted policies of the transit agency that appointed them.

ARTICLE VIII

Organization and Procedure

The board of directors of the Authority shall by rule provide for its own organization and procedure. It shall biennially elect a chairperson from among its directors who shall serve a term of two years subject to earlier removal by a vote of four directors. Meetings of the board shall be held as frequently as the board deems that the proper performance of its duties requires, and the board shall keep minutes of its meetings. The board shall adopt rules and regulations governing its meetings, minutes and transactions.

ARTICLE IX

Staff

The Authority shall not have the power to hire administrative staff. Administrative staff support shall be provided by C-TRAN and Tri-Met by intergovernmental agreement.

ARTICLE X

Quorum and Actions by the Board

Four directors shall constitute a quorum. No action by the board shall be effective unless there is an affirmative vote of a majority of those present.

ARTICLE XI

Conflicts of Interest

(1) No director shall:

(a) Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the board of directors of the Authority is party;

(b) In connection with services performed within the scope of official duties, solicit or accept money or any other thing of value in addition to the expenses paid to the director by the Authority; or

(c) Offer money or any other thing of value for or in consideration of obtaining an appointment, promotion or privilege in employment with the Authority.

(2) Any director who willfully violates any provision of this section shall, in the discretion of the board, forfeit the office of the director. Any contract or agreement made in contravention of this section may be declared void by the board. Nothing in this section shall be considered to abrogate or limit the applicability of any federal or state law that may be violated by any action proscribed by this section.

ARTICLE XII

Financial Plans and Reports

The board of directors of the authority shall make and publish, as necessary, financial plans and detailed annual budgets for the construction, operation and maintenance of the South North light rail transit line, including a Sources of Funds plan. The board may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

ARTICLE XIII

Operation and Maintenance Costs

(1) The Authority shall annually determine the amount of the South North light rail transit line's operating and maintenance costs and the Authority's administrative costs that shall be contributed to the Authority by C-TRAN and Tri-Met. The amount to be collected from C-TRAN and Tri-Met shall be based upon all relevant factors, including but not limited to, ridership origination and destination and relative usage of the South North light rail transit line.

(2) After establishing the amount to be allocated to C-TRAN and Tri-Met, the Authority shall levy an annual assessment on C-TRAN and Tri-Met for the purpose of financing the management, administration, operation, maintenance, repair, expansion, and related activities for facilities, equipment, systems or improvements included in the South North light rail transit line.

ARTICLE XIV

Capital Contributions

(1) The Authority shall enter into a financing plan agreement with C-TRAN, Tri-Met and any private entities providing construction financing for the South North light rail transit line or any segment thereof, which agreement shall establish a financing plan for the construction phases of the South North light rail transit line, including each segment thereof. The financing plan agreement shall specify the obligations of each party to pay a portion of the construction costs of the South North light rail transit line, including the estimated total construction costs, the percentage share of each party of the total construction costs, the estimated schedule for the payment of each party's percentage share and the planned source of funds from which each party intends to fund its share of the total construction costs. The financing plan agreement, among other matters, may:

(a) Separately specify each party's obligation for each segment of the South North light rail transit line;

(b) Limit the liability of C-TRAN and Tri-Met to particular funding sources identified in the financing plan agreement;

(c) Make provisions for any interim financing, credit enhancements or guarantees to be provided by C-TRAN, Tri-Met or any other parties in order to supply the funds needed to construct the South North light rail transit line in accordance with the construction schedule established in the financing plan agreement; or

(d) Provide that all or a portion of one party's obligations shall be satisfied by making payments to another party to the agreement in order to pay or reimburse the construction or financing costs incurred by the payee.

(2) The financing plan agreement shall provide that C-TRAN and Tri-Met shall each retain full power and authority to pledge their respective sources of funds as security for any bonds, notes or other obligations issued thereby, and for any credit enhancements obtained in connection with any such bonds, notes or other obligations, in order to provide interim or permanent financing for the construction costs of the South North light rail transit line. The financing plan agreement shall not in any way or to any extent create a pledge of or a lien or encumbrance on any funds of C-TRAN or Tri-Met.

(3) C-TRAN and Tri-Met singly or together shall enter into one or more Full Funding Grant Agreements with the Federal Transit Administration, or its successor, to establish the federal funding commitment for the South North light rail transit line, or any segments thereof, and the terms and conditions for obtaining the federal funds. The Authority shall cause the South North light rail transit line, and each segment thereof, to be designed, engineered and constructed in a manner consistent with the applicable Full Funding Grant Agreement, applicable state laws and the terms and conditions of the financing plan agreement.

(4) The financing plan agreement may be amended from time to time by the Authority, C-TRAN and Tri-Met to the extent such parties determine any amendment is necessary or beneficial. Any such amendment shall require the consent of any private entity that is a party to the financing plan agreement only if and to the extent such consent is required under the terms of the financing plan agreement.

ARTICLE XV

Indemnification

(1) C-TRAN shall hold Tri-Met and the Authority harmless and indemnify Tri-Met and the Authority for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from C-TRAN's negligent errors, omissions or acts in carrying out the purposes of this compact.

(2) Tri-Met shall hold C-TRAN and the Authority harmless and indemnify C-TRAN and the Authority for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from Tri-Met's negligent errors, omissions or acts in carrying out the purposes of this compact.

(3) The Authority shall hold C-TRAN and Tri-Met harmless and indemnify C-TRAN and Tri-Met for any and all liability, settlements, losses, costs, damages and expenses in connection with any action, suit or claim resulting from the Authority's negligent errors, omissions or acts in carrying out the purposes of this compact.

ARTICLE XVI

Fares

Fares will be established and collected by C-TRAN and Tri-Met for trips originating within their respective districts. Payment of those fares will be honored by the Authority as payment for passage on the South North light rail transit line.

ARTICLE XVII

Insurance

The board of directors of the Authority may self-insure or purchase insurance and pay the premiums therefor against loss or damage, against liability for injury to persons or property and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the board may determine, subject to the requirements of any agreement or other obligations of the Authority.

ARTICLE XVIII

Tax Exemption

(1) It is hereby declared that the creation of the Authority and the carrying out of the purposes of the Authority is in all respects for the benefit of all people of the signatory states. It is further declared that the Authority and the board of directors are performing a public purpose and an essential government function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this compact. Therefore, the Authority and the board of directors shall not be required to pay taxes or assessments upon any of the property under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the South North light rail transit line or upon any revenues therefrom.

(2) When C-TRAN or Tri-Met, acting under an agreement with the Authority pursuant to Article IV of this compact, possesses or controls property or conducts activities in the operation and maintenance of the South North light rail transit line:

(a) C-TRAN and Tri-Met shall remain subject to the tax laws of their respective states with respect to such property located, or activities conducted, within their respective states;

(b) C-TRAN shall be subject to the tax laws of the State of Oregon with respect to such property located, or activities conducted, in Oregon only to the extent Tri-Met would be subject to those laws if Tri-Met rather than C-TRAN possessed or controlled the property or conducted the activity; and

(c) Tri-Met shall be subject to the tax laws of the State of Washington with respect to such property located, or activities conducted, in Washington only to the extent C-TRAN would be subject to those laws if C-TRAN rather than Tri-Met possessed or controlled the property or conducted the activity.

ARTICLE XIX

Applicable Laws

The Authority shall be both subject to and exempt from certain laws of the States of Oregon and Washington as concurred in by the legislature of each state, respectively. Where the laws of the States of Oregon and Washington are not made inapplicable to the Authority by legislative action, the laws of the respective states will continue to apply to activities occurring within each state's geographical boundaries. However, the following laws shall apply generally to the Authority regardless of the state in which the activities governed by the laws occur. The following laws shall govern exclusively the matters they address, and the provisions of corresponding or analogous laws of either signatory shall have no effect:

(1) Federal Administrative Procedures Act (5 U.S.C. 500 et seq.), as amended from time to time, or any successor legislation;

(2) Federal Miller Act (40 U.S.C. 270a et seq.), as amended from time to time, or any successor legislation;

(3) Federal prevailing wage law (40 U.S.C. 276a et seq.), as amended from time to time, or any successor legislation;

(4) Federal rules on disadvantaged business enterprises (49 C.F.R. Part 23), as amended from time to time, or any successor legislation;

(5) Federal competitive bidding laws (41 U.S.C. 251 et seq.), as amended from time to time, or any successor legislation; and

(6) ORS 30.260 to 30.300 (1993 Edition).

ARTICLE XX

Jurisdiction of Courts

(1) The United States District Courts shall have original jurisdiction, concurrent with the courts of Oregon and Washington, of all actions brought by or against the Authority and shall enforce subpoenas issued under this Compact. Any such action initiated in a state court shall be removable to the appropriate United States District Court

in the manner provided by the Act of June 25, 1948, as amended (28 U.S.C. 1446).

(2) All laws or parts of laws of the United States and of the signatory states that are inconsistent with the provisions of this compact are hereby amended for the purpose of this compact to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this compact.

ARTICLE XXI

Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid and to this end, the provisions of this compact are severable.

ARTICLE XXII

Effective Date

This compact shall take effect, and the board of the Authority may exercise its authority pursuant to the compact when it has been ratified by the federal Congress and adopted by both signatories, and the six directors of the board have been appointed. The effective date of this compact shall be the date of the establishment of the board of directors of the Authority.

[1996 c.13 §2]

391.310 [1995 s.s. c.3 §34; repealed by 1996 c.13 §4]

391.311 Effect of compact on powers and privileges of mass transit districts in Oregon and Washington. (1) A mass transit district established under ORS 267.010 to 267.390, when operating under the authority or direction of the Columbia River Light Rail Transit Authority established under the Columbia River Light Rail Transit Compact ratified by ORS 391.301, retains all the rights, powers, privileges and immunities conferred upon the district by ORS 267.010 to 267.390 to the extent that those rights, powers, privileges and immunities are consistent with the provisions of the Columbia River Light Rail Transit Compact.

(2) A mass transit agency organized under the laws of the State of Washington, when operating in Oregon under the authority or direction of the Columbia River Light Rail Transit Authority established under the Columbia River Light Rail Transit Compact ratified by ORS 391.301, may exercise all of the rights, powers, privileges and immunities conferred upon a mass transit district by ORS 267.010 to 267.390 to the extent that those rights, powers, privileges and immunities are consistent with the provisions of the Columbia River Light Rail Transit Compact. [1996 c.13 §3]

SOUTH METRO COMMUTER RAIL PROJECT

Note: Sections 18, 19, 20, 21 and 22, chapter 942, Oregon Laws 2001, provide:

Sec. 18. As used in sections 18 to 22 of this 2001 Act:

(1) "Residual lottery revenues" means the unobligated net lottery proceeds as defined in ORS 286.560 that remain in each fiscal year after:

(a) Payment of debt service due in that fiscal year on all bonds secured by the revenues of the lottery, and issued on parity with lottery bonds outstanding on the effective date of this 2001 Act [August 9, 2001]; and

(b) Payment of costs related to those lottery bonds.

(2) "South Metro Commuter Rail Project" or "project" means the acquisition, construction, installation and procurement of all components of an approximately 15-mile commuter rail line connecting Wilsonville, Tualatin, Tigard and Beaverton, or segments thereof. [2001 c.942 §18]

Sec. 19. (1)(a) For the biennium beginning July 1, 2003, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of $35,342,000 for payment of the expenses of Washington County for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.

(b) For the biennium beginning July 1, 2003, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of $200,000 for payment of the expenses of the Department of Transportation in entering into, modifying and administering a grant agreement under section 21 (3), chapter 942, Oregon Laws 2001, for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.

(2) Lottery bonds issued under this section shall be issued at the request of the Director of Transportation.

(3) Net proceeds of lottery bonds issued under subsection (1)(a) and (b) of this section, in the amount of $35,542,000, shall be deposited in the South Metro Commuter Rail Project Fund established by section 21, chapter 942, Oregon Laws 2001, not later than June 30, 2005.

(4) The bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer for the lottery bonds authorized by this section shall be paid from the gross proceeds of those lottery bonds and from allocations for the purposes of ORS 286.576 (1)(c). [2001 c.942 §19; 2003 c.741 §7]

Sec. 20. The Legislative Assembly finds that:

(1) The development, acquisition, construction and operation of the South Metro Commuter Rail Project will accomplish the purpose of creating jobs and furthering economic development in Oregon because:

(a) Construction and operation of the South Metro Commuter Rail will reduce traffic congestion on existing highways and roads, improving the attractiveness of the metropolitan area to new businesses and supporting the operations and prosperity of existing businesses;

(b) Construction and operation of the South Metro Commuter Rail will reduce the cost and time required for family wage earners to commute to work, permitting more of Oregon's work force to obtain jobs for which they are qualified; and

(c) Authorization for the issuance of lottery bonds for the South Metro Commuter Rail Project will increase the likelihood of federal funding for the project and add new revenues that will directly benefit Oregon's construction industry.

(2) The factors described in subsection (1) of this section will encourage and promote economic development within the State of Oregon, and issuance of lottery bonds to finance the South Metro Commuter Rail Project is therefore an appropriate use of state lottery funds under section 4, Article XV of the Oregon Constitution, and ORS 461.510. [2001 c.942 §20]

Sec. 21. (1) The South Metro Commuter Rail Project Fund is established separate and distinct from the General Fund. The moneys in the South Metro Commuter Rail Project Fund and the interest earnings of the fund are continuously appropriated to the Department of Transportation for the purpose described in subsection (2) of this section. The fund shall consist of moneys deposited in the fund under section 19, chapter 942, Oregon Laws 2001, and may include fees, moneys or other revenues available for payment of expenses of the South Metro Commuter Rail Project, including federal funds collected or received as reimbursement for expenses of the project from the United States Department of Transportation or the Federal Highway Administration under the Transportation Equity Act for the 21st Century (P.L. 105-178), or Miscellaneous Receipts.

(2) Subject to subsection (3) of this section, moneys in the fund shall be available for immediate distribution to Washington County to pay the expenses of the project.

(3)(a) The Director of Transportation shall enter into, or modify, a grant agreement with Washington County that requires the department to disburse, over the course of the project, an aggregate amount of $35,342,000 to Washington County from the fund. Disbursements from the fund shall be made as soon as deposits accrue in the fund and shall commence when:

(A) Moneys are available;

(B) Washington County has entered into one or more contracts for final design, construction or acquisition of components of the South Metro Commuter Rail Project and the contracts have an aggregate value of at least $35,342,000; and

(C) The Director of Transportation determines that the following conditions have occurred:

(i) Washington County has provided documentation that it will have sufficient financing to complete the project; and

(ii) Washington County has agreed in the grant agreement authorized by this section that the county will not request or accept any state General Fund moneys for the project. Upon completion of the project, if the aggregate expenditure of state and local moneys is less than $45 million, Washington County shall refund the difference to the fund established by this section.

(b) Upon satisfaction of the conditions described in paragraph (a) of this subsection, the Department of Transportation shall disburse $35,342,000 of the moneys in the fund to Washington County in the biennium beginning July 1, 2003.

(c) Of the moneys deposited in the fund, the Department of Transportation may use $200,000 to pay the department's expenses in entering into, modifying and administering the grant agreement authorized by this section.

(4)(a) The state is not liable to the lenders, vendors or contractors of Washington County for any action or omission under sections 18 to 22, chapter 942, Oregon Laws 2001, or the grant agreement authorized by this section, except for a failure to allocate and deposit to the fund amounts required by section 19, chapter 942, Oregon Laws 2001, or to disburse from the fund to Washington County amounts required by this section and the grant agreement authorized by this section.

(b) The grant agreement must:

(A) Obligate the department to deposit the net proceeds of lottery bonds described in section 19, chapter 942, Oregon Laws 2001, or, if necessary, the amounts described in section 22, chapter 942, Oregon Laws 2001, into the fund.

(B) Obligate Washington County to indemnify the state and its agencies and departments to the fullest extent permitted by law for any liability the state or its agencies and departments might incur in connection with any borrowing by Washington County for the project, except failure to allocate and deposit to the fund amounts required by section 19, chapter 942, Oregon Laws 2001, or amounts described in section 22, chapter 942, Oregon Laws 2001, or to disburse from the fund to Washington County amounts required by this section and the grant agreement authorized by this section.

(c) Washington County may assign and pledge its rights under the grant agreement to lenders, vendors or contractors. The Director of Transportation shall pledge the moneys available in the fund for the project. [2001 c.942 §21; 2002 s.s.2 c.4 §10; 2003 c.741 §8]

Sec. 22. If the state has not deposited an aggregate amount of $35,342,000 in the South Metro Commuter Rail Project Fund by February 28, 2005, the state shall allocate to the Department of Transportation for deposit in the South Metro Commuter Rail Project Fund an amount equal to the difference between $35,342,000 and the aggregate deposits to the fund as of February 28, 2005, from the first available residual lottery revenues. [2001 c.942 §22; 2003 c.741 §9]

MASS TRANSPORTATION FINANCING AUTHORITY

391.500 Declaration of policy; construction of statutes. (1) The Legislative Assembly of the State of Oregon finds and declares that:

(a) It is in the public interest to provide methods of financing the costs of mass transit facilities; and

(b) The method of financing provided in ORS 267.227 and 391.500 to 391.660 is in the public interest and serves a public purpose.

(2) The purpose of ORS 267.227 and 391.500 to 391.660 is to create an authority to provide financial assistance to mass transit districts.

(3) ORS 267.227 and 391.500 to 391.660 shall be liberally construed. [1977 c.662 §2]

391.510 Definitions for ORS 391.500 to 391.660. As used in ORS 267.227 and 391.500 to 391.660, unless the context otherwise requires:

(1) "Acquire" or "acquisition" means the acquisition, by purchase, lease, gift, grant, devise, construction, installation, reconstruction, repair and alteration, and the equipment, improvement and extension of mass transit facilities.

(2) "Authority" means the Oregon Mass Transportation Financing Authority created by ORS 267.227 and 391.500 to 391.660.

(3) "Board" means the members of the authority created in ORS 391.520.

(4) "District" means a mass transit district established under ORS 267.010 to 267.390.

(5) "Finance" or "financing" means the issuance of revenue bonds pursuant to ORS 391.570 by the authority for the purpose of providing financial assistance to districts.

(6) "Financial assistance" means the providing of methods of financing of costs of mass transit facilities under ORS 267.227 and 391.500 to 391.660.

(7) "Mass transit facility" or "facilities" means any or all property constituting a mass transit system, or any portion thereof, in any manner owned, used, leased or operated by a district and which is located wherever a district is authorized to operate. [1977 c.662 §3]

391.520 Financing authority created; membership. The Oregon Mass Transportation Financing Authority is hereby created as a public instrumentality of the State of Oregon and the exercise by the authority of the powers conferred by ORS 267.227 and 391.500 to 391.660 is the performance of an essential public function. The authority shall consist of the chairperson of the Oregon Transportation Commission, the State Treasurer, or designee, the chairperson of the Oregon Investment Council, or designee, and a representative designated by the board of directors of each district. [1977 c.662 §4]

391.530 Meetings; quorum; expenses. The members shall select a chairperson from among themselves and may select such other officers as they consider necessary. Any member may call a meeting of the board. A majority of the members of the Oregon Mass Transportation Financing Authority shall constitute a quorum for all purposes. Members of the authority shall receive no compensation for services but shall be entitled to the necessary expenses incurred in the discharge of their duties. [1977 c.662 §5]

391.540 Bylaws; secretary's duties, power. The Oregon Mass Transportation Financing Authority may adopt and amend appropriate bylaws for the regulation of its affairs and the conduct of its business and may elect a secretary who need not be a member. The secretary shall perform such duties as the board shall designate and may give certificates under the official seal of the authority, and all persons dealing with the authority may rely on such certificates. [1977 c.662 §6]

391.550 Powers of Mass Transportation Financing Authority. The Oregon Mass Transportation Financing Authority shall have the following powers together with all powers incidental thereto or necessary for the performance thereof:

(1) To have perpetual succession as a public instrumentality of the State of Oregon;

(2) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

(3) To have and to use a corporate seal and to alter the same at pleasure;

(4) To maintain an office at such place or places as it may designate;

(5) To acquire, own, finance, lease and dispose of any mass transit facility and to enter into contracts for any and all of such purposes; provided, that title to or in any mass transit facility so financed may in the discretion of the authority remain in a district and provided, further, that the district shall not itself operate any mass transit facility, except as lessor;

(6) To lease or sell to a district any or all of the mass transit facilities upon such terms and conditions as the board shall deem proper, and to charge and collect rent or other payments therefor and to terminate any such lease or sales agreement upon the failure of the district to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the district shall have options to renew the term of the lease for such period or periods and at such rent as shall be determined by the board or to purchase any or all of the mass transit facilities for a nominal amount or otherwise or that at or prior to the payment of all of the indebtedness incurred by the authority for the financing of such mass transit facilities the authority may convey any or all of the mass transit facilities to the district with or without consideration;

(7) By resolution of a majority of the members of the authority, to issue bonds in the aggregate principal sum of not to exceed $250 million par value for any of its corporate purposes and to refund the same, subject to the provisions of ORS 267.227 and 391.500 to 391.660;

(8) To employ or to contract with other state or municipal agencies for such employees and agents as may be necessary in its judgment;

(9) To receive and accept from any public agency loans or grants for aid in the acquisition of any mass transit facility and any portion thereof, and to receive and accept

grants, gifts or other contributions from any source;

(10) To refund outstanding obligations incurred by any district including obligations incurred, undertaken or completed prior to or after October 4, 1977;

(11) To receive and to pledge as security for the payment of any bonds issued under ORS 267.227 and 391.500 to 391.660, any lease, purchase agreement, note, bond or other obligation by or on behalf of any district;

(12) To make loans to any district for the purpose of providing financial assistance to such district in accordance with an agreement between the authority and such district; and

(13) To do all things necessary and convenient to carry out the purpose of ORS 267.227 and 391.500 to 391.660. [1977 c.662 §7; 1983 c.306 §1]

391.560 Lease terms for facility financed by bonds. Any lease of a mass transit facility entered into pursuant to the provisions of ORS 267.227 and 391.500 to 391.660 shall be for a term not shorter than the longest maturity of any bonds issued to finance such mass transit facility or a portion thereof and shall provide for income, revenues and rentals from all sources pledged to the payment of such bonds adequate to pay the principal, interest and premiums, if any, on such bonds as the same fall due and to create and maintain such reserves and accounts for depreciation, if any, as the board in its discretion shall determine to be necessary. [1977 c.662 §8]

391.570 Bonds; form; conditions; issuance; refunding. (1) Bonds may be issued as serial bonds or as term bonds or a combination of both types. The board may provide that such bonds:

(a) May be executed and delivered by the Oregon Mass Transportation Financing Authority at any time and from time to time in such amounts including all necessary and incidental expenses, together with all necessary initial bond and interest reserves and applicable interest during the period of acquisition;

(b) May be in such form and denominations and of such terms and maturities;

(c) May be in fully registered form or in bearer form registerable either as to principal or interest or both;

(d) May bear such conversion privileges and be payable in such installments and at such time or times not exceeding 40 years from the date thereof;

(e) May be payable at such time or times and at such place or places whether within or without the State of Oregon and evidenced in such manner;

(f) May be made optional for redemption prior to maturity at such price or prices and on such terms and conditions;

(g) May be executed by the manual or facsimile signatures of such officers of the authority; and

(h) May contain such other provisions not inconsistent with ORS 267.227 and 391.500 to 391.660.

(2) Any bonds of the authority may be sold for such price and in such manner and from time to time as may be determined by the board. The board shall publish notice of its intent to sell bonds, at least once, at least two days prior to the date of sale, in a newspaper of general circulation in each district which is to receive financial assistance from the proceeds of the bonds. The notice shall state the general purposes for which the bonds are to be sold. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same mass transit facility or any other mass transit facility or for any other purpose, but the proceedings where any subsequent bonds may be issued shall recognize and protect any prior pledge made for any prior issue of bonds. Refunding bonds may be issued whether the bonds to be refunded are then subject to redemption or are thereafter subject to redemption or maturity, and regardless of the purpose for which the bonds to be refunded were issued by the authority. All such bonds and the interest coupons applicable thereto, if any, are made and shall be construed to be negotiable instruments. [1977 c.662 §9]

391.580 Pledges for bonds. The principal, interest and premiums, if any, on any bonds issued by the Oregon Mass Transportation Financing Authority shall be secured solely by a pledge of the income, revenues and receipts out of which the same shall be made payable and may also be secured by and payable out of proceeds from the sale of the mass transit facility acquired or financed by the proceeds of such bonds. In addition, the district which is to lease or purchase the mass transit facilities financed out of the proceeds of any bonds issued by the authority may, by resolution of the district board, pledge all or any part of the revenues of the district derived from any taxes which the district is authorized to levy as security for the payment of the principal, interest and premiums, if any, on the bonds issued by the authority to finance such mass transit facilities. In the resolution of the district board pledging all or any part of its tax revenues as security for any bonds issued by the au-

thority, the district may reserve the right to pledge from time to time on a parity basis all or any part of its tax revenues as security for any one or more series of bonds issued thereafter by the authority or the district, and in the event the right so reserved by the district is exercised all bonds secured by a pledge of such tax revenues shall be equally and ratably secured by such tax revenues without preference or priority of any kind of any bond or series of bonds secured thereby over any other bond or series of bonds secured thereby. A pledge of tax revenues by a district as a security for the payment of any bonds issued by the authority shall not be considered to be the incurring of bonded indebtedness by the district. Any pledge made pursuant to this section shall be valid and binding from and after the date of issuance of the bonds secured thereby and the income, revenues, receipts or taxes pledged shall be immediately subject to the lien of such pledge without the physical delivery thereof, the filing of any notice or any further act. The lien of any such pledge shall be valid and binding against all persons having claims of any kind against the pledgor whether in tort, contract or otherwise, irrespective of whether such persons have notice thereof. The resolution under which the bonds are authorized to be issued and any indenture executed as security for the bonds, may contain any agreements and provisions with respect to the maintenance of the properties covered thereby, the fixing and collection of rents for any portions leased by the authority to a district, the pledge of the agreement of the district to make such payments as shall be necessary to pay principal, interest and premiums, if any, on the bonds, the creation and maintenance of special funds from such revenues, and the rights and remedies available in the event of default, designation of a trustee, and any other provision the board shall deem advisable. Each pledge and agreement made for the benefit or security of any of the bonds of the authority shall continue effective until the principal, interest and premiums, if any, on the bonds for the benefit of which the same were made shall have been fully paid or provision for such payment duly made. [1977 c.662 §10; 1985 c.655 §1]

391.590 Bonds not general obligation of state. All bonds issued by the Oregon Mass Transportation Financing Authority under the provisions of ORS 267.227 and 391.500 to 391.660 shall not constitute a debt, liability or general obligation of this state, or a pledge of the faith and credit of this state, but shall be payable solely from the income revenues, receipts or assets pledged for their payment. Each bond issued shall contain on the face a statement that the State of Oregon or the authority shall not be obligated to pay the same nor the interest thereon except from the income revenues, receipts or assets pledged therefor, and that neither the general obligation, full faith and credit nor the taxing power of this state is pledged to the payment of the principal of or the interest on such bond. [1977 c.662 §11]

391.600 Tax exempt status of income, property and bond interest. (1) The income and, to the extent permitted by the Constitution, the property of the Oregon Mass Transportation Financing Authority shall be exempt from all taxation in the State of Oregon. For purposes of the Oregon Securities Law, bonds issued by the authority shall be deemed to be securities issued by an instrumentality or a political subdivision of the State of Oregon.

(2) Interest payable on bonds of the authority shall be exempt from taxes imposed on income by the State of Oregon. [1977 c.662 §12]

391.605 Limitations on transfer to metropolitan service district. (1) No transfer authorized by ORS 267.020 of a mass transit district system to a metropolitan service district shall take effect while bonds issued by the Oregon Mass Transportation Financing Authority to finance mass transit facilities for the district are outstanding until a plan designed to repay any outstanding bonds when due is prepared by the governing body of the metropolitan service district and approved by:

(a) The chairperson of the Oregon Transportation Commission or the chairperson's designee;

(b) The State Treasurer or State Treasurer's designee; and

(c) The chairperson of the Oregon Investment Council or the chairperson's designee.

(2) Persons given authority to approve a transfer under subsection (1) of this section may only refuse to approve a transfer for reasons relating to the financial effect of the transfer. [1983 c.306 §3]

391.610 Expenses of authority; borrowed funds. All expenses of the Oregon Mass Transportation Financing Authority incurred in carrying out the provisions of ORS 267.227 and 391.500 to 391.660 shall be payable solely from funds provided under the authority of ORS 267.227 and 391.500 to 391.660. For the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys from districts, and districts are empowered to lend money to the author-

ity as may be required and agreed for such necessary expenses of organization and operation. Expenses incurred by the authority in connection with any application by a district for financial assistance under ORS 267.227 and 391.500 to 391.660 shall be paid by such district as provided in ORS 267.200 (10), or, in the alternative and in the discretion of the authority, may be paid from the proceeds of bonds issued by the authority. [1977 c.662 §13]

391.620 Limitation on transfer of property rights. The Oregon Mass Transportation Financing Authority shall not convey its right, title and interest in mass transit facilities to any district, prior to the time the bonds secured thereby are fully paid, unless the authority has determined that adequate provision has been made for the payment of principal, interest and premiums, if any, on the bonds as they become due. [1977 c.662 §14]

391.630 Investments of surplus moneys. The Oregon Mass Transportation Financing Authority may invest any surplus moneys in investments permitted by ORS 294.035. [1977 c.662 §15]

391.640 Investment in authority's bonds authorized. The state and all counties, cities and other municipal corporations, all banking institutions and building and loan associations, savings and loan associations, investment companies, insurance companies and associations, and all personal representatives, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to ORS 267.227 and 391.500 to 391.660. [1977 c.662 §16]

391.650 Severability of ORS 391.500 to 391.660. If any one or more sections or provisions of ORS 267.227 and 391.500 to 391.660, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of ORS 267.227 and 391.500 to 391.660 and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this Legislative Assembly to enact the remaining provisions of ORS 267.227 and 391.500 to 391.660 notwithstanding such invalidity. [1977 c.662 §19]

391.660 Short title. ORS 267.227 and 391.500 to 391.660 may be referred to and cited as the "Oregon Mass Transportation Financing Act." [1977 c.662 §1]

ELDERLY AND DISABLED TRANSPORTATION

391.800 Elderly and Disabled Special Transportation Fund. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Elderly and Disabled Special Transportation Fund. All moneys in the Elderly and Disabled Special Transportation Fund are appropriated continuously to the Department of Transportation for payment of the department's administrative costs of the program and payment to mass transit districts, transportation districts, Indian tribes and counties as provided in ORS 391.810.

(2) The Elderly and Disabled Special Transportation Fund shall consist of:

(a) Moneys transferred to the fund under ORS 184.642 and 323.455 (3);

(b) Other moneys appropriated to the fund by the Legislative Assembly; and

(c) Moneys obtained from interest earned on the investment of moneys in the fund.

(3) Moneys in the Elderly and Disabled Special Transportation Fund, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.820, and the earnings from the investments shall be credited to the Elderly and Disabled Special Transportation Fund. [1985 c.816 §9; 1987 c.62 §1; 1989 c.224 §66; 2003 c.601 §2; 2003 c.751 §3]

391.802 Definition for ORS 391.800 to 391.830. As used in ORS 391.800 to 391.830, "Indian tribe" means a federally recognized Indian tribe in Oregon that has members residing on a reservation or tribal trust lands in Oregon. [2003 c.751 §2]

391.810 Distribution of funds to districts, Indian tribes and counties; rules. (1) The Department of Transportation shall distribute three-quarters of the moneys in the Elderly and Disabled Special Transportation Fund, including the interest attributable thereto, to mass transit districts organized under ORS 267.010 to 267.390, transportation districts organized under ORS 267.510 to 267.650, Indian tribes and to those counties in which no part of a mass transit district or transportation district is located as follows:

(a) Each district shall receive that share of the moneys as the population of the counties in which the district is situated, determined under ORS 190.510 to 190.610 last preceding apportionment of the moneys, bears to the total population of the state. However, if two or more districts are situated in a single county, distribution of moneys under this subsection shall be determined as though only the mass transit district is located in that county or, if there are two or more transportation districts in the county,

as though only the transportation district with the highest population is located in that county.

(b) Each county in which no part of a mass transit district or transportation district is located shall receive that share of the moneys as its population, determined under ORS 190.510 to 190.610 last preceding apportionment of the moneys, bears to the total population of the state.

(c) Each Indian tribe shall receive that share of the moneys as the population of the tribe residing in Oregon, determined by the Oregon Transportation Commission pursuant to rules adopted under subsection (4) of this section, bears to the total population of the state.

(2) After the requirements of subsection (1) of this section have been met, the department shall distribute the remainder of the moneys in the Elderly and Disabled Special Transportation Fund to the districts, Indian tribes and counties described in subsection (1) of this section as follows:

(a) Each district, Indian tribe or county that receives a share of the moneys in proportion to population under subsection (1) of this section shall receive an amount, determined by the commission by rule and not to exceed $2,000 annually, to be used to defray the administrative expenses of the district, Indian tribe or county in carrying out its functions under ORS 391.800 to 391.830.

(b) Each district, Indian tribe or county that receives a share of the moneys in proportion to population under subsection (1) of this section shall receive for each fiscal year a minimum amount, determined by the commission by rule, to be distributed to providers of transportation for use as specified under ORS 391.830 (4).

(c) Each district, Indian tribe or county shall receive any money distributed to it from the discretionary grant account established under ORS 391.815.

(d) After the requirements of paragraphs (a) to (c) of this subsection have been satisfied, the department shall set aside and transfer the remainder of the moneys in the Elderly and Disabled Special Transportation Fund to a discretionary grant account established under ORS 391.815.

(3) The department may not distribute moneys to a mass transit district, transportation district, Indian tribe or county under this section unless the district, Indian tribe or county has appointed an advisory committee under ORS 391.820.

(4) The department shall adopt rules necessary for the administration and implementation of ORS 391.800 to 391.830. The rules may include but are not limited to:

(a) Restrictions and requirements on the distribution and use of moneys received under this section;

(b) Development of a form contract for use by districts, Indian tribes and counties when distributing moneys received under this section; and

(c) Restrictions and requirements on a district, Indian tribe or county for failure to comply with the provisions of this section or ORS 391.815 or 391.830.

(5) Each district, Indian tribe or county described in subsection (1) of this section is specifically authorized to enter into an agreement with another district, Indian tribe or county under ORS 190.003 to 190.130 to facilitate the performance of the functions authorized under ORS 391.830. [1985 c.816 §10; 1989 c.224 §67; 1989 c.866 §8; 2003 c.613 §1a; 2003 c.751 §4]

391.815 Discretionary grant account; purpose; application for grant; grant approval; distribution of moneys. (1) After the requirements of ORS 391.810 have been satisfied, the Department of Transportation shall set aside and transfer the remainder of the moneys in the Elderly and Disabled Special Transportation Fund to a discretionary grant account established as an account in the Elderly and Disabled Special Transportation Fund.

(2) The moneys in the discretionary grant account established under this section are continuously appropriated to the department for the purpose of distribution for ultimate use for transportation and services to the elderly and disabled as described under ORS 391.830 (4). The department may distribute moneys from the discretionary grant account only as directed by the Oregon Transportation Commission under this section.

(3)(a) A district, Indian tribe or county described in ORS 391.810 (1) may make application to the department for a distribution from the discretionary grant account established under this section. The application shall describe the purposes for which the grant is to be used and the monetary amount that is required to carry out those purposes.

(b) Upon receipt of an application, the department shall cause the application to come to the attention of the commission, which shall, after consideration, approve or deny the application, in whole or in part.

(c) The commission shall approve only those grants applied for under paragraph (a) of this subsection that are for use for the purposes set forth in ORS 391.830 (4).

(4) Upon approval of an application, in whole or in part, the commission shall direct the department to distribute the dollar amount approved to the applying district, In-

dian tribe or county. [1989 c.866 §10; 2003 c.751 §5]

391.820 Advisory committees; membership; duties. (1) The governing body of each mass transit district, transportation district, Indian tribe or county that receives moneys from the Elderly and Disabled Special Transportation Fund under ORS 391.810 shall appoint an advisory committee to advise and assist the governing body in carrying out the purposes of ORS 391.800 to 391.830. The number and terms of the members of an advisory committee appointed under this section shall be determined by the appointing governing body.

(2) To be qualified to serve on an advisory committee of a district or county, an individual must reside within the boundaries of the district, the county within which a district or part thereof is located or the county in which no part of a district is located and must be:

(a) A person who is an elderly or disabled individual and uses transportation services in the district or county;

(b) A person who is an elderly or disabled individual and lives in an area of the district or county where there are no public transportation services;

(c) An individual engaged in providing transportation services to the elderly or disabled in the district or county;

(d) A representative of elderly individuals; or

(e) A representative of disabled individuals.

(3) To be qualified to serve on an advisory committee of an Indian tribe, an individual must be able to represent the transportation needs of elderly and disabled persons served by the Indian tribe as determined by the governing body of the Indian tribe.

(4) An advisory committee appointed under this section shall review the distribution of moneys by the governing body of a district, Indian tribe or county under ORS 391.830. The advisory committee may propose any changes to the policies or practices of the governing body relating to the distribution that the advisory committee considers necessary or desirable. [1985 c.816 §11; 1987 c.532 §1; 1989 c.224 §68; 2003 c.751 §6]

391.830 Use of funds to finance and improve transportation for elderly and disabled. (1)(a) Each mass transit district and transportation district that receives moneys from the Department of Transportation under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a), shall distribute the moneys to providers of transportation for the purpose of financing and improving transportation programs and services for the elderly and disabled residents of the district and the county in which all or a portion of the district is located. The moneys received under ORS 391.810 (1) and (2)(b) and distributed to providers of transportation in areas within the counties in which the district is located but outside the boundaries of the district shall be that share of all moneys received by the district as the population of those counties residing outside the district, as determined by the last federal decennial census, bears to the total population of the counties.

(b) Each county that receives moneys from the department under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a) shall distribute the moneys to providers of transportation for the purpose of financing and improving transportation programs and services for the elderly and disabled residents of the county.

(c) Each Indian tribe that receives moneys from the department under ORS 391.810 (1) or (2)(b), after providing for costs of administration in an amount determined under ORS 391.810 (2)(a), shall use the moneys for the purpose of financing and improving transportation programs and services for elderly and disabled individuals served by the Indian tribe.

(2) The governing body of a district, Indian tribe or county, after consultation with the advisory committee it appointed under ORS 391.820, shall determine the amount of money to be distributed to a provider of transportation and the purposes for which the money must be used. Moneys received under ORS 391.810 (2)(c) shall be used for the purposes for which received as indicated in the directive from the Oregon Transportation Commission as described under ORS 391.815. All moneys received under ORS 391.810 shall be distributed and used consistent with rules adopted by the Department of Transportation under ORS 391.810 (4).

(3) A provider of transportation receiving funds prior to January 1, 1986, from a governmental unit or agency for purposes related to the transportation needs of the elderly or disabled is eligible to receive moneys from a district, Indian tribe or county under this section.

(4) Moneys distributed to providers of transportation under this section may be used for the following purposes:

(a) Maintenance of existing transportation programs and services for the elderly or disabled.

(b) Expansion of such programs and services.

(c) Creation of new programs and services.

(d) Planning for, and development of, access to transportation for elderly and disabled individuals who are not currently served by transportation programs and services.

(5) Except in the case of a uniform budget reduction or upon order or other authorization of the department, the increase in moneys received under ORS 391.810 under this section and ORS 323.030, 323.455, 391.810 and 391.815 may not be used to supplant moneys currently appropriated by counties, Indian tribes or districts for elderly and disabled transportation projects.

(6) As used in this section, "provider of transportation" includes a city, county, district, Indian tribe or any other person or agency, whether public or private, that maintains, operates or sponsors vehicles and facilities for the transportation of passengers for profit or on a nonprofit or voluntary basis. [1985 c.816 §12; 1989 c.224 §69; 1989 c.866 §11; 2003 c.613 §2; 2003 c.751 §7]

CHAPTERS 392 TO 395

[Reserved for expansion]

Chapter 447
(Partial)

2003 EDITION

Access by Disabled Persons

STANDARDS AND SPECIFICATIONS FOR ACCESS BY DISABLED PERSONS

447.210 Definitions for ORS 447.210 to 447.280

447.220 Purpose

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STANDARDS AND SPECIFICATIONS FOR ACCESS BY DISABLED PERSONS

447.210 Definitions for ORS 447.210 to 447.280. As used in ORS 447.210 to 447.280, unless the context requires otherwise:

(1) "Affected buildings" includes any place of public accommodations and commercial facilities designed, constructed and altered in compliance with the accessibility standards established by the Americans with Disabilities Act. "Affected buildings" also includes any government building that is subject to Title II of the Americans with Disabilities Act. "Affected buildings" also includes private entities, private membership clubs and churches that have more than one floor level and more than 4,000 square feet in ground area or that are more than 20 feet in height, measured from the top surface of the lowest flooring to the highest interior overhead finish of the building.

(2) "Americans with Disabilities Act" means the Americans with Disabilities Act of 1990 found at 42 U.S.C. section 12101 et seq.

(3) "Architectural barriers" are physical design features that restrict the full use of affected buildings and their related facilities by persons with disabilities.

(4) "Commercial facilities" includes nonresidential facilities, such as office buildings, factories and warehouses, whose operations affect commerce.

(5) "Covered multifamily dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

(6) "Department" means the Department of Consumer and Business Services.

(7) "Director" means the Director of the Department of Consumer and Business Services.

(8) "Fair Housing Act" means the Fair Housing Act of 1968, as amended in 1988, found at 42 U.S.C. section 3604 et seq.

(9) "Municipality" means a city, county or other unit of local government otherwise authorized by law to enact building codes.

(10) "Private entities" means privately owned entities offering examinations or courses related to applications, licensing, certification or credentials for secondary or post-secondary education, professional or trade purposes.

(11) "Public accommodations" means a facility whose operations affect commerce and fall within at least one of the following categories:

(a) Places of lodging not including owner-occupied establishments renting fewer than six rooms;

(b) Establishments serving food or drink;

(c) Places of exhibition or entertainment;

(d) Places of public gathering;

(e) Sales or rental establishments;

(f) Service establishments;

(g) Public transportation terminals, depots or stations;

(h) Places of public display or collection;

(i) Places of recreation;

(j) Places of education;

(k) Social service center establishments; and

(L) Places of exercise or recreation.

(12) "Related facilities" means building site improvements including, but not limited to, parking lots, passageways, roads or any other real or personal property located on the site.

(13) "Structural code" means the specialty code defined in ORS 455.010. [1971 c.230 §2; 1973 c.539 §1; 1975 c.675 §35; 1979 c.133 §1; 1987 c.414 §27; 1987 c.604 §12; 1989 c.224 §109; 1991 c.67 §122; 1993 c.503 §1; 1993 c.744 §74; 1995 c.307 §1]

447.220 Purpose. It is the purpose of ORS 447.210 to 447.280 to make affected buildings, including but not limited to commercial facilities, public accommodations, private entities, private membership clubs and churches, in the state accessible to and usable by persons with disabilities, as provided in the Americans with Disabilities Act, and to make covered multifamily dwellings in the state accessible to and usable by all persons with disabilities, as provided in the Fair Housing Act. In requiring that buildings and facilities be usable by persons with disabilities, it is not the intention of the Legislative Assembly to require that items of personal convenience such as rest rooms, telephones and drinking fountains be provided for members of the public who have disabilities if they are not otherwise provided for members of the public who do not have disabilities. However, pursuant to the Americans with Disabilities Act, the Director of the Department of Consumer and Business Services may provide greater protection to individuals with disabilities by adopting more stringent standards than prescribed by the Americans with Disabilities Act. [1971 c.320 §1; 1973 c.539 §2; 1979 c.133 §2; 1989 c.224 §110; 1993 c.503 §2]

447.230 Standards and specifications to eliminate architectural barriers. (1) The Director of the Department of Consumer

and Business Services shall, pursuant to ORS 455.030 and ORS chapter 183, establish standards and specifications in the structural code necessary to eliminate architectural barriers to entry to and use of affected buildings and their related facilities by persons who have disabilities.

(2) The director shall, to assist in the identification of architectural barriers and in the development of the standards and specifications referred to in subsection (1) of this section, be assisted by the Oregon Disabilities Commission or its designee. [1971 c.320 §3; 1973 c.539 §3; 1979 c.133 §3; 1983 c.740 §169; 1987 c.414 §27b; 1987 c.672 §1; 1989 c.224 §111; 1989 c.703 §1; 1993 c.503 §3; 1993 c.744 §75a]

447.231 Rules to eliminate architectural barriers. Notwithstanding any other provision of law and the authority of any board within the Department of Consumer and Business Services, the Director of the Department of Consumer and Business Services shall adopt rules to conform the state building code to the Americans with Disabilities Act and the Fair Housing Act and the regulations adopted thereunder. In addition, the director shall adopt rules to conform the state building code to the provisions of ORS 447.210 to 447.280, to the extent to which any statute is stricter than the Americans with Disabilities Act or the Fair Housing Act. [1991 c.691 §2; 1993 c.503 §4; 2003 c.14 §269]

447.233 Accessible parking space requirements; inspection of spaces; remedy for violation. (1) The Director of the Department of Consumer and Business Services shall include in the state building code, as defined in ORS 455.010, a requirement that the number of accessible parking spaces specified in subsection (2) of this section be provided for affected buildings subject to the state building code and that the spaces be signed as required by subsection (2) of this section. Spaces may also be marked in a manner specified in the state building code.

(2)(a) The number of accessible parking spaces shall be:

Total Parking In Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 percent of total
1,001 and over	20 plus 1 for each 100 over 1,000

(b) In addition, one in every eight accessible spaces, but not less than one, shall be van accessible. A van accessible parking space shall be at least nine feet wide and shall have an adjacent access aisle that is at least eight feet wide.

(c) Accessible parking spaces shall be at least nine feet wide and shall have an adjacent access aisle that is at least six feet wide.

(d) The access aisle shall be located on the passenger side of the parking space except that two adjacent accessible parking spaces may share a common access aisle.

(e) A sign shall be posted for each accessible parking space. The sign shall be clearly visible to a person parking in the space, shall be marked with the International Symbol of Access and shall indicate that the spaces are reserved for persons with disabled person parking permits. Van accessible parking spaces shall have an additional sign marked "Van Accessible" mounted below the sign.

(f) Accessible parking spaces and signs shall be designed in compliance with the standards set forth by the Oregon Transportation Commission in consultation with the Oregon Disabilities Commission.

(3) No ramp or obstacle may extend into the parking space or the aisle, and curb cuts and ramps may not be situated in such a way that they could be blocked by a legally parked vehicle.

(4) Parking spaces required by this section shall be maintained so as to meet the requirements of this section at all times and to meet the standards established by the state building code.

(5) The director is authorized to inspect parking spaces and facilities and buildings subject to the provisions of this section, and to do whatever is necessary to enforce the requirements, including the maintenance requirements, of this section. Municipalities and counties may administer and enforce the requirements of this section in the manner provided under ORS 455.148 or 455.150 for administration and enforcement of specialty codes. All plans for parking spaces subject to the provisions of this section must be approved by the director prior to the creation of the spaces.

(6) Requirements adopted under this section do not apply to long-term parking facilities at the Portland International Airport.

(7) Any reported violation of this section shall be investigated by the administrative authority. The administrative authority shall

make a final decision and order correction, if necessary, within 30 days of notification. Any aggrieved person may appeal within 30 days of the decision by the administrative authority to the appropriate municipal appeals board or, at the option of the local jurisdiction, directly to the Building Codes Structures Board established under ORS 455.132. The appeal shall be acted upon within 60 days of filing. The decision of the municipal appeals board may be appealed to the board. The board shall act on the appeal within 60 days of filing. All appeals to the board shall be filed in accordance with ORS 455.690. [1979 c.809 §2; 1981 c.275 §1; 1983 c.338 §930; 1987 c.187 §1; 1989 c.243 §15; 1991 c.741 §6; 1993 c.503 §8; 1993 c.744 §77; 2001 c.573 §5]

447.241 Standards for renovating, altering or modifying certain buildings; barrier removal improvement plan. (1) Every project for renovation, alteration or modification to affected buildings and related facilities that affects or could affect the usability of or access to an area containing a primary function shall be made to insure that, to the maximum extent feasible, the paths of travel to the altered area and the rest rooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope.

(2) Alterations made to the path of travel to an altered area may be deemed disproportionate to the overall alteration when the cost exceeds 25 percent of the alteration to the primary function area.

(3) If the cost of alterations to make the paths of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the paths of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

(4) In choosing which accessible elements to provide under this section, priority shall be given to those elements that will provide the greatest access. Elements shall be provided in the following order:

(a) Parking;

(b) An accessible entrance;

(c) An accessible route to the altered area;

(d) At least one accessible rest room for each sex or a single unisex rest room;

(e) Accessible telephones;

(f) Accessible drinking fountains; and

(g) When possible, additional accessible elements such as storage and alarms.

(5) A series of small alterations to an area served by a single path of travel does not satisfy the obligation to provide an accessible path of travel created under subsection (1) of this section.

(6) If an area containing a primary function has been altered without providing an accessible path of travel to the area and subsequent alterations affecting the same path of travel are undertaken within three years of the original alteration, the total cost of the alterations to the primary function area on the path of travel during the preceding three-year period shall be considered in determining whether the cost of making the path of travel accessible is disproportionate.

(7)(a) A barrier removal improvement plan may satisfy the requirements of subsection (1) of this section. The plan shall require an equivalent or greater level of barrier removal than required by subsection (1) of this section.

(b) The barrier removal improvement plan shall include:

(A) A letter of participation from the building owner;

(B) A building survey that identifies existing architectural barriers;

(C) An improvement plan and time schedule for removal of architectural barriers; and

(D) An implementation agreement.

(c) The barrier removal improvement plan may be reviewed and accepted through the waiver process under ORS 447.250. The plan shall be reviewed upon completion or every three years for compliance with the requirements of this section.

(8) For purposes of this section, "primary function" is a major activity for which the facility is intended. [1993 c.503 §7]

447.247 Elevators required; criteria. (1) Elevators are required:

(a) In all shopping centers, shopping malls, professional offices of health care providers and government buildings that are covered by Title II of the Americans with Disabilities Act;

(b) In all other commercial facilities, private entities and places of public accommodation covered by Title III of the Americans with Disabilities Act that have more than one floor level and more than 3,000 square feet in ground area or that are more than 20 feet in height, measured from the top surface of the lowest flooring to the highest interior overhead finish of the building; and

(c) In all private membership clubs and churches that have more than one floor level

and more than 4,000 square feet in ground area or that are more than 20 feet in height, measured from the top surface of the lowest flooring to the highest interior overhead finish of the building.

(2) The Department of Consumer and Business Services may by rule create exceptions to the requirements of this section if this section would require an elevator in a building that would not be required to have an elevator under the provisions of the Americans with Disabilities Act or the Fair Housing Act. [1993 c.503 §6; 1995 c.307 §2]

447.250 Waiver or modification of standards and specifications; appeals board; procedures; fees. (1) When a person or governmental entity undertaking the construction, renovation, alteration or modification of an affected building or its related facilities determines that a particular standard or specification exceeds the standards or specifications imposed by the Americans with Disabilities Act and the Fair Housing Act, and that full compliance with the standard or specification is impractical in that it would defeat the purpose of the project proposed or in process, it may apply to the appeals board having jurisdiction over the project for a waiver or modification of such standard or specification, setting forth the reasons for its determination and a proposal for the work complying with the particular standard or specification to the maximum extent that it considers practical.

(2)(a) For projects involving a state correctional facility as defined in ORS 421.005 (2), or a local correctional facility, as defined in ORS 169.005, the appeals board referred to in subsection (1) of this section is the Building Codes Structures Board established under ORS 455.132.

(b) For all other projects, the appeals board referred to in subsection (1) of this section is the appeals board established under ORS 455.020 (4) by the municipality having jurisdiction over the project.

(3) The appeals board shall thereupon investigate the application. The board in its investigation shall be required to seek the advice of the Oregon Disabilities Commission or its designee in dealing with architectural barrier waivers. If the appeals board finds that the proposal submitted with the application would constitute a substantial compliance with, or an acceptable alternative to, the particular standard or specification in view of the objectives of ORS 447.210 to 447.280, the waiver shall be granted. If the board finds otherwise, the application shall be promptly denied with notice to the requesting person or governmental entity of the denial.

(4) The findings of the appeals board shall include the estimated building costs and the additional cost of construction to conform to the requirements of ORS 447.210 to 447.280 over the cost of a nonconforming feature or any other special reason or circumstance that, in the judgment of the board, justifies the decision.

(5) Any person aggrieved by the final decision of an appeals board may within 30 days of the decision appeal to the Director of the Department of Consumer and Business Services. In the case where no appeals board has been created the director shall have original jurisdiction of an application for a waiver. The applicant for a waiver or an appeal shall submit a fee of $20 payable to the director with the request for waiver or appeal. In determining an appeal or an original application, the procedures and standards of subsections (1) to (4) of this section shall apply to the director. [1971 c.320 §5; 1973 c.539 §7; 1979 c.133 §4; 1987 c.672 §3; 1989 c.224 §115; 1989 c.703 §2; 1993 c.744 §78; 1995 c.307 §3; 2001 c.517 §6]

447.255 Access to lottery-funded facilities by persons with disabilities. (1) It is the intent of the Legislative Assembly that any affected buildings, the construction costs of which are paid for in whole or in part by lottery funds, shall be accessible to and usable by persons with disabilities in the manner prescribed in ORS 447.210 to 447.280.

(2) Promotional and marketing programs described by this section and ORS 285B.464 shall promote and identify lottery-funded facilities as accessible to and usable by persons with disabilities whenever appropriate. [1989 c.909 §49; formerly 461.730; 1993 c.503 §9]

447.260 Rulemaking. (1) The Director of the Department of Consumer and Business Services may promulgate rules reasonably necessary to implement and enforce ORS 447.210 to 447.280 as part of the structural code including, but not limited to, rules authorizing the director to waive or modify any standards and specifications with respect to work on affected buildings and their related facilities where the director determines, with respect to emergency or temporary construction, that compliance with such standards or specifications would not be necessary to fulfill the objectives of ORS 447.210 to 447.280 or would be impractical.

(2) The Director of the Department of Consumer and Business Services shall by rule establish criteria for determining the lowest flooring of a building for the purposes of the definition of "affected buildings" provided by ORS 447.210 and for the purposes of ORS 447.247. [1971 c.320 §6; 1973 c.539 §8; 1979 c.133 §5; 1993 c.503 §10; 1993 c.744 §76; 1995 c.307 §4]

447.270 Cooperation with public officials and agencies required. The Director of the Department of Consumer and Business Services or the designated representative of the director shall cooperate with and receive the assistance of all persons, all appropriate elective or appointive public officials and all state or governmental agencies in carrying out the responsibilities of the director under ORS 447.210 to 447.280. [1971 c.320 §7; 1973 c.539 §9]

447.275 Nonliability for emergency exit deficiencies. Architects, engineers or other persons designing buildings; contractors and other persons erecting buildings; building officials, plans examiners, inspectors, the Director of the Department of Consumer and Business Services, the State Fire Marshal, State Fire Marshal deputies, municipal fire marshals or municipal deputies inspecting buildings; or a municipal appeals board shall be relieved of any personal or financial liability from persons suffering injury or death or those persons' heirs as the result of exiting deficiencies during emergencies resulting from access for persons with disabilities required by ORS 447.210 to 447.280 or standards adopted under them. [1979 c.133 §8; 1989 c.224 §116; 1991 c.67 §123]

447.280 Enforcement powers. The provisions of ORS 447.210 to 447.280 and rules adopted under them shall be considered part of the state building code and violations shall be subject to the provisions of ORS 455.450. [1971 c.320 §8; 1973 c.539 §10; 1979 c.133 §6]

447.310 Standards for curbing. (1) The standard for construction of curbs on each side of any city street, county road or state highway, or any connecting street, road or highway for which curbs and sidewalks have been prescribed by the governing body of the city or county or Department of Transportation having jurisdiction thereover, shall require not less than two curb cuts or ramps per lineal block to be located on or near the crosswalks at intersections. Each curb cut or ramp shall be at least 48 inches wide, where possible, and a minimum of 36 inches wide where a 48-inch width will not fit, at a slope not to exceed one-inch rise per 12-inch run. If a slope of 1:12 will not fit, a slope between 1:10 and 1:12 is allowed for a maximum rise of six inches and a slope between 1:8 and 1:10 is allowed for a maximum rise of three inches. In no case shall the slope exceed 1:8.

(2) Standards set for curb cuts and ramps under subsection (1) of this section shall apply whenever a curb or sidewalk is constructed or replaced at any point in a block which gives reasonable access to a crosswalk. [1973 c.176 §1; 1975 c.468 §1; 1989 c.224 §117; 1993 c.503 §13]

Chapter 465
(Partial)

2003 EDITION

Bulk Petroleum Product Withdrawal Regulation

465.101 Definitions for ORS 465.101 to 465.131

465.104 Fees for petroleum product delivery or withdrawals; exceptions; registration of facility operators

465.106 Amount of fee to be set by State Fire Marshal

465.111 Department of Revenue to collect fee; exemption from fee of protected petroleum products

465.114 Extension of time for paying fee; interest on extended payment

465.117 Records of petroleum products transactions; inspection by Department of Revenue

465.121 Rules

465.124 Application of ORS chapters 305 and 314 to fee collection

465.127 Disposition of fees; administrative expenses; other uses

465.131 Fee imposed by ORS 465.104 in addition to fees established by local government

465.101 Definitions for ORS 465.101 to 465.131. As used in ORS 465.101 to 465.131:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(2) "Cargo tank" means an assembly used for transporting, hauling or delivering petroleum products and consisting of a tank having one or more compartments mounted on a wagon, truck, trailer, truck-trailer, railcar or wheels. "Cargo tank" does not include any assembly used for transporting, hauling or delivering petroleum products that holds less than 100 gallons in individual, separable containers.

(3) "Department" means the Department of Revenue.

(4) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the federal government or any agency of the federal government.

(5) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and number 1 and number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel sold to vessels engaged in interstate or foreign commerce.

(6) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for use or sale in this state. [1989 c.833 §139]

465.104 Fees for petroleum product delivery or withdrawals; exceptions; registration of facility operators. (1) Beginning September 1, 1989, the seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal a petroleum products withdrawal delivery fee in the maximum amount of $10.

(2) Beginning September 1, 1989, any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay a petroleum products import delivery fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit the first payment on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be on a quarterly basis.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue by August 1, 1989, or 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products, whichever comes first. [1989 c.833 §140]

465.106 Amount of fee to be set by State Fire Marshal. The State Fire Marshal shall establish by rule the amount of the fee required under ORS 465.104 necessary to provide funding for the state's oil, hazardous material and hazardous substance emergency response program, as described in ORS 465.127. [1993 c.707 §3]

465.111 Department of Revenue to collect fee; exemption from fee of protected petroleum products. (1) The Department of Revenue shall collect the fee imposed under ORS 465.104.

(2) Any petroleum product which the Constitution or laws of the United States prohibit the state from taxing is exempt from the fee imposed under ORS 465.104. [1989 c.833 §142]

465.114 Extension of time for paying fee; interest on extended payment. The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under ORS 465.101 to 465.131. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid. [1989 c.833 §143]

465.117 Records of petroleum products transactions; inspection by Department of Revenue. (1) Each operator of a bulk facility and each person who imports petroleum products into this state shall keep at the person's registered place of business complete and accurate records of any petroleum products sold, purchased by or brought in or caused to be brought in to the place of business.

(2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 465.101 to 465.131. [1989 c.833 §144]

465.121 Rules. The Department of Revenue is authorized to establish those rules and procedures for the implementation and enforcement of ORS 465.101 to 465.131 that are consistent with its provisions and are considered necessary and appropriate. [1989 c.833 §145]

465.124 Application of ORS chapters 305 and 314 to fee collection. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpoenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the Department of Revenue under ORS 465.101 to 465.131, except where the context requires otherwise. [1989 c.833 §146; 1995 c.650 §61]

465.127 Disposition of fees; administrative expenses; other uses. All moneys received by the Department of Revenue under ORS 465.101 to 465.131 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of ORS 465.101 to 465.131 and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to carry out the state's oil, hazardous material and hazardous substance emergency response program as it relates to the maintenance, operation and use of the public highways, roads, streets and roadside rest areas in this state as allowed by section 3a, Article IX of the Oregon Constitution. [1989 c.833 §147; 1989 c.935 §4; 1993 c.707 §1]

465.131 Fee imposed by ORS 465.104 in addition to fees established by local government. The fee imposed by ORS 465.104 is in addition to all other state, county or municipal fees on a petroleum product. [1989 c.833 §148]

Chapter 469
(Partial)

2003 EDITION

Energy Conservation

TRANSPORTATION OF RADIOACTIVE MATERIAL

469.603 Intent to regulate transportation of radioactive material

469.605 Permit to transport required; application; delegation of authority to issue permits

469.606 Determination of best and safest route

469.607 Authority of council

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes

469.611 Emergency preparedness and response program; radiation emergency response team; training

469.613 Records; inspection

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident

469.617 Report to legislature; content

469.619 State Department of Energy to make federal regulations available

TRANSPORTATION OF RADIOACTIVE MATERIAL

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 §2]

469.605 Permit to transport required; application; delegation of authority to issue permits. (1) No person shall ship or transport radioactive material identified by the Energy Facility Siting Council by rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the State Department of Energy.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the Director of the State Department of Energy and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the director to evaluate the application.

(4) The director shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the department of performing the duties of the department under ORS 469.550 (3), 469.563, 469.603 to 469.619 and 469.992. Fees collected under this subsection shall be deposited in the State Department of Energy Account established under ORS 469.120.

(5) The director shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.603 to 469.619 and if the proposed route complies with federal law as provided in ORS 469.606.

(6) The director may delegate the authority to issue permits for the transportation of radioactive material to the Department of Transportation. In exercising such authority, the Department of Transportation shall comply with the applicable provisions of ORS 469.603 to 469.619 and rules adopted by the director or the Energy Facility Siting Council under ORS 469.603 to 469.619. Permits issued by the Department of Transportation under this subsection shall be enforced according to the provisions of ORS 825.258. The director also may delegate other authority granted under ORS 469.605 to 469.619 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program. [1981 c.707 §5; 1989 c.6 §4; 1991 c.233 §3; 2003 c.186 §36]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the State Department of Energy shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Oregon Department of Transportation, or a designee of the Oregon Department of Transportation;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the Director of the State Department of Energy shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the director:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to ensure safe transport over a route available to the applicant, until the United States Department of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 §2; 2003 c.186 §37]

469.607 Authority of council. (1) After consultation with the Department of Transportation and other appropriate state, local

and federal agencies, the Energy Facility Siting Council by rule:

(a) May fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) May designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.619 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS chapter 183. [1981 c.707 §6; 1989 c.6 §5; 1995 c.733 §45]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the Director of the State Department of Energy shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The director's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the director. [1981 c.707 §8; 1989 c.6 §6; 2003 c.186 §38]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The Director of the State Department of Energy shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to ensure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Department of Human Services shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the department at the scene of a radiological accident, the Director of the State Department of Energy may designate other technical advisors to work with the local response agencies.

(4) The Department of Human Services shall assist the Director of the State Department of Energy to ensure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Department of Human Services shall report annually to the Director of the State Department of Energy on training of emergency response personnel. [1981 c.707 §9; 1983 c.586 §44; 1989 c.6 §7; 2003 c.186 §39]

469.613 Records; inspection. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the Energy Facility Siting Council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the Director of the State Department of Energy. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.550, 469.563, 469.603 to 469.619 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 §10; 1989 c.6 §8; 2003 c.186 §40]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the Director of the State Department of Energy shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 §11; 1987 c.705 §9; 1989 c.6 §9]

469.617 Report to legislature; content. The Director of the State Department of Energy shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the State Department of Energy in administering ORS 469.550, 469.563, 469.603 to 469.619 and 469.992; and

(4) Such recommendations for additional legislation as the Energy Facility Siting Council considers necessary and appropriate. [1981 c.707 §12; 1989 c.6 §10]

469.619 State Department of Energy to make federal regulations available. The State Department of Energy shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.563, 469.603 to 469.619 and 469.992. [1981 c.707 §14; 1989 c.6 §11]

Chapter 608
(Partial)

2003 EDITION

Fences to Prevent Damage By or To Animals

FENCES AND CROSSINGS ON RAILROAD RIGHT OF WAY; RAILROAD LIABILITY

608.310 Erecting and maintaining fences, crossings, gates and cattle guards; rules

608.320 Penalty for railroad refusing or failing to maintain fences, gates and guards

608.330 Leaving gate open

608.340 Liability of railroad for killing or injuring stock

608.350 Fences sufficient to relieve railroad of liability

608.360 When railroad's negligence is presumed; contributory negligence and willful intent as defense

608.370 Service of process on agent

608.380 Notice of stock injured or killed

608.390 Notifying brand inspector

608.400 Inspection of injured livestock and notice to owner

PENALTIES

608.990 Penalties

FENCES AND CROSSINGS ON RAILROAD RIGHT OF WAY; RAILROAD LIABILITY

608.310 Erecting and maintaining fences, crossings, gates and cattle guards; rules. (1) Every person, or the lessee or agent of the person, owning or operating any railroad, shall erect and maintain good and sufficient lawful fences on both sides of the railroad line, except at the crossings of and upon public roads and highways, within such portions of cities as are or may be laid out and platted in lots and blocks and at railroad station grounds. Such person shall also at the same time erect and maintain necessary farm crossings and gates and sufficient cattle guards at all public crossings.

(2) Railroad lines shall be so fenced and farm crossings, gates and cattle guards installed, within three months from the time such lines are put in operation. However, the Department of Transportation may prescribe by rule the number, location and character of farm crossings which may be necessary and the manner in which they shall be constructed so that they are reasonably adequate, safe, sufficient and convenient, but not so as to impair the terms of any contract between the landowner and the railroad or judgment in condemnation relative to such crossings.

(3) The Department of Transportation may, by rule, determine and prescribe any other description of fence than that designated as a lawful fence, which shall be constructed and maintained by any such railroad company between the points which are designated in such rule, and may provide for the apportionment of the costs of reconstruction necessitated thereby as between the parties interested.

(4) The Department of Transportation by rule may suspend the operation of this section as to any particular portion of any line of railroad. [Amended by 1971 c.655 §248; 1995 c.733 §46; 1997 c.249 §186; 2003 c.576 §524]

608.320 Penalty for railroad refusing or failing to maintain fences, gates and guards. (1) Any person shall forfeit and pay into the State Treasury the sum of $100 for each mile of fence on either side of a railroad, or for each farm crossing, gate or cattle guard which the person fails, neglects or refuses to erect and maintain in violation of ORS 608.310. This shall be recovered as other penalties are recovered and paid into the State Treasury.

(2) If a person neglects or refuses to comply with ORS 608.310 to 608.330, the Attorney General or prosecuting attorney of the proper county may, by mandamus, compel compliance with such sections.

(3) The provisions of ORS 608.310 to 608.330 are cumulative to existing remedies. [Amended by 1995 c.733 §47]

608.330 Leaving gate open. (1) No person shall intentionally or negligently leave open or unfastened any farm crossing gate, or let down and leave down any bars of any railroad fence.

(2) Justices of the peace have original jurisdiction for violations of this section.

608.340 Liability of railroad for killing or injuring stock. Any person, or the lessee or agent of the person, owning or operating any railroad, is liable for the value of any horses, mules, colts, cows, bulls, calves, hogs or sheep killed, and for reasonable damages for any injury to any such livestock upon or near any unfenced track of any railroad in this state, whenever the killing or injury is caused by any moving train, engine or cars upon such track.

608.350 Fences sufficient to relieve railroad of liability. No railroad track shall be deemed to be fenced within the meaning of ORS 608.340 unless it is guarded by such fence against the entrance thereon of any livestock on either side of the track, and not more than 100 feet from the track. Whatever is a lawful fence in the county where the killing or injury occurs, and no other, shall be deemed a lawful fence under ORS 608.340. However, complete natural defenses against the entrance of stock upon the track, such as natural walls or deep ditches, shall be deemed to be a fence under such section, when it, in connection with other and ordinary lawful fences, forms a continuous guard and defense against the entrance of such livestock upon the track.

608.360 When railroad's negligence is presumed; contributory negligence and willful intent as defense. In every action for the recovery of the value of any livestock killed, or for damages for injury to any livestock, under ORS 608.340, proof of such killing or injury shall of itself be deemed conclusive evidence in any court of this state of negligence upon the part of the person, or the lessees or agents of the person, owning or operating such railroad. Contributory negligence on the part of the plaintiff in such action may be set up as a defense, but allowing stock to run at large upon common unfenced range or upon enclosed land owned or in possession of the owner of such stock shall not be deemed contributory negligence. In any such action, proof of willful intent on the part of the plaintiff to procure the killing or injury of such stock shall defeat the recovery of any damages for such killing or injury.

608.370 Service of process on agent. In any action authorized by ORS 608.340, service of summons or any other necessary process may be made upon any person, or the lessees or agents of the person, owning or operating any railroad, by personal service upon any authorized agent thereof, residing or stationed in the county where such action is brought.

608.380 Notice of stock injured or killed. Whenever any livestock mentioned in ORS 608.340 is killed or injured by a moving train or engine upon the unfenced railroad track of any railroad in this state, the owner, operator, lessee or agent of the railroad shall immediately notify or cause notice to be given to the sheriff of the county where the accident occurred, and within a reasonable time shall deliver to the sheriff a written description of the livestock so killed or injured, including brands, earmarks and any marks of ownership, and a statement of the condition of or extent and nature of injuries to the livestock.

608.390 Notifying brand inspector. Upon receipt of the information mentioned in ORS 608.380, the sheriff shall immediately notify the nearest brand inspector and deliver the written statement to the inspector.

608.400 Inspection of injured livestock and notice to owner. When notified of the killing or injury of livestock under the circumstances described in ORS 608.380, the brand inspector or sheriff shall go to the scene of the accident, examine any identifying marks and, if the ownership of the livestock is determined, notify the owner. If the owner remains unknown, the sheriff shall cause publication in a county newspaper of a description of the livestock and the facts of the accident.

PENALTIES

608.990 Penalties. (1) Violation of ORS 608.330 is punishable, upon conviction, by a fine not exceeding $50 or by imprisonment in the county jail not exceeding 10 days, or both.

(2) Violation of ORS 608.380 is a Class A violation.

(3) Violation of ORS 608.510 is a Class D violation. [Amended by 1957 c.476 §3; 1999 c.1051 §207]

Chapter 618
(Partial)

2003 EDITION

Weights and Measures

618.275 **Testing and inspection of scales; use without seal prohibited; sealing device; tests and inspection of cars; interstate cooperation**

618.275 Testing and inspection of scales; use without seal prohibited; sealing device; tests and inspection of cars; interstate cooperation. (1) All railroad track scales within this state used to weigh cars, commodities or freight offered for shipment shall be under the jurisdiction of the Director of Agriculture and subject to inspection by the State Department of Agriculture. The department may also test other track scales.

(2) The department shall, from time to time, test and inspect all such scales. No track scale shall be used in determining weights for the purpose of determining freight charges without first obtaining a seal from the department approving such use.

(3) The department shall approve a suitable sealing device, and cause all track scales inspected under this section to be officially sealed with such device, when such scales are found, or made to be in compliance with the department's rules.

(4) The department may procure or otherwise secure the use of the car, apparatus or facilities used for tests and inspections as the department may require for the purposes of this section. Such car, apparatus or facilities may be used jointly with another state or states to test track scales and for that purpose may be taken beyond the limits of the state under such terms and conditions agreed upon with such other states. The car and apparatus needed to test track scales shall be transported free by every railroad in this state. [1989 c.405 §2]

Chapter 758
(Partial)

2003 EDITION

Utility Rights of Way

758.010 Authority to construct lines and facilities; requirements and conditions by public officials

758.010 Authority to construct lines and facilities; requirements and conditions by public officials. (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of any charge other than charges allowed under section 2, chapter 664, Oregon Laws 2001, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 §1; 1971 c.655 §100; 1981 c.153 §76; 2001 c.664 §3]

Note: The amendments to 758.010 by section 6, chapter 664, Oregon Laws 2001, become operative January 2, 2006. See section 7, chapter 664, Oregon Laws 2001. The text that is operative on and after January 2, 2006, is set forth for the user's convenience.

758.010. (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection.

Chapter 772
(Partial)

2003 EDITION

Rights of Way for Public Uses

CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.010 Right of entry for survey of proposed right of way; notice required

772.015 Condemnation of lands for rights of way and necessary facilities

772.020 Condemnation of additional land for railway purposes

772.025 Approval of Department of Transportation required before railroad may cross or connect with another railroad

772.030 Condemnation of right of way through canyon or pass for joint use by railroads

772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes

772.040 Condemnation rights of pipe corporations

772.045 Right to cut timber and build aqueducts

772.050 Condemnation of riparian rights and for reservoirs

772.055 Condemnation procedure

772.060 Condemnation rights for change of grade or location of railway, canal or pipes

772.065 Appropriation of county road or property in lieu thereof by agreement with county court

772.070 Procedure on dispute between county and corporation

APPROPRIATION OF PUBLIC LANDS FOR RAILROADS

772.105 Authority to appropriate

CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.010 Right of entry for survey of proposed right of way; notice required. (1) A corporation organized for the construction of a railway, sewer or canal or of any ditch or flume for the conducting of water for irrigation or domestic purposes, or for the purpose of selling water to the public for general purposes for public use, or for conducting potable or waste water by means of pipe laid upon or under the surface of the ground; or desiring to use electrical power in the operation of any railway, shall have a right to enter upon any land, between the termini thereof or elsewhere, for the purpose of examining, locating or surveying the lines of such electric or other railway, sewer, canal, ditch, flume or pipeline, for the purpose of surveying or measuring any lands or rights appurtenant thereto needed for such purposes, doing no unnecessary damage thereby.

(2) Prior to entering upon private land under this section, a person who intends to enter upon the land shall first provide written notice by first class mail to the record owner of the private property of such intent to enter. [Amended by 1971 c.655 §232; 1999 c.629 §1]

772.015 Condemnation of lands for rights of way and necessary facilities. Any corporation mentioned in ORS 772.010 may condemn so much land as may be necessary for the lines of such railway, sewer, canal, ditch, flume or pipeline, not exceeding 100 feet in width, besides a sufficient quantity of land for toolhouses, workshops, materials for construction, timber excepted, and a right through such adjacent land to enable such corporation to construct and repair its lines, poles, towers, wires, underground wires, supports and necessary equipment, railway, sewer, canal, ditch, flume or other pipeline, and to make proper drains. [Amended by 1971 c.655 §233; 1999 c.629 §2]

772.020 Condemnation of additional land for railway purposes. (1) Any railway corporation mentioned in ORS 772.010 may condemn a sufficient quantity of land in addition to that specified in ORS 772.015, for necessary sidetracks, spur tracks and laterals reasonably necessary for manufacturing establishments, also for depot and water stations, cuttings and embankments, and for the proper construction, security and convenient operation of its road.

(2) Any such railway corporation may cross, intersect, join and unite its railway with any other railway at any point in its route, and upon the grounds of such other railway corporation, and make the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connection and may condemn to make such crossings. The railway which is or may be intersected by new railways, may unite with the owners of such new railways in forming the intersection and connection, and grant the facilities mentioned in this subsection.

772.025 Approval of Department of Transportation required before railroad may cross or connect with another railroad. (1) Whenever any railroad corporation, authorized by ORS 772.020 to condemn the right to cross or connect with any other right of way or constructed line of railroad, is unable to agree with the owner of the line which it desires to cross, it may apply to the Department of Transportation in the manner provided by ORS 824.228 to 824.232.

(2) Upon such application and upon notice and hearing as provided in ORS chapter 183 for contested cases, the department shall determine the right to crossing, intersection or connection, the mode and manner thereof and the compensation to be paid therefor.

(3) No agreement for the crossing of one railroad by another shall be valid without the approval of the department. [Amended by 1971 c.655 §234; 1995 c.733 §97; 1997 c.275 §23]

772.030 Condemnation of right of way through canyon or pass for joint use by railroads. (1) Any railroad company whose right of way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its railroad in common with the railroad first located.

(2) Any railroad company authorized by law to condemn property for right of way or any other corporate purpose, may commence an action for condemnation of a right of way through any canyon, pass or defile for the purpose of its railroad, where right of way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its railroad.

(3) Thereupon like proceedings shall be had as are provided by the laws of this state for the condemnation of land for right of way and other railroad purposes. At the time of rendering judgment for damages, the court or judge thereof shall enter a judgment authorizing the railroad to occupy and use the right of way, roadbed and track, if necessary, in common with the railroad company already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common. [Amended by 2003 c.576 §564]

772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes. Any corporation organized in whole or in part for the construction of a canal for navigating or manufacturing purposes or of any ditch or flume for the purpose of conveying water for irrigating, domestic or stock purposes may condemn such waterways, water rights or privileges, or otherwise acquire established water rights or privileges, or those initiated by performing any acts required, provided or permitted by law, as may be necessary or convenient for the purpose of supplying, operating, constructing or maintaining the same.

772.040 Condemnation rights of pipe corporations. Except in cities, any corporation organized for conducting water by means of pipe laid upon or under the surface of the ground may, so far as may be necessary for the laying and keeping in repair its water pipes, condemn the use of so much land as may be necessary, and may make whatever cuts and excavations as soon as practicable after condemnation.

772.045 Right to cut timber and build aqueducts. Any railway corporation mentioned in ORS 772.010 may cut down any standing timber in danger of falling upon its line or railway, making compensation therefor as provided in ORS 772.055 for lands taken for the use of the corporation. [Amended by 1971 c.655 §235]

772.050 Condemnation of riparian rights and for reservoirs. Any corporation mentioned in ORS 772.010 may also condemn:

(1) The rights of riparian proprietors in any lake or stream, to enable such corporation to develop, manufacture or furnish electrical energy for the operation of any railway in this state.

(2) Lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders carrying water to reservoirs, and for ditches, canals, flumes or pipelines carrying the same away. [Amended by 1971 c.655 §236]

772.055 Condemnation procedure. No condemnation of private property shall be made under ORS 772.010 to 772.020 or 772.030 to 772.050 until compensation is made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner provided in ORS chapter 35.

772.060 Condemnation rights for change of grade or location of railway, canal or pipes. Any corporation may change the grade or location of its railway, canal or pipes for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes. For the accomplishment of such change it has the same right to enter upon, examine, survey and appropriate the necessary lands and materials as in the original location and construction of such railway, canal or water pipes. [Amended by 1971 c.655 §237]

772.065 Appropriation of county road or property in lieu thereof by agreement with county court. (1) Whenever it is necessary for any corporation mentioned in ORS 772.010 to appropriate all or part of any county road or highway for right of way, the corporation may appropriate so much of the road as may be necessary, and in lieu thereof may condemn or otherwise acquire property contiguous to or as near adjacent to the road as possible in an amount equal to the property to be appropriated.

(2) Upon construction by the corporation of a county road or highway on the property so acquired in a manner conformable in the material character of the construction of said highways appropriated and upon the same grade or such other grade as may be agreed upon by the corporation and the county court or board of county commissioners of the county in which the road is located, and upon the acceptance by the county court or board of such newly constructed road, and on the conveyance of same to the county, the corporation shall then become the owner and entitled to the possession of so much of the county road or highway so appropriated.

(3) ORS 772.065 and 772.070 do not apply to roads or streets within any platted or incorporated city or town, or any addition thereto.

772.070 Procedure on dispute between county and corporation. (1) If the county court or board of county commissioners and corporation cannot agree upon the matters of appropriation under ORS 772.065, the dispute shall be referred to the Public Utility Commission.

(2) The commission, after notice and hearing, shall by order determine the terms and conditions upon which the corporation may appropriate the county road or highway. [Amended by 1971 c.655 §238]

APPROPRIATION OF PUBLIC LANDS FOR RAILROADS

772.105 Authority to appropriate. (1) When it is necessary or convenient in the location of any railway to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of a municipal corporation, the county court of the county wherein such road, street, alley

or public grounds is located, may agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation. If the parties are unable to agree, the corporation may appropriate so much thereof as is necessary and convenient in the location and construction of the road.

(2) Whenever a private corporation is authorized to appropriate any public highway or grounds as mentioned in subsection (1) of this section, within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, alley or public grounds, within such town as the local authorities designate. If the local authorities fail to make such designation within a reasonable time when requested, the corporation may make such appropriation without reference thereto. [Amended by 1971 c.655 §239]

Chapter 776

2003 EDITION

Maritime Pilots and Pilotage

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GENERAL PROVISIONS

776.015 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Oregon Board of Maritime Pilots.

(2) "Licensee" means an individual licensed under ORS 776.115.

(3) "Organization of pilots" means any legal entity or association to which licensees belong as members, or with which licensees are associated, that is formed for cooperative performance of functions including, but not limited to, the dispatching of licensees and trainees, collection of pilotage fees, ownership and operation of pilot boats, distribution of earnings of licensees and trainees, and education and training so as to facilitate the rendition of pilotage services by individual licensees and trainees.

(4) "Pilotage," "piloting" or "to pilot" means the actions of a licensee or trainee in assisting the master of a vessel under ORS 776.405 while the vessel is on, approaching or departing a pilotage ground, and the associated communication with the vessel.

(5) "Trainee" means a person the board has licensed under ORS 776.300 and who has met the requirements of ORS 776.540. [1957 c.448 §1; 1981 c.88 §2; 1983 c.330 §1; 1993 c.741 §110; 1993 c.796 §1; 2001 c.403 §1]

776.020 [Repealed by 1957 c.448 §27]

776.025 Description of bar and river pilotage grounds. Except as may be established by the Oregon Board of Maritime Pilots under ORS 776.115 (3), bar and river pilotage grounds shall be as follows:

(1) The Columbia River bar pilotage ground extends from the uppermost dock or wharf at the Port of Astoria or Knappton to the open sea in at least 30 fathoms of water.

(2) The Columbia and Willamette River pilotage ground extends from the lowermost dock or wharf at the Port of Astoria to the head of navigation on the Columbia and Willamette Rivers and their tributaries.

(3) The Coos Bay bar pilotage ground extends from the head of navigation on Coos Bay and its tributaries to the open sea in at least 30 fathoms of water.

(4) The Yaquina Bay bar pilotage ground extends from the head of navigation on Yaquina Bay and its tributaries to the open sea in at least 30 fathoms of water. [1957 c.448 §2; 1993 c.741 §112b; 1993 c.796 §1a]

776.030 [Repealed by 1957 c.448 §27]

776.035 Findings. The Legislative Assembly finds that:

(1) In order to implement the policies described and inherent in ORS 196.420, 273.553, 465.205, 466.010 and 468B.015 and ORS chapter 274, it is necessary to establish precautionary measures.

(2) Only individuals who have experience and can demonstrate knowledge of currents, tides, soundings, bearings and distances of the shoals, rocks, bars, points of landings, lights and fog signals should direct a large vessel on certain waters of this state. [1991 c.234 §2; 1997 c.16 §2]

776.040 [Repealed by 1957 c.448 §27]

776.045 Deck officer requirements. (1) All vessels required by ORS 776.405 (1) to engage a licensee under this chapter shall, at all times while underway upon any of the pilotage grounds established under ORS 776.025 or 776.115, have at least two licensed deck officers on the navigation bridge of the vessel, one of whom meets the requirements of ORS 776.405 (1).

(2) The only duties of the licensed deck officer required under ORS 776.405 (1) shall be to monitor and direct safe navigation of the vessel during transit on the waters of this state. [1991 c.234 §4; 1993 c.796 §2]

776.050 [Repealed by 1957 c.448 §27]

776.060 [Repealed by 1957 c.448 §27]

776.070 [Repealed by 1957 c.448 §27]

776.080 [Repealed by 1957 c.448 §27]

776.090 [Repealed by 1957 c.448 §27]

776.100 [Repealed by 1957 c.448 §27]

OREGON BOARD OF MARITIME PILOTS

776.105 Oregon Board of Maritime Pilots; term; qualifications; appointment; quorum. (1) The Oregon Board of Maritime Pilots is established within the Department of Transportation, and shall consist of nine members appointed by the Governor for terms of four years. The appointments of members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) Three members of the board shall be public members, one of whom shall act as chairperson of the board. The public members of the board shall not:

(a) During the preceding five years or during their terms of office have any interest in the ownership, operation or management of any tugs, cargo or passenger vessels or in the carriage of freight or passengers by vessel;

(b) During the preceding five years or during their terms of office have any interest in any association or organization represented under subsection (4) of this section or principally comprised of persons engaged in

commercial pursuits in the maritime industry as described in paragraph (a) of this subsection in any capacity; or

(c) Hold or have held a maritime pilot license issued by any state or federal authority.

(3) Three members shall be licensees under this chapter. One member shall be a Columbia River bar licensee, one member shall be a Columbia River licensee and one member shall be a Coos Bay or Yaquina Bay licensee. A licensee member shall:

(a) Have been licensed for more than three years under this chapter;

(b) Be actively engaged in piloting; and

(c) Be a resident of this state.

(4) Three members of the board shall, for at least three years immediately preceding their appointment, have been and during their terms of office be engaged in the activities of a company that operates commercial oceangoing vessels.

(5)(a) The majority of members shall constitute a quorum for the transaction of all business if at least one member of each group, as described in subsections (2), (3) and (4) of this section, is present.

(b) Notwithstanding paragraph (a) of this subsection, when the board fixes pilotage fees under ORS 776.115 (5) a quorum shall consist of seven members.

(c) Notwithstanding paragraph (a) of this subsection, for purposes of ORS 192.610 to 192.690 a quorum shall consist of five members.

(6) The Director of Transportation, or a designated representative, shall serve as an ex officio member of the board but without the right to vote. [1957 c.448 §3; 1963 c.580 §93; 1967 c.401 §8; 1969 c.314 §102; 1971 c.753 §41; 1981 c.88 §3; 1987 c.414 §89; 1987 c.775 §4; 1993 c.741 §111; 1993 c.796 §3]

776.110 [Repealed by 1957 c.448 §27]

776.115 Powers and duties of board; rules. The Oregon Board of Maritime Pilots shall:

(1) Fix the manner of calling and fixing the places of meetings; provided that at least one meeting shall be held each calendar year.

(2) Provide for efficient and competent pilotage service on all pilotage grounds, and regulate and limit the number of licensees and trainees under this chapter, such number of licensees and trainees to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service. The primary consideration of the board is public safety. If a proposed rule would result in the significant limitation of competition among licensees or pilot organizations that exist in this state on January 1, 1991, the board shall first make a determination that the proposed rule is essential to protect the safety of the public.

(3) Establish and fix the boundaries of pilotage grounds not described in ORS 776.025.

(4) In accordance with the applicable provisions of ORS chapter 183, establish by rule a licensing system for persons licensed to pilot, for persons licensed as trainees and for pilot organizations who train persons to pilot, including but not limited to provisions prescribing:

(a) The form and content of and the times and procedures for submitting an application for license issuance and renewal. The pendency of an investigation shall not affect the renewal process.

(b) The term of license and the annual fee, not to exceed $1,500.

(c) The requirements for and the manner of testing competency of license applicants.

(d) Those actions or circumstances that constitute failure to achieve or maintain competency or that otherwise constitute a danger to public health and safety and for which the board may refuse to issue or renew a license, may suspend or revoke a license or may reprimand a licensee.

(e) Classes of licenses that specify the size of vessels the licensee is authorized to be trained to pilot or to pilot on those river pilotage grounds for which the trainee or pilot is licensed.

(5)(a) Fix, at reasonable and just rates, pilotage fees, extra fees for vessels in distress, fees for extraordinary pilotage services, fees for a licensee or trainee being carried to sea unwillingly and reimbursement for the return to station or for the detention of a licensee or trainee; except that pilotage fees shall not be less inbound or outbound on vessels, propelled in whole or in part by their own power, than the following:

(A) Between Astoria and Portland or Vancouver, $2.50 per foot draft and 2 cents per net ton;

(B) Between Astoria or Knappton and the sea, $3 per foot draft and 2 cents per net ton;

(C) Between Yaquina Bay and the sea, $3 per foot draft and 2 cents per ton; and

(D) Between Coos Bay and the sea, $2.50 per foot draft and 2 cents per ton.

(b) In fixing fees pursuant to paragraph (a) of this subsection, the board shall give due regard to the following factors:

(A) The length and net tonnage of the vessels to be piloted.

(B) The difficulty and inconvenience of the particular service and the skill required to render it.

(C) The supply of and demand for pilotage services.

(D) The public interest in maintaining efficient, economical and reliable pilotage service.

(E) Other factors relevant to the determination of reasonable and just rates.

(6) Conduct or authorize the holding of hearings. In so doing the board or the administrative law judge may subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony.

(7) Adopt any rule or make any order, as set forth in ORS chapter 183, for the effective administration and enforcement of this chapter.

(8) Establish rates pursuant to subsection (5) of this section, for a period of not less than two years, that continue in effect until a subsequent hearing process. Rates may include automatic adjustment provisions to reflect changing economic conditions. [1957 c.448 §4; 1981 c.88 §5; 1983 c.313 §5; 1987 c.158 §157; 1987 c.775 §3; 1991 c.234 §8; 1993 c.741 §112; 1993 c.796 §4; 2003 c.75 §110; 2003 c.619 §1]

776.118 Additional authority of board. In addition to its authority under ORS 776.115, the Oregon Board of Maritime Pilots may:

(1) Establish pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(2) Review and, if appropriate, reduce deadweight tonnage specifications for pilotage service for vessels carrying oil;

(3) Establish regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters; and

(4) Establish a program for a near-miss reporting system. [1991 c.651 §21; 1993 c.796 §5]

776.120 [Repealed by 1957 c.448 §27]

776.125 [1957 c.448 §5; repealed by 1993 c.796 §23]

776.129 Administrative law judge for rate hearings; recommendations from other agencies; assessing costs and expenses of hearing. (1) When the Oregon Board of Maritime Pilots establishes rates described in ORS 776.115 (5), the board shall contract with and compensate the Public Utility Commission of Oregon for the use of administrative law judges assigned by the commission to conduct the rate proceeding. Notwithstanding ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480, an administrative law judge shall conduct the proceeding in compliance with procedures adopted by the board by rule. The administrative law judge and the board may receive and consider recommendations made by the Economic and Community Development Department and the Port of Portland.

(2) The board may defray the costs and expenses of the hearing by assessing, in its final order, all or a portion of the costs and expenses of the hearing to a party to the hearing. [1987 c.775 §2; 1989 c.171 §85; 1989 c.293 §1; 1993 c.741 §112a; 1993 c.796 §6; 1999 c.849 §§178,179; 2003 c.75 §63; 2003 c.619 §2]

776.130 [Repealed by 1957 c.448 §27]

776.135 [Subsection (1) enacted as part of 1957 c.448 §5; subsection (2) enacted as 1957 c.448 §24; 1971 c.734 §184; 1983 c.313 §1; repealed by 1993 c.796 §23]

776.140 [Repealed by 1957 c.448 §27]

776.145 [1957 c.448 §6; repealed by 1971 c.734 §21]

776.150 [Repealed by 1957 c.448 §27]

776.155 [1957 c.448 §7; repealed by 1971 c.734 §21]

776.160 [Repealed by 1957 c.448 §27]

776.165 [1957 c.448 §8; repealed by 1971 c.734 §21]

776.170 [Repealed by 1957 c.448 §27]

776.175 [1957 c.448 §9; repealed by 1971 c.734 §21]

776.185 [1957 c.448 §10; repealed by 1971 c.734 §21]

776.195 [1957 c.448 §11; repealed by 1971 c.734 §21]

776.205 [1957 c.448 §12; repealed by 1971 c.734 §21]

LICENSING; COMPENSATION; LIABILITY

776.300 Trainee license; qualifications; assignment for training; rules. (1) No person shall be licensed as a trainee under this chapter unless the person meets the experience and educational requirements established by the Oregon Board of Maritime Pilots by rule including provisions pursuant to a program to carry out ORS 243.305 and 776.115 (2).

(2) The board shall assign trainees to organizations of pilots licensed under ORS 776.311. Trainees shall be trained to become licensees by one or more organizations of pilots. The board may adopt by rule training requirements. [1981 c.88 §7; 1993 c.796 §7]

776.305 [1957 c.448 §13; 1985 c.34 §1; repealed by 1993 c.796 §23]

776.310 [Repealed by 1957 c.448 §27]

776.311 Organizations licensed to train pilots. (1) No organization of pilots shall be licensed to train persons to be pilots under this chapter unless the organization:

(a) Has members who are licensed to pilot under ORS 776.325; and

(b) Meets other requirements established by the Oregon Board of Maritime Pilots.

(2) The board shall license at least one pilot organization on each pilotage ground.

(3) Organizations of pilots shall train only persons who are licensed as trainees and have been assigned for training by the board under ORS 776.300. [1993 c.796 §8b]

776.315 [1957 c.448 §14; 1985 c.32 §1; repealed by 1993 c.796 §23]

776.320 [Amended by 1953 c.140 §2; repealed by 1957 c.448 §27]

776.325 Qualifications of licensees. (1) No person shall be licensed to pilot under this chapter unless the person:

(a) Was licensed as a trainee or licensee prior to submitting an application to be licensed to pilot and has met the training requirements established by the Oregon Board of Maritime Pilots; and

(b) Possesses the requisite skill and the experience as a navigator and pilot, as demonstrated by satisfactory performance on such written examinations as the board may prescribe, together with practical knowledge of the currents, tides, soundings, bearings and distances of the several shoals, rocks, bars, points of landings, lights and fog signals of or pertaining to the navigation of the pilotage ground for which application is made for a license to pilot.

(2) An applicant for a license over any river pilotage ground must have at least six months' continuous experience, as determined by the board, as a trainee on vessels subject to ORS 776.405 piloting oceangoing vessels over the pilotage ground for which application is made, prior to making application for a license, and must have had the necessary experience in handling oceangoing vessels through the bridges, under varying conditions with and without towboats.

(3) An applicant for a license on bar pilotage grounds shall satisfy the board that the applicant has means available for boarding and leaving vessels which the applicant may be called upon to pilot. [1957 c.448 §15; 1973 c.827 §82; 1981 c.88 §8; 1983 c.313 §2; 1985 c.32 §2; 1993 c.796 §8]

776.330 [Repealed by 1957 c.448 §27]

776.335 [1957 c.448 §16; repealed by 1993 c.796 §23]

776.340 [Repealed by 1953 c.297 §2]

776.345 [1957 c.448 §17; 1981 c.88 §13; 1983 c.313 §3; 1985 c.34 §2; repealed by 1993 c.796 §23]

776.350 [Repealed by 1957 c.448 §27]

776.355 License fees; rules. (1) Except as provided in subsection (2) of this section, each licensee under this chapter shall pay an annual license fee to the Oregon Board of Maritime Pilots not to exceed the amount established under ORS 776.115. Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, the amount of the fee shall be adjusted by the Oregon Board of Maritime Pilots to finance costs as defined by the legislatively approved budget, as it may be modified by the Emergency Board.

(2) The board by rule may establish reduced license fees for those individuals who engage in pilotage activities on less than a full-time basis. However, in no event shall the fee be less than $50. [1957 c.448 §22; 1963 c.105 §2; 1973 c.832 §68; 1977 c.40 §2; 1979 c.11 §2; 1981 c.88 §9; 1983 c.313 §4; 1985 c.271 §2; 1989 c.293 §2; 1991 c.466 §1; 1991 c.703 §41; 1993 c.796 §9]

776.360 [Repealed by 1957 c.448 §27]

776.365 Pilot Account; uses. The money received under this chapter shall be paid into the State Treasury and placed to the credit of the General Fund in the Pilot Account which account hereby is established. Such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of this chapter. The Oregon Department of Administrative Services shall draw warrants for all claims approved by the Oregon Board of Maritime Pilots pursuant to the appropriations on the State Treasurer, payable out of the Pilot Account in the General Fund. [1957 c.448 §23; 1983 c.740 §256]

776.370 [Repealed by 1957 c.448 §27]

776.375 Disciplinary proceedings; administrative procedures; judicial review. (1) Where the Oregon Board of Maritime Pilots proposes to refuse to issue or renew a license to pilot, or proposes to revoke or suspend a license or proposes to issue a written reprimand, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Adoption of rules, conduct of hearings, issuance of orders and judicial review of rules and orders shall be as provided in ORS chapter 183. Contested case hearings shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. [1971 c.734 §186; 1981 c.88 §14; 1993 c.796 §10; 1999 c.849 §§181,182; 2003 c.75 §64]

776.380 [Repealed by 1957 c.448 §27]

776.390 [Repealed by 1957 c.448 §27]

776.400 [Repealed by 1957 c.448 §27]

776.405 License required; exemptions. (1)(a) Except as set forth in paragraph (b) of this subsection, no person shall pilot any vessel upon any of the pilotage grounds established under ORS 776.025 or 776.115 without being a licensee under this chapter or a trainee under the onboard supervision of a licensee under this chapter.

(b) Paragraph (a) of this subsection does not apply to:

(A) The master of a vessel under fishery, recreational or coastwise indorsement provided under 46 U.S.C. chapter 121;

(B) A vessel registered with the State Marine Board or a similar licensing agency of another state; or

(C) The master of a foreign registered fishing or recreational vessel, exempted by the Oregon Board of Maritime Pilots, of not more than 100 feet in length or 250 gross tons international.

(2) A licensee under this chapter is at all times the servant of the vessel being piloted and its owners and operators. [1957 c.448 §25(1); 1973 c.650 §1; 1983 c.330 §3; 1985 c.34 §3; 1991 c.234 §3; 1993 c.796 §11; 2001 c.104 §296]

776.410 [Amended by 1955 c.558 §1; repealed by 1957 c.448 §27]

776.415 Compensation of licensees determined by law. No licensee shall demand or receive any greater, lesser or different compensation for piloting a vessel upon any of the pilotage grounds than is allowed by law. [1957 c.448 §25(2); 1993 c.796 §12]

776.420 [Amended by 1953 c.141 §2; 1953 c.142 §2; 1955 c.698 §1; repealed by 1957 c.448 §27]

776.425 Authority of licensees generally; compensation. Within the scope of the license, a licensee may pilot any vessel and demand and receive therefor the compensation allowed by law. [1957 c.448 §20(1); 1973 c.650 §2; 1985 c.32 §3; 1993 c.796 §13]

776.430 [Repealed by 1957 c.448 §27]

776.435 Refusing services of licensee; liability for pilotage fee. The master or person in charge of any vessel may refuse to accept the services of any particular licensee and shall call for another licensee, in which case the vessel and the owners, operators and agents of the vessel are liable only for the services of the licensee employed. [1957 c.448 §20(2); 1983 c.330 §2; 1991 c.234 §5; 1993 c.796 §14]

776.440 [Repealed by 1957 c.448 §27]

776.445 Liability of certain persons for licensee's compensation. In addition to the lien of the licensee upon the vessel for any sum due for piloting, the master, owner and consignee or agent are jointly and severally liable to the licensee therefor. [1957 c.448 §21; 1993 c.796 §15]

776.450 [Repealed by 1957 c.448 §27]

776.455 Exhibition of license on boarding vessel. On boarding a vessel and if required by the master thereof, a licensee shall exhibit the license before the licensee is authorized to perform a piloting assignment. [1957 c.448 §19; 1993 c.796 §16]

776.460 [Repealed by 1957 c.448 §27]

776.465 [1957 c.448 §18; repealed by 1993 c.796 §23]

776.470 [Repealed by 1957 c.448 §27]

776.480 [Repealed by 1957 c.448 §27]

776.490 [Repealed by 1957 c.448 §27]

776.500 [Repealed by 1957 c.448 §27]

776.510 Declaration of legislative intent relating to liability of licensees, trainees and organizations. (1) The stimulation and preservation of maritime commerce on the bar and river pilotage grounds of this state are declared to be affected with the public interest and the limitation and regulation of liability of licensees, trainees and organizations of pilots are necessary to such stimulation and preservation of maritime commerce and are deemed to be in the public interest.

(2) To accomplish the stimulation and preservation of maritime commerce it is necessary to establish an optional rate system whereby vessels and persons engaging the services of a licensee have the option of:

(a) Agreeing not to assert any personal liability against any licensee, trainee and organization of pilots to which the licensee or trainee belongs, and to defend, indemnify and save harmless the licensee, trainee and organization of pilots against all claims and demands arising from acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel; or

(b) Directing licensees in writing and in sufficient time for insurance to be procured by them, on a "trip" basis, insuring such licensees, trainees and organizations of pilots to which they belong against all claims or demands arising from or relating to, directly or indirectly, pilotage of the vessel, the premium or cost of such insurance to be included in the charges for pilotage services and paid on demand by the vessel.

(3) The Legislative Assembly hereby declares that to effect the ends and purposes listed in this section, and to maintain pilotage fees at reasonable levels on the bar and river pilotage grounds of this state, ORS 776.520, 776.530 and 776.540 are adopted. [1959 c.404 §2; 1983 c.330 §4; 1993 c.796 §17]

776.520 Tariffs limiting liability of licensees, trainees or organizations. Licensees and trainees are authorized to limit their liability and the liability of any organization of pilots to which they belong by tariffs approved by the Oregon Board of Maritime Pilots containing substantially the terms and provisions of the following form:

The provisions of ORS 776.510 and 776.540 hereby are incorporated into and made a part of this tariff. By reason of the option granted by ORS 776.510, the rates and charges named in this tariff do not include the cost of marine insurance insuring the licensee, trainee and any organization of pilots

to which the licensee or trainee belongs, the vessel, its owners, agents or operators from the consequences of negligence or errors in judgment of the licensees, trainees or organizations of pilots.

However, upon reasonable notice to the licensees in writing from the vessel, its master, owners, agents or operators, the licensees parties hereto will procure such insurance on a "trip" basis in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between the licensees and the vessel, its master, owners, agents or operators, insuring the licensees and the organizations of pilots to which they belong against all claims or demands arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified herein.

The election of the vessel, its master, owners, agents or operators not to request licensees parties hereto to procure such insurance and thereby to elect to have the licensees parties hereto perform services on the rates and charges specified herein shall constitute a binding and irrevocable agreement on the part of the vessel, its master, owners, agents or operators to the terms and conditions of the following:

It is understood and agreed, and is the essence of the contract under which services of the licensee are tendered to and accepted by the vessel, its master, operators and owners, that:

(1) The services rendered hereunder are rendered by a licensee;

(2) The services of any individual licensee have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510;

(3) Such services are advisory in nature only, the master of the vessel remaining at all times in full command of the vessel and empowered to relieve the licensee of duties;

(4) The services of the licensee and, if applicable, trainee are accepted on the express understanding that when the licensee and trainee go aboard the vessel the licensee and trainee become the servants of the vessel and its owners and operators. Except as to such personal liability and rights over as may arise by reason of the willful misconduct or gross negligence of the licensee or trainee, the master, owners and operators of the vessel expressly covenant and agree:

(a) Not to assert directly or indirectly, any personal liability against the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization;

(b) Not to respond in damage (including any rights over) arising out of or connected with, directly or indirectly, any damage, loss or expense sustained by the vessel, its master, owners, operators and crew, and any third parties (including cargo), even though resulting from acts or omissions of any organization of pilots to which the licensee or trainee belongs, from acts or omissions of its members, or any acts or omissions of the licensee or trainee; and

(c) To defend, indemnify and hold harmless the licensee, trainee, any organization of pilots to which the licensee or trainee belongs, and any members of such organization, from any claims whatsoever for damages, loss or expense arising out of, or connected with any acts or omissions of the licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of the vessel;

(5) The master, owners and operators of the vessel shall not be liable to indemnify and hold harmless the licensee, trainee and any organization of pilots to an extent greater than the amount to which the liability of the vessel, its owners and operators, is limited by reason of contract, bill of lading or statute, including but not limited to, the Limitation of Liability Act (46 U.S.C. 181-189), the Harter Act (46 U.S.C. 190-195), the Carriage of Goods by Sea Act (46 U.S.C. 1300-1315), and the Federal Water Pollution Control Act (33 U.S.C. 1321); and

(6) The fees charged for the services rendered by the licensee and trainee have been computed and are assessed in accordance with and based upon the above stipulations.

[1959 c.404 §3; 1973 c.650 §3; 1983 c.330 §5; 1993 c.796 §18]

776.530 Licensees, trainees and organizations not liable for certain acts or omissions. An organization of pilots shall not be liable for any claims arising from acts or omissions of a licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of a vessel. A licensee or trainee shall not be liable either directly or as a member or associate of an organization of pilots for any claims arising from acts or omissions of any other licensee, trainee or any organization of pilots which relate, directly or indirectly, to pilotage of a vessel. This section does not apply to acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted. [1983 c.330 §8; 1993 c.796 §19]

776.540 Security required of licensees and trainees; conditions of bond; limitation of liability. (1) Each licensee and trainee shall procure and furnish to the Ore-

gon Board of Maritime Pilots a security in the sum of $250 as a surety bond or an irrevocable letter of credit, in a form approved by the board and underwritten by a surety company authorized to engage in business in the State of Oregon or issued by an insured institution, as defined in ORS 706.008, or as a cash deposit in a form approved by the board. The cash deposit, letter of credit or bond shall be conditioned so as to pay the sum to any person, firm, corporation or other legal entity who or which shall suffer any loss or damage by reason of any negligent act or omission of the licensee or trainee which relates, directly or indirectly, to pilotage of the vessel. No licensee or trainee shall be liable for any such act or omission beyond the amount of the security. However, this limitation of liability shall not apply:

(a) To willful misconduct on the part of the licensee or trainee;

(b) To the extent to which insurance is procured pursuant to the option granted by ORS 776.510 and 776.520; or

(c) To acts or omissions relating to the ownership and operation of pilot boats or the transportation of licensees and trainees to and from the vessel being piloted.

(2) When any suit or action is brought in any court against a licensee or trainee for any such act or omission in respect of which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, upon payment by the licensee or trainee of the amount of the security into the court in which such suit or action is brought, the court shall distribute that amount rateably among the several claimants and shall dismiss the proceedings as to the licensee or trainee. [1983 c.330 §7; 1985 c.29 §1; 1991 c.331 §138; 1993 c.796 §20; 1997 c.631 §553]

PENALTIES

776.880 Civil penalties. (1) In addition to any other penalty provided by law, any licensee or trainee who commits any act for which the Oregon Board of Maritime Pilots could revoke, suspend or refuse to issue or renew a license is subject to a civil penalty in an amount determined by the board of not more than $250 for each offense.

(2) Any person who violates the provisions of ORS 776.405 (1)(a) is subject to a civil penalty in an amount as determined by the board of not less than $5,000 and not more than $50,000.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) All amounts recovered under this section are subject to ORS 776.365. [1981 c.88 §11; 1991 c.234 §6; 1991 c.734 §102; 1993 c.796 §21]

776.990 [Repealed by 1957 c.448 §27]

776.991 Criminal penalties. (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter is punishable, upon conviction, by a fine not to exceed $500, or by imprisonment in the county jail not to exceed six months, or both.

(2) Any person violating the provisions of ORS 776.405 (1)(a) is punishable, upon conviction, by a fine of not less than $5,000 nor more than $50,000, or by imprisonment in the county jail not to exceed six months, or both. [1957 c.448 §26; 1991 c.234 §7]

Chapter 802
(Partial)

2003 EDITION

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FINANCIAL ADMINISTRATION

802.100 Accounts related to driver and vehicle services; uses. The following accounts are established separate and distinct from the General Fund for the financial administration of those functions of the Department of Transportation dealing with driver and motor vehicle services in accordance with ORS 802.110:

(1) The Department of Transportation Driver and Motor Vehicle Suspense Account. The account established under this subsection is a suspense account in the State Treasury that is used to deposit moneys received by the department related to driver and motor vehicle services and to make approved payments and disbursals of funds before the department pays administrative expenses related to the provision of driver and motor vehicle services. The department shall transfer the money that is not to be used to make approved payments and disbursals from the account established under this subsection and that remains in the account at the close of business on the last day of each month to the Department of Transportation Driver and Motor Vehicle Services Administrative Account on or before the 15th day of the following month.

(2) The Department of Transportation Driver and Motor Vehicle Services Administrative Account. The account established under this subsection shall be used for the payment of administrative expenses payable before money from the account is transferred to the State Highway Fund. The department shall transfer the money that is not to be used to make payments from the account established under this subsection and that remains in the account at the close of business on the last day of each month to the State Highway Fund on or before the 15th day of the following month.

(3) Environmental Quality Information Account. The account established under this subsection is a separate account in the State Treasury that shall be used to deposit moneys received from the sale of customized registration plates under ORS 805.240. Moneys in the account shall be used for programs under ORS 366.157. Moneys shall be deposited in the account after payment of administrative expenses as provided under ORS 802.110.

(4) The Revolving Account for Emergency Cash Advances. The account established under this subsection is a separate account that shall be maintained for the payment of emergency cash advances and taking up of dishonored remittances. [1983 c.338 §132; 1985 c.16 §39; 1989 c.966 §71; 1993 c.18 §166; 1993 c.741 §74; 2001 c.104 §298]

802.110 Procedures for financial administration; receipt and disposition of moneys; refunds; payments; limitations. Any procedures the Department of Transportation establishes for financial administration of those functions of the department dealing with driver and motor vehicle services and for the disposition and payment of moneys it receives from the provision of driver and motor vehicle services shall comply with all of the following:

(1) The department shall deposit all moneys it receives related to driver and motor vehicle services in the Department of Transportation Driver and Motor Vehicle Suspense Account for approved expenses and disbursals before payment of general administrative expenses of the department related to the provision of driver and motor vehicle services. Notwithstanding this subsection, the department may return a bank check or money order when received in incorrect or incomplete form or when not accompanied by the proper application.

(2) The department shall pay the following approved expenses and disbursals from the Department of Transportation Driver and Motor Vehicle Suspense Account before payment of the general administrative expenses of the department related to driver and motor vehicle services:

(a) Refunds authorized by any statute administered by the department when such refunds are approved by the department.

(b) Amounts transferred to the State Treasurer under ORS 319.410 (2) for the purpose of carrying out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and Facility Account by ORS 319.415, amounts transferred to the State Aviation Account by ORS 319.417 and amounts transferred to the Department of Transportation Operating Fund by ORS 184.643.

(c) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected from the Student Driver Training Fund eligibility fee under ORS 807.040, 807.150 and 807.370 to the State Treasurer for deposit in the Student Driver Training Fund. The moneys deposited in the Student Driver Training Fund under this paragraph are continuously appropriated to the department for the following purposes:

(A) To the extent of not more than 10 percent of the amount transferred into the Student Driver Training Fund in any biennium, to pay the expenses of administering ORS 336.795, 336.800, 336.805, 336.810 (2) and 336.815.

(B) The remaining moneys, for reimbursing school districts as provided under ORS 336.805.

(d) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected for the Motorcycle Safety Subaccount under ORS 807.170 to the State Treasurer for deposit in the Motorcycle Safety Subaccount of the Transportation Safety Account. Moneys paid to the State Treasurer under this paragraph shall be used for the purpose of ORS 802.320.

(e) After deduction of expenses for the administration of the issuance of customized registration plates under ORS 805.240, the department shall place moneys received from the sale of customized registration plates in the Environmental Quality Information Account. The moneys placed in the account are continuously appropriated to the department and shall be used for the payment of expenses heretofore and hereafter incurred in administering programs established under ORS 366.157.

(f) After deduction of expenses of collection, transfer and administration, the department shall pay moneys from any registration fees established by the governing bodies of counties or a district, as defined in ORS 801.237, under ORS 801.041 or 801.042 to the appropriate counties or districts. The department shall make the payments on at least a monthly basis unless another basis is established by the intergovernmental agreements required by ORS 801.041 and 801.042 between the department and the governing bodies of a county or a district.

(g) After deducting the expenses of the department in collecting and transferring the moneys, the department shall make disbursals and payments of moneys collected for or dedicated to any other purpose or fund except the State Highway Fund, including but not limited to, payments to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2).

(3) The department shall refund from the Department of Transportation Driver and Motor Vehicle Suspense Account any excess or erroneous payment to a person who made the payment or to the person's legal representative when the department determines that money has been received by it in excess of the amount legally due and payable or that it has received money in which it has no legal interest. Refunds payable under this subsection are continuously appropriated for such purposes in the manner for payment of refunds under this section. If the department determines that a refund is due, the department may refund the amount of excess or erroneous payment without a claim being filed. Except as provided in ORS 319.290, 319.375, 319.820 and 319.831, any claim for a refund from the department must be filed within 12 months after the date payment is received by the department.

(4) After payment of those expenses and disbursals approved for payment before general administrative expenses related to the provision of driver and motor vehicle services, the department shall pay from the Department of Transportation Driver and Motor Vehicle Services Administrative Account its general administrative expenses incurred in the administration of any law related to driver and motor vehicle services that the department is charged with administering and any other expenses the department is permitted by law to pay from moneys held by the department before transfer of the moneys to the State Highway Fund. The following limitations apply to payments of administrative expenses under this subsection:

(a) The department shall make payment of the expenses of administering the issuance of winter recreation parking permits under ORS 811.595 from those moneys received from issuing the permits or from moneys received under ORS 153.630 from violation of the requirement to have the permit.

(b) The department shall pay its expenses for administering the registration and titling of snowmobiles under ORS 821.060 and 821.100 from the fees collected from administering those sections. The department shall also pay its expenses for the administration of the snowmobile driver permit program under ORS 821.160 from the moneys otherwise described in this paragraph.

(c) The department shall pay its expenses for determining the amount of money to be withheld under ORS 802.120 from the fees collected for administering the registration and titling of snowmobiles. The amount used to pay expenses under this paragraph shall be such sum as necessary but shall not exceed $10,000 during each biennium.

(d) The department shall retain not more than $15,000 in any biennium for the expenses of collecting and transferring moneys to the Student Driver Training Fund under this section and for the administration of ORS 336.810 (3).

(e) The department shall pay its expenses for collecting title, registration, exemption and trip permit fees for manufactured structures and for the performance of its duties required under ORS 820.500 to 820.580 from the fees collected for such purposes. Except as provided in ORS 366.512, moneys from the described fees that remain after payment of the department's expenses shall be transferred to the State Highway Fund to be used for the same purpose as any tax or excise

levied on the ownership, operation or use of a motor vehicle.

(5) Except as otherwise provided in this subsection, the department shall transfer to the State Highway Fund the moneys not used for payment of the general administrative expenses or for approved expenses and disbursals before payment of general administrative expenses. The following apply to this subsection:

(a) If the Director of Transportation certifies the amount of principal or interest of highway bonds due on any particular date, the department may make available for the payment of such interest or principal any sums that may be necessary to the extent of moneys on hand available for the State Highway Fund regardless of the dates otherwise specified under this section.

(b) Notwithstanding paragraph (a) of this subsection the department shall not make available for purposes described in paragraph (a) of this subsection any moneys described in ORS 367.605 when there are not sufficient amounts of such moneys in the State Highway Fund for purposes of bonds issued under ORS 367.615.

(6) Notwithstanding any other provision of this section, the following moneys shall be transferred to the State Highway Fund at the times described:

(a) Moneys received under ORS 802.120 and not used for the payment of administrative expenses of the department shall be transferred before July 31 of each year.

(b) Moneys received from the registration of snowmobiles that is not to be used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(c) Moneys received from the issuance of winter recreation parking permits or under ORS 153.630 from violation of the requirement to have a winter recreation parking permit and that is not used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(7) The following moneys transferred to the State Highway Fund under this section may be used only for the purposes described as follows:

(a) Moneys collected from the issuance of winter recreation parking permits or under ORS 153.630 for violation of the requirement to have a winter recreation parking permit, and the interest on such moneys, shall be used to enforce the requirement for winter recreation parking permits and to remove snow from winter recreation parking locations designated under ORS 810.170. Any remaining moneys shall, upon approval by the Winter Recreation Advisory Committee:

(A) Be used to maintain parking locations developed with moneys obtained under ORS 810.170 and snowmobile facilities that are parking lots developed with moneys as provided under this section;

(B) Be used to develop additional winter recreation parking locations under ORS 810.170; or

(C) Be carried over to be used in subsequent years for the purposes and in the manner described in this paragraph.

(b) Moneys received from the registration of snowmobiles or under ORS 802.120 shall be used for the development and maintenance of snowmobile facilities, including the acquisition of land therefor by any means other than the exercise of eminent domain. Moneys received under ORS 802.120 may also be used for the enforcement of ORS 811.590, 821.100 to 821.120, 821.140, 821.150, 821.190, 821.210 and 821.240 to 821.290.

(8) The department shall maintain the Revolving Account for Emergency Cash Advances separate from other moneys described in this section. From the account, the department may pay for the taking up of dishonored remittances returned by banks or the State Treasurer and for emergency cash advances to be subsequently reimbursed. The account shall be used only as a revolving fund. The department shall at all times be accountable for the amount of the account, either in cash or unreimbursed items and advances. The moneys in the account are continuously appropriated for the purposes of this subsection. The amount of the account under this subsection shall not exceed $40,000 from moneys received by the department in the performance of its driver and motor vehicle services functions and moneys otherwise appropriated for purposes of this subsection. The account under this subsection shall be kept on deposit with the State Treasurer. The State Treasurer is authorized to honor and pay all properly signed and indorsed checks or warrants drawn against the account. [1983 c.338 §133; 1985 c.16 §40; 1985 c.152 §5; 1985 c.280 §1; 1985 c.459 §22; 1985 c.551 §14; 1987 c.158 §161; 1987 c.261 §1; 1987 c.791 §4; 1989 c.101 §3; 1989 c.168 §1; 1989 c.491 §70; 1989 c.864 §6; 1991 c.67 §§208,209; 1991 c.453 §§4,5; 1991 c.709 §4; 1993 c.741 §75; 1995 c.79 §368; 1995 c.774 §8; 1999 c.328 §15; 1999 c.935 §31; 1999 c.977 §14; 1999 c.1010 §3; 2001 c.668 §7; 2001 c.820 §6; 2001 c.827 §8]

Note: The amendments to 802.110 by section 95, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

802.110. Any procedures the Department of Transportation establishes for financial administration of those functions of the department dealing with driver and motor vehicle services and for the disposition and

payment of moneys it receives from the provision of driver and motor vehicle services shall comply with all of the following:

(1) The department shall deposit all moneys it receives related to driver and motor vehicle services in the Department of Transportation Driver and Motor Vehicle Suspense Account for approved expenses and disbursals before payment of general administrative expenses of the department related to the provision of driver and motor vehicle services. Notwithstanding this subsection, the department may return a bank check or money order when received in incorrect or incomplete form or when not accompanied by the proper application.

(2) The department shall pay the following approved expenses and disbursals from the Department of Transportation Driver and Motor Vehicle Suspense Account before payment of the general administrative expenses of the department related to driver and motor vehicle services:

(a) Refunds authorized by any statute administered by the department when such refunds are approved by the department.

(b) Amounts transferred to the State Treasurer under ORS 319.410 (2) for the purpose of carrying out the state aviation laws, amounts transferred to the Boating Safety, Law Enforcement and Facility Account by ORS 319.415, amounts transferred to the State Aviation Account by ORS 319.417 and amounts transferred to the Department of Transportation Operating Fund by ORS 184.643.

(c) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected from the Student Driver Training Fund eligibility fee under ORS 807.040, 807.150 and 807.370 to the State Treasurer for deposit in the Student Driver Training Fund. The moneys deposited in the Student Driver Training Fund under this paragraph are continuously appropriated to the department for the following purposes:

(A) To the extent of not more than 10 percent of the amount transferred into the Student Driver Training Fund in any biennium, to pay the expenses of administering ORS 336.795, 336.800, 336.805, 336.810 (2) and 336.815.

(B) The remaining moneys, for reimbursing school districts as provided under ORS 336.805.

(d) After deduction of expenses of collection, transfer and administration, the department shall pay moneys collected for the Motorcycle Safety Subaccount under ORS 807.170 to the State Treasurer for deposit in the Motorcycle Safety Subaccount of the Transportation Safety Account. Moneys paid to the State Treasurer under this paragraph shall be used for the purpose of ORS 802.320.

(e) After deduction of expenses for the administration of the issuance of customized registration plates under ORS 805.240, the department shall place moneys received from the sale of customized registration plates in the Environmental Quality Information Account. The moneys placed in the account are continuously appropriated to the department and shall be used for the payment of expenses heretofore and hereafter incurred in administering programs established under ORS 366.157.

(f) After deduction of expenses of collection, transfer and administration, the department shall pay moneys from any registration fees established by the governing bodies of counties or a district, as defined in ORS 801.237, under ORS 801.041 or 801.042 to the appropriate counties or districts. The department shall make the payments on at least a monthly basis unless another basis is established by the intergovernmental agreements required by ORS 801.041 and 801.042 between the department and the governing bodies of a county or a district.

(g) After deducting the expenses of the department in collecting and transferring the moneys, the department shall make disbursals and payments of moneys collected for or dedicated to any other purpose or fund except the State Highway Fund, including but not limited to, payments to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2).

(3) The department shall refund from the Department of Transportation Driver and Motor Vehicle Suspense Account any excess or erroneous payment to a person who made the payment or to the person's legal representative when the department determines that money has been received by it in excess of the amount legally due and payable or that it has received money in which it has no legal interest. Refunds payable under this subsection are continuously appropriated for such purposes in the manner for payment of refunds under this section. If the department determines that a refund is due, the department may refund the amount of excess or erroneous payment without a claim being filed. Except as provided in ORS 319.290, 319.375, 319.820 and 319.831, any claim for a refund from the department must be filed within 12 months after the date payment is received by the department.

(4) After payment of those expenses and disbursals approved for payment before general administrative expenses related to the provision of driver and motor vehicle services, the department shall pay from the Department of Transportation Driver and Motor Vehicle Services Administrative Account its general administrative expenses incurred in the administration of any law related to driver and motor vehicle services that the department is charged with administering and any other expenses the department is permitted by law to pay from moneys held by the department before transfer of the moneys to the State Highway Fund. The following limitations apply to payments of administrative expenses under this subsection:

(a) The department shall make payment of the expenses of administering the issuance of winter recreation parking permits under ORS 811.595 from those moneys received from issuing the permits or from moneys received under ORS 153.630 from violation of the requirement to have the permit.

(b) The department shall pay its expenses for administering the registration and titling of snowmobiles under ORS 821.060 and 821.100 from the fees collected from administering those sections. The department shall also pay its expenses for the administration of the snowmobile driver permit program under ORS 821.160 from the moneys otherwise described in this paragraph.

(c) The department shall pay its expenses for determining the amount of money to be withheld under ORS 802.120 from the fees collected for administering the registration and titling of snowmobiles. The amount used to pay expenses under this paragraph shall be such sum as necessary but shall not exceed $10,000 during each biennium.

(d) The department shall retain not more than $15,000 in any biennium for the expenses of collecting and transferring moneys to the Student Driver Training Fund under this section and for the administration of ORS 336.810 (3).

(5) Except as otherwise provided in this subsection, the department shall transfer to the State Highway Fund the moneys not used for payment of the general administrative expenses or for approved expenses and disbursals before payment of general administrative expenses. The following apply to this subsection:

(a) If the Director of Transportation certifies the amount of principal or interest of highway bonds due on any particular date, the department may make available for the payment of such interest or principal

any sums that may be necessary to the extent of moneys on hand available for the State Highway Fund regardless of the dates otherwise specified under this section.

(b) Notwithstanding paragraph (a) of this subsection the department shall not make available for purposes described in paragraph (a) of this subsection any moneys described in ORS 367.605 when there are not sufficient amounts of such moneys in the State Highway Fund for purposes of bonds issued under ORS 367.615.

(6) Notwithstanding any other provision of this section, the following moneys shall be transferred to the State Highway Fund at the times described:

(a) Moneys received under ORS 802.120 and not used for the payment of administrative expenses of the department shall be transferred before July 31 of each year.

(b) Moneys received from the registration of snowmobiles that is not to be used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(c) Moneys received from the issuance of winter recreation parking permits or under ORS 153.630 from violation of the requirement to have a winter recreation parking permit and that is not used for payment of administrative expenses of the department shall be transferred within 30 days after the end of the quarter.

(7) The following moneys transferred to the State Highway Fund under this section may be used only for the purposes described as follows:

(a) Moneys collected from the issuance of winter recreation parking permits or under ORS 153.630 for violation of the requirement to have a winter recreation parking permit, and the interest on such moneys, shall be used to enforce the requirement for winter recreation parking permits and to remove snow from winter recreation parking locations designated under ORS 810.170. Any remaining moneys shall, upon approval by the Winter Recreation Advisory Committee:

(A) Be used to maintain parking locations developed with moneys obtained under ORS 810.170 and snowmobile facilities that are parking lots developed with moneys as provided under this section;

(B) Be used to develop additional winter recreation parking locations under ORS 810.170; or

(C) Be carried over to be used in subsequent years for the purposes and in the manner described in this paragraph.

(b) Moneys received from the registration of snowmobiles or under ORS 802.120 shall be used for the development and maintenance of snowmobile facilities, including the acquisition of land therefor by any means other than the exercise of eminent domain. Moneys received under ORS 802.120 may also be used for the enforcement of ORS 811.590, 821.100 to 821.120, 821.140, 821.150, 821.190, 821.210 and 821.240 to 821.290.

(8) The department shall maintain the Revolving Account for Emergency Cash Advances separate from other moneys described in this section. From the account, the department may pay for the taking up of dishonored remittances returned by banks or the State Treasurer and for emergency cash advances to be subsequently reimbursed. The account shall be used only as a revolving fund. The department shall at all times be accountable for the amount of the account, either in cash or unreimbursed items and advances. The moneys in the account are continuously appropriated for the purposes of this subsection. The amount of the account under this subsection shall not exceed $40,000 from moneys received by the department in the performance of its driver and motor vehicle services functions and moneys otherwise appropriated for purposes of this subsection. The account under this subsection shall be kept on deposit with the State Treasurer. The State Treasurer is authorized to honor and pay all properly signed and indorsed checks or warrants drawn against the account.

802.112 Surcharge for certain transactions; rules. The Department of Transportation may impose a surcharge on any fee the department is authorized to collect if the fee is imposed for a transaction that can be accomplished by a customer of the department in more than one way and the customer chooses the more expensive way. A surcharge imposed under this section may not exceed the lesser of the additional cost to the department, rounded to the nearest dollar, or $10. No surcharge may be imposed under this section until the department adopts rules specifying transactions for which the surcharge will be imposed. [1993 c.751 §9]

802.120 Snowmobile fuel tax moneys; amount; disposition; report. (1) Motor vehicle fuel used and purchased for providing the motive power for snowmobiles shall be considered a nonhighway use of fuel.

(2) The Director of Transportation shall withhold, from taxes collected under ORS chapter 319 during June of each year, amounts the director determines to have been paid as tax under ORS chapter 319 on fuel used in snowmobiles during the preceding 12-month period ending June 30 and that were not refunded.

(3) Moneys withheld by the director under this section are subject to disposition as provided in ORS 802.110.

(4) The director shall do all of the following:

(a) Establish a reasonable manner to determine the amount of money to be withheld under this section from the tax on motor vehicle fuels under ORS chapter 319.

(b) Determine the amount or proportion of moneys to be withheld under this section at least once each four years.

(c) Report the manner used to determine the amount of money withheld under this section to the Legislative Assembly at the end of each four-year period. [1983 c.338 §129; 1987 c.88 §1; 2001 c.827 §9]

802.125 Transfer of unrefunded all-terrain vehicle fuel tax. The Department of Transportation shall transfer to the State Parks and Recreation Department that portion of the amount paid to the Department of Transportation as motor vehicle fuel tax under ORS 319.020 and 319.530 that is determined by the department to be tax on fuel used by Class I, Class II and Class III all-terrain vehicles in off-highway operation and that is not refunded. The Department of Transportation shall determine the amount of moneys to be transferred under this section at quarterly intervals. [1999 c.977 §17]

802.150 Motor Vehicle Records Account; uses. The Motor Vehicle Records Account is established in the General Fund. The following apply to the account established by this section:

(1) Moneys in the account are continuously appropriated for the purpose of reimbursing the Department of Transportation for the cost of furnishing motor vehicle records to district attorneys and other prosecuting attorneys for the prosecution of persons for driving while suspended or revoked.

(2) District attorneys and other prosecuting attorneys shall not be charged for the cost of records furnished under subsection (1) of this section. [1985 c.744 §4; 1987 c.730 §8; 1987 c.904 §1; 1987 c.905 §31]

802.155 Safety Education Fund; uses. (1) There is created the Safety Education Fund, separate and distinct from the General Fund. Interest earned by the fund shall be credited to the fund.

(2) Moneys deposited in the Safety Education Fund from the Criminal Fine and Assessment Public Safety Fund are continuously appropriated to the office of the manager of the Transportation Safety section of the Department of Transportation to be used for safety education programs:

(a) That provide injury prevention education on traffic safety issues for each age group in the kindergarten through college ages;

(b) That have been recipients of funds under 23 U.S.C. 402 for at least three years;

(c) That are found by the Transportation Safety section to be effective, as measured by the three-year reporting cycle funded under 23 U.S.C. 402; and

(d) That operate statewide. [1991 c.709 §7; 1995 c.440 §42; 2001 c.668 §10; 2001 c.829 §9; 2003 c.14 §462]

802.160 Use of revocation and suspension reinstatement fees. The fees collected under ORS 807.370 for the reinstatement of suspended and revoked driving privileges shall be applied by the Department of Transportation to the cost of preparing and serving notices of suspension or revocation and to the cost of administering the driver improvement program authorized under ORS 809.480. [1983 c.338 §130]

802.170 Uncollectible tender of payment; procedures. If any person pays the Department of Transportation any fee or tax with a bank check and the check is returned to the department as uncollectible, or if a person pays the department with a credit or debit card and for any reason the department does not get payment from the issuer of the card, the department may charge the person the fee for dishonored checks or other orders for the payment of money under ORS 30.701 (5). If the person does not pay the fee charged under this section, the department may do all of the following:

(1) Suspend or cancel, or refuse to issue or renew, any vehicle registration or title, vehicle permit, driver license or driver permit in payment of which the check or other order for the payment of money was presented.

(2) Authorize any department employee or police officer to seize and recover any evidence of the registration, title, license or permit suspended or canceled.

(3) If evidence of the suspended or canceled registration, title, license or permit is not recovered, refuse to conduct any further transactions with the person until the fee charged under this section is paid. [1983 c.338 §134; 1985 c.669 §10; 1991 c.702 §21; 1993 c.751 §12; 1997 c.583 §6; 1999 c.59 §234]

TRANSPORTATION SAFETY PROGRAMS AND TRAFFIC SAFETY EDUCATION

802.300 Transportation Safety Committee; members, compensation, expenses; staff. (1) The Transportation Safety Committee is created within the Department of Transportation to advise the department and the Oregon Transportation Commission concerning the functions described under ORS 802.310 and to perform any other functions related to transportation safety that the commission delegates. The committee established under this section shall consist of five members appointed by the Governor on the recommendation of the commission. The term of office of each member is four years. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is eligible for reappointment. In case of a vacancy for any cause, the Governor shall appoint a person to fill the office for the unexpired term.

(2) The Governor shall appoint one member of the committee established under this section as the chair and another member as vice chair.

(3) A member of the committee established under this section is entitled to compensation and expenses as provided under ORS 292.495.

(4) The Director of Transportation may appoint assistants, consultants, clerical staff and other employees needed to carry out the purposes of the committee but shall, as much as possible, consolidate the staff and coordinate the activities of the committee with other staff and activities of the department. [1983 c.338 §119; 1991 c.453 §6; 1993 c.741 §77]

802.310 Transportation safety programs; manager. (1) The manager for transportation safety shall serve as the Governor's representative for highway safety in conformity with the Federal Highway Safety Act of 1966. The Director of Transportation and the Oregon Transportation Commission shall be responsible to the Governor for the administration of the state transportation safety programs. All reports and recommendations relating to program evaluations, assignment of responsibilities and approval of plans and activities shall be provided to the Governor by the commission.

(2) The Department of Transportation, in consultation with the Transportation Safety Committee, shall do the following:

(a) Organize, plan and conduct a statewide transportation safety program.

(b) Coordinate general activities and programs of the several departments, divisions or agencies of the state engaged in promoting transportation safety.

(c) Provide transportation safety information and develop other measures of public information.

(d) Cooperate fully with all national, local, public and private agencies and organizations interested in the promotion of transportation safety.

(e) Serve as a clearinghouse for all transportation safety materials and information used throughout the state.

(f) Cooperate in promoting research, special studies and analysis of problems concerning transportation safety.

(g) Make studies and suitable recommendations to the legislature concerning safety regulations and laws.

(3) The department shall review plans and applications for participation by counties and cities in the federal government highway safety programs conducted under the Federal Highway Safety Act of 1966 and any amendments thereto. The committee shall make recommendations to the department regarding the approval of plans and applications under ORS 802.315. [1983 c.338 §873; 1991 c.453 §7; 1993 c.741 §78]

802.315 Department authority to apply for and receive federal highway safety program grants and other funds; local government program participation. (1) The Department of Transportation, with the advice of the Transportation Safety Committee, may apply for, accept, receive and disburse grants available from the federal government or any of its agencies to carry out approved state highway safety programs conducted under the Federal Highway Safety Act of 1966 and the amendments thereto.

(2) The department may accept funds from other sources and enter into such contracts or agreements and do all things necessary to receive such funds for the purposes of carrying out in this section and ORS 802.300, 802.329, 802.331 and 802.340. However, funds shall not be accepted that are subject to a restriction or condition that is in conflict with any law of this state.

(3) The department, considering the recommendations of the Transportation Safety Committee, shall approve plans or applications for participation by counties and cities in the federal government highway safety programs conducted under the Federal Highway Safety Act of 1966 and any amendments thereto. The approval of plans and applications shall be done in accordance with the uniform standards of the federal government regarding such programs. Subject to any conditions of the grant, the department shall disburse any funds received from the federal government or any of its agencies for county and city highway safety programs. [Formerly 802.410]

802.320 Motorcycle safety program; contents; fees; contracts. (1) In addition to any duties under ORS 802.310, the Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a motorcycle safety program that complies with this section to the extent moneys are available for such program from the Motorcycle Safety Subaccount under ORS 802.340. The program established may include the following:

(a) Motorcycle safety promotion and public education.

(b) The development of training sites for courses approved by the department to teach safe and proper operation of motorcycles and mopeds.

(c) Classroom instruction and actual driving instruction necessary to teach safe and proper operation of motorcycles and mopeds.

(d) The development of a mobile training unit.

(e) The acquisition of films and equipment that may be loaned to the public for the encouragement of motorcycle and moped safety.

(f) The department may charge a fee for services provided under the program. Any fee charged by the department under this paragraph shall be established by rule and shall not be in an amount that will discourage persons from participating in safety programs offered by the department under this section.

(g) Advice and assistance, including monetary assistance, for motorcycle safety

programs operated by government or nongovernment organizations.

(h) Other education or safety programs the department determines will help promote the safe operation of motorcycles and mopeds, promote safe and lawful driving habits, assist in accident prevention and reduce the need for intensive highway policing.

(2) Subject to the State Personnel Relations Law under ORS chapter 240, the department shall employ such employees as the department determines necessary to carry out the purposes of this section to:

(a) Advise and assist motorcycle safety programs in this state.

(b) Act as a liaison between government agencies and advisory committees and interested motorcyclist groups.

(3) The department may provide for the performance of training and other functions of the program established under this section by contracting with any private or public organizations or entities the department determines appropriate to achieve the purposes of this section. The organizations the department may contract with under this subsection include, but are not limited to, nonprofit private organizations, private organizations that are operated for profit, public or private schools, community colleges or public agencies or political subdivision. [1985 c.16 §442; 1989 c.427 §3; 1991 c.453 §8]

802.325 Bicycle safety program; contents; fees. (1) The Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a bicycle safety program that complies with this section to the extent moneys are available for such program. The program established may include the following:

(a) Bicycle safety promotion and public education.

(b) Advice and assistance for bicycle safety programs operated by government or nongovernment organizations.

(c) Classroom instruction and actual riding instruction necessary to teach safe and proper operation of bicycles.

(d) Bicycle education and information that assist police agencies in the enforcement of bicycle laws.

(e) Other education or safety programs the department determines will help promote the safe operation of bicycles, promote safe and lawful riding habits and assist in accident prevention.

(f) The department may charge a fee for services provided under the program. Any fee charged by the department under this paragraph shall be established by rule and shall not be in an amount that will discourage persons from participating in safety programs offered by the department under this section.

(2) The department shall act as a liaison between government agencies and advisory committees and interested bicyclist groups.

(3) The department may accept donations and solicit grants to enable the department to carry out the functions of this section. [1987 c.683 §2; 1991 c.453 §9]

802.329 City and county highway safety program participation authorized. Any city or county may participate in the highway safety program and do all things necessary to secure the benefits available under ORS 802.310 and 802.315 and under the Federal Highway Safety Act of 1966 and any amendments thereto. [Formerly 802.420]

802.331 Highway Safety Trust Account. The Highway Safety Trust Account is established separate and distinct from the General Fund. All money received by the Department of Transportation under ORS 802.315 shall be paid into the State Treasury and credited to the account established under this section. All money in the account established under this section is continuously appropriated for and shall be used by the department in carrying out the purposes for which the funds were received. [Formerly 802.400; 2003 c.81 §12]

802.340 Transportation Safety Account; uses; Motorcycle Safety Subaccount. (1) The Transportation Safety Account is established in the General Fund of the State Treasury. Except as provided in subsection (2) of this section, all money credited to the account established under this section is appropriated continuously for and shall be used by the Department of Transportation to carry out the following purposes:

(a) Payment of the per diem, travel and other expenses of the Transportation Safety Committee.

(b) Payment of the expenses of the department in performance of its duties related to transportation safety.

(c) Functions or programs established under ORS 802.315.

(2) There is established in the account created under subsection (1) of this section a subaccount to be known as the Motorcycle Safety Subaccount. The subaccount shall consist of moneys credited to the subaccount under ORS 807.370 and as otherwise provided by law. The subaccount shall be accounted for separately. Moneys in the subaccount are continuously appropriated to the department for and shall be used to carry out the purposes provided under ORS 802.320. [1983 c.338 §139; 1985 c.16 §41; 1991 c.453 §10; 1993 c.741 §79]

802.345 Traffic safety education course; curriculum; rules. (1) The Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a curriculum for a traffic safety education course under ORS 336.800. The curriculum shall establish standards for a course of instruction to be devoted to the study and practice of rules of the road, the safe and proper operation of motor vehicles, accident prevention and other matters that promote safe and lawful driving habits and reduce the need for intensive highway policing. The course shall include classroom instruction and on-street driving or simulated driving in a driving simulator. No pupil may participate in on-street driving instruction unless the pupil is enrolled in or has completed a course in classroom instruction.

(2) The department shall adopt by rule a procedure to certify that a traffic safety education course meets curriculum standards established under subsection (1) of this section.

(3) The department shall adopt rules establishing qualifications for a person to teach a traffic safety education course.

(4) The department shall adopt rules necessary to administer ORS 336.805 and 336.810. [1999 c.328 §4]

COMMITTEES AND BOARDS

802.350 Winter Recreation Advisory Committee; members; meetings; rules. (1) The Winter Recreation Advisory Committee is created to perform the functions described for the committee under ORS 810.170.

(2) The committee created under this section shall consist of seven members appointed by the Oregon Transportation Commission as follows:

(a) Two persons representing ski area operators;

(b) One member representing the Oregon Nordic Club;

(c) One person representing the Pacific Northwest Ski Association;

(d) One member representing the Oregon State Snowmobile Association; and

(e) Two members from the general public interested in winter recreation in this state.

(3) Members of the committee established under this section shall not receive compensation for their service on the committee.

(4) The members shall be appointed to serve for terms of four years. Vacancies on the committee shall be filled by appointment by the commission for the unexpired term.

(5) The committee shall meet regularly four times a year at times and places fixed by the chair of the committee. The committee may meet at other times specified by the chair or a majority of the members of the committee.

(6) The Department of Transportation shall provide assistance and space for meetings as requested by the chair of the committee.

(7) The committee shall adopt rules to govern its proceedings and shall select a chair and any other officers it considers necessary.

(8) Members of the advisory committee shall be entitled to actual and necessary expenses as provided by ORS 292.495 (2). [1983 c.338 §122; 1989 c.498 §1]

RECIPROCAL AGREEMENTS AND INTERSTATE COMPACTS

802.500 Authority for reciprocal registration agreements; permitted provisions; requirements; limitations. The Director of Transportation may enter into agreements with the duly authorized representatives of any jurisdiction that issues registration to establish reciprocal privileges or registration exemptions for vehicles as described in this section. All of the following apply to an agreement established under the authority granted by this section:

(1) An agreement may establish any of the following benefits, privileges and exemptions with respect to the operation of commercial or noncommercial vehicles in this state:

(a) For purposes of ORS 803.305 exemptions from registration and payment, wholly or partially, of any vehicle or registration fees.

(b) Privileges relating to vehicles used by disabled persons.

(c) Privileges relating to vehicle parking.

(d) Privileges relating to vehicle dealers.

(e) Privileges, exemptions or benefits relating to farm vehicles or implements of husbandry.

(f) Privileges relating to persons commercially transporting vehicles.

(g) Any similar privileges, benefits or exemptions relating to the operation of vehicles.

(h) Privileges, benefits or exemptions relating to the registration of fleets of vehicles.

(2) An agreement shall only grant the privileges, benefits and exemptions to a vehicle or the owner of a vehicle if the vehicle is any of the following:

(a) Registered in the jurisdiction where the person registering the vehicle has a legal residence.

(b) A commercial vehicle registered in a jurisdiction where the commercial enterprise in which the vehicle is used has a place of business. To qualify under this paragraph the vehicle must be assigned to the place of business and the place of business must be the place from which or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled.

(c) A commercial vehicle registered in a jurisdiction where the vehicle has been registered because of an agreement between two jurisdictions or a declaration issued by any jurisdiction.

(3) An agreement shall retain the right of the Department of Transportation to make the final determination as to the proper place of registration of a vehicle when there is a dispute or doubt concerning the proper place of registration. An agreement shall retain the right of the department to confer with the departments of other jurisdictions affected when making a determination under this subsection.

(4) An agreement shall not provide for any benefit, exemption or privilege with respect to fuel taxes, use fuel taxes, weight mile taxes or any other fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except registration taxes, fees and requirements.

(5) An agreement must provide that any vehicle registered in this state will receive a similar kind or degree of exemptions, benefits and privileges when operated in another jurisdiction that is party to the agreement as vehicles registered in the other jurisdiction receive when operated in this state.

(6) An agreement, in the judgment of the director, shall be in the best interest of this state and its citizens, shall be fair and equitable to this state and its citizens and shall be determined on the basis and recognition of benefits that accrue to the economy of this state from the uninterrupted flow of commerce.

(7) An agreement may authorize a vehicle that would otherwise be required to be registered in one jurisdiction to be registered in another jurisdiction without losing any benefit, exemption or privilege under the agreement if the vehicle is operated from a base located in the other jurisdiction.

(8) An agreement may allow the lessee or lessor of a vehicle, subject to the terms and conditions of the lease to receive benefits, exemptions and privileges under the agreement.

(9) An agreement may authorize the department to suspend or cancel any exceptions, benefits or privileges granted to any person under the agreement if the person violates any of the terms or conditions of the agreement or violates any law or rule of this state relating to vehicles.

(10) All agreements shall be in writing and filed with the department within 10 days after execution or the effective date of the agreement, whichever is later.

(11) An agreement may be a limited type agreement with any state bordering this state as described in this subsection. An agreement described under this subsection is subject to all of the following:

(a) The benefits, exemptions and privileges under the agreement shall only be extended to vehicles or a class of vehicles as specified in the agreement.

(b) The agreement shall be applicable only within an area in each state that is situated along the boundary between the states and that is substantially equal in size.

(c) The usage permitted of the vehicles in the two areas shall be as substantially equal as may be practicable.

(d) The areas and usage subject to the agreement shall be described in the agreement.

(e) Proportional registration shall not be required under the agreement.

(f) The agreement shall comply with other mandatory provisions of this section and may contain any other provisions described under this section.

(g) A vehicle operating under the agreement may be required to obtain a permit under ORS 803.610.

(12) An agreement may require the display or submission of evidence of registration for any vehicle operating under the agreement. [1983 c.338 §142; 1985 c.16 §43; 1985 c.668 §3; 1993 c.174 §2]

802.520 Authority to grant registration privileges or exemptions to vehicles registered in other jurisdictions; declaration; limitations. The Director of Transportation may examine the laws and requirements of any jurisdiction that issues out-of-state registration and may grant a privilege or a registration exemption described in this section to vehicles or owners of vehicles registered in that jurisdiction. All of the following apply to the authority granted by this section:

(1) The director may only grant privileges or registration exemptions under this section to vehicles that are registered in jurisdictions that do not have an agreement with this state for privileges or registration exemptions under ORS 802.500 or 826.005 or an agreement for proportional registration with this state under ORS 826.007.

(2) All grants of privileges and registration exemptions under this section shall be by declaration, shall be in writing and shall be filed with the Department of Transportation within 10 days after execution or effective date, whichever is later.

(3) A declaration may grant benefits, privileges and exemptions with respect to the operation of commercial or noncommercial vehicles in this state of the same type that may be established by agreement under ORS 802.500 or 826.005.

(4) A declaration shall only grant the privileges, benefits and exemptions to a vehicle or the owner of a vehicle if the vehicle is any of the following:

(a) Registered in the jurisdiction where the person registering the vehicle has a legal residence.

(b) A commercial vehicle registered in a jurisdiction where the commercial enterprise in which the vehicle is used has a place of business. To qualify under this paragraph the vehicle must be assigned to the place of business and the place of business must be the place from which or in which the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled.

(c) A commercial vehicle registered in a jurisdiction where the vehicle has been registered because of an agreement between two jurisdictions or a declaration issued by any jurisdiction.

(5) The department shall make any final determination in any case of doubt or dispute as to the proper place of registration of a vehicle, but may confer with departments of other jurisdictions affected.

(6) A declaration shall not provide for any benefit, exemption or privilege with respect to fuel taxes, use fuel taxes, weight mile taxes or other fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except registration taxes, fees and requirements.

(7) A declaration shall only grant benefits, exemptions or privileges that are, in the judgment of the director, in the best interest of this state and its citizens, fair and equitable to this state and its citizens and determined on the basis and with recognition of benefits that accrue to the economy of this state from the uninterrupted flow of commerce.

(8) A declaration may authorize a vehicle that would otherwise be required to be registered in one jurisdiction to be registered in another jurisdiction without losing any benefit, exemption or privilege under the declaration if the vehicle is operated from a base located in the other jurisdiction.

(9) A declaration may allow the lessee or lessor of a vehicle, subject to the terms and conditions of the lease, to receive benefits, exemptions and privileges under the declaration.

(10) A declaration may authorize the department to suspend or cancel any exemptions, benefits or privileges granted to any person under the declaration if the person violates any of the terms or conditions of the declaration or violates any law or rule of this state relating to vehicles. [1983 c.338 §143; 1985 c.668 §4; 1989 c.43 §16]

802.530 Authority of department for reciprocal agreements concerning traffic offenses; permitted provisions; fees; limitations; rules; report. The Department of Transportation is authorized to enter into bilateral or multilateral reciprocal agreements with other jurisdictions to provide mutual assistance in the disposition of traffic offenses committed by residents of one jurisdiction while in another jurisdiction. Agreements authorized by this section are subject to the following:

(1) An agreement may provide for the sharing of information between and among jurisdictions concerning driving records, vehicle registration records and records concerning the granting, denial, revocation or suspension of driving privileges.

(2) An agreement may provide that a jurisdiction will suspend the driving privileges of a resident of the jurisdiction if the resident does not comply with the requirements and responsibilities created by citation for or conviction of a traffic offense in another jurisdiction.

(3) An agreement may provide that a jurisdiction will refuse to issue or renew a driver license or permit or to issue a duplicate or replacement license or permit for a resident of the jurisdiction if the resident does not comply with the requirements and responsibilities created by citation for or conviction of a traffic offense in another jurisdiction.

(4) An agreement may be limited to certain traffic offenses.

(5) An agreement may provide for the establishment of fees for and collection of fees from persons cited for traffic offenses or convicted of traffic offenses who are subject to the terms of the agreement. Any agency of this state that participates in a program established by an agreement authorized by this section is granted authority to establish fees for and collect fees from persons subject to an agreement. Fees established for purposes of this subsection must be established by rule. No fee established for purposes of this subsection may exceed an amount nec-

essary to recover the actual cost incurred by participation in the program established by the agreement.

(6) An agreement may provide that residents of one jurisdiction who are issued citations for traffic offenses in another jurisdiction will be released on recognizance without requirement of security deposit or bail. Nothing in this subsection authorizes an agreement that prohibits a court from releasing on security release, as defined in ORS 135.230, a person charged with a traffic crime.

(7) An agreement may provide that one jurisdiction will act as agent for another jurisdiction in the disposition of traffic offenses committed in the other jurisdiction. No provision described under this subsection may be established that requires the participation of courts of this state unless the Oregon Supreme Court establishes rules under ORS 1.002 to provide procedures for court participation.

(8) No agreement may be established under this section to provide for assistance in dealing with:

(a) Offenses other than traffic offenses.

(b) Parking offenses.

(c) Bicycle offenses.

(d) Pedestrian offenses.

(9) Any agreement established under this section must provide that this state may withdraw from the agreement upon notice of not more than 90 days.

(10) An agreement may include any other provision that the department determines will assist in the disposition of traffic offenses committed by residents of one jurisdiction while in another jurisdiction or will increase the convenience for residents of this state in complying with requirements and responsibilities created by citation for or conviction of a traffic offense in another jurisdiction.

(11) The department may adopt rules necessary to implement any agreement established under this section.

(12) The department must submit a report on any agreement proposed under this section to the presiding officers of each house of the Oregon Legislative Assembly at least 30 days before the agreement may take effect. An agreement described under this section cannot take effect in this state unless the department complies with this subsection. [1985 c.396 §2; 1993 c.102 §1; 1999 c.1051 §85]

802.540 Driver License Compact. The Driver License Compact is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I
FINDINGS AND DECLARATION
OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II
DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III
REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV
EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or a controlled substance, or under the influence of any other drug or substance to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this Article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to insure that full force and effect is given to this Article.

ARTICLE V
APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI
APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII
COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII
ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX
CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1983 c.338 §168]

802.550 Administrative provisions relating to license compact. The following relate to the Driver License Compact under ORS 802.540:

(1) The Director of Transportation or the director's deputy shall act as the compact administrator. The compact administrator shall not be entitled to any additional compensation on account of service as compact administrator, but shall be entitled to expenses incurred in connection with such service, payable the same as expenses in connection with services as the normal duties of the person.

(2) When reference in the compact is made to the executive head in this state, the reference applies to the Governor of this state.

(3) When reference in the compact is made to the licensing authority in this state, the reference applies to the Department of Transportation.

(4) In accordance with subdivision (c) of Article IV of the compact, the following offenses or violations provided by Oregon law hereby are designated as offenses or violations of a substantially similar nature as the respective denominations and descriptions of conduct appearing in subdivision (a) of Article IV of the compact.

(a) ORS 809.409 (1) and (2) - Article IV (a) (1).

(b) ORS 813.400 - Article IV (a) (2).

(c) ORS 809.409 (5) - Article IV (a) (3).

(d) ORS 809.409 (3) - Article IV (a) (4).

(5) Offenses or violations other than those referred to in subsection (4) of this section reported to the department pursuant to Article III of the compact shall be given effect within the purpose of Article IV (b) of the compact as the other laws of this state provide. [1983 c.338 §169; 2003 c.402 §11]

802.560 Multistate Highway Transportation Agreement. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into on behalf of this state with all other jurisdictions legally joining therein in a form substantially as follows:

ARTICLE I
FINDINGS AND PURPOSES

SECTION 1. Findings. The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity;

(b) Highway transportation is the major mode for movement of people and goods in the western states;

(c) Uniform application in the west of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption and related transportation costs, which are necessary to permit increased productivity;

(d) A number of western states, already having adopted substantially the 1964 Bureau of Public Roads recommended vehicle size and weight standards, still find current federal limits more restrictive; and

(e) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

SECTION 2. Purposes. The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the

freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(b) Establish a system authorizing the operation of vehicles traveling between two (2) or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

(f) Facilitate communication among legislators, state transportation administrators and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE II

DEFINITIONS

SECTION 1. As used in this agreement:

(a) "Cooperating committee" means a body composed of the designated representatives from the participating jurisdictions.

(b) "Designated representative" means a legislator authorized to represent the jurisdiction appointed by the President of the Senate and the Speaker of the House of Representatives in consultation.

(c) "Jurisdiction" means a state of the United States or the District of Columbia.

(d) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III

GENERAL PROVISIONS

SECTION 1. Qualifications for Membership. Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

SECTION 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

SECTION 3. Effect of Headings. Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

SECTION 4. Vehicle Laws and Regulations. This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

SECTION 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

SECTION 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

SECTION 7. Restrictions, Conditions or Limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

SECTION 8. Additional Jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV

COOPERATING COMMITTEE

SECTION 1. Each participating jurisdiction shall have two designated representatives. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee which shall have the power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

(d) Recommend improvements in highway operations, in vehicular safety and in state

administration of highway transportation laws.

(e) Perform functions necessary to facilitate the purposes of this agreement.

SECTION 2. Each designated representative of a participating jurisdiction shall be entitled to one (1) vote. No action of the committee shall be approved unless a majority of the total number of votes cast by the designated representatives of the participating jurisdictions are in favor thereof.

SECTION 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman and a secretary.

SECTION 4. The committee shall submit annually to the legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable.

ARTICLE V

OBJECTIVES OF THE

PARTICIPATING JURISDICTIONS

SECTION 1. Objectives. The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all State highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight of 20,000 pounds, a tandem-axle weight of 34,000 pounds, and a gross vehicle or combination weight of that resulting from application of the formula:

$$W = 500\left(\left(\frac{LN}{N-1}\right) + 12N + 36\right)$$

where W = maximum weight in pounds carried on any group of two or more axles computed to nearest 500 pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that the operation in interstate commerce of a vehicle or combination of vehicles that exceeds statutory maximum weights or statutory maximum lengths be authorized under special permit authority by each participating jurisdiction.

(c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including, but not limited to, the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent.

(d) It is the further objective of the participating jurisdictions to authorize the cooperating committee to recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically, of the vehicle size and weight standards set forth in subsection (a) of this section.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional economic needs and to promote an efficient, safe and consistent transportation network;

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways consistent with and in recognition of principles of highway safety; and

(3) Establish programs to increase productivity and reduce congestion, fuel consumption and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

(f) It is the further objective of the participating jurisdictions that in carrying out subsection (e) of this section, the participating jurisdictions shall give priority to ensuring the long term financial stability of the highway infrastructure, considering the net benefits across all modes and all segments of industry and society and not focusing on incremental changes where there is no long term guiding policy.

ARTICLE VI

ENTRY INTO FORCE AND WITHDRAWAL

SECTION 1. This agreement shall enter into force when enacted into law by any two (2) or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

SECTION 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until thirty (30) days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII

CONSTRUCTION AND SEVERABILITY

SECTION 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

SECTION 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII

FILING OF DOCUMENTS

SECTION 1. A copy of this agreement, its amendments, and rules or regulations promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

ARTICLE IX

EXISTING STATUTES NOT REPEALED

SECTION 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

ARTICLE X

STATE GOVERNMENT DEPARTMENTS AUTHORIZED TO COOPERATE WITH COOPERATING COMMITTEE

SECTION 1. Within appropriations available therefor, the departments, agencies and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, section 1(a) and (b) of the agreement. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said cooperating committee.

[1983 c.338 §172; 1985 c.172 §5; 2001 c.610 §1]

802.570 Compensation and reimbursement for legislative representative under Multistate Highway Transportation Agreement. A legislator who is a designated representative under ORS 802.560 is entitled to compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly. [1987 c.879 §21; 2001 c.610 §2]

Chapter 803
(Partial)

2003 EDITION

Vehicle Title and Registration

TITLE FEES

803.090 Fees for transfer, issuance, duplicate, replacement and late presentation

VEHICLE REGISTRATION PERIODS AND FEES

803.400 Duration of registration periods

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803.410 Department authorized to adjust periods and fees; rules

803.415 Registration periods for vehicles

803.420 Registration fees

803.425 Vehicle length for fee determination

803.430 Registration weight for fee determination; methods of establishing; requirement

803.435 Declaration of weight for fee determination; contents

803.440 Failure to submit declaration of weight; penalty

803.445 Authority of counties and districts to impose registration fees; maximum amount

TITLE FEES

803.090 Fees for transfer, issuance, duplicate, replacement and late presentation. The following fees are the fees for the transaction described:

(1) The transfer fee under ORS 803.092:

(a) For a salvage title, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(2) The fee for issuance of a certificate of title under ORS 803.045 or 820.591:

(a) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(b) For vehicles other than vehicles for which the title fee is described in paragraph (a) of this subsection, $55.

(3) The fee for issuance of a salvage title certificate under ORS 803.140, $17.

(4) The fee for issuance of a duplicate or replacement certificate of title under ORS 803.065 or 820.591:

(a) For a duplicate or replacement salvage title certificate, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(5) The fee under subsection (4) of this section must be paid at the same time as a transfer fee under this section if application is made at the same time as application for transfer.

(6) The fee for issuance of a new certificate of title under ORS 803.220 indicating a change of name or address:

(a) For a new salvage title certificate, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(7) The fee for late presentation of certificate of title under ORS 803.105, $25 from the 31st day after the transfer through the 60th day after the transfer and $50 thereafter.

(8) The fees for title transactions involving a form of title other than a certificate shall be the amounts established by the Department of Transportation by rule under ORS 803.012. [1983 c.338 §188; 1985 c.16 §64; 1985 c.174 §2; 1985 c.300 §3; 1985 c.315 §1; 1987 c.790 §1; 1989 c.148 §12; 1991 c.873 §11; 1993 c.233 §28; 2001 c.669 §7; 2001 c.675 §8; 2003 c.161 §1; 2003 c.618 §1]

Note: The amendments to 803.090 by section 101, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

803.090. The following fees are the fees for the transaction described:

(1) The transfer fee under ORS 803.092:

(a) For a salvage title, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(2) The fee for issuance of a certificate of title under ORS 803.045:

(a) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(b) For vehicles other than vehicles for which the title fee is described in paragraph (a) of this subsection, $55.

(3) The fee for issuance of a salvage title certificate under ORS 803.140, $17.

(4) The fee for issuance of a duplicate or replacement certificate of title under ORS 803.065:

(a) For a duplicate or replacement salvage title certificate, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(5) The fee under subsection (4) of this section must be paid at the same time as a transfer fee under this section if application is made at the same time as application for transfer.

(6) The fee for issuance of a new certificate of title under ORS 803.220 indicating a change of name or address:

(a) For a new salvage title certificate, $17.

(b) For trailers eligible for permanent registration under ORS 803.415 (1) and motor vehicles with a gross vehicle weight rating over 26,000 pounds, excluding motor homes, $90.

(c) For vehicles other than vehicles for which the title fee is described in paragraph (b) of this subsection, $55.

(7) The fee for late presentation of certificate of title under ORS 803.105, $25 from the 31st day after the

transfer through the 60th day after the transfer and $50 thereafter.

(8) The fees for title transactions involving a form of title other than a certificate shall be the amounts established by the Department of Transportation by rule under ORS 803.012.

VEHICLE REGISTRATION PERIODS AND FEES

803.400 Duration of registration periods. This section establishes and distinguishes registration periods. Each registration period determines the period of validity for vehicle registration. Registration under the following registration periods is valid during the described registration period:

(1) Annual registration is valid for a one-year period. The period starts on the first day of a calendar month and runs through the last day of the same calendar month one year later. Once a vehicle is registered under annual registration, the registration period of the vehicle begins and ends with that same calendar month each time the vehicle is reregistered or registration for the vehicle is renewed.

(2) Biennial registration is valid for a two-year period. The period starts on the day a vehicle is registered and runs through the same day two years later. Once a vehicle is registered under biennial registration, the registration period of the vehicle begins and ends with that same day each time the vehicle is reregistered or registration for the vehicle is renewed. Vehicles initially registered on February 29 will expire on the last day of February two years later.

(3) Calendar-year registration starts on January 1 of a year and runs through December 31 of the same year.

(4) Ownership registration starts on the day the vehicle is registered and is valid until the ownership of the vehicle changes.

(5) Permanent registration starts on the day the vehicle is registered and is valid for the life of the vehicle.

(6) Quarterly registration starts on the first day of any calendar quarter and runs through the last day of the last calendar quarter in the registration period. The number of calendar quarters in a quarterly registration is elected by the vehicle owner at the time of registration. A person may not establish quarterly registration periods for more than four quarters. If a vehicle is registered for a quarterly registration period of less than four calendar quarters, the Department of Transportation shall collect, when issuing or renewing registration of the vehicle, the additional fee for quarterly registration established under ORS 803.420.

(7) Four-year registration starts on the day a vehicle is registered and runs through the same day four years later. [1983 c.338 §222; 1989 c.76 §1; 1993 c.174 §4; 2001 c.124 §2]

803.405 Effect of initial registration month. (1) The month in which any vehicle is initially registered under annual registration is the month established as the beginning and ending of registration periods for the vehicle unless the Department of Transportation adjusts the registration month of the vehicle upon initial registration under ORS 803.410.

(2) The day on which any vehicle is initially registered under biennial registration or when required under ORS 820.520 is the day established as the beginning and ending of registration periods for the vehicle unless the department adjusts the registration period of the vehicle upon initial registration under ORS 803.410. [1983 c.338 §223; 1989 c.76 §2]

803.410 Department authorized to adjust periods and fees; rules. The Department of Transportation is empowered to administer ORS 803.400 and 803.405, relating to the registration periods of vehicles and to adopt and enforce rules, including rules for the adjustment or proration of fees and registration periods, necessary to accomplish the enforcement of those sections. The authority granted the department under this section is subject to the following:

(1) The department may initially register a vehicle that is subject to biennial registration for less than a 24-month period or for more than a 24-month period, not exceeding a maximum of a 30-month period, and prorate the fee on a monthly basis, when in its opinion such fractional registration tends to fulfill the purpose of the biennial registration system.

(2) The department may initially adjust the registration periods of trailers for hire registered as part of a fleet.

(3) The authority granted under this section includes authority to adjust the initial registration period of travel trailers and special use trailers that are required to be registered after being removed from assessment under the ad valorem tax laws by ORS 820.520.

(4) The department, by rule, may adjust registration fees or registration periods for a vehicle, as is administratively convenient for the department, if:

(a) The vehicle is changed from one type of registration to another type; or

(b) Any other change relating to the registration of the vehicle is made where it would be administratively convenient for the department to make such adjustments. [1983

c.338 §224; 1985 c.16 §83; 1985 c.253 §3; 1987 c.750 §6; 1989 c.43 §21; 1993 c.174 §5]

803.415 Registration periods for vehicles. This section establishes registration periods for vehicles. The registration periods are periods described under ORS 803.400. Except as provided in the following, the registration period for any vehicle registered in this state by the Department of Transportation is a biennial registration period:

(1) The following vehicles have permanent registration:

(a) Antique vehicles registered under ORS 805.010.

(b) Vehicles of special interest registered under ORS 805.020.

(c) Trailers that will be operated on the highways at a loaded weight of more than 8,000 pounds and are not travel trailers, manufactured structures, fixed load vehicles or special use trailers.

(2) Government-owned vehicles registered under ORS 805.040 have ownership registration.

(3) The following vehicles may be registered under annual or quarterly registration unless the vehicles are registered under proportional registration under ORS 826.009 or proportional fleet registration under ORS 826.011:

(a) Vehicles required to establish a registration weight under ORS 803.430.

(b) Commercial buses.

(c) Vehicles registered as farm vehicles under ORS 805.300.

(4) Snowmobiles are registered as provided in ORS 821.080.

(5) Manufactured structures are registered as provided in ORS 820.500.

(6) Vehicles operated by dealers who hold certificates under ORS 822.020 are as provided under ORS 822.040.

(7) Trailers for hire that will be operated at a loaded weight of 8,000 pounds or less may be registered as follows:

(a) Annual registration; or

(b) If registered under an agreement pursuant to ORS 802.500, for a period of time determined as specified in the agreement or as determined by the department.

(8) Except as otherwise provided in subsection (11) of this section, the registration period for electric vehicles and hybrid vehicles that use electricity and another source of motive power is a biennial registration period except that the registration period for the following electric or hybrid vehicles is an annual registration period:

(a) Commercial buses.

(b) Electric or hybrid vehicles registered as farm vehicles under ORS 805.300.

(c) Vehicles required to establish registration weight under ORS 803.430.

(9) Vehicles registered under ORS 805.100 have an ownership registration period.

(10) School vehicles registered under ORS 805.050 have ownership registration except that the registration shall continue to be valid if ownership of the vehicle is transferred to a person who continues to use the vehicle for purposes authorized by ORS 805.050.

(11) The following vehicles have a four-year registration period:

(a) New vehicles registered under ORS 803.420 (1) for which new registration plates will be issued;

(b) New mopeds registered under ORS 803.420 (2) for which new registration plates will be issued;

(c) New motorcycles registered under ORS 803.420 (3) for which new registration plates will be issued; and

(d) New vehicles registered under ORS 803.420 (9)(a) for which new registration plates will be issued. [1983 c.338 §225; 1985 c.16 §84; 1985 c.177 §1; 1985 c.189 §1; 1985 c.547 §12; 1987 c.158 §162; 1987 c.217 §2; 1989 c.43 §22; 1989 c.723 §7; 1989 c.991 §26; 1991 c.284 §16; 1991 c.407 §27; 1993 c.174 §6; 1995 c.774 §12; 1999 c.977 §20; 2001 c.124 §1; 2001 c.293 §9]

Note: The amendments to 803.415 by section 111, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

803.415. This section establishes registration periods for vehicles. The registration periods are periods described under ORS 803.400. Except as provided in the following, the registration period for any vehicle registered in this state by the Department of Transportation is a biennial registration period:

(1) The following vehicles have permanent registration:

(a) Antique vehicles registered under ORS 805.010.

(b) Vehicles of special interest registered under ORS 805.020.

(c) Trailers that will be operated on the highways at a loaded weight of more than 8,000 pounds and are not travel trailers, fixed load vehicles or special use trailers.

(2) Government-owned vehicles registered under ORS 805.040 have ownership registration.

(3) The following vehicles may be registered under annual or quarterly registration unless the vehicles are registered under proportional registration under ORS 826.009 or proportional fleet registration under ORS 826.011:

(a) Vehicles required to establish a registration weight under ORS 803.430.

(b) Commercial buses.

(c) Vehicles registered as farm vehicles under ORS 805.300.

(4) Snowmobiles are registered as provided in ORS 821.080.

(5) Vehicles operated by dealers who hold certificates under ORS 822.020 are as provided under ORS 822.040.

(6) Trailers for hire that will be operated at a loaded weight of 8,000 pounds or less may be registered as follows:

(a) Annual registration; or

(b) If registered under an agreement pursuant to ORS 802.500, for a period of time determined as specified in the agreement or as determined by the department.

(7) Except as otherwise provided in subsection (10) of this section, the registration period for electric vehicles and hybrid vehicles that use electricity and another source of motive power is a biennial registration period except that the registration period for the following electric or hybrid vehicles is an annual registration period:

(a) Commercial buses.

(b) Electric or hybrid vehicles registered as farm vehicles under ORS 805.300.

(c) Vehicles required to establish registration weight under ORS 803.430.

(8) Vehicles registered under ORS 805.100 have an ownership registration period.

(9) School vehicles registered under ORS 805.050 have ownership registration except that the registration shall continue to be valid if ownership of the vehicle is transferred to a person who continues to use the vehicle for purposes authorized by ORS 805.050.

(10) The following vehicles have a four-year registration period:

(a) New vehicles registered under ORS 803.420 (1) for which new registration plates will be issued;

(b) New mopeds registered under ORS 803.420 (2) for which new registration plates will be issued;

(c) New motorcycles registered under ORS 803.420 (3) for which new registration plates will be issued; and

(d) New vehicles registered under ORS 803.420 (9)(a) for which new registration plates will be issued.

803.420 Registration fees. This section establishes registration fees for vehicles. If there is uncertainty as to the classification of a vehicle for purposes of the payment of registration fees under the vehicle code, the Department of Transportation may classify the vehicle to assure that registration fees for the vehicle are the same as for vehicles the department determines to be comparable. The registration fees for the vehicle shall be those based on the classification determined by the department. Except as otherwise provided in this section, or unless the vehicle is registered quarterly, the fees described in this section are for an entire registration period for the vehicle as described under ORS 803.415. The department shall apportion any fee under this section to reflect the number of quarters registered for a vehicle registered for a quarterly registration period under ORS 803.415. The fees are payable when a vehicle is registered and upon renewal of registration. Except as provided in ORS 801.041 (3) and 801.042 (7), the fee shall be increased by any amount established by the governing body of a county or by the governing body of a district, as defined in ORS 801.237 under ORS 801.041 or 801.042 as an additional registration fee for the vehicle. The fees for registration of vehicles are as follows:

(1) Vehicles not otherwise provided for in this section or ORS 820.580 or 821.320, $27 for each year of the registration period.

(2) Mopeds, $15 for each year of the registration period.

(3) Motorcycles, $15 for each year of the registration period.

(4) Government-owned vehicles registered under ORS 805.040, $3.50.

(5) State-owned vehicles registered under ORS 805.045, $3.50 on registration or renewal.

(6) Undercover vehicles registered under ORS 805.060, $3.50 on registration or renewal.

(7) Antique vehicles registered under ORS 805.010, $54.

(8) Vehicles of special interest registered under ORS 805.020, $81.

(9) Electric vehicles and hybrid vehicles that use electricity and another source of motive power, as follows:

(a) The registration fee for an electric or hybrid vehicle not otherwise described in this subsection is $27 for each year of the registration period.

(b) The registration fee for electric or hybrid vehicles that have two or three wheels is $27. This paragraph does not apply to electric or hybrid mopeds. Electric or hybrid mopeds are subject to the same registration fee as otherwise provided for mopeds under this section.

(c) The registration fees for the following electric or hybrid vehicles are the same as for comparable nonelectric vehicles described in this section plus 50 percent of such fee:

(A) Motor homes.

(B) Commercial buses.

(C) Vehicles registered as farm vehicles under ORS 805.300.

(D) Vehicles required to establish registration weight under ORS 803.430 or 826.013.

(10) Motor vehicles required to establish a registration weight under ORS 803.430 or 826.013, and commercial buses as provided in the following chart, based upon the weight submitted in the declaration of weight prepared under ORS 803.435 or 826.015:

Weight in Pounds			Fee
8,000	or	less	$ 27
8,001	to	10,000	169
10,001	to	12,000	192
12,001	to	14,000	215
14,001	to	16,000	238

16,001	to	18,000	261
18,001	to	20,000	291
20,001	to	22,000	314
22,001	to	24,000	345
24,001	to	26,000	375
26,001	to	28,000	184
28,001	to	30,000	192
30,001	to	32,000	207
32,001	to	34,000	215
34,001	to	36,000	230
36,001	to	38,000	238
38,001	to	40,000	253
40,001	to	42,000	261
42,001	to	44,000	276
44,001	to	46,000	284
46,001	to	48,000	291
48,001	to	50,000	307
50,001	to	52,000	322
52,001	to	54,000	330
54,001	to	56,000	337
56,001	to	58,000	352
58,001	to	60,000	368
60,001	to	62,000	383
62,001	to	64,000	398
64,001	to	66,000	406
66,001	to	68,000	421
68,001	to	70,000	429
70,001	to	72,000	444
72,001	to	74,000	452
74,001	to	76,000	467
76,001	to	78,000	475
78,001	to	80,000	490
80,001	to	82,000	498
82,001	to	84,000	513
84,001	to	86,000	521
86,001	to	88,000	536
88,001	to	90,000	544
90,001	to	92,000	559
92,001	to	94,000	567
94,001	to	96,000	582
96,001	to	98,000	590
98,001	to	100,000	598
100,001	to	102,000	613
102,001	to	104,000	621
104,001	to	105,500	636

(11)(a) Motor vehicles with a registration weight of more than 8,000 pounds that are described in ORS 825.015, that are operated by a charitable organization as defined in ORS 825.017 (14), that are certified under ORS 822.205 or that are used exclusively to transport manufactured structures, as provided in the following chart:

Weight in Pounds			Fee
8,001	to	10,000	$ 50
10,001	to	12,000	60
12,001	to	14,000	65
14,001	to	16,000	75
16,001	to	18,000	80
18,001	to	20,000	90
20,001	to	22,000	95
22,001	to	24,000	105
24,001	to	26,000	110
26,001	to	28,000	120
28,001	to	30,000	125
30,001	to	32,000	135
32,001	to	34,000	140
34,001	to	36,000	150
36,001	to	38,000	155
38,001	to	40,000	165
40,001	to	42,000	170
42,001	to	44,000	180
44,001	to	46,000	185
46,001	to	48,000	190
48,001	to	50,000	200
50,001	to	52,000	210
52,001	to	54,000	215
54,001	to	56,000	220
56,001	to	58,000	230
58,001	to	60,000	240
60,001	to	62,000	250
62,001	to	64,000	260
64,001	to	66,000	265
66,001	to	68,000	275
68,001	to	70,000	280
70,001	to	72,000	290
72,001	to	74,000	295
74,001	to	76,000	305
76,001	to	78,000	310
78,001	to	80,000	320
80,001	to	82,000	325
82,001	to	84,000	335
84,001	to	86,000	340
86,001	to	88,000	350
88,001	to	90,000	355
90,001	to	92,000	365
92,001	to	94,000	370
94,001	to	96,000	380
96,001	to	98,000	385
98,001	to	100,000	390
100,001	to	102,000	400
102,001	to	104,000	405
104,001	to	105,500	415

(b) The owner of a vehicle described in paragraph (a) of this subsection must certify at the time of initial registration, in a manner determined by the department by rule, that the motor vehicle will be used exclusively to transport manufactured structures or exclusively as described in ORS 822.210, 825.015 or 825.017 (14). Registration of a vehicle described in paragraph (a) of this subsection is invalid if the vehicle is operated in any manner other than that described in the certification under this paragraph.

(12) Trailers registered under permanent registration, $10.

(13) Fixed load vehicles as follows:

(a) If a declaration of weight described under ORS 803.435 is submitted establishing the weight of the vehicle at 3,000 pounds or less, $54.

(b) If no declaration of weight is submitted or if the weight of the vehicle is in excess of 3,000 pounds, $75.

(14) Trailers for hire that are equipped with pneumatic tires made of an elastic material and that are not travel trailers, manu-

factured structures or trailers registered under permanent registration, $27.

(15) Trailers registered as part of a fleet under an agreement reached pursuant to ORS 802.500, the same as the fee for vehicles of the same type registered under other provisions of the Oregon Vehicle Code.

(16) Travel trailers, campers and motor homes as follows, based on length as determined under ORS 803.425:

(a) For travel trailers or campers that are 6 to 10 feet in length, $81.

(b) For travel trailers or campers over 10 feet in length, $81 plus $6.75 a foot for each foot of length over the first 10 feet.

(c) For motor homes that are 6 to 10 feet in length, $126.

(d) For motor homes over 10 feet in length, $126 plus $7.50 a foot for each foot of length over the first 10 feet.

(17) Special use trailers as follows, based on length as determined under ORS 803.425:

(a) For lengths 6 to 10 feet, $54.

(b) For special use trailers over 10 feet in length, $54 plus $3 a foot for each foot of length over the first 10 feet.

(18) Fees for vehicles with proportional registration under ORS 826.009, or proportioned fleet registration under ORS 826.011, are as provided for vehicles of the same type under this section except that the fees shall be fixed on an apportioned basis as provided under the agreement established under ORS 826.007.

(19) For any vehicle that is registered under a quarterly registration period, a minimum of $15 for each quarter registered plus an additional fee of $1.

(20) In addition to any other fees charged for registration of vehicles in fleets under ORS 805.120, the department may charge the following fees:

(a) A $2 service charge for each vehicle entered into a fleet.

(b) A $1 service charge for each vehicle in the fleet at the time of renewal.

(21) The registration fee for vehicles with special registration for disabled veterans under ORS 805.100 is a fee of $15.

(22) The registration fee for manufactured structures is as provided in ORS 820.580.

(23) Subject to subsection (19) of this section, the registration fee for motor vehicles registered as farm vehicles under ORS 805.300 is as follows based upon the registration weight given in the declaration of weight submitted under ORS 803.435:

Weight in Pounds			Fee
8,000	or	less	$ 27
8,001	to	10,000	30
10,001	to	12,000	35
12,001	to	14,000	45
14,001	to	16,000	50
16,001	to	18,000	60
18,001	to	20,000	65
20,001	to	22,000	75
22,001	to	24,000	80
24,001	to	26,000	90
26,001	to	28,000	95
28,001	to	30,000	105
30,001	to	32,000	110
32,001	to	34,000	120
34,001	to	36,000	125
36,001	to	38,000	135
38,001	to	40,000	140
40,001	to	42,000	150
42,001	to	44,000	155
44,001	to	46,000	165
46,001	to	48,000	170
48,001	to	50,000	180
50,001	to	52,000	185
52,001	to	54,000	190
54,001	to	56,000	200
56,001	to	58,000	210
58,001	to	60,000	215
60,001	to	62,000	220
62,001	to	64,000	230
64,001	to	66,000	240
66,001	to	68,000	245
68,001	to	70,000	250
70,001	to	72,000	260
72,001	to	74,000	265
74,001	to	76,000	275
76,001	to	78,000	280
78,001	to	80,000	290
80,001	to	82,000	295
82,001	to	84,000	305
84,001	to	86,000	310
86,001	to	88,000	320
88,001	to	90,000	325
90,001	to	92,000	335
92,001	to	94,000	340
94,001	to	96,000	350
96,001	to	98,000	355
98,001	to	100,000	365
100,001	to	102,000	370
102,001	to	104,000	380
104,001	to	105,500	385

(24) The registration fee for school vehicles registered under ORS 805.050 is $7.50.

(25) The registration fee for a low-speed vehicle is $54. [1983 c.338 §226; 1985 c.16 §85; 1985 c.177 §2; 1985 c.189 §2; 1985 c.245 §2; 1985 c.253 §4; 1985 c.401 §6; 1985 c.547 §13; 1987 c.6 §2; 1987 c.25 §3; 1987 c.440 §3; 1987 c.750 §7; 1989 c.43 §23; 1989 c.723 §§8,8a; 1989 c.864 §7; 1989 c.865 §§7,7a,7b,7c,7d,7e,7f; 1989 c.992 §§11,11a,11b,11c; 1991 c.284 §17; 1991 c.497 §13; 1991 c.880 §10; 1993 c.174 §7; 1993 c.662 §3; 1993 c.751 §23a; 1995 c.447 §3; 2001 c.124 §3; 2001 c.293 §6; 2003 c.589 §7; 2003 c.618 §2]

Note: The amendments to 803.420 by section 112, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003.

The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

803.420. This section establishes registration fees for vehicles. If there is uncertainty as to the classification of a vehicle for purposes of the payment of registration fees under the vehicle code, the Department of Transportation may classify the vehicle to assure that registration fees for the vehicle are the same as for vehicles the department determines to be comparable. The registration fees for the vehicle shall be those based on the classification determined by the department. Except as otherwise provided in this section, or unless the vehicle is registered quarterly, the fees described in this section are for an entire registration period for the vehicle as described under ORS 803.415. The department shall apportion any fee under this section to reflect the number of quarters registered for a vehicle registered for a quarterly registration period under ORS 803.415. The fees are payable when a vehicle is registered and upon renewal of registration. Except as provided in ORS 801.041 (3) and 801.042 (7), the fee shall be increased by any amount established by the governing body of a county or by the governing body of a district, as defined in ORS 801.237 under ORS 801.041 or 801.042 as an additional registration fee for the vehicle. The fees for registration of vehicles are as follows:

(1) Vehicles not otherwise provided for in this section or ORS 821.320, $27 for each year of the registration period.

(2) Mopeds, $15 for each year of the registration period.

(3) Motorcycles, $15 for each year of the registration period.

(4) Government-owned vehicles registered under ORS 805.040, $3.50.

(5) State-owned vehicles registered under ORS 805.045, $3.50 on registration or renewal.

(6) Undercover vehicles registered under ORS 805.060, $3.50 on registration or renewal.

(7) Antique vehicles registered under ORS 805.010, $54.

(8) Vehicles of special interest registered under ORS 805.020, $81.

(9) Electric vehicles and hybrid vehicles that use electricity and another source of motive power, as follows:

(a) The registration fee for an electric or hybrid vehicle not otherwise described in this subsection is $27 for each year of the registration period.

(b) The registration fee for electric or hybrid vehicles that have two or three wheels is $27. This paragraph does not apply to electric or hybrid mopeds. Electric or hybrid mopeds are subject to the same registration fee as otherwise provided for mopeds under this section.

(c) The registration fees for the following electric or hybrid vehicles are the same as for comparable nonelectric vehicles described in this section plus 50 percent of such fee:

(A) Motor homes.

(B) Commercial buses.

(C) Vehicles registered as farm vehicles under ORS 805.300.

(D) Vehicles required to establish registration weight under ORS 803.430 or 826.013.

(10) Motor vehicles required to establish a registration weight under ORS 803.430 or 826.013, and commercial buses as provided in the following chart, based upon the weight submitted in the declaration of weight prepared under ORS 803.435 or 826.015:

Weight in Pounds			Fee
8,000	or	less	$ 27
8,001	to	10,000	169
10,001	to	12,000	192
12,001	to	14,000	215
14,001	to	16,000	238
16,001	to	18,000	261
18,001	to	20,000	291
20,001	to	22,000	314
22,001	to	24,000	345
24,001	to	26,000	375
26,001	to	28,000	184
28,001	to	30,000	192
30,001	to	32,000	207
32,001	to	34,000	215
34,001	to	36,000	230
36,001	to	38,000	238
38,001	to	40,000	253
40,001	to	42,000	261
42,001	to	44,000	276
44,001	to	46,000	284
46,001	to	48,000	291
48,001	to	50,000	307
50,001	to	52,000	322
52,001	to	54,000	330
54,001	to	56,000	337
56,001	to	58,000	352
58,001	to	60,000	368
60,001	to	62,000	383
62,001	to	64,000	398
64,001	to	66,000	406
66,001	to	68,000	421
68,001	to	70,000	429
70,001	to	72,000	444
72,001	to	74,000	452
74,001	to	76,000	467
76,001	to	78,000	475
78,001	to	80,000	490
80,001	to	82,000	498
82,001	to	84,000	513
84,001	to	86,000	521
86,001	to	88,000	536
88,001	to	90,000	544
90,001	to	92,000	559
92,001	to	94,000	567
94,001	to	96,000	582
96,001	to	98,000	590
98,001	to	100,000	598
100,001	to	102,000	613
102,001	to	104,000	621
104,001	to	105,500	636

(11)(a) Motor vehicles with a registration weight of more than 8,000 pounds that are described in ORS 825.015, that are operated by a charitable organization as defined in ORS 825.017 (14), that are certified under ORS 822.205 or that are used exclusively to transport manufactured structures, as provided in the following chart:

Weight in Pounds			Fee
8,001	to	10,000	$ 50
10,001	to	12,000	60
12,001	to	14,000	65
14,001	to	16,000	75
16,001	to	18,000	80
18,001	to	20,000	90
20,001	to	22,000	95
22,001	to	24,000	105
24,001	to	26,000	110
26,001	to	28,000	120
28,001	to	30,000	125
30,001	to	32,000	135

32,001	to	34,000	140
34,001	to	36,000	150
36,001	to	38,000	155
38,001	to	40,000	165
40,001	to	42,000	170
42,001	to	44,000	180
44,001	to	46,000	185
46,001	to	48,000	190
48,001	to	50,000	200
50,001	to	52,000	210
52,001	to	54,000	215
54,001	to	56,000	220
56,001	to	58,000	230
58,001	to	60,000	240
60,001	to	62,000	250
62,001	to	64,000	260
64,001	to	66,000	265
66,001	to	68,000	275
68,001	to	70,000	280
70,001	to	72,000	290
72,001	to	74,000	295
74,001	to	76,000	305
76,001	to	78,000	310
78,001	to	80,000	320
80,001	to	82,000	325
82,001	to	84,000	335
84,001	to	86,000	340
86,001	to	88,000	350
88,001	to	90,000	355
90,001	to	92,000	365
92,001	to	94,000	370
94,001	to	96,000	380
96,001	to	98,000	385
98,001	to	100,000	390
100,001	to	102,000	400
102,001	to	104,000	405
104,001	to	105,500	415

(b) The owner of a vehicle described in paragraph (a) of this subsection must certify at the time of initial registration, in a manner determined by the department by rule, that the motor vehicle will be used exclusively to transport manufactured structures or exclusively as described in ORS 822.210, 825.015 or 825.017 (14). Registration of a vehicle described in paragraph (a) of this subsection is invalid if the vehicle is operated in any manner other than that described in the certification under this paragraph.

(12) Trailers registered under permanent registration, $10.

(13) Fixed load vehicles as follows:

(a) If a declaration of weight described under ORS 803.435 is submitted establishing the weight of the vehicle at 3,000 pounds or less, $54.

(b) If no declaration of weight is submitted or if the weight of the vehicle is in excess of 3,000 pounds, $75.

(14) Trailers for hire that are equipped with pneumatic tires made of an elastic material and that are not travel trailers or trailers registered under permanent registration, $27.

(15) Trailers registered as part of a fleet under an agreement reached pursuant to ORS 802.500, the same as the fee for vehicles of the same type registered under other provisions of the Oregon Vehicle Code.

(16) Travel trailers, campers and motor homes as follows, based on length as determined under ORS 803.425:

(a) For travel trailers or campers that are 6 to 10 feet in length, $81.

(b) For travel trailers or campers over 10 feet in length, $81 plus $6.75 a foot for each foot of length over the first 10 feet.

(c) For motor homes that are 6 to 10 feet in length, $126.

(d) For motor homes over 10 feet in length, $126 plus $7.50 a foot for each foot of length over the first 10 feet.

(17) Special use trailers as follows, based on length as determined under ORS 803.425:

(a) For lengths 6 to 10 feet, $54.

(b) For special use trailers over 10 feet in length, $54 plus $3 a foot for each foot of length over the first 10 feet.

(18) Fees for vehicles with proportional registration under ORS 826.009, or proportioned fleet registration under ORS 826.011, are as provided for vehicles of the same type under this section except that the fees shall be fixed on an apportioned basis as provided under the agreement established under ORS 826.007.

(19) For any vehicle that is registered under a quarterly registration period, a minimum of $15 for each quarter registered plus an additional fee of $1.

(20) In addition to any other fees charged for registration of vehicles in fleets under ORS 805.120, the department may charge the following fees:

(a) A $2 service charge for each vehicle entered into a fleet.

(b) A $1 service charge for each vehicle in the fleet at the time of renewal.

(21) The registration fee for vehicles with special registration for disabled veterans under ORS 805.100 is a fee of $15.

(22) Subject to subsection (19) of this section, the registration fee for motor vehicles registered as farm vehicles under ORS 805.300 is as follows based upon the registration weight given in the declaration of weight submitted under ORS 803.435:

Weight in Pounds			Fee
8,000	or	less	$ 27
8,001	to	10,000	30
10,001	to	12,000	35
12,001	to	14,000	45
14,001	to	16,000	50
16,001	to	18,000	60
18,001	to	20,000	65
20,001	to	22,000	75
22,001	to	24,000	80
24,001	to	26,000	90
26,001	to	28,000	95
28,001	to	30,000	105
30,001	to	32,000	110
32,001	to	34,000	120
34,001	to	36,000	125
36,001	to	38,000	135
38,001	to	40,000	140
40,001	to	42,000	150
42,001	to	44,000	155
44,001	to	46,000	165
46,001	to	48,000	170
48,001	to	50,000	180
50,001	to	52,000	185
52,001	to	54,000	190
54,001	to	56,000	200
56,001	to	58,000	210
58,001	to	60,000	215
60,001	to	62,000	220
62,001	to	64,000	230
64,001	to	66,000	240
66,001	to	68,000	245
68,001	to	70,000	250
70,001	to	72,000	260
72,001	to	74,000	265
74,001	to	76,000	275
76,001	to	78,000	280

78,001	to	80,000	290
80,001	to	82,000	295
82,001	to	84,000	305
84,001	to	86,000	310
86,001	to	88,000	320
88,001	to	90,000	325
90,001	to	92,000	335
92,001	to	94,000	340
94,001	to	96,000	350
96,001	to	98,000	355
98,001	to	100,000	365
100,001	to	102,000	370
102,001	to	104,000	380
104,001	to	105,500	385

(23) The registration fee for school vehicles registered under ORS 805.050 is $7.50.

(24) The registration fee for a low-speed vehicle is $54.

803.425 Vehicle length for fee determination. The following are the measurement points of the described vehicles for the purposes of determining registration fees under ORS 803.420:

(1) Special use trailers and travel trailers are measured from the foremost point of the trailer hitch to the rear extremity of the trailer body not including the spare tire, but including all ordinary equipment or appliances appropriate to the type of body such as stakes, curtains, hooks, skids, tailboard, chains, sides and roof.

(2) Campers are measured by overall length from the extreme front to the extreme rear.

(3) Motor homes are measured by overall length from front to rear extremities.

(4) Tent trailers are measured by overall length when folded for travel. [1983 c.338 §229; 1985 c.16 §86]

803.430 Registration weight for fee determination; methods of establishing; requirement. (1) Registration weight is established for the following purposes:

(a) The registration weight is the weight used in the declaration of weight under ORS 803.435 to determine the registration fees under ORS 803.420 for vehicles required to establish registration weight under this section.

(b) A vehicle that is required to establish registration weight by this section is in violation of ORS 803.315 if the vehicle is operated on a highway of this state at a weight in excess of the registration weight except when carrying a load:

(A) Under the provisions of ORS 376.305 to 376.390;

(B) Of over 105,500 pounds combined weight under a variance permit issued under ORS 818.200;

(C) Under a registration weight trip permit issued under ORS 803.600; or

(D) Consisting of towed motor vehicles required to be registered under the vehicle code.

(2) Registration weight is established at the time of registration and whenever the vehicle has been altered or reconstructed by furnishing a declaration of weight described under ORS 803.435 that contains a declaration of the maximum combined weight at which the vehicle will be operated on the highways of this state except when carrying loads described under subsection (1)(b) of this section. The maximum registration weight for any vehicle required to establish a registration weight under this section is 105,500 pounds. Vehicles operating at weights above 105,500 pounds will operate under a variance permit issued under ORS 818.200.

(3) Except as provided in subsection (4) of this section, the following vehicles are required to establish a registration weight under this section:

(a) Any motor truck that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle described in subsection (5) of this section.

(b) Any truck tractor that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle described in subsection (5) of this section.

(c) An armored car, wrecker, tow vehicle, hearse or ambulance.

(d) Any other motor vehicle that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle as described in subsection (5) of this section.

(e) A self-propelled mobile crane.

(f) Any motor vehicle registered as a farm vehicle under ORS 805.300.

(4) A vehicle that is being registered under a specific provision of the vehicle code where fees are not based on weight or where registration weight is specifically not required is not required to establish registration weight under this section.

(5) The weight of a camper or the following trailing vehicles shall not be included in the registration weight:

(a) Trailers with a loaded weight of 8,000 pounds or less.

(b) Special use trailers, travel trailers, manufactured structures and fixed load vehicles.

(c) Towed motor vehicles. [1983 c.338 §230; 1985 c.16 §87; 1985 c.71 §3; 1985 c.172 §6; 1989 c.723 §9; 1991 c.284 §18; 1993 c.751 §24]

Note: The amendments to 803.430 by section 113, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

803.430. (1) Registration weight is established for the following purposes:

(a) The registration weight is the weight used in the declaration of weight under ORS 803.435 to determine the registration fees under ORS 803.420 for vehicles required to establish registration weight under this section.

(b) A vehicle that is required to establish registration weight by this section is in violation of ORS 803.315 if the vehicle is operated on a highway of this state at a weight in excess of the registration weight except when carrying a load:

(A) Under the provisions of ORS 376.305 to 376.390;

(B) Of over 105,500 pounds combined weight under a variance permit issued under ORS 818.200;

(C) Under a registration weight trip permit issued under ORS 803.600; or

(D) Consisting of towed motor vehicles required to be registered under the vehicle code.

(2) Registration weight is established at the time of registration and whenever the vehicle has been altered or reconstructed by furnishing a declaration of weight described under ORS 803.435 that contains a declaration of the maximum combined weight at which the vehicle will be operated on the highways of this state except when carrying loads described under subsection (1)(b) of this section. The maximum registration weight for any vehicle required to establish a registration weight under this section is 105,500 pounds. Vehicles operating at weights above 105,500 pounds will operate under a variance permit issued under ORS 818.200.

(3) Except as provided in subsection (4) of this section, the following vehicles are required to establish a registration weight under this section:

(a) Any motor truck that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle described in subsection (5) of this section, or any trailing manufactured structure.

(b) Any truck tractor that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle described in subsection (5) of this section, or any trailing manufactured structure.

(c) An armored car, wrecker, tow vehicle, hearse or ambulance.

(d) Any other motor vehicle that will be operated on the highways at a combined weight of more than 8,000 pounds not including the weight of any camper or trailing vehicle as described in subsection (5) of this section, or any trailing manufactured structure.

(e) A self-propelled mobile crane.

(f) Any motor vehicle registered as a farm vehicle under ORS 805.300.

(4) A vehicle that is being registered under a specific provision of the vehicle code where fees are not based on weight or where registration weight is specifically not required is not required to establish registration weight under this section.

(5) The weight of a camper or the following trailing vehicles may not be included in the registration weight:

(a) Trailers with a loaded weight of 8,000 pounds or less.

(b) Special use trailers, travel trailers and fixed load vehicles.

(c) Towed motor vehicles.

(6) The weight of a trailing manufactured structure may not be included in the registration weight.

803.435 Declaration of weight for fee determination; contents. A declaration of weight required for purposes of complying with ORS 803.440 and for purposes of determining vehicle registration fees under ORS 803.420 shall contain the following:

(1) For vehicles required to establish a registration weight under ORS 803.430, the declaration shall contain the registration weight.

(2) For buses, the declaration shall contain the unloaded weight of the vehicle plus the unloaded weight of any bus trailer to be used in combination with the vehicle. The declaration shall also indicate the number of persons, including the driver, to be carried in the vehicle, plus the number of persons to be carried on any bus trailer to be used in combination with the vehicle. For purposes of determining the fee for registration of the vehicle under ORS 803.420, the Department of Transportation shall determine the weight of the vehicle by adding the unloaded weight of the vehicle, plus the unloaded weight of any bus trailer to be used in combination with the vehicle, to a weight determined by multiplying the maximum seating capacity of the vehicle plus the maximum seating capacity of any bus trailer to be used in combination with the vehicle, including the driver's seat but excluding emergency seats, times 170 pounds, if the vehicle has a separate compartment for transporting baggage or express, or 150 pounds, if the vehicle has no separate compartment for transporting baggage or express. If the vehicle has a seating capacity that is not arranged for separate or individual seating, 18 lineal inches shall be deemed the equivalent of a passenger seat.

(3) For fixed load vehicles, the declaration shall contain the weight of the vehicle including the cab, chassis, frame and all appurtenances necessary for making the vehicle self-propelled including front bumpers, fenders, windshield, tire carrier and spare wheel, and including the fixed or permanent load of the vehicle but excluding the spare tire.

(4) For all vehicles not otherwise provided for by this section and for which a declaration is prepared or required, the declaration shall contain the registration weight of the vehicle. [1983 c.338 §231; 1985 c.16 §88; 1985 c.189 §3; 1989 c.723 §10; 1989 c.992 §12c; 1993 c.18 §168; 1993 c.751 §25]

803.440 Failure to submit declaration of weight; penalty. (1) A person commits the offense of failure to submit a declaration of weight if the person does not submit a declaration of weight for a vehicle described

in this subsection when the person applies for registration of the vehicle or has the vehicle registered in the person's name and the vehicle has been altered or reconstructed. This section applies to the following vehicles:

(a) Any vehicle required to establish registration weight under ORS 803.430.

(b) Any commercial bus.

(c) Any vehicle registered as a farm vehicle under ORS 805.300.

(d) Any vehicle registered under the proportional registration provisions of ORS 826.009 or 826.011.

(2) The offense described in this section, failure to submit a declaration of weight, is a Class D traffic violation. [1983 c.338 §232; 1989 c.43 §24; 1989 c.723 §11; 1993 c.751 §26]

803.445 Authority of counties and districts to impose registration fees; maximum amount. (1) The governing body of a county may impose registration fees for vehicles as provided in ORS 801.041.

(2) The governing body of a district may impose registration fees for vehicles as provided in ORS 801.042.

(3) The Department of Transportation shall provide by rule for the administration of laws authorizing county and district registration fees and for the collection of those fees.

(4) Any registration fee imposed under this section shall be imposed in a manner consistent with ORS 803.420.

(5) No county or district may impose a vehicle registration fee that would by itself, or in combination with any other vehicle registration fee imposed under this section, exceed the amount of the fee imposed under ORS 803.420 (1). The owner of any vehicle subject to multiple fees under this section shall be allowed a credit or credits with respect to one or more of such fees so that the total of such fees does not exceed the amount of the fee imposed under ORS 803.420 (1). [1989 c.864 §2]

Chapter 818
(Partial)

2003 EDITION

Road Use Assessment Fee

818.225 **Road use assessment fee for single-trip nondivisible load permittee; definition of "equivalent single-axle load"**

818.225 Road use assessment fee for single-trip nondivisible load permittee; definition of "equivalent single-axle load." (1)(a) In addition to any fee for a single-trip nondivisible load permit, a person who is issued the permit or who operates a vehicle in a manner that requires the permit is liable for payment of a road use assessment fee of five and seven-tenths cents per equivalent single-axle load mile traveled. As used in this subsection, "equivalent single-axle load" means the relationship between actual or requested weight and an 18,000 pound single-axle load as determined by the American Association of State Highway and Transportation Officials Road Tests reported at the Proceedings Conference of 1962. The Department of Transportation may adopt rules to standardize the determination of equivalent single-axle load computation based on average highway conditions.

(b) If the road use assessment fee is not collected at the time of issuance of the permit, the department shall bill the permittee for the amount due. The account shall be considered delinquent if not paid within 60 days of billing.

(c) The miles of travel authorized by a single-trip nondivisible load permit shall be exempt from taxation under ORS chapter 825.

(2) The department by rule may establish procedures for payment, collection and enforcement of the fees and assessments established by this chapter. [1989 c.992 §15; 1991 c.497 §12; 1995 c.447 §4; 1995 c.733 §91; 2003 c.618 §3]

Chapter 824

2003 EDITION

Railroads

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FUNDS, ACCOUNTS AND FEES

824.010 Annual fees payable by railroads; audit. (1) Subject to the provisions of subsections (3) and (4) of this section, each railroad shall pay to the Department of Transportation in each year, such fee as the department finds and determines to be necessary, with the amount of all other fees paid or payable to the department by such railroads in the current calendar year, to defray the costs of performing the duties imposed by law upon the department in respect to such railroads and to pay such amounts as may be necessary to obtain matching funds to implement the program referred to in ORS 824.058.

(2) In each calendar year the percentage rate of the fee required to be paid shall be determined by orders entered by the department on or after March 1 of each year, and notice thereof shall be given to each railroad. Such railroad shall pay to the department the fee or portion thereof so computed upon the date specified in such notice, which date shall be at least 15 days after the date of mailing such notice.

(3) Fifty percent of the cost of carrying out the duties, functions and powers imposed upon the department by ORS 824.200 to 824.256 shall be paid from the Grade Crossing Protection Account.

(4) The department shall determine the gross operating revenues derived within this state in the preceding calendar year by Class I railroads as a whole and by other railroads individually subject to the following limitations:

(a) The total of the fees payable by Class I railroads shall not exceed thirty-five hundredths of one percent of the combined gross operating revenues of Class I railroads derived within this state. The fee paid by each Class I railroad shall bear the same proportion to the total fees paid by Class I railroads as such railroad's share of railroad-highway crossings, track miles and gross operating revenues derived within the state, weighted equally, bears to the total amount of Class I railroad-highway crossings within the state, track miles within the state and gross operating revenues derived within the state.

(b) The fees payable by other railroads shall not exceed thirty-five hundredths of one percent of any such railroad's gross operating revenues.

(5) Payment of each fee or portion thereof provided for in subsections (1) to (4) of this section shall be accompanied by a statement verified by the railroad involved showing its gross operating revenues upon which such fee or portion thereof is computed. This statement shall be in such form and detail as the Department of Transportation shall prescribe and shall be subject to audit by the department. The department may refund any overpayment of any such fee in the same manner as other claims and expenses of the department are payable as provided by law. [1995 c.733 §§29,30]

824.012 Failure to pay fees; penalty. Every person who fails to pay any fees provided for in ORS 824.010 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid. If, in the judgment of the Department of Transportation, action is necessary to collect any unpaid fees or penalties, the department shall bring such action or take such proceedings as may be necessary thereon in the name of the State of Oregon in any court of competent jurisdiction, and be entitled to recover all costs and disbursements incurred therein. [1995 c.733 §31]

824.014 Railroad Fund; sources; use. (1) The Railroad Fund is established separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the Railroad Fund.

(2) All fees, fines, penalties and other moneys collected by the Department of Transportation under ORS 824.010 and 824.012 shall be paid by the department into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Railroad Fund created by subsection (1) of this section. The fees, fines, penalties and other moneys collected from railroads shall be used only for the purpose of paying the expenses of the department in performing the duties imposed by law upon the department in respect to railroads. [1995 c.733 §§31a,32]

824.016 State Rail Rehabilitation Fund; use; report. (1) The State Rail Rehabilitation Fund is established as an account in the General Fund of the State Treasury. All moneys in the account are appropriated continuously to the Department of Transportation for expenditures for any or all of the following:

(a) Acquisition of a railroad line.

(b) Rehabilitation or improvement of rail properties.

(c) Planning for rail services.

(d) Any other methods of reducing the costs of lost rail service in this state.

(2) The program developed by the Department of Transportation under this section to provide funds for rail projects shall include:

(a) Development of a formula for determining a minimum cost to benefit ratio necessary for project funding;

(b) Supervision and monitoring of railroad acquisitions and the awarding of rehabilitation contracts;

(c) Continuing inspection of all railroad rehabilitation projects; and

(d) Auditing financial records of all railroad acquisition and rehabilitation projects.

(3) The Department of Transportation shall provide funds for railroad projects under this section only with the approval of the Oregon Transportation Commission.

(4) The Department of Transportation shall prepare an annual report relating to its activities under this section. Copies of each report shall be submitted to the Legislative Assembly. [Formerly 760.620]

824.018 Grade Crossing Protection Account; use; limits. (1) There is established in the State Highway Fund an account to be known as the Grade Crossing Protection Account. There shall be credited to the account each fiscal year, from funds received by the State Highway Fund from the registration of vehicles and licensing of drivers under the Oregon Vehicle Code, the sum of $300,000 plus an amount equal to 50 percent of the cost of carrying out the duties, functions and powers imposed upon the Department of Transportation by ORS 824.200 to 824.256. State-shared highway fund revenues for cities and counties, as well as Department of Transportation expenditures for the elimination of hazardous railroad-highway crossings, shall be computed and allocated prior to any appropriation or transfer to the account. The amount of $300,000 credited to the account is continuously appropriated and shall be expended for railroad-highway crossing safety as authorized by ORS 824.242 to 824.248 and subsection (2) of this section. The amount credited to the account for paying the cost of carrying out the duties, functions and powers of the department by ORS 824.200 to 824.256 is transferred and appropriated to the Department of Transportation and shall be used as provided in ORS 824.010 (3). No more than $100,000 in the aggregate shall be allocated from the account in any one fiscal year for costs of construction, reconstruction, alteration or relocation of separated crossings; provided however the unapportioned amount in the Grade Crossing Protection Account at the end of each fiscal year may be allocated for costs of reconstruction, alteration or relocation of separated crossings.

(2) Moneys credited to the account may also be allocated for such highway purposes as the Department of Transportation deems appropriate in order to enhance safety at railroad-highway crossings. The Department of Transportation may allocate no more than $100,000 annually to railroads to defray the costs of maintenance of protective devices at railroad-highway crossings.

(3) As used in this section, "highway," "maintenance costs," "protective device" and "railroad" have the meaning given those terms in ORS 824.200. [Formerly 763.330; 1997 c.249 §245]

824.019 Grade Crossing Safety Improvement Fund. (1) The Grade Crossing Safety Improvement Fund is established separate and distinct from the General Fund. Interest earned by the Grade Crossing Safety Improvement Fund shall be credited to the fund.

(2) Notwithstanding ORS 823.991, all civil penalties collected under ORS 824.222 and 824.223 shall be paid by the Department of Transportation into the State Treasury within 30 days after the collection thereof and shall be placed by the State Treasurer to the credit of the Grade Crossing Safety Improvement Fund. Moneys in the fund are continuously appropriated to the Department of Transportation for the purpose of grade crossing safety improvement projects. [2001 c.909 §4]

Note: 824.019 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Vehicle Code or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

GENERAL PROVISIONS

824.020 Definitions for ORS 824.020 to 824.042. As used in ORS 824.020 to 824.042, unless the context requires otherwise:

(1) "Class I railroad" has the meaning given that term in rules adopted by the Department of Transportation. The definition of "Class I railroad" in rules adopted by the Department of Transportation shall be consistent, insofar as practicable, with the definition of the term under federal law and regulations.

(2) "Railroad" means all corporations, municipal corporations, counties, companies, individuals, associations of individuals and their lessees, trustees or receivers, that:

(a) Own, operate by steam, electric or other motive power, manage or control all or part of any railroad or interurban railroad as a common or for hire carrier in this state, or cars or other equipment used thereon, or bridges, terminals or sidetracks used in connection therewith, whether owned or operated under a contract, agreement, lease or otherwise.

(b) Are engaged in the ownership, management or control of terminals in this state,

which corporations, municipal corporations, counties, companies, individuals and associations hereby are declared to be common and for hire carriers, or the transportation of property within this state by express. [Formerly 760.005]

824.022 Applicability of ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256. (1) ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256 apply to:

(a) The transportation of passengers and property.

(b) The receiving, delivering, switching, storing, elevation and transfer in transit, ventilation, refrigeration or icing, and handling of such property, and all charges connected therewith.

(c) All railroad, terminal, car, tank line, freight and freight line companies.

(d) All associations of persons, whether incorporated or otherwise, that do business as common or for hire carriers upon or over any line of railroad within this state.

(e) Any common or for hire carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water.

(2) ORS 824.020 to 824.042 do not apply to logging or other private railroads not doing business as common carriers.

(3) ORS 824.020 to 824.042 and 824.050 to 824.110 do not apply to corporations, companies, individuals, associations of individuals and their lessees, trustees or receivers that:

(a) Are primarily involved in a business enterprise other than rail transportation;

(b) Conduct rail operations 50 percent or more of which are for the purpose of providing transportation to the primary business enterprise;

(c) Operate on less than 10 miles of track; and

(d) Provide for hire rail transportation service to no more than five persons. [Formerly 760.010]

824.024 Procedure for construction of side lines and extensions. If any railway company owning or operating a railway within this state desires to construct any branch line or side line, or to build an extension of the main line, its board of directors shall adopt a resolution defining the branch, side line or extension, and designating the termini thereof, and shall cause a copy of such resolution, certified by its secretary, to be filed in the office of the Secretary of State, and in the office of each county clerk in or through whose county such branch or side line or extension is to be constructed. Thereupon such corporation has the right to build and construct such branch, side line or extension, and to exercise the right of eminent domain as provided by law, and the termini so designated in such resolution shall be a sufficient designation thereof for the purpose of exercising such right of eminent domain. [Formerly 760.060]

INSPECTORS; REPORTS

824.026 Railway inspectors required; powers and duties. (1) The Department of Transportation shall employ at least three full-time railroad inspectors to assist the department as the department may prescribe in:

(a) Inquiring into any neglect or violation of and enforcing any law of this state or any law or ordinance of any municipality thereof relating to railroad safety;

(b) Inquiring into any neglect or violation of and enforcing any rule, regulation, requirement, order, term or condition issued by the department relating to railroad safety; and

(c) Conducting any investigative, surveillance and enforcement activities that the department is authorized to conduct under federal law in connection with any federal law, rule, regulation, order or standard relating to railroad safety.

(2) A railroad inspector may stop and detain any train and the contents thereof that the railroad inspector reasonably believes is being operated in violation of any law, ordinance, rule, regulation, requirement, order, standard, term or condition referred to in subsection (1) of this section. [Formerly 760.070]

824.028 Qualifications of inspectors. A person employed by the Department of Transportation as a railroad inspector shall:

(1) Have passed an examination, which the department shall prescribe, concerning physical fitness, mental fitness, the rules of the department and the laws of this state relating to railroads; and

(2) Have at least five years of experience as a railroad train service, engine service, maintenance of way or mechanical department employee. College education with major work in engineering may be substituted for not more than two years of the required experience on the basis of two years of college being equivalent to one year of experience. [Formerly 760.075]

824.030 Annual report to department; penalty. (1) Every railroad shall annually, on or before May 1, unless additional time is granted, file with the Department of Transportation a report verified by a duly authorized officer, in such form and containing such information as the department shall

prescribe, covering the year ending December 31 next preceding.

(2) Any railroad failing to make such report shall forfeit to the state, for each day's default, a sum not to exceed $100, to be recovered in a civil action in the name of the State of Oregon. [Formerly 760.305]

ACQUISITION OR ABANDONMENT OF LINES

824.040 Government acquisition of lines; permitted actions. (1) The State of Oregon, a city, county, county service district, mass transit district organized under ORS 267.010 to 267.390, a transportation district organized under ORS 267.510 to 267.650 or a port may acquire, own, reconstruct, rehabilitate, operate or maintain a railroad line for the benefit and use of its inhabitants and for profit.

(2) In the exercise of the power granted under subsection (1) of this section, this state, a city, county, county service district, mass transit district, transportation district or port may:

(a) Acquire, by purchase or otherwise, own, reconstruct, rehabilitate or operate a railroad as described in subsection (1) of this section within and outside its boundaries and the boundaries of this state and running from the city, county, district or port to other points within and outside its boundaries and the boundaries of this state.

(b) Acquire rights of way, easements or real property within and outside its boundaries and the boundaries of this state when necessary or convenient for the acquisition and operation of the railroad line.

(c) Enter into contracts with any person for the reconstruction, rehabilitation, operation or maintenance of the railroad line by such person for the city, county, district or port.

(3) Nothing in this section shall be construed as expanding or diminishing the power of eminent domain conferred upon public bodies, designated in subsection (1) of this section, by ORS 368.116 or any other provision of law. [Formerly 760.610]

Note: 824.040 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

824.042 Department to participate in contested abandonment proceedings. The Department of Transportation shall participate before the appropriate federal agency in all contested railroad line abandonment proceedings involving the proposed abandonment of any railroad line in this state. Prior to such participation, the department shall consult with public entities and users of railroad service affected by the proposed abandonment. [Formerly 760.630]

SAFETY PROGRAM STANDARD

824.045 Department establishment of system safety program for rail fixed guideway system; fee; rules. (1) Except as provided in ORS 479.950, the Department of Transportation, by rule, shall establish a system safety program standard that applies to any municipal corporation that owns or operates a rail fixed guideway system that is not regulated by the Federal Railroad Administration. The Department of Transportation is designated as the state agency to monitor compliance with the standard, as required by federal law.

(2) As used in this section, "municipal corporation" means:

(a) A county;

(b) A city;

(c) A special district organized under ORS 198.705 to 198.845;

(d) A mass transit district organized under ORS 267.010 to 267.390;

(e) A transportation district organized under ORS 267.510 to 267.650;

(f) A metropolitan service district organized under ORS chapter 268;

(g) A port organized under ORS 777.005 to 777.725 or 777.915 to 777.953; or

(h) The Port of Portland created by ORS 778.010.

(3) The department shall set an annual fee for operators of rail fixed guideway systems to defray the costs of the safety program described in subsection (1) of this section and the costs associated with department responsibilities under ORS 267.230 (2). The department shall establish by rule the manner and timing of the collection of the fee. Fees collected by the department that are in excess of the combined actual cost of the safety program and the costs associated with department responsibilities under ORS 267.230 (2) shall be refunded to operators of rail fixed guideway systems within one year following the end of the fiscal year in which the department collected the excess fees. In lieu of a refund, an operator of a rail fixed guideway system may choose to have the excess fees credited against the subsequent year's fee payment. [1995 c.29 §3; 1997 c.275 §43; 2001 c.522 §11]

FACILITIES AND TRACKS

824.050 Inspection of, recommendations on and orders concerning railroad equipment and facilities. (1) Except as provided in subsection (2) of this section, the Department of Transportation shall examine and inspect the physical condition of all railroad facilities in the state, including roadbeds, stations and equipment. Whenever it appears from such inspection that the safety of the public or the employees of such railroad may be threatened, notice of the condition or practice under investigation shall be given to the railroad and any person responsible for the maintenance or use of the railroad facility. If such condition or practice is not corrected to the department's satisfaction, the department shall set the matter for hearing. Following such hearing the department shall order the railroad or person responsible for the maintenance or use of the railroad facility to make any repairs, alterations, or changes necessary to correct or eliminate any condition or practice found to threaten the safety of the public or the employees of the railroad. If in the opinion of the Department of Transportation a condition or practice is so hazardous as to place the employees of the railroad in immediate danger the department may issue, after hearing, upon 48 hours' written notice given the railroad, an order prohibiting the use of the facility until such time as necessary repair, alterations or changes are made.

(2) This section does not apply to a penalty imposed under ORS 824.090 or 824.992 (7) and (8). [Formerly 761.120; 1997 c.275 §12]

824.052 Track clearances. The Department of Transportation, upon own motion or upon application of any person, and with or without hearing:

(1) May enter an order prescribing standard track clearances for railroads.

(2) Upon finding good cause, may enter an order granting authority for a railroad to operate at particular points with clearances different from those prescribed as standard track clearances. [Formerly 761.180]

824.054 Cooperation with federal agencies on matters of safety; disclosure of reports if required by federal law. (1) The Department of Transportation may cooperate with, make certifications to, and enter agreements with the Secretary of Transportation of the United States, or any other federal agency with jurisdiction over railroads, under the Federal Railroad Safety Act of 1970, as amended through the effective date of that Act.

(2) The Department of Transportation may assume responsibility for and carry out on behalf of the Secretary of Transportation of the United States, or any other federal agency with jurisdiction over railroads, regulatory jurisdiction over the safety practices applicable to railroad facilities and operations in Oregon not otherwise subject to the jurisdiction of any other agency of this state.

(3) Notwithstanding any other provisions of law to the contrary, the Department of Transportation shall make public such reports as are required to be made public under the Federal Railroad Safety Act of 1970, as amended through the effective date of that Act and shall provide such information as is required thereunder to the Secretary of Transportation of the United States. [Formerly 761.190]

824.056 Walkway standards; rules; variances. (1) The Department of Transportation, upon the department's motion or upon application of any person, shall adopt rules that prescribe standards for walkways alongside railroad tracks where necessary for the safety of railroad employees.

(2) The department may for good cause shown permit variances from the standards so prescribed. [Formerly 761.200; 1997 c.275 §13]

824.058 Track improvement and rehabilitation program. The Department of Transportation may:

(1) Identify segments of railroad track in this state that:

(a) Are abandoned, threatened with abandonment or have physical characteristics that reduce freight service; and

(b) Have the potential for providing renewed, continued or improved rail service that would benefit the state or community beyond the cost involved.

(2) Develop and implement programs to encourage improvement of service over segments of railroad track identified under subsection (1) of this section.

(3) With the prior approval of the Oregon Transportation Commission, enter into agreements with the United States Government, a political subdivision in this state or any person to:

(a) Continue existing rail service on a segment of railroad track identified under subsection (1) of this section;

(b) Acquire a segment of railroad track identified under subsection (1) of this section to maintain existing or provide for future rail service;

(c) Rehabilitate or improve, to the extent necessary to permit more adequate and efficient rail service, railroad property on a segment of railroad track identified under subsection (1) of this section; or

(d) Provide funding for less expensive alternatives to rail service over a segment of railroad track identified under subsection (1) of this section.

(4) Do any act required of this state under rules adopted by the United States Secretary of Transportation under section 1654, title 49, United States Code, for allocation and distribution of funds to any state under section 1654, title 49, United States Code, for preserving or improving rail freight service in this state. [Formerly 761.205]

Note: 824.058 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

EQUIPMENT

824.060 First aid kits required on locomotives and caboose cars. Every locomotive and caboose of every railroad operating in this state shall be equipped with a first aid kit. [Formerly 761.315]

824.062 Equipment required on track motor cars. (1) Every person operating or controlling any railroad which is a common carrier shall equip each of its track motor cars operating during the period 30 minutes before sunset and 30 minutes after sunrise with:

(a) An electric headlight of sufficient candle power to enable the operator of the car to plainly discern any track obstruction, landmark, warning sign or grade crossing at a distance not less than 300 feet.

(b) A red rear electric light with sufficient candle power to be plainly visible at a distance not less than 300 feet.

(c) A windshield equipped with a device, which must be kept in good working order, with which the operator can clean rain, snow and other moisture from the windshield.

(d) A canopy or top adequate to protect the occupants of the car from sun, rain, snow or other inclement weather.

(2) As used in this section, "track motor car" means all power-propelled speeders and motor cars which can be lifted on and off the track by hand. [Formerly 761.320]

824.064 Self-propelled vehicles used in yards or terminals. (1) No railroad shall permit or require an employee to use a self-propelled vehicle in its yards or terminals for inspecting trains, equipment or facilities or transporting employees or materials for the repair of trains, equipment or facilities, unless the vehicle is designed, constructed and operated in accordance with the safety orders and regulations adopted under ORS 654.001 to 654.170 and 654.202 to 654.216.

(2) As used in subsection (1) of this section, "railroad" means a railroad as defined by ORS 824.020 and 824.022. [Formerly 761.325]

Note: 824.064 was added to and made a part of ORS chapters 823, 824, 825 and 826 by legislative action but was not added to ORS chapter 824 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

824.066 Helper unit operation restrictions. (1) Except for operation in its yards or terminals, no railroad shall permit or require a helper unit that is not attached to a train to be operated with a crew of fewer than two people.

(2) As used in this section, "helper unit" means a locomotive power unit placed near the middle of or at the rear of a train to help the train traverse steep grades.

(3) A violation of this section is a Class A violation. [Formerly 761.331; 1999 c.1051 §231]

824.068 Water quality and sanitation facility standards for locomotives and caboose cars. (1) The Department of Transportation shall prescribe standards for water quality and sanitation facilities on railroad locomotives and cabooses in this state.

(2) The department may for good cause shown permit variances from the standards so prescribed. [Formerly 761.365]

HAZARDOUS MATERIALS

824.080 "Hazardous materials" defined. As used in ORS 824.082 to 824.090 "hazardous materials" means those substances designated by the Department of Transportation pursuant to ORS 824.086 (1). [Formerly 761.370]

824.082 Notice of movement of hazardous materials; confidentiality of notice information. (1) Before transporting hazardous materials into this state or from a railroad terminal located within this state, a railroad shall, as soon as reasonably possible after it has notice of such train movement, provide such notification thereof as the Department of Transportation determines pursuant to ORS 824.086. If the information necessary for the notification is not available before beginning the train movement, or if hazardous materials are added to the train while en route, notification shall be given as soon as the information is available. For the purposes of this subsection, "train movement" does not include a switching or transfer movement.

(2) Except to the extent that the Department of Transportation determines is necessary to provide for the safe transportation of the hazardous materials, the department, an employee of the department and any person receiving information pursuant to this section shall not divulge or make known the

information contained in the notification at any time before or during the transportation of the hazardous materials for which the notification is provided. [Formerly 761.380]

824.084 Visual external inspections required on cars standing in rail yards or stations more than two hours. Each railcar containing hazardous materials for which an "Explosives A," "Flammable Gas" or "Poison Gas" placard is required by federal regulation, and which remains in a rail yard or station for more than two hours shall be visually inspected externally by the transporting railroad within two hours of the car's arrival and within two hours prior to the car's departure. [Formerly 761.395]

824.086 Designation of hazardous materials and notice requirements; rules. After consultation with the State Fire Marshal the Department of Transportation shall determine:

(1) What material and quantity thereof the transportation of which is hazardous to public health, safety or welfare and shall designate by rule such materials and quantities as hazardous materials. In defining hazardous materials the department shall adopt definitions in conformity with the federal rules and regulations. Rules adopted under this subsection shall be applicable to any person who transports, or causes to be transported, any hazardous material.

(2) What notification required by ORS 824.082 (1) is necessary to provide for the safe transportation of hazardous materials, including but not limited to the time, content and manner of notification. [Formerly 761.400]

824.088 Notifying Office of Emergency Management of reportable incident, derailments and fires; radio gear. (1) Each railroad that gives notice to the United States Department of Transportation of an incident that occurs during the course of transporting hazardous materials as defined by federal regulations shall also give notice of the incident to the Director of the Office of Emergency Management of the Department of State Police.

(2) As soon as reasonably practicable, each railroad shall notify the Director of the Office of Emergency Management of the Department of State Police by telephone or similar means of communication of any derailment or fire involving or affecting hazardous material.

(3) To facilitate expedited and accurate notice to the director under this section, each train transporting hazardous materials in this state shall be equipped with at least two radio transmitter-receivers in good working order. In addition, 18 months after October 4, 1977, trains over 2,000 feet in length that are transporting hazardous materials shall be equipped with a radio handset in good working order capable of communicating with the radio transmitter-receivers. If the equipment required under this section does not function while the train is en route, the train may proceed to the next point of crew change where the equipment shall be replaced or repaired. [Formerly 761.405]

824.090 Department to set standards for safe transportation of hazardous wastes; rules; civil penalty. (1) The Department of Transportation shall adopt rules setting standards for the safe transportation of hazardous wastes, as defined in ORS 466.005, by all transporters.

(2) The authority granted under this section:

(a) Is in addition to any other authority granted the department.

(b) Does not supersede the authority of the Energy Facility Siting Council to regulate the transportation of radioactive materials under ORS 469.550, 469.563, 469.603 to 469.619 and 469.992.

(3) In addition to any other penalty for violation of a rule adopted under this section, the department, in the manner provided in ORS 183.745, may impose a civil penalty of not more than $10,000 for violation of a rule adopted under this section. Each day of noncompliance with a rule is a separate violation.

(4) As used in this section, "transporter" has the meaning given that term in ORS 466.005. [Formerly 761.415; 1997 c.275 §14]

824.092 Disclosure of hazardous waste reports and information to Environmental Protection Agency. Records, reports and information obtained or used by the Department of Transportation in administering the hazardous waste program under ORS 824.090 shall be available to the United States Environmental Protection Agency upon request. If the records, reports or information has been submitted to the department under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 761.421]

CABOOSE REQUIREMENTS

824.100 Definitions for ORS 824.102 to 824.110. As used in ORS 824.102 to 824.110:

(1) "Caboose" means any car or coach used on a train to carry a train crew.

(2) "Marker" means any lamp providing illumination by electrical power which is designed to be displayed on a railroad car or coach for safety purposes.

(3) "Terminal" means a system of tracks, the boundaries of which are set by a railroad for the purpose of coupling or uncoupling cars. [Formerly 761.600]

824.102 Application of requirements. The provisions of ORS 824.102 to 824.110 shall apply to all cabooses except those used in terminal service or in road service for a distance not to exceed three miles, and shall not apply to logging railways. [Formerly 761.605; 1999 c.59 §246]

824.104 Fire extinguishers; exemption. (1) All cabooses shall be equipped with fire extinguishers meeting the following requirements:

(a) Each caboose shall have at least one portable fire extinguisher.

(b) Fire extinguishers may be of a foam, dry chemical or carbon dioxide type.

(c) The fire extinguishers in each caboose shall provide a minimum capacity of one and one-quarter gallons or five pounds. More than one fire extinguisher may be used to comply with the minimum capacity requirement under this paragraph.

(d) Fire extinguishers shall be placed in readily accessible locations.

(e) Fire extinguishers shall be maintained in working order.

(2) A railroad may apply for a temporary exemption from the provisions of subsection (1) of this section. The Department of Transportation will consider the application of the railroad for a temporary exemption when accompanied by a full statement of the conditions existing and the reasons for the exemption. Any exemption so granted will be limited to a stated period of time. [Subsection (1) formerly 761.620; subsection (2) formerly 761.625]

824.106 Use of noncomplying caboose prohibited; equipment failure; repair. A caboose shall not be placed in service unless it is in compliance with all of the provisions of ORS 824.102 to 824.110 relating to required equipment and standards of maintenance. In the event a failure of required equipment or standards of maintenance occurs after a caboose has departed from a terminal and a member of the train crew has boarded the caboose, the railroad operating the caboose shall not be deemed to be in violation of ORS 824.102 to 824.110 if such failure of equipment or standard of maintenance is corrected at the first point at which maintenance supplies are available or, in the case of repairs, the first point at which repair facilities are available and repairs can reasonably be made or the defective equipment replaced. [Formerly 761.630; 1999 c.59 §247]

824.108 Register for reporting failures of equipment or maintenance standards; rules for use. A register for the reporting of failures of required equipment or standards of maintenance shall be maintained on all cabooses. The register shall contain sufficient space to record the dates and particulars of each failure. The Department of Transportation shall provide rules for the use of this register, including a requirement that the record of reported failures be maintained not less than 80 days from the date of the most recent failure. [Formerly 761.635]

824.110 Administrative authority of department; rules. The Department of Transportation shall regulate and enforce all sections of ORS 824.102 to 824.110 and shall promulgate all rules necessary for the enforcement of ORS 824.102 to 824.110. [Formerly 761.640; 1999 c.59 §248]

824.112 [Subsections (1) to (4) formerly 761.900; subsections (5) to (8) formerly 761.905; 1997 c.249 §246; 1997 c.275 §15a; renumbered 824.990 in 1997]

824.114 [Subsections (1) to (5) formerly 761.990; subsection (6) formerly 761.992; subsections (7) and (8) formerly 761.994; 1997 c.249 §248; renumbered 824.992 in 1997]

RAILROAD CROSSINGS

824.200 Definitions for 824.200 to 824.256. As used in ORS 824.200 to 824.256, unless the context requires otherwise:

(1) "High speed rail system" means a fixed guideway passenger transportation system capable of transporting passengers at speeds exceeding 79 miles per hour and connecting two or more urban areas, including but not limited to any such system that utilizes or incorporates, in whole or in part, existing rail transportation facilities and any necessary upgrades of or modifications to existing rail transportation facilities.

(2) "Highway" includes all roads, streets, alleys, avenues, boulevards, parkways and other places in this state actually open and in use, or to be opened and used for travel by the public.

(3) "Installation costs," when used in the context of protective devices, includes costs of acquiring, assembling and rendering operational the device and its attendant controls, circuitry and fail-safe mechanisms.

(4) "Maintenance costs," when used in the context of protective devices, includes preventive maintenance, repair and replacement of the device and its attendant controls, circuitry and fail-safe mechanisms.

(5) "Protective device" means a sign, signal, gate or other device to warn or protect

the public, installed at or in advance of a railroad-highway crossing.

(6) "Unauthorized railroad-highway crossing" means a crossing at grade which is actually open and in use, or to be opened and used for travel by the public, and which has not been authorized under ORS 824.204.

(7) Except in proceedings under ORS 824.236, "public authority in interest" means the state, county, municipal or other governmental body with jurisdiction over the highway crossing the railroad track. In proceedings under ORS 824.236, "public authority in interest" means that county, municipal or other governmental body which has primary zoning authority over the lands served by the crossing.

(8) "Railroad" has the meaning given that term in ORS 824.020, and includes logging and other private railroads.

(9) "Railroad company" includes every corporation, company, association, joint stock association, partnership or person, and their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, controlling or managing any railroad. [Formerly 763.010]

824.202 Policy; authority vested in state and department. It is the policy of this state to achieve uniform and coordinated regulation of railroad-highway crossings and to eliminate crossings at grade wherever possible. To these ends, authority to control and regulate the construction, alteration, and protection of railroad-highway crossings is vested exclusively in the state, and in the Department of Transportation as provided in ORS 824.200 to 824.256. [Formerly 763.013]

824.204 Authority to construct grade crossings; protective devices. (1) Except for the repair of lawfully existing roads and highways or the replacement of tracks, no highway shall be constructed across the track of any railroad company at grade, nor shall the track of any railroad company be constructed across a highway at grade, without having first secured the permission of the Department of Transportation.

(2) Whenever any railroad company desires to cross any established and existing highway at grade or any public authority desires to lay out and extend any highway over and across any established and existing railroad at grade, it shall file with the department its application setting forth the objections and difficulties of making such crossing either above or below the grade of the existing highway or railroad.

(3) Upon receipt of the above application the department, after hearing, unless a hearing is not required under ORS 824.214, shall:

(a) Determine whether the public safety, public convenience and general welfare require a grade separation; and

(b) In the event a grade separation is not required, determine whether the application should be refused or granted, and upon what terms and conditions.

(4) If the grade crossing is approved, the department shall determine and prescribe the manner of its construction, maintenance and use, the kind and location of protective devices to be installed, the allocation of costs and the place of the crossing. [Formerly 763.020]

824.206 Elimination, relocation or alteration of grade crossing; installation or alteration of protective devices. (1) The Department of Transportation may, upon its own motion or upon application by a railroad or the public authority in interest, subsequent to a hearing, unless a hearing is not required under ORS 824.214, and upon finding that such action is required by the public safety, necessity, convenience and general welfare:

(a) Eliminate a grade crossing by relocation of the highway;

(b) Alter or abolish any grade crossing or change the location thereof, or require a separation of grades at any such crossing;

(c) Alter or change any existing crossing at separated grades; and

(d) Require installation or alteration of protective devices.

(2) The department shall prescribe the time and manner of such alteration, change, installation or alteration, and the terms and conditions thereof. [Formerly 763.030; 1997 c.249 §250; 1997 c.275 §16]

824.208 Authority to fix speeds and regulate sounding of train warning devices at crossings. (1) The power to fix and regulate the speed of railway trains and to regulate the sounding of railway train warning devices at public railroad-highway crossings is vested exclusively in the state.

(2) Upon petition of any public authority in interest or of any railroad or upon the Department of Transportation's own motion, the Department of Transportation shall, after due investigation and hearing, unless a hearing is not required under ORS 824.214 enter an order fixing and regulating the speed of railway trains or regulating the sounding of railway train warning devices.

(3) The speed limits fixed by the department shall be maximum speed limits and shall be commensurate with the hazards presented and the practical operation of the trains. [Formerly 763.035]

824.210 Construction and alteration of crossings above or below grade. No highway shall be constructed across the track of any railroad company above or below grade, nor shall the track of any railroad company be constructed across a highway above or below grade, without having first secured the permission of the Department of Transportation. If permission is granted, the department shall, after a hearing, unless hearing is not required under ORS 824.214, prescribe the terms and conditions upon which such crossing shall be made and shall allocate the cost of construction and maintenance. [Formerly 763.040]

824.212 Specifications for construction and maintenance of crossings; application of specifications; priorities; compliance. (1) The Department of Transportation shall adopt regulations prescribing specifications for the construction and maintenance of railroad-highway crossings, both at grade level and at separated grades. The specifications shall be developed in consultation with representatives of cities and counties and shall conform to nationally recognized and commonly used standards to ensure that the crossings are constructed and maintained in a manner that conforms to the public safety, necessity, convenience and general welfare, including but not limited to the projected transportation needs.

(2) Specifications for separate crossings adopted under subsection (1) of this section do not apply to crossings in existence on the effective date of the regulation prescribing the specifications. However, within a reasonable period after the effective date, crossings shall be altered or reconstructed to comply with the regulations in effect at the time of the alteration or reconstruction.

(3) Priorities for such alterations or reconstruction shall be established by the Department of Transportation, based upon the expressed need of the public authority in interest, and upon such other factors as danger or inconvenience to motorists, age of the structure, frequency of reported accidents and degree of noncompliance with regulations.

(4) If the public authority in interest or the railroad company fails to so alter or reconstruct a crossing, the department, after following the procedures specified in ORS chapter 183 for contested cases, may order the alteration or reconstruction and proceed in accordance with ORS 824.216. [Formerly 763.055; 1997 c.249 §251; 1997 c.275 §17]

824.214 Procedure to obtain permission for crossings; rules. (1) Proceedings to carry out ORS 824.204, 824.206, 824.210 to 824.218, 824.224, 824.226 to 824.230, 824.238, 824.240 and 824.256, including the right to review any order of the Department of Transportation, shall be those specified in ORS chapter 183 for contested cases. If the final order of the department, in a proceeding initiated under ORS 824.206 or 824.226 by a city or county, is appealed and the city or county prevails, it shall be entitled to costs and reasonable attorney fees.

(2) The department may adopt rules to govern the procedure, and to regulate the mode and manner of all investigations under ORS 824.204, 824.206, 824.210 to 824.218, 824.224, 824.226 to 824.230, 824.238, 824.240 and 824.256.

(3) The authority granted the department by ORS 824.200 to 824.256 is in addition to and not in lieu of the authority of any city, county or other political subdivision of the state to use other remedies and procedures to provide public highways for the traveling public. [Formerly 763.080; 1997 c.249 §252; 1997 c.275 §18]

824.216 Procedure to compel compliance with orders. (1) The railroad company, public authority or person to whom an order of the Department of Transportation is directed under ORS 824.200 to 824.256 shall comply with such order within such reasonable time as may be prescribed by the department. In case of failure to comply, the department shall thereupon take proceedings to compel obedience to such order.

(2) The circuit court has power in case of all such orders by the department to compel obedience therewith by mandamus, brought in the name of the state, subject, however, to appeal to the Court of Appeals in the same manner and with like effect as provided in cases of appeal from the order of the circuit court. [Formerly 763.090; 1997 c.275 §19]

824.218 Work and materials furnished by railroad company; supervision of work. All work and the material for work done under ORS 824.200, 824.204, 824.206, 824.210 to 824.218, 824.226 to 824.230, 824.238, 824.240 and 824.256 within the limits of railroad rights of way shall, if the railroad company so desires, be furnished and done by the railroad company. However, the Department of Transportation shall have supervision of the work and may decide the kind of material to be used. [Formerly 763.100; 1997 c.249 §253]

824.220 Protective devices; rules. The Department of Transportation shall adopt rules prescribing specifications for the design and location of protective devices. [Formerly 763.110; 1997 c.249 §254]

824.222 Authority over duration that grade crossing may be blocked; penalty. (1) The power to fix and regulate the length of time a public railroad-highway grade

crossing may be blocked by railroad equipment is vested exclusively in the state.

(2)(a) Upon petition of the public authority in interest, or of any railroad or upon the Department of Transportation's own motion, the department shall, after due investigation and hearing, unless hearing is not required under ORS 824.214, enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked by railroad equipment.

(b) Upon petition of a person, the department shall investigate and may hold a hearing and, following a hearing, may enter an order fixing and regulating the length of time a public railroad-highway grade crossing may be blocked by railroad equipment.

(3) The time limits fixed by the department shall be maximum time limits and shall be commensurate with reasonable requirements of train and vehicular traffic operations.

(4) Violation of a time limit fixed by the department under this section is punishable by a civil penalty of not less than $100 nor more than $3,000 for each offense. [Formerly 763.120; 2001 c.909 §1]

824.223 Authority to regulate distance from grade crossing at which railroad may stop or park equipment; penalty. (1) The power to regulate the distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment is vested exclusively in the state.

(2)(a) Upon petition of the public authority in interest, or of any railroad or upon the Department of Transportation's own motion, the department shall, after due investigation and hearing, unless hearing is not required under ORS 824.214, enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(b) Upon petition of a person, the department shall investigate and may hold a hearing and, following a hearing, may enter an order establishing a safe distance from a public railroad-highway grade crossing at which a railroad may stop or park equipment.

(3) In determining what constitutes a safe distance under subsection (2) of this section, the department shall consider issues including, but not limited to, hazards associated with public railroad-highway grade crossings that do not have active protective devices.

(4) Violation of an order issued under subsection (2) of this section is punishable by a civil penalty of not less than $100 nor more than $3,000 for each offense. [2001 c.909 §3]

824.224 When stop signs are to be installed by railroad; exemption; grade crossing alteration, relocation or closure. (1) At every farm or private grade crossing of a railroad where no automatic grade crossing protective device is installed, the railroad shall cause to be installed and maintained, as a means of protecting the crossing, one or more stop signs.

(2) The Department of Transportation shall, after hearing, unless hearing is not required under ORS 824.214, prescribe the number, type and location of the stop signs and may exempt a farm or private grade crossing if the department finds that the installation of such sign or signs at the crossing would create a hazard or dangerous condition that would not otherwise exist.

(3) After notice to any affected landowner and opportunity for a hearing, unless a hearing is not required under ORS 824.214, the Department of Transportation may alter, relocate or close any farm or private grade crossing on any line designated as a high speed rail system.

(4) If the department decides to alter, relocate or close a farm or private grade crossing in such a manner as to constitute a taking of private property, the department shall exercise its power of eminent domain to acquire such property as is necessary to carry out the decision. A department order under this subsection shall constitute a resolution of necessity for exercise of the department's power of eminent domain.

(5) If the department exercises its power of eminent domain under subsection (4) of this section, the department shall use any combination of state or federal funds allocated for high speed rail systems to pay any settlement with or judgment in favor of an owner of a farm or private grade crossing. The department shall have discretion to determine whether to reach a settlement with an owner of a farm or private grade crossing.

(6) The costs of implementing a department order issued under subsection (3) of this section shall be apportioned to any combination of state or federal funds specifically allocated for high speed rail systems as the department determines appropriate in order to eliminate farm or private grade crossings or to enhance safety at such crossings. [Formerly 763.130; 1997 c.249 §255; 1997 c.275 §20]

824.226 Dangerous grade crossings; notice; hearing; order to install protective devices; apportioning of cost. (1) The Department of Transportation on its own motion may, or upon application by the common council or mayor of any city, or any county judge or county commissioner or county roadmaster, or by five or more resi-

dents and taxpayers in any city, county or road district to the effect that a public highway and a railroad cross one another in such city, county or road district at the same level, and that such grade crossing is unsafe and dangerous to travelers over such highway or railroad, shall, give notice to the railroad company, of the filing of such application, and furnish a copy of the same to the railroad company, and order a hearing thereon in the manner provided for contested case hearings under ORS chapter 183.

(2) If upon such hearing it appears to the satisfaction of the department that the crossing complained of is unsafe and dangerous to human life, the department may order the crossing closed or order and direct the railroad or public authority to install and maintain proper protective devices, and establish a date by which such devices are to be installed and placed into operation. The department shall apportion the installation and maintenance costs thereof in accordance with ORS 824.242 to 824.246, and, notwithstanding the provisions of ORS chapter 183, shall suspend the effective date of the order until the public authority in interest has consented to the apportionment and has agreed to comply therewith. [Formerly 763.170; 1997 c.275 §21]

824.228 Procedure for determining mode of track crossing of intersecting railroads. (1) Whenever it becomes necessary for the track of one railroad to cross the track of another railroad, the Department of Transportation shall ascertain and define either on the application of a railroad or on its own motion and after notice to the affected railroads, in the manner provided for contested cases in ORS chapter 183, the mode of such crossing that occasions the least probable injury upon the safety, welfare and interests of the public and the rights of the company owning the road that is intended to be crossed.

(2) The department shall also determine the compensation to be paid by the railroad so seeking to cross the other, if the railroads are unable to agree thereon, and the points and manner of such connection.

(3) If it appears to the department that it is reasonable and practicable to avoid a grade crossing, the department shall by order prevent the same, and shall prescribe the manner of such crossing.

(4) If any railroad seeks to cross at grade with its tracks the tracks of another railroad, the railroad seeking to cross at grade shall be compelled to pay all damages caused by such crossing, and to interlock or protect such crossing by safety devices to be designated by the department, and to pay all costs of appliances, together with the expenses of putting them in and maintaining them. This requirement does not apply to crossings of sidetracks. [Formerly 763.180; 1997 c.275 §22]

824.230 Installation of protective devices where railroads intersect at grade. (1) In any case where the tracks of two or more railroads cross each other at a common grade in this state, the railroads, when ordered by the Department of Transportation, shall protect such crossings by interlocking or other safety devices, under regulations to be designated by the department, to prevent trains colliding at such crossings. An order may be issued under this section only after notice to the affected railroads and a proceeding under ORS chapter 183 initiated by the department on its own motion or upon application by one of the railroads.

(2) The department in making such order shall designate the manner of such interlocking protection, and shall apportion the cost of installing and maintaining the same between the several railroads, if such railroads are unable to agree upon the same between themselves. [Formerly 763.190; 1997 c.275 §24]

824.232 Forfeiture for noncompliance. Any company, corporation, person or receiver operating any railroad who neglects to comply with any order made by the Department of Transportation pursuant to ORS 824.228 or 824.230 shall forfeit and pay to the state a penalty of $500 per week for each week of such neglect. [Formerly 763.200]

824.234 Use of findings of department regarding hazards at crossings. The determinations of the Department of Transportation under ORS 824.200 to 824.256 as to hazards at crossings shall not be admissible in any civil action for damages. [Formerly 763.210]

824.236 Protective devices at unauthorized railroad-highway crossing; apportionment to railroad; reimbursement; closure. (1) Except as provided in subsection (2) of this section, the Department of Transportation may, under ORS 823.033, order a railroad to install and maintain protective devices at an unauthorized railroad-highway crossing and order the public authority in interest to install and maintain stop signs at and other protective devices in advance of an unauthorized railroad-highway crossing.

(2) The department may not order the railroad to install at an unauthorized railroad-highway crossing devices which are activated immediately in advance of, and during, each train movement over the crossing unless the department determines that the railroad intentionally created the unauthorized crossing after June 2, 1995.

(3) Except as provided in subsection (4) of this section, in any proceeding under sub-

sections (1) and (2) of this section, or unless the parties agree otherwise, installation and maintenance costs of protective devices shall be apportioned to the railroad.

(4) The railroad may seek reimbursement or indemnity from third parties.

(5) Under ORS 823.033, the department may open an investigation to consider closure of an unauthorized railroad-highway crossing. If the department decides to open an investigation, it shall post notice of the investigation at the crossing at least 30 days prior to opening the investigation. If the department is unable to complete an investigation within two years from the date it was opened, the department shall order the crossing closed within one year from the expiration of the two-year period allowed for investigation unless closure of the unauthorized railroad-highway crossing would remove the only access to any land. [Formerly 763.220; 2003 c.145 §3]

COST APPORTIONMENTS

824.238 Division of costs between railroad and public authority. The following costs shall be divided between the railroad and the public authority in interest in such proportion as the Department of Transportation finds just and equitable under the circumstances in each case:

(1) That portion of the cost of any alteration or change resulting in the elimination of a grade crossing under ORS 824.206 (1) by reason of relocation of the highway which is directly chargeable to the grade elimination.

(2) The costs of construction, change, alteration, abolition and relocation of any grade crossing involved in a proceeding arising under ORS 824.204, 824.206 or 824.226.

(3) The costs of maintenance of crossings above or below grade under ORS 824.206 and 824.210.

(4) Any cost otherwise apportionable under the terms of ORS 824.242 to 824.246 or 824.248 (1) to the extent that funds are not available from the Grade Crossing Protection Account. [Formerly 763.250]

824.240 Payment when public highway involved. (1) As to all crossings above or below grade constructed on state highways, the proportion of expense to be borne by public authority in interest shall be paid from the state highway funds.

(2) Any public authority in interest acting through its governing body may, at its option, by agreement with the Department of Transportation, bear a share of the expense of constructing any railroad crossing above or below grade on a state highway.

(3) If federal funds allocated specifically for removal of hazards at hazardous railroad-highway crossings are available for any part of the work to be performed, the Department of Transportation shall cause such funds to be used for such purposes. [Formerly 763.260]

824.242 Apportionment of costs for installation of protective devices. In any grade crossing proceeding arising under ORS 824.204, 824.206 or 824.226, unless the parties agree otherwise, installation costs of protective devices shall be apportioned as follows:

(1) At an existing crossing, a crossing relocated pursuant to ORS 824.206 or 824.226, or a crossing previously closed by order of the Department of Transportation and reopened in a proceeding under ORS 824.204:

(a) For devices to be installed at or in advance of the crossing and which are activated immediately in advance of, and during, each train movement over the crossing:

(A) Seventy-five percent to the Grade Crossing Protection Account;

(B) Five percent to the public authority in interest; and

(C) Twenty percent to the railroad company.

(b) For devices which are primarily designed for the purpose of illuminating the crossing or its approaches during hours of darkness:

(A) Not less than 90 percent to the Grade Crossing Protection Account;

(B) Not more than five percent to the public authority in interest; and

(C) Not more than five percent to the railroad company for such devices to be installed at the crossing.

(c) For all other protective devices:

(A) Seventy-five percent to the Grade Crossing Protection Account; and

(B) Twenty-five percent to the public authority in interest for such devices to be installed by it at or in advance of the crossing; or

(C) Twenty-five percent to the railroad company for such devices to be installed by it at the crossing.

(2) Except as provided in subsection (4) of this section, at a new crossing requested by a public authority, 100 percent of the installation costs shall be paid by the public authority in interest.

(3) Except as provided in subsection (4) of this section, at a new crossing requested by a railroad company, 100 percent of the installation costs shall be paid by the railroad company.

(4) If the Department of Transportation converts an unauthorized railroad-highway crossing to a crossing authorized under ORS 824.204, the department shall apportion installation costs of protective devices as provided in subsection (1) of this section, or, if federal funds are available, installation costs may be apportioned as provided in ORS 824.250. [Formerly 763.271]

824.244 Apportionment of costs for maintenance of protective devices. Unless the parties agree otherwise, maintenance cost of protective devices at grade crossings installed pursuant to ORS 824.204, 824.206 or 824.226 shall be apportioned as follows:

(1) One hundred percent to the railroad company for devices at the crossing actually installed and maintained by the railroad.

(2) One hundred percent to the public authority in interest for devices at or in advance of the crossing actually installed and maintained by the authority, except as provided under subsection (3) of this section.

(3) Fifty percent to the railroad company, and 50 percent to the public authority in interest, for devices at the crossing installed and maintained by the public authority which are primarily designed for the purpose of illuminating the crossing during hours of darkness and which are not activated immediately in advance of, or during, each train movement. [Formerly 763.273]

824.246 Apportionment of costs of crossing closure. If in any grade crossing proceeding arising under ORS 824.204, 824.206 or 824.226, the Department of Transportation requires the closure of any existing crossing within the jurisdiction of the public authority in interest, the department may apportion to the railroad company, for such crossing closed, an amount not to exceed five percent of the cost of installation of protective devices at any new or other existing crossing within the jurisdiction of the public authority in interest. Any additional costs paid by the railroad company shall reduce the share otherwise apportionable to the public authority in interest. [Formerly 763.275]

824.248 Apportionments for crossings above or below grade. In any proceeding involving a crossing above or below grade arising under ORS 824.206 or 824.210, unless the parties agree otherwise, the cost of construction, reconstruction, or alteration of such crossings shall be apportioned as follows:

(1) At existing crossings above or below grade: 10 percent of the cost of reconstruction or alteration to the public authority in interest and all remaining costs of reconstruction or alteration to the Grade Crossing Protection Account and the railroad in interest as is just and equitable under the circumstances in each case.

(2) At a new crossing requested by a public authority: All construction costs to the public authority in interest.

(3) At a new crossing requested by a railroad company: All construction costs to the railroad company. [Formerly 763.280]

824.250 Apportionment when federal funds available. In the event any protective device is to be installed or altered at an existing or relocated crossing or any reconstruction or alteration is made at an existing separation structure, with the aid of any federal funds administered by the Federal Highway Administration of the United States Department of Transportation, the Oregon Department of Transportation shall, unless the parties agree otherwise:

(1) Apportion the amount of such federal funds to payment of installation, reconstruction, or alteration costs; and

(2) Apportion the remaining costs of installation, reconstruction, alteration, and maintenance as provided by ORS 824.238 and 824.242 to 824.248; however, in a case where the federal fund assistance equals or exceeds 75 percent of the cost of installing, altering and reconstructing protective devices at an existing or relocated crossing, the remaining costs, except for maintenance costs, may be allocated entirely to the Grade Crossing Protection Account. [Formerly 763.290]

824.252 Procedure when disagreement as to apportionment exists. (1) In any proceeding under ORS 824.206 or 824.226, where the application to the Department of Transportation states that the parties are not in agreement as to apportionment of costs, but the applicant is willing to advance the amount of money reasonably necessary to enable the respondent to complete the work which must be done by it or the amount reasonably necessary is available and can be advanced from the Grade Crossing Protection Account, the department shall set the application for hearing as soon as the calendar of the department permits on the questions of:

(a) The necessity for the project;

(b) The approval of the location and the engineering plans, including provisions for handling traffic during construction and the work to be performed by each party; and

(c) The sum to be advanced by the applicant or the account for the work to be done by the respondent.

(2) The Department of Transportation shall render as promptly as possible an interim order, effective within 20 days on such questions, reserving for later hearing and decision the question of the apportionment

of costs. The interim order shall also direct the respondent to proceed upon receipt of the sum to be advanced by the applicant or the account without delay to perform the work to be done by respondent, integrating the work with that of the applicant or its contractor in such manner that neither will unreasonably obstruct or delay the work of the other, to the end that the people of the state may have the use of the project at the earliest possible date.

(3) In the final order apportioning costs, the sum advanced by the applicant or the account shall be credited against its share of the costs. In the final order there shall also be credited against applicant's share of the costs any increase in the costs found by the Department of Transportation to be directly attributable to respondent's willful failure or refusal, after the effective date of the interim order, to proceed with its own work or to integrate the work with that of applicant or its contractor. [Formerly 763.300]

824.254 Reimbursement procedure for railroad and public authority. (1) Upon issuance of an order apportioning costs to the Grade Crossing Protection Account, the railroad company or the public authority in interest may submit to the Department of Transportation progress claims, not to exceed 80 percent of the apportionment, for reimbursement for the cost of labor, and other services provided to date of billing, and for the costs of materials stockpiled at the project site or specifically purchased and delivered for use on the project. Upon completion of the construction, reconstruction or alteration of a crossing, or of the installation or alteration of grade crossing warning or safety devices at a crossing, the railroad company or the public authority in interest shall present to the department for approval its claim for reimbursement for the costs thereof in the amount apportioned to the Grade Crossing Protection Account less progress payments previously made. When a claim is approved, the department shall, as funds become available, order the claim paid from the account.

(2) The department may make such audit as the department considers necessary before or after each such disbursement for the purpose of determining that the money is expended for the purposes and under the conditions authorized by ORS 824.242 to 824.248. By presentation of its claim, the railroad company and the public authority consent to make pertinent records showing costs of labor and materials available to the department.

(3) Notwithstanding subsection (1) of this section, upon issuance of an order apportioning costs to the Grade Crossing Protection Account, and upon agreement with the Department of Transportation, the railroad company or public authority in interest shall submit an estimate of the costs of the project. The railroad company or public authority in interest may submit statements for lump-sum reimbursement from the account during and at the completion of the construction, reconstruction or alteration of a crossing, or of the installation or alteration of a grade crossing warning or safety device at a crossing. [Formerly 763.310; 1997 c.249 §256; 1999 c.596 §1]

824.256 Expense contributed by public held in trust by railroad company. Any portion of the cost or expense that is contributed or borne by any public authority under ORS 824.200, 824.204, 824.206, 824.210 to 824.218 and 824.226 shall forever be considered as held in trust by the railroad company receiving the same or the benefits thereof, and no part thereof shall be considered a part of the value of the property of the railroad company upon which it is entitled to receive a return. [Formerly 763.320]

824.258 [Formerly 763.900; repealed by 1997 c.249 §257]

EMPLOYEE SAFETY REGULATIONS

824.300 Required crews on trains; exception. No person or officer of court operating any railroad or railway in this state engaged as a common carrier in the transportation of freight or passengers shall operate over its road, or any part thereof, in excess of 15 continuous miles, or suffer or permit to be run over the same, outside of yard switching limits, any passenger, mail or express train propelled by any form of motive power and consisting of four or more cars with less than a full passenger crew consisting of one engineer, one apprentice engineer, one conductor, one brakeman and one flagger. None of said crew shall be required or permitted to perform the duties of train baggage handler or express messenger while on such road. This section shall not apply to operations in which lesser crew requirements are established by agreement between the common carrier and the organizations representing railroad employees. [Formerly 764.110; 1997 c.249 §258]

824.302 Qualification of flagger. The flagger in the crews required under ORS 824.300 shall have had at least six months' experience in train service. [Formerly 764.130; 1997 c.249 §259]

824.304 Guarding frogs, switches and guardrails. (1) Every person owning or operating a railroad in this state, shall so adjust, fill, block and securely guard the frogs, switches and guardrails of their roads as to

protect and prevent the feet of employees and other persons from being caught therein.

(2) Any person owning or operating a railroad in this state shall be liable for any damage caused from a failure to comply with this section. [Formerly 764.140]

824.306 Shelter of car repairers. (1) No person owning, controlling or operating any line of railroad in this state shall build, construct, reconstruct or repair railroad car equipment or motive power in the state without first erecting and maintaining at every division terminal, or other point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all employees regularly employed in such work are sheltered and protected from rain and other inclement weather.

(2) This section does not apply at points where fewer than five employees are regularly employed in such work, nor at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment. As used in this subsection, "light repairs" does not include repairs usually made in roundhouse, shop or shed upon well-equipped railroads. [Formerly 764.150]

824.308 Railroads to provide first aid training for employees. (1) Every railroad operating in this state shall provide to any employee who is an engineer, conductor or yard foreman a first aid training course that conforms to standards at least equivalent to the American Red Cross eight-hour first aid training course and cardiopulmonary resuscitation course.

(2) Railroads shall bear all costs incurred for the first aid training course described in subsection (1) of this section and shall pay wages to employees who are attending the course. [Subsection (1) formerly 764.170; subsection (2) formerly 764.180]

824.310 Immunity from liability of persons providing first aid treatment. No person may recover in an action against a railroad or employee who has received the first aid training described in ORS 824.308 (1) for any damages directly or indirectly resulting from first aid treatment rendered by such employee unless the complaining party establishes that the treatment violates the standards of reasonable care under the circumstances including the existence of emergency conditions in which the treatment was rendered. [Formerly 764.190]

824.312 [Formerly 764.900; repealed by 1997 c.249 §260]

824.314 [Formerly 764.990; repealed by 1997 c.249 §260]

PENALTIES

824.990 Civil penalties. (1) In addition to all other penalties provided by law:

(a) Every person who violates or who procures, aids or abets in the violation of ORS 824.060, 824.084, 824.088, 824.304 (1) or 824.306 (1) or any order, rule or decision of the Department of Transportation shall incur a civil penalty of not more than $1,000 for every such violation.

(b) Every person who violates or who procures, aids or abets in the violation of any order, rule or decision of the department promulgated pursuant to ORS 824.052 (1), 824.056 (1), 824.068, 824.082 (1) or 824.208 shall incur a civil penalty of not more than $1,000 for every such violation.

(2) Each such violation shall be a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission that procures, aids or abets in the violation is a violation under subsection (1) of this section and subject to the penalty provided in subsection (1) of this section.

(3) Civil penalties imposed under subsection (1) of this section shall be imposed in the manner provided in ORS 183.745.

(4) The department may reduce any penalty provided for in subsection (1) of this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request for reduction of the penalty; or

(b) The defendant submits to the department a written request for reduction of the penalty within 15 days from the date the penalty order is served. [Formerly 824.112]

824.992 Criminal penalties. (1) Violation of ORS 824.062 is a Class D violation.

(2) Violation of ORS 824.064 is a misdemeanor.

(3) Violation of ORS 824.082 (1), 824.084 or 824.088 by a railroad is a Class A violation.

(4) Violation of ORS 824.082 (2) is a Class A violation.

(5) As used in subsection (3) of this section, "railroad" means a railroad as defined by ORS 824.020 and 824.022.

(6) Subject to ORS 153.022, violation of ORS 824.104 (1), 824.106 or 824.108 or any rule promulgated pursuant thereto is a Class A violation, and upon conviction the court shall impose a fine of not less than $100.

(7) A person is subject to the penalties under subsection (8) of this section if the person knowingly:

(a) Transports by railroad any hazardous waste listed under ORS 466.005 or rules adopted thereunder to a facility that does not have appropriate authority to receive the waste under ORS 466.005 to 466.385 and 466.992.

(b) Disposes of any hazardous waste listed under ORS 466.005 or rules adopted thereunder without appropriate authority under ORS 466.005 to 466.385 and 466.992.

(c) Materially violates any terms of permit or authority issued to the person under ORS 466.005 to 466.385 and 466.992 in the transporting or disposing of hazardous waste.

(d) Makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with requirements under ORS 824.050 to 824.110 for the safe transportation of hazardous wastes.

(e) Violates any rules adopted by the Department of Transportation concerning the transportation of hazardous wastes.

(8) Subject to ORS 153.022, violation of subsection (7) of this section is subject to the penalty of a fine of not more than $10,000 for each day of violation, imprisonment of not more than six months, or both.

(9) Violation of ORS 824.300 or 824.302 is a Class D violation.

(10) Violation of ORS 824.304 is punishable, upon conviction, by a fine of not less than $500 nor more than $2,000.

(11) Violation of ORS 824.306 by any railroad company or officer or agent thereof, or any other person is a Class D violation. Each day's violation is a separate offense. [Formerly 824.114; 1999 c.1051 §232]

Chapter 825
(Partial)

2003 EDITION

Weight-Mile Tax

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825.450 Weight receipt; fee; period of validity. (1) Except as otherwise permitted under ORS 825.470, the Department of Transportation shall issue a receipt stating the combined weight of each self-propelled or motor-driven vehicle and any train or combination of vehicles to be used therewith.

(2) The receipt shall be carried with the motor vehicle at all times, and no person shall load any motor vehicle in excess of its combined weight permit rating thus determined except as variations may necessarily result in passenger loading. A fee of $8 shall be paid to the department for each weight receipt issued.

(3) Receipts issued under this section shall be valid from the first day of any calendar quarter to the last day of the fourth consecutive calendar quarter. Each carrier may select the calendar quarter in which the period will begin except that, if necessary for administrative convenience, the department may require a carrier to adopt a starting date chosen by the department.

(4) All vehicles operating under the carrier's authority shall have the same four-quarter period of receipt validity. The department may allow a carrier to operate with expired receipts for up to one extra quarter if the renewal application has been submitted and the required fees have been paid on or before the last day of the period of validity of the receipt. The extension of time allowed by this subsection shall be granted only if the department determines that the extension is necessary for the administrative convenience of the department. [Formerly 767.775; 2001 c.567 §1; 2003 c.618 §50]

825.452 Initial registration period. In order to facilitate the registration issuance and registration renewal processes, when a carrier initially registers under ORS 826.009 or 826.037, the Department of Transportation may assign a registration period ranging from three to 12 months. Initial fees shall be adjusted accordingly. [1995 c.39 §6; 2001 c.567 §6]

825.454 Identification devices; applications; fees. (1) The Department of Transportation, in the discretion of the department, may require the use of identification devices, such as cab cards, stamps or carrier identification numbers, to identify and be carried with or placed upon each motor vehicle authorized to be operated in Oregon subject to the provisions of this chapter. The form of any identification device and the method for its use shall be determined by the department.

(2) Notwithstanding any other provision in this chapter, the department may require applications for identification devices to be made annually and may require each carrier holding or obtaining a permit under this chapter to pay to the department a fee of not to exceed $8 for each device issued on an annual basis. [Formerly 767.780; 2001 c.567 §7; 2003 c.753 §1]

825.470 Temporary pass; fees. For single trip or short-time operation not exceeding 10 days of a vehicle subject to the provisions of this chapter, the Department of Transportation may issue a temporary pass identifying the motor vehicle. The pass must be carried in the motor vehicle for which it is issued. For this pass a fee of $9 for each motor vehicle shall be paid. [Formerly 767.805; 2001 c.567 §8]

825.472 Determination of filing of reports or payments. (1) Any report or payment transmitted through the United States mail that is required to be filed with the Department of Transportation by ORS 825.474, 825.476, 825.480, 825.484, 825.488, 825.490, 825.492, 825.494 and 825.496 shall be considered filed:

(a) On the date shown by the post-office cancellation mark on the envelope or wrapper containing such report or payment.

(b) On the date such report or payment was mailed if the post-office cancellation mark on the envelope or wrapper containing the report or payment is omitted or is not legible or if the report or payment is not received by the department and if the sender establishes to the satisfaction of the department that the report or payment was deposited in the United States mail on or before the date due for filing.

(2) If the date for filing any report or payment required to be filed with the department by ORS 825.474, 825.476, 825.480, 825.484, 825.488, 825.490, 825.492, 825.494 and 825.496 falls on a Saturday, Sunday or legal holiday, a filing shall be considered timely if made on the next business day.

(3) Notwithstanding the provisions of subsection (1)(a) of this section, a report or payment that is required to be filed with the department by ORS 825.474, 825.476, 825.480, 825.484, 825.488, 825.490, 825.492, 825.494 and 825.496 and that is filed by a person whose certificate or permit is suspended under ORS 825.139 (1)(a) for delinquent reporting or paying shall be considered filed on the date it is received by the department. [Formerly 767.810; 1997 c.275 §41]

825.474 Motor carrier tax for use of highways. (1) In addition to other fees and taxes imposed by law upon carriers, there shall be assessed against and collected from every carrier a tax for the use of the highways, to apply to the cost of administration of this chapter and for the maintenance, operation, construction and reconstruction of public highways.

(2) The tax rate which shall apply to each motor vehicle shall be based upon the declared combined weight of the motor vehicle and in accordance with the weight group tax rates as shown in the tables set forth in ORS 825.476.

(3) For the purpose of computing the tax due:

(a) Table "A" applies to motor vehicles subject to the tax imposed by this section that are not issued an annual variance permit under ORS 818.200 (1)(a) to (c) to operate with a combined weight of more than 80,000 pounds.

(b) Table "B" applies to motor vehicles subject to the tax imposed by this section that are issued or required to obtain an annual variance permit under ORS 818.200 (1)(a) to (c) to operate with a combined weight of more than 80,000 pounds.

(c) The declared combined weight shall be the combined weight, as defined in ORS 825.005, declared in the application for authority under ORS 825.100, subject to audit and approval by the Department of Transportation.

(d) In addition to any tax due under this chapter, motor vehicles that exceed the maximum vehicle weight limits for annual variance permits under ORS 818.200 (1)(a) to (c) are subject to the road use assessment fee imposed under ORS 818.225 for the entire motor vehicle weight, minus the road use assessment fee for the maximum vehicle weight allowed under the annual variance permit.

(4) The tax for each motor vehicle when table "A" or "B" is used shall be computed by multiplying the extreme mileage of travel in Oregon by the appropriate weight group tax rate as it appears in the table. [Formerly 767.815]

825.476 Carrier tax tables.

MILEAGE TAX RATE TABLE "A"

Declared Combined Weight Groups (Pounds)	Fee Rates Per Mile (Mills)
26,001 to 28,000	40.0
28,001 to 30,000	42.4
30,001 to 32,000	44.3
32,001 to 34,000	46.3
34,001 to 36,000	48.1
36,001 to 38,000	50.6
38,001 to 40,000	52.5
40,001 to 42,000	54.4
42,001 to 44,000	56.4
44,001 to 46,000	58.3
46,001 to 48,000	60.2
48,001 to 50,000	62.2
50,001 to 52,000	64.5
52,001 to 54,000	66.9
54,001 to 56,000	69.4
56,001 to 58,000	72.3
58,001 to 60,000	75.6
60,001 to 62,000	79.5
62,001 to 64,000	83.9
64,001 to 66,000	88.7
66,001 to 68,000	95.0
68,001 to 70,000	101.7
70,001 to 72,000	108.4
72,001 to 74,000	114.6
74,001 to 76,000	120.5
76,001 to 78,000	126.3
78,001 to 80,000	131.6

AXLE-WEIGHT MILEAGE TAX RATE TABLE "B"

Declared Combined Weight Groups (Pounds)	Number of Axles 5	6	7	8	9 or more
	(Mills)				
80,001 to 82,000	135.9	124.3	116.2	110.4	104.1
82,001 to 84,000	140.3	126.3	118.1	111.8	105.5
84,001 to 86,000	144.5	129.2	120.0	113.2	107.0
86,001 to 88,000	149.4	132.0	121.9	115.2	108.4
88,001 to 90,000	155.2	135.4	123.9	117.1	110.4
90,001 to 92,000	161.9	139.3	125.7	119.0	112.3
92,001 to 94,000	169.2	143.1	127.7	120.9	113.8
94,001 to 96,000	176.9	147.5	130.1	122.9	115.6
96,001 to 98,000	185.1	152.8	133.0	124.9	117.6
98,001 to 100,000		158.5	135.9	127.2	119.5
100,001 to 102,000			138.8	130.1	121.5
102,001 to 104,000			141.7	133.0	123.9
104,001 to 105,500			145.5	135.9	126.3

[Formerly 767.820; 1999 c.1075 §36; 2003 c.618 §4]

825.480 Substitute taxes for certain vehicles. (1)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in operating motor vehicles in the transportation of logs, poles, peeler cores or piling may pay annual fees for such operation computed at the rate of six dollars and ten cents for each 100 pounds of declared combined weight.

(b) Any carrier electing to pay fees under this method may, as to vehicles otherwise exempt from taxation, elect to be taxed on the mileage basis for movements of such empty vehicles over public highways whenever operations are for the purpose of repair, maintenance, servicing or moving from one exempt highway operation to another.

(2) The annual fees provided in subsections (1), (4) and (5) of this section may be paid on a monthly basis. Any carrier electing to pay fees under this method may not change an election during the same calendar year in which the election is made, but may be relieved from the payment due for any month on a motor vehicle which is not operated. A carrier electing to pay fees under this method shall report and pay these fees on or before the 10th of each month for the preceding month's operations. A monthly report shall be made on all vehicles on the an-

nual fee basis including any vehicle not operated for the month.

(3)(a) In lieu of the fees provided in ORS 825.470 to 825.474, motor vehicles described in ORS 825.024 with a combined weight of less than 46,000 pounds that are being operated under a permit issued under ORS 825.102 may pay annual fees for such operation computed at the rate of five dollars for each 100 pounds of declared combined weight.

(b) The annual fees provided in this subsection shall be paid in advance but may be paid on a monthly basis on or before the first day of the month. A carrier may be relieved from the fees due for any month during which the motor vehicle is not operated for hire if a statement to that effect is filed with the Department of Transportation on or before the fifth day of the first month for which relief is sought.

(4)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in the operation of motor vehicles equipped with dump bodies and used in the transportation of sand, gravel, rock, dirt, debris, cinders, asphaltic concrete mix, metallic ores and concentrates or raw nonmetallic products, whether crushed or otherwise, moving from mines, pits or quarries may pay annual fees for such operation computed at the rate of six dollars and five cents for each 100 pounds of declared combined weight.

(b) Any carrier electing to pay fees under this method may, as to vehicles otherwise exempt for taxation, elect to be taxed on the mileage basis for movements of such empty vehicles over public highways whenever operations are for the purpose of repair, maintenance, servicing or moving from one exempt highway operation to another.

(5)(a) In lieu of other fees provided in ORS 825.474, carriers engaged in operating motor vehicles in the transportation of wood chips, sawdust, barkdust, hog fuel or shavings may pay annual fees for such operation computed at the rate of twenty-four dollars and sixty-two cents for each 100 pounds of declared combined weight.

(b) Any carrier electing to pay under this method may, as to vehicles otherwise exempt from taxation, elect to be taxed on the mileage basis for movement of such empty vehicles over public highways whenever operations are for the purpose of repair, maintenance, service or moving from one exempt highway operation to another. [Formerly 767.825; 2003 c.618 §5]

825.482 Review of flat fee rates. The Department of Transportation and the Oregon Transportation Commission shall review flat fee rates established under ORS 825.480 in each even-numbered year and shall recommend to each regular session of the Legislative Assembly any adjustments to the flat fee rates that the department and the commission deem appropriate. [1989 c.992 §28]

Note: 825.482 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 825 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

825.484 Effect of carrier tax law on other taxes; offset of fees or taxes erroneously paid. (1) The fees or taxes listed in ORS 825.474, 825.476 and 825.480 shall be in addition to, and not in lieu of, other fees and taxes of the state, county or municipality which may be imposed, levied, assessed or collected against the business or property of such carrier. This section does not authorize the imposition of license fees by municipalities upon intercity carriers, or deprive any city within which a passenger motor vehicle, having a seating capacity of not more than seven passengers, is principally operated for hire, from imposing and collecting license fees upon and from such motor vehicle, or the owner or operator thereof, as to such portion of its operations as are wholly within the corporate limits of such city.

(2) ORS 319.510 to 319.880 do not apply to vehicles or fuels used therein when the vehicles are subject to, and report and pay, the tax for the use of Oregon highways based upon the combined weight of the vehicle and in accordance with the weight group rates prescribed in ORS 825.474, 825.476 and 825.480.

(3) When an audit of the operations of a carrier shows that the use fuel taxes reported and paid under ORS chapter 319 should have been reported and paid under this chapter, or that fees or taxes reported and paid under this chapter should have been reported and paid under ORS chapter 319, the fees or taxes erroneously reported and paid under one chapter need not be refunded but may be considered an offset of fees or taxes due under the other chapter. [Formerly 767.830]

825.486 Credit for fuel tax. Any tax paid under ORS 319.010 to 319.430 or 319.510 to 319.880 on motor vehicle fuel or fuel as defined in ORS 319.520, either directly by the collection of the tax by the vendor from the consumer or indirectly by adding the amount of the tax to the price of the fuel paid by the customer, is a credit against the amount of tax otherwise due and payable to the state under ORS 825.474, 825.476 and 825.480. A credit under this section shall be allowed when the person claiming the credit submits to the Department of Transportation:

(1) A report under ORS 825.480, 825.490 or 825.492; and

(2) Satisfactory evidence along with the report showing the amount of tax paid by the person under ORS 319.010 to 319.430 or 319.510 to 319.880 during the period reported. [Formerly 767.832]

825.488 Fees required of interstate carriers. A person engaged exclusively in the conduct of interstate transportation shall currently pay to the Department of Transportation the road tax mileage fees prescribed by ORS 825.474, 825.476, 825.480, 825.484, 825.490, 825.494 and 825.496. [Formerly 767.835]

825.490 Due date of taxes and fees; penalty; deficiency assessments; refund of overpayment; limitation on audit. (1) On or before the last day of each month, except for the time of payment provided in ORS 825.480 and 825.492, all persons shall report and pay to the Department of Transportation the amount of taxes and fees due from them for the preceding calendar month. However, taxes and fees incurred after the 15th day of any month may be reported and paid to the department on or before the last day of the second calendar month following the month in which the taxes or fees were incurred. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(2) The department may permit a person to report and pay motor carrier taxes and fees on a periodic basis other than the calendar-month basis prescribed in subsection (1) of this section, provided that the number of reporting periods in any 12-month period shall not be less than 12. If no taxes or fees are due in any reporting period, the report shall so state. If payment is not made on or before the date it is due, there shall be added as a late payment charge a sum equal to 10 percent of the unpaid amount of the tax.

(3) Whenever practicable, and in no event later than three years after any report of taxes or fees is filed, the department shall audit it if the department deems such audit practicable. If the department is not satisfied with the report filed or amount of taxes or fees, including fees for temporary passes required under ORS 825.470 (2), paid to the state by any person, the department may, not later than three years after the report was filed or the taxes or fees were paid, make a proposed assessment of additional taxes or fees due from such person based upon any information available to the department. There shall be added to each such assessment, as a late payment charge, a sum equal to 10 percent of the amount of additional taxes or fees due.

(4) Every such additional assessment shall bear interest at the rate of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the additional assessment is imposed until paid.

(5) If the additional assessment imposed exceeds by at least five percent but not more than 15 percent the amount of taxes or fees reported or paid a penalty of five percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

(6) If the additional assessment imposed exceeds by more than 15 percent the amount of taxes or fees reported or paid, a penalty of 20 percent of the amount of the additional assessment shall be added thereto in addition to the 10 percent late payment charge provided in subsection (3) of this section.

(7) The department shall give to the person concerned written notice of such additional assessment.

(8) Except as provided in ORS 825.484 (3), the department shall refund to any person the amount of any overpayment caused by any incorrect report.

(9) Whenever the department has made an assessment pursuant to this section which has become final the department may not reopen or reassess such taxes, interest or penalties unless the department is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by the taxpayer pursuant to this chapter or the rules of the department. [Formerly 767.840]

825.492 Annual and quarterly reports authorized. (1) Whenever in the judgment of the Department of Transportation the estimated annual tax payable by a carrier will be less than $100, and the vehicles operated by the carrier are of less than 30,000 pounds combined weight, the department may authorize the carrier to file reports annually in lieu of monthly reports required by ORS 825.490 and 825.515. Annual reports and accompanying remittances shall be filed on or before the due date of February 28 for the preceding calendar year.

(2) At the request of a motor carrier, the department may authorize the carrier to file quarterly reports in lieu of monthly reports required by ORS 825.490 and 825.515. Quarterly reports and accompanying remittances due shall be filed on or before the due date as follows: First calendar quarter, May 31;

second quarter, August 31; third quarter, November 30; fourth quarter, February 28.

(3) Such authorizations may be withdrawn at any time upon the mailing of notice to the carrier at the last address of record of the carrier with the department. Any provisions of ORS 825.490 and 825.515 otherwise applicable to reports and remittances shall be applicable to reports and remittances under this section. [Formerly 767.845; 2001 c.567 §11]

825.494 Assessment by department upon failure to report tax or fee due. (1) If any person neglects or refuses to make a fee or tax report as required by this chapter, the Department of Transportation shall make a proposed assessment, based upon any information available to the department, for the period for which such person failed to make a report, of the amount of taxes and fees, including fees for temporary passes required under ORS 825.470 (2), due for the period for which such proposed assessment is made.

(2) Each assessment shall bear interest at the rate of one percent per month, or fraction thereof, from the last day of the month following the close of the month for which the assessment is imposed until paid.

(3) There shall be added to every such assessment a penalty of 25 percent of the amount thereof.

(4) The department shall give to such person written notice of such assessment.

(5) Whenever the department has made an assessment pursuant to this section which has become final the department may not reopen or reassess such taxes, fees, interest or penalties unless the department is satisfied that the taxpayer fraudulently or with intent to evade taxation destroyed, concealed or withheld any books, accounts, papers, records or memoranda required to be maintained by a person subject to this chapter or the rules of the department. [Formerly 767.850]

825.496 Reassessment waiver or reduction upon request; charge for failure to appear at hearing. (1) Any person against whom an assessment is made under ORS 825.490 or 825.494, may petition the Department of Transportation for a reassessment within 30 days after service upon the person of notice. If a petition is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is filed within the 30-day period the department shall reconsider the assessment and, if the person has requested in the petition, shall grant such person a hearing and give the person 10 days' notice of the time and place of the hearing. The department has power to continue the hearing from time to time as may be necessary. The decision of the department upon a petition for reassessment shall become final 30 days after service of notice upon the person concerned.

(2) The department may waive or reduce the interest and penalties provided in ORS 825.490 (1) to (6) or 825.494 (2) or (3) on those terms as the department considers proper if request for waiver or reduction is made within 30 days after service of notice of assessment upon the person concerned, or as part of the pleas made in the department's reconsideration of the assessment.

(3) Every assessment made by the department under ORS 825.490 to 825.496 becomes due and payable at the time it becomes final and if not paid to the department when due and payable there shall be added to the assessment a penalty of 10 percent of the amount of the tax.

(4) If any person who has requested a hearing pursuant to this section fails to appear at the scheduled hearing and failed to withdraw the petition for reassessment at least five days before the date of the hearing, the department may require such person to pay a charge of $150 in addition to any other fees, taxes and charges which may be imposed under this chapter. [Formerly 767.855]

825.498 Collection of fees, taxes and other moneys. All fees, taxes and charges imposed by this chapter and ORS chapter 826, all claims and penalties payable by any person under this chapter and ORS chapter 826 and all moneys collected under this chapter and ORS chapter 826, are the property of the state. The Department of Transportation shall collect and receive all fees, taxes, penalties and moneys due or to become due to the state under this chapter and ORS chapter 826 and, to that end, shall bring such actions or take such proceedings, including attachment and garnishment proceedings, in the name of the State of Oregon, as may be necessary. [Formerly 767.860]

825.500 Calculation of interest and penalties for delinquent road use assessment fees and single-use nondivisible load permits; audit. (1) Interest and penalties for delinquent payments of road use assessment fees payable pursuant to the provisions of ORS 818.225 and of single-trip nondivisible load permits shall be calculated in the same manner that interest and penalties are calculated under ORS 825.490 and 825.494.

(2) An audit conducted by the Department of Transportation pursuant to its authority under this chapter may include an examination of records of the carrier pertaining to the road use assessment fee imposed under ORS 818.225. If the audit shows that movement by a carrier exceeds the mileage authorized by a single-trip nondivis-

ible load permit, the department shall determine the amount of the road use assessment fee that is due. The department shall collect the amount due and may impose any penalties or additional assessments authorized by this chapter for delinquent payment of taxes. [Formerly 767.862; 1997 c.275 §28]

825.502 Payment of taxes and fees by credit card; rules. For payment of any weight-mile taxes and fees, the Department of Transportation may:

(1) Accept payment of taxes and fees by credit card. Any payment made by credit card shall be for the full amount of the tax or fee, except that a surcharge may be added to the amount tendered by the customer to offset fees charged to the department for acceptance and use of the credit card.

(2) Adopt reasonable rules as necessary or proper for the administration of this section. [Formerly 767.863]

825.504 Warrant procedure for collecting tax, fee, penalty or assessment. (1) If any tax, or fee in lieu of tax, reported due, or any final assessment made by the Department of Transportation under ORS 825.490, 825.494 and 825.496, including any penalties or charges therein imposed, or any final penalty imposed under ORS 825.950, 825.955 or 825.960, is not paid in full, the department may issue a warrant under the department's official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for payment of the amount thereof, with the added penalties or charges, interest and the cost of executing the warrant, and to return such warrant to the department and pay to the department the money collected by virtue thereof by a time to be specified therein, not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties or charges for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18.

(3) The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(4) In the discretion of the Department of Transportation, a warrant of like terms, force and effect to levy upon funds of the taxpayer in possession of the Department of Revenue may be issued and directed to any agent authorized by the Department of Transportation to collect taxes payable under this chapter, and in the execution thereof the agent shall have all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(5) The procedures authorized by this section may also be used for collection of any fees and penalties imposed on persons registering vehicles under ORS chapter 826. [Formerly 767.865; 1997 c.275 §29; 2003 c.576 §222]

825.506 Deposit or bond to secure payment of fees, taxes, charges and penalties. (1) If the Department of Transportation finds it necessary in order to insure the collection of any fees, taxes, charges or penalties imposed upon a carrier pursuant to this chapter or ORS 818.225, the department may at the time and as a condition of granting a certificate or permit, or continuing the same, or as a condition of issuing a motor vehicle registration device, require a carrier to deposit and keep on deposit with the department a sum in an amount determined proper by the department, taking into account the nature and scope of the carrier's operations. Moneys deposited under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The deposit required may be increased or reduced by the department at any time. In determining the necessity for an applicant or carrier to maintain a deposit the department shall consider the applicant or carrier's financial capability and responsibility and the department's prior experience, if any, in collecting fees, taxes, charges or penalties from the applicant, carrier or any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the carrier's authority.

(2) To secure payment of sums payable by the carrier the department may accept in lieu of such deposit:

(a) A bond in the form prescribed by the department; or

(b) Bonds, negotiable by delivery, of the State of Oregon, school districts therein, or obligations of the United States, or obligations for which the faith of the United

States is pledged for the payment of both principal and interest, equal in amount to the amount of the requested deposit.

(3) So long as the deposit remains unencumbered the depositor is entitled to collect the interest upon the securities described in subsection (2)(b) of this section. The department shall hold the securities upon such terms as the department shall designate and approve pursuant to the provisions of this chapter, and shall deliver such securities to the State Treasurer, who shall receive and hold them subject to the lawful orders of the department. The State Treasurer and the surety of the treasurer shall be liable upon the official bond of the treasurer for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by the treasurer in the mailing, insuring, shipping or delivering of any such securities, or of the interest coupons attached thereto as they mature.

(4) If a carrier ceases to be a carrier under this chapter, within a reasonable time of the receipt by the department of all payments due, the department shall refund or have returned to the carrier all deposits and securities remaining to the carrier's credit and shall release the surety on any bond given under this section.

(5) Any applicant or carrier required under this section to make a deposit to secure the payment of fees, taxes, charges or penalties may by proper petition demand a hearing on the necessity of such deposit or the reasonableness of the amount required. A hearing shall be granted and held within 10 days after the demand therefor. The decision of the department shall become final 10 days after service of the order upon the applicant or carrier concerned. [Formerly 767.870]

825.507 Limitations on cancellation of bond; suspension of authority. (1) No bond filed pursuant to ORS 825.506 may be canceled or otherwise terminated at any time prior to its expiration until the surety company which executed the same, has filed with the Department of Transportation a notice of cancellation as provided in such bond. Such cancellation shall be effective not less than 30 days from the date of receipt, and no agreement between the parties thereto shall operate to avoid this restriction upon cancellation.

(2) If any bond filed pursuant to ORS 825.506 becomes inoperative, the authority under the certificate or permit involved shall cease and be suspended insofar as it pertains to any affected vehicles until the requirements of ORS 825.506 have been met by the carrier. [Formerly 767.795]

825.508 Use of collection agency to obtain moneys due. (1) In carrying out the duties under ORS 825.498, the Department of Transportation may engage the services of a collection agency to collect any of the fees, taxes, penalties and moneys due to the state under this chapter and ORS chapter 826. The department may engage the services by entering into agreements to pay reasonable charges on a contingent fee or other basis.

(2) The department may assign to the collection agency, for collection purposes only, any of the fees, taxes, penalties and moneys due the state under this chapter and ORS chapter 826.

(3) The collection agency may bring such actions or take such proceedings, including attachment and garnishment proceedings, as may be necessary. [Formerly 767.875]

825.509 Writing off uncollected moneys due. (1) Any fee, tax, penalty or money due the state assigned to a collection agency pursuant to ORS 825.508 that remains uncollected for two years after the date of such assignment meets the criteria for uncollectibility formulated pursuant to ORS 293.240, and may be assigned to the Secretary of State.

(2) ORS 293.245 applies to any fee, tax, penalty or money due the state assigned to the Secretary of State pursuant to subsection (1) of this section. [Formerly 767.880]

825.515 Daily records and monthly reports by carriers. (1) Every for-hire carrier and private carrier shall keep daily records, upon forms prescribed by the Department of Transportation, of all vehicles used during the current month.

(2) On or before the last day of the month following, except as otherwise permitted under ORS 825.492, they shall certify to the department, upon forms prescribed therefor, the true and correct summaries of their daily records which shall show the extreme miles traveled in this state during the preceding month, the amount of fuel tax paid to the state during the preceding month, and such other information as the department may require.

(3) The daily records shall be kept on file in the office of the carrier and thereafter preserved until written permission for their destruction is given by the department. [Formerly 767.905]

825.517 Certain records not public. (1) The following are not public records unless the public interest requires disclosure in the particular instance:

(a) Reports from motor carriers required to be filed with the Department of Transportation in connection with the imposition or collection of any tax.

(b) Information collected by the department from a motor carrier for the purpose of conducting a tax audit.

(2) A motor carrier to whom the information pertains, or a person who has written permission from the carrier, may inspect information described in subsection (1) of this section.

(3) The department, upon request or as required by law, shall disclose information from the records described in subsection (1) of this section to a government agency for use in carrying out its governmental functions. [1997 c.501 §2]

825.550 Multijurisdictional agreement for collection of weight-mile taxes; rules. (1) The Department of Transportation may enter into an agreement with the authorized representatives of any jurisdiction that imposes weight-mile taxes, in order to form a multijurisdictional agreement for the singular collection of the total weight-mile taxes claimed due by any of the jurisdictions that are party to the agreement. An agreement established under authority granted by this section:

(a) May allow motor carriers to pay the total weight-mile taxes that are claimed due to any jurisdiction that is a party to the agreement.

(b) May provide for collection of all weight-mile taxes claimed due by any party to the agreement, on vehicles that are engaged in interjurisdictional commerce or combined interjurisdictional and intrajurisdictional commerce.

(c) May include provisions necessary to facilitate the determination and distribution of weight-mile tax moneys among the various jurisdictions.

(d) May provide that the department may deny any person further benefits under the agreement until all taxes have been paid, if the department determines that the person should have paid additional taxes.

(e) May provide for arrangements with agencies of this state and other jurisdictions for joint audits of owners of vehicles availing themselves of this agreement and for the exchange of audit information on those owners.

(f) May authorize the department to suspend or cancel any benefits under the agreement, if the person violates any of the terms or conditions of the agreement or violates any law or rule of this state relating to vehicles.

(2) The department may adopt any rules the department deems necessary to effectuate and administer the provisions of an agreement entered into under this section. Nothing in an agreement shall affect the right of the department to adopt rules as described in this section.

(3) An agreement shall be in writing and shall be filed with the department within 10 days after execution or the effective date of the agreement, whichever is later.

(4) Nothing in an agreement shall affect the right of the department to act under this section.

(5) An agreement shall not provide for any benefit, exemption or privilege with respect to any other fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except weight-mile taxes, fees and requirements. [Formerly 767.882]

825.555 International fuel tax agreement; rules; fees. (1) The Department of Transportation may enter into an international fuel tax agreement with jurisdictions outside of this state to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed on motor carriers for the consumption of all fuels used in vehicles operated interstate.

(2) An agreement under this section may:

(a) Provide for determining a base state for motor carriers for purposes of the agreement.

(b) Impose record keeping requirements.

(c) Specify audit procedures.

(d) Provide for exchange of information among jurisdictions.

(e) Provide criteria for determining which carriers are eligible to receive the benefits of the agreement.

(f) Define qualified motor vehicles.

(g) Specify conditions under which bonds are required.

(h) Specify reporting requirements and periods, including but not limited to specifying penalty and interest rates for late reporting.

(i) Determine methods for collecting and forwarding of motor fuel taxes, penalties and interest to another jurisdiction.

(j) Provide that the Department of Transportation may deny any person further benefits under the agreement until all motor fuel taxes have been paid, if the department determines that additional motor fuel taxes are owed by the person.

(k) Authorize the department to suspend or cancel benefits under the agreement for any person who violates any term or condition of the agreement or any law or rule of this state relating to motor carriers or vehicles.

(L) Contain such other provisions as will facilitate the agreement.

(3) An agreement may not provide for any benefit, exemption or privilege with respect to any fees or taxes levied or assessed against the use of highways or use or ownership of vehicles except for motor fuel taxes and requirements related to motor fuel taxes.

(4) The department may adopt any rules the department deems necessary to effectuate and administer the provisions of an agreement entered into under this section. Nothing in the agreement shall affect the right of the department to adopt rules as provided in ORS chapter 823 and this chapter.

(5) An agreement shall be in writing and shall be filed with the department within 10 days after execution or on the effective date of the agreement, whichever is later.

(6) The department shall adopt rules establishing an annual fee to be paid by each motor carrier receiving benefits from an agreement entered into under this section. In establishing fees, the department shall consider the size of the motor carrier's fleet. Fees established under this subsection shall be designed to recover the full direct and indirect costs to the department that result from participation in the agreement, but the department may not establish a fee under this subsection that exceeds $650. [Formerly 767.884; 1997 c.275 §30; 2001 c.698 §1]

CONSTITUTION OF OREGON

2003 EDITION

ARTICLE IX

FINANCE

(Partial)

Section 3a. Use of revenue from taxes on motor vehicle use and fuel; legislative review of allocation of taxes between vehicle classes. (1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state:

(a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and

(b) Any tax or excise levied on the ownership, operation or use of motor vehicles.

(2) Revenues described in subsection (1) of this section:

(a) May also be used for the cost of administration and any refunds or credits authorized by law.

(b) May also be used for the retirement of bonds for which such revenues have been pledged.

(c) If from levies under paragraph (b) of subsection (1) of this section on campers, mobile homes, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.

(d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.

(3) Revenues described in subsection (1) of this section that are generated by taxes or excises imposed by the state shall be generated in a manner that ensures that the share of revenues paid for the use of light vehicles, including cars, and the share of revenues paid for the use of heavy vehicles, including trucks, is fair and proportionate to the costs incurred for the highway system because of each class of vehicle. The Legislative Assembly shall provide for a biennial review and, if necessary, adjustment, of revenue sources to ensure fairness and proportionality. [Created through S.J.R. 7, 1979, and adopted by the people May 20, 1980 (this section and section 3 adopted in lieu of former section 3 of this Article); Amendment proposed by S.J.R. 44, 1999, and adopted by the people Nov. 2, 1999]

APPENDIX A
Capital Construction

Chapter 623
(Partial)
Oregon Laws 2003

CHAPTER 623

AN ACT HB 5004

Relating to state financial administration; limiting expenditures; and declaring an emergency.

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

SECTION 1. Notwithstanding any other law limiting expenditures, the following amounts are established for a six-year period beginning July 1, 2003, as the maximum limits for the payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the state agencies listed for the acquisition of land and the acquisition, planning, constructing, altering, repairing, furnishing and equipping of buildings and facilities:

(1)	**Department of Transportation:**	
(a)	**Lake of the Woods maintenance station**	**$800,000**
(b)	**Sylvan maintenance station**	**$1,600,000**
(c)	**Planning and design for future projects**	**$200,000**
(2)	**Oregon Department of Aviation:**	
(a)	**Cottage Grove airport improvements**	**$1**
(b)	**Salem office building construction**	**$1**
(3)	**Oregon Department of Administrative Services:**	
(a)	**Commerce Building renovation phase 2**	**$260,000**
(b)	**Labor and Industries Building electrical and HVAC phase 2**	**$350,000**
(c)	**North Mall Historic District phase 2**	**$1,200,000**
(d)	**Security improvements**	**$600,000**
(e)	**General Services Building basement conversion**	**$2,250,000**
(f)	**Multiple building clean and seal**	**$1,130,000**
(g)	**DEQ/Health Laboratory**	**$6,000,000**
(h)	**Justice Building renovation**	**$11,250,000**
(i)	**Planning funds**	**$250,000**
(j)	**Eugene State Office Building planning**	**$100,000**
(k)	**Central Computer Facility planning**	**$150,000**
(L)	**Pendleton State Office Building space improvements**	**$752,000**
(m)	**Space management/acquisition**	**$1**
(n)	**Transportation Building renovation planning**	**$1**
(4)	**Oregon Military Department, Lane County Armed Forces Reserve Center Complex**	**$2,400,000**

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Approved by the Governor July 29, 2003
Filed in the office of Secretary of State July 29, 2003
Effective date July 29, 2003

APPENDIX B
Fees Adopted by Administrative Rule

Chapter 636
Oregon Laws 2003

CHAPTER 636

AN ACT HB 5057

Relating to the financial administration of the Department of Transportation; and declaring an emergency.

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

SECTION 1. For the purpose of carrying out the provisions of ORS 291.055 (1)(e), the following new or increased fees, adopted by the Department of Transportation and approved by the Oregon Department of Administrative Services, are approved:

(1)	**Utility permit fees not related to highway construction:**		
(a)	**Class 1**	**$**	**150**
(b)	**Class 2**	**$**	**400**
(c)	**Class 3**	**$**	**1,000**
(d)	**Class 4**	**$**	**3,000**
(2)	**Utility permit fees related to highway construction:**		
(a)	**Class A 1**	**$**	**250**
(b)	**Class A 2**	**$**	**500**
(c)	**Class A 3**	**$**	**750**
(d)	**Class A 4**	**$**	**1,000**
(e)	**Class B 1**	**$**	**500**
(f)	**Class B 2**	**$**	**1,000**
(g)	**Class B 3**	**$**	**1,500**
(h)	**Class B 4**	**$**	**2,000**
(i)	**Class C 1**	**$**	**1,000**
(j)	**Class C 2**	**$**	**2,000**
(k)	**Class C 3**	**$**	**4,000**
(L)	**Class C 4**	**$**	**6,000**
(m)	**Class D 1**	**$**	**4,000**
(n)	**Class D 2**	**$**	**7,000**
(o)	**Class D 3**	**$**	**10,000**
(p)	**Class D 4**	**$**	**15,000**
(3)	**Application for making cash or security deposit under financial responsibility requirements**	**$**	**80**
(4)	**Recreational vehicle show license application fee**	**$**	**32**
(5)	**Annual fee for motor carriers participating in the International Fuel Tax Agreement (IFTA):**		
(a)	**1 motor vehicle**	**$**	**280**
(b)	**2 motor vehicles**	**$**	**295**
(c)	**3 motor vehicles**	**$**	**310**
(d)	**4 motor vehicles**	**$**	**325**
(e)	**5 motor vehicles**	**$**	**340**
(f)	**6 motor vehicles**	**$**	**355**
(g)	**7 motor vehicles**	**$**	**370**
(h)	**8 motor vehicles**	**$**	**385**
(i)	**9 motor vehicles**	**$**	**400**
(j)	**10 motor vehicles**	**$**	**415**
(k)	**11 motor vehicles**	**$**	**430**
(L)	**12 motor vehicles**	**$**	**445**
(m)	**13 motor vehicles**	**$**	**460**
(n)	**14 motor vehicles**	**$**	**475**
(o)	**15 motor vehicles**	**$**	**490**
(p)	**16 to 20 motor vehicles**	**$**	**525**
(q)	**More than 20 motor vehicles**	**$**	**575**
(r)	**Farm vehicle**	**$**	**50**
(6)	**Permit fee for a new, relocated or reconstructed outdoor advertising sign:**		
(a)	**Sign area 25 sq. ft. or less**	**$**	**125**
(b)	**Sign area 26-50 sq. ft.**	**$**	**300**
(c)	**Sign area 51-400 sq. ft.**	**$**	**500**
(d)	**Sign area 401 sq. ft. or more**	**$**	**600**
(7)	**Annual permit renewal fee for outdoor advertising sign on location:**		
(a)	**Sign area 50 sq. ft. or less**	**$**	**70**
(b)	**Sign area 51-400 sq. ft.**	**$**	**80**
(c)	**Sign area 401 sq. ft. or more**	**$**	**90**
(8)	**Annual permit renewal fee for outdoor advertising sign not on location that is pending relocation**	**$**	**10**
(9)	**Annual fee for outdoor advertising business license:**		
(a)	**Only erects or maintains signs**	**$**	**500**
(b)	**Owns 1 - 49 signs**	**$**	**375**
(c)	**Owns 50 - 499 signs**	**$**	**1,000**
(d)	**Owns 500 or more signs**	**$**	**1,500**

SECTION 2. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect July 1, 2003.

Approved by the Governor August 12, 2003
Filed in the office of Secretary of State August 13, 2003
Effective date August 12, 2003

APPENDIX C
2003-2005 Department of Transportation Legislatively Approved Budget

Chapter 710 (Partial) Oregon Laws 2003

CHAPTER 710

AN ACT HB 5077

Relating to state financial administration; creating new provisions; amending section 3, chapter 13, Oregon Laws 2002 (third special session), section 7, chapter 9, Oregon Laws 2003 (Enrolled Senate Bill 5548), and sections 15, 20, 21, 22 and 25, chapter 732, Oregon Laws 2003 (Enrolled House Bill 5067); appropriating money; limiting expenditures; and declaring an emergency.

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

* * *

SECTION 81. Notwithstanding any other law limiting expenditures, the following amounts are established for the biennium beginning July 1, 2003, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds received as reimbursement from the United States Department of Transportation, collected or received by the Department of Transportation for the following purposes:

(1)	Maintenance program	$293,419,677
(2)	Preservation program	$311,915,678
(3)	Bridge program	$226,260,863
(4)	Highway safety program	$ 46,319,589
(5)	Operations program	$ 34,022,586
(6)	Modernization program	$253,712,038
(7)	Utility permits	$ 4,472,858
(8)	Special programs	$164,759,760
(9)	Local government program	$208,789,477
(10)	Driver and motor vehicle services	$124,340,625
(11)	DMV debt service	$ 66,576
(12)	Motor carrier transportation	$ 44,326,184
(13)	Transportation program development	$ 62,409,112
(14)	Public transit	$ 22,807,568
(15)	Rail	$ 62,398,982
(16)	Transportation safety	$ 9,798,001
(17)	Oregon Board of Maritime Pilots	$ 199,385
(18)	Capital improvement	$ 2,529,970
(19)	Central services	$114,014,829

SECTION 82. Notwithstanding any other law limiting expenditures, the following amounts are established for the biennium beginning July 1, 2003, as the maximum limits for payment of expenses from federal funds, excluding federal funds received as reimbursement from the United States Department of Transportation, collected or received by the Department of Transportation for the following purposes:

(1)	Transportation program development	$ 181,535
(2)	Motor carrier transportation	$ 6,144,505
(3)	Central services	$ 56,051
(4)	Public transit	$ 27,047,250
(5)	Rail	$ 22,862,239
(6)	Transportation safety	$ 13,109,049

SECTION 83. Notwithstanding any other law limiting expenditures, the following amounts are established for the biennium beginning July 1, 2003, as the maximum limits for payment of expenses from lottery moneys allocated from the Administrative Services Economic Development Fund to the Department of Transportation for debt service for the following purposes:

(1)	Westside Light Rail	$ 19,928,618
(2)	Short Line Infrastructure Assistance	$ 673,761
(3)	South Metro Commuter Rail	$ 43,473
(4)	Industrial Rail Spur Assistance	$ 500,050

SECTION 84. Notwithstanding any other law appropriating moneys, limiting expenditures or otherwise adjusting appropriations or expenditure limitations, and in addition to any action taken by the Emergency Board, the following expenditure limitations for the Department of Transportation are changed by the amounts specified for the biennium ending June 30, 2003:

Program	2001 Oregon Laws Chapter/ Section	Adjustment
(1) Preservation program	ch. 643 2(2)	-$11,000,000
(2) Bridge program	ch. 643 2(3)	+$10,000,000
(3) Highway safety program	ch. 643 2(4)	+$2,000,000
(4) Operations program	ch. 643 2(5)	-$2,000,000
(5) Modernization program	ch. 643 2(6)	+$14,000,000
(6) Special programs	ch. 643 2(8)	-$2,000,000
(7) Local government program	ch. 643 2(9)	-$11,000,000

SECTION 85. **There is appropriated to the Department of Transportation, for the biennium beginning July 1, 2003, out of the General Fund, the amount of $3,914,616 for the Willamette Valley Train Program.**

SECTION 86. **For the biennium beginning July 1, 2003, the following expenditures are not limited:**

(1) Expenditures by the Oregon Board of Maritime Pilots from the Pilot Account established under ORS 776.365 for costs related to rate setting hearings;

(2) Expenditures by the Department of Transportation from the Department of Transportation Driver and Motor Vehicle Suspense Account and the Department of Transportation Driver and Motor Vehicle Services Administrative Account established under ORS 802.100 for debt service and for internally reimbursed expenditures;

(3) Expenditures by the Department of Transportation from the State Highway Fund established under ORS 366.505 for debt service and for internally reimbursed expenditures; and

(4) Expenditures by the Department of Transportation from the Oregon Transportation Infrastructure Fund established under ORS 367.015 for debt service and for internally reimbursed expenditures.

* * *

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APPENDIX D
Budget Reconciliation

Chapter 734
(Partial)
Oregon Laws 2003

CHAPTER 734

AN ACT HB 2148

Relating to state finance; creating new provisions; amending ORS 173.790, 199.432, 291.002, 291.003, 291.232, 292.039, 461.547, 576.435 and 577.440; repealing ORS 173.795 and 291.254; appropriating money; and declaring an emergency.

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

* * *

ENVIRONMENTAL QUALITY INFORMATION ACCOUNT/DEPARTMENT OF TRANSPORTATION OPERATING FUND

SECTION 9. Notwithstanding any other provision of law, not later than January 1, 2005, the amount of $4.9 million shall be transferred from the Environmental Quality Information Account established under ORS 802.100 to the Department of Transportation Operating Fund established under ORS 184.642.

* * *

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APPENDIX E
Bond Limits

Chapter 741
(Partial)
Oregon Laws 2003

CHAPTER 741

AN ACT HB 3446

Relating to state finance; creating new provisions; amending ORS 285B.551, 777.267, 777.277, 777.282 and 777.284 and sections 6, 14, 19, 21 and 22, chapter 942, Oregon Laws 2001; repealing ORS 777.279 and 777.289; appropriating money; and declaring an emergency.

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

SECTION 1. The amounts allocated, as provided by ORS 286.525 (1), for general obligation bonds, revenue bonds, certificates of participation and other financing agreements of this state that may be issued during the 2003-2005 biennium are as follows:

Category Designation		
GENERAL OBLIGATION BONDS Program		
General Fund Obligations		
Department of Higher Education (Art. XI-G)	$	56,700,000
Department of Environmental Quality (Art. XI-H)	$	10,000,000
Oregon Department of Administrative Services (Art. XI-L)	$	120,000,000
Dedicated Fund Obligations		
Department of Veterans' Affairs (Art. XI-A)	$	135,000,000
Department of Higher Education (Art. XI-F(1))	$	345,000,000
Housing and Community Services Department (Art. XI-I(2))	$	150,000,000
Office of Energy (Art. XI-J)	$	80,000,000
Total General Obligation Bonds	$	896,700,000

Category Designation		
REVENUE BONDS Program		
Direct Revenue Bonds		
Housing and Community Services Department	$	600,000,000
Department of Transportation, Oregon Transportation Infrastructure Fund	$	50,000,000
Highway User Tax	$	290,000,000
Economic and Community Development Department	$	200,000,000
Oregon Department of Administrative Services Lottery Revenue Bonds	$	132,000,000
Total Direct Revenue Bonds	$	1,272,000,000

Category Designation		
Pass Through Revenue Bonds		
Oregon Economic and Community Development Commission Industrial Development Bonds	$	250,000,000
Oregon Facilities Authority	$	500,000,000
Housing and Community Services Department	$	150,000,000
Total Pass Through Revenue Bonds	$	900,000,000
Total Revenue Bonds	$	2,172,000,000

Category Designation		
CERTIFICATES OF PARTICIPATION AND OTHER FINANCING AGREEMENTS		
Oregon Department of Administrative Services	$	211,895,000

* * *

SHORT LINE CREDIT PREMIUM ACCOUNT

SECTION 6. Section 14, chapter 942, Oregon Laws 2001, is amended to read:

Sec. 14. (1) Pursuant to ORS 286.560 to 286.580, lottery bonds may be issued to fund projects for the improvement, restoration, upgrading and preservation of systems, facilities and equipment of short line railroads.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well developed system of short line railroads is critical to the economic growth and stability of Oregon;

(b) Traditional funding techniques such as grant programs are unable to keep pace with infrastructure investment in Oregon due to budgetary constraints on state government;

(c) Short line railroads serve the public good and would benefit from the provision of public assistance;

(d) New investment capital can be attracted to infrastructure projects that are capable of generating their own revenue stream through dedicated funding sources;

(e) A state credit program can complement existing funding sources by leveraging resources from nonstate sources;

(f) The state could mitigate the need to expand highways by encouraging the development and sustainability of a statewide system of short line railroads; and

(g) Newly established state credit programs are most effectively delivered when they augment and utilize the resources of previously established state credit programs.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of [*$2 million and*] **$4 million, plus** an additional amount established by the State Treasurer to be necessary to pay bond-related costs. Lottery bonds issued pursuant to this section shall be issued only at the request of the Director of Transportation.

(4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the Short Line Credit Premium Account established by [*section 16 of this 2001 Act*] **ORS 367.067**.

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs.

SOUTH METRO COMMUTER RAIL PROJECT

SECTION 7. Section 19, chapter 942, Oregon Laws 2001, is amended to read:

Sec. 19. [*(1)(a) For the biennium beginning July 1, 2001, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of $200,000 for payment of the expenses of the Department of Transportation in entering into and administering a grant agreement under section 21 (3) of this 2001 Act for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.*]

[*(b)*] **(1)(a)** For the biennium beginning [*July 1, 2001,*] **July 1, 2003,** the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of [*$20 million*] **$35,342,000** for payment of the expenses of Washington County for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.

[*(c)*] **(b)** For the biennium beginning July 1, 2003, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of $200,000 for payment of the expenses of the Department of Transportation in **entering into, modifying and** administering a grant agreement under section 21 (3)**, chapter 942, Oregon Laws 2001,** [*of this 2001 Act*] for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.

[*(d) For the biennium beginning July 1, 2003, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286.560 to 286.580 in the amount of $15 million for payment of the expenses of Washington County for the South Metro Commuter Rail Project, plus an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer.*]

(2) Lottery bonds issued under this section shall be issued at the request of the Director of Transportation.

[*(3)(a) Net proceeds of lottery bonds issued under subsection (1)(a) and (b) of this section, in the amount of $20.2 million, shall be deposited in the South Metro Commuter Rail Project Fund established by section 21 of this 2001 Act not later than June 30, 2003.*]

[*(b)*] **(3)** Net proceeds of lottery bonds issued under subsection [*(1)(c) and (d)*] **(1)(a) and (b)** of this section, in the amount of [*$15.2 million*] **$35,542,000**, shall be deposited in the South Metro Commuter Rail Project Fund established by section 21**, chapter 942, Oregon Laws 2001,** [*of this 2001 Act*] not later than [*June 30, 2004*] **June 30, 2005**.

(4) The bond-related costs of the Oregon Department of Administrative Services, the Department of Transportation and the State Treasurer for the lottery bonds authorized by this section shall be paid from the gross proceeds of those lottery bonds and from allocations for the purposes of ORS 286.576 (1)(c).

SECTION 8. Section 21, chapter 942, Oregon Laws 2001, as amended by section 10, chapter 4, Oregon Laws 2002 (second special session), is amended to read:

Sec. 21. (1) The South Metro Commuter Rail Project Fund is established separate and distinct from the General Fund. The moneys in the South Metro Commuter Rail Project Fund and the interest earnings of the fund are continuously appropriated to the Department of Transportation for the purpose described in subsection (2) of this section. The fund shall consist of moneys deposited in the fund under section 19, chapter 942, Oregon Laws 2001, and may include fees, moneys or other revenues available for payment of expenses of the South Metro Commuter Rail Project, including federal funds collected or received as reimbursement for expenses of the project from the United States Department of Transportation or the Federal Highway Administration under the Transportation Equity Act for the 21st Century (P.L. 105-178), or Miscellaneous Receipts.

(2) Subject to subsection (3) of this section, moneys in the fund shall be available for immediate distribution to Washington County to pay the expenses of the project.

(3)(a) The Director of Transportation shall enter into**, or modify,** a grant agreement [*by February 28, 2002,*] with Washington County that requires the department to disburse, over the course of the project, an aggregate amount of [*$35 million*] **$35,342,000** to Washington County from the fund. Disbursements from the fund shall be made as soon as deposits accrue in the fund and shall commence when:

(A) Moneys are available;

(B) Washington County has entered into one or more contracts for final design, construction or acquisition of components of the South Metro Commuter Rail Project and the contracts have an aggregate value of at least [*$20 million*] **$35,342,000**; and

(C) The Director of Transportation determines that the following conditions have occurred:

(i) Washington County has provided documentation that it will have sufficient financing to complete the project; and

(ii) Washington County has agreed in the grant agreement authorized by this section that the county will not request or accept any state General Fund moneys for the project. Upon completion of the project, if the aggregate expenditure of state and local moneys is less than $45 million, Washington County shall refund the difference to the fund established by this section.

(b) Upon satisfaction of the conditions described in paragraph (a) of this subsection, the Department of Transportation shall disburse [*$20 million*] **$35,342,000** of the moneys in the fund to Washington County in the biennium beginning [*July 1, 2001*] **July 1, 2003**.

[*(c) When moneys are available in the fund and Washington County certifies to the Department of Transportation that it has entered into one or more contracts for final design, construction or acquisition of components of the project that in the aggregate represent at least 58 percent of the project's costs, the department shall disburse $15 million of the moneys in the fund to Washington County in the biennium beginning July 1, 2003.*]

[*(d)(A) Of the moneys deposited in the fund in the biennium beginning July 1, 2001, the Department of Transportation may use $200,000 to pay the department's expenses in entering into and administering the grant agreement authorized by this section.*]

[*(B)*] **(c)** Of the moneys deposited in the fund [*in the biennium beginning July 1, 2003*], the Department of Transportation may use $200,000 to pay the department's expenses in entering into**, modifying** and administering the grant agreement authorized by this [*subsection*] **section**.

(4)(a) The state is not liable to the lenders, vendors or contractors of Washington County for any action or omission under sections 18 to 22, chapter 942, Oregon Laws 2001, or the grant agreement authorized by this section, except for a failure to allocate and deposit to the fund amounts required by section 19, chapter 942, Oregon Laws 2001, or to disburse from the fund to Washington County amounts required by this section and the grant agreement authorized by this section.

(b) The grant agreement must:

(A) Obligate the department to deposit the net proceeds of lottery bonds described in section 19, chapter 942, Oregon Laws 2001, or, if necessary, the amounts described in section 22, chapter 942, Oregon Laws 2001, into the fund.

(B) Obligate Washington County to indemnify the state and its agencies and departments to the fullest extent permitted by law for any liability the state or its agencies and departments might incur in connection with any borrowing by Washington County for the project, except failure to allocate and deposit to the fund amounts required by section 19, chapter 942, Oregon Laws 2001, or amounts described in section 22, chapter 942, Oregon Laws 2001, or to disburse from the fund to Washington County amounts required by this section and the grant agreement authorized by this section.

(c) Washington County may assign and pledge its rights under the grant agreement to lenders, vendors or contractors. The Director of Transportation shall pledge the moneys available in the fund for the project.

SECTION 9. Section 22, chapter 942, Oregon Laws 2001, is amended to read:

Sec. 22. If the state has not deposited an aggregate amount of [*$35 million*] **$35,342,000** in the South Metro Commuter Rail Project Fund by [*June 30, 2004,*] **February 28, 2005,** the state shall allocate to the Department of Transportation for deposit in the South Metro Commuter Rail Project Fund an amount equal to the difference between [*$35 million*] **$35,342,000** and the aggregate deposits to the fund as of [*June 30, 2004,*] **February 28, 2005,** from the first available residual lottery revenues.

INDUSTRIAL RAIL SPURS

SECTION 10. (1) For the biennium beginning July 1, 2003, pursuant to ORS 286.560 to 286.580, the State Treasurer, at the request of the Director of Transportation, may issue lottery bonds to finance grants and loans to fund industrial rail spurs typically used to provide access for transportation of raw materials and finished products between manufacturing facilities and main rail lines.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well-developed system of industrial rail spurs supports state and local government efforts to attract new industries to Oregon and to keep and encourage expansion of existing industries;

(b) Industrial rail spurs serve the public good and would benefit from the provision of public assistance; and

(c) A state credit program can complement existing funding sources by leveraging resources from nonstate sources.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of $8 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs.

(4) The net proceeds of lottery bonds issued pursuant to this section must be deposited in the Industrial Rail Spur Fund established by section 11 of this 2003 Act.

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs.

SECTION 11. The Industrial Rail Spur Fund is established separate and distinct from the General Fund. The moneys in the Industrial Rail Spur Fund and the interest earnings of the fund are continuously appropriated to the Department of Transportation for the purpose of financing grants and loans to fund industrial rail spurs. The fund consists of moneys deposited in the fund under section 10 of this 2003 Act and may include fees, moneys, federal funds, Miscellaneous Receipts or other revenues available for the purpose.

* * *

Approved by the Governor August 29, 2003
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APPENDIX F
Study of Highway Fund Allocation to Counties

Chapter 780
Oregon Laws 2003

CHAPTER 780

AN ACT HB 3582

Relating to distribution of moneys to counties; and declaring an emergency.

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

SECTION 1. (1) The Association of Oregon Counties shall establish a work group that consists of county officials to study the basis used to allocate the county portion of state highway funds to each county in this state.

(2) The association may appoint persons who are not county officials to the work group.

(3) The purpose of the work group is to study methods within the formula that allocates state highway funds to counties in order to address the following issues:

(a) The financial support that high-growth counties require due to the unique needs of those counties;

(b) The financial support that sparsely populated counties require for basic road programs;

(c) The effect on county road programs of large bridges including, but not limited to, bridges across the Willamette River;

(d) The effect on county road programs of vehicles, including heavy truck tractors and truck trailers, that are registered in a county but are not operated in the county; and

(e) Other issues relating to the allocation of state highway funds to counties.

(4) The work group shall develop and present a report on the results of its study to the appropriate committees of the Seventy-third Legislative Assembly on or before February 1, 2005.

(5) Funds made available to counties under ORS 366.524 may be used to pay the expenses of the work group. The association may enter into an intergovernmental agreement with the Department of Transportation to obtain the funds.

(6) All agencies of state government, as defined in ORS 174.111, and the League of Oregon Cities are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish the information and advice that members of the work group consider necessary to perform their duties.

SECTION 2. Section 1 of this 2003 Act is repealed on January 2, 2006.

SECTION 3. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect on its passage.

Approved by the Governor September 17, 2003
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The following index is derived from selected topics in the General Index to *Oregon Revised Statutes* (2003 Edition). Certain citations may not be applicable to this publication but have been retained for informational purposes.

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