

HIGHER EDUCATION COORDINATING COMMISSION: Policies & Procedures



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POLICY #1

COMMISSION POLICIES & PROCEDURES

A. Commission Policies & Procedures

The Commission shall operate under its policies as directed by law and as adopted by the Commission. These policies may be adopted, amended, or repealed by a majority of the members. No amendment shall be contrary to the laws of Oregon.

The policies may be amended at any meeting upon giving the members of the Commission ten (10) days advance notice of such proposed amendments, and upon an affirmative vote of a majority of the members. Citations may be updated, and punctuation, grammar, and typographical errors may be corrected by Commission staff, without a vote of the Commission.

END OF POLICY

POLICY #2

MEMBERSHIP

A. Number & Terms of Office

The Higher Education Coordinating Commission consists of 15 voting members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

The term of office of each member appointed under ORS 350.050(2)(g) and (h) is four years, and the term of office for each student, faculty, and staff member appointed under ORS 350.050(2)(a) to (f) is two years. A person appointed under this paragraph is eligible for reappointment.

Members serve at the Governor's pleasure and may be removed at any time for cause after notice and public hearing. Not more than three members shall be removed within a period of four years, unless it is for corrupt conduct in office (ORS 350.050(5)).

B. Eligibility for Commission Membership

The Governor shall appoint the following to voting positions on the Commission:

- One member from each of the five congressional districts in the state; and
- Four members of the general public.
- One undergraduate student at a public university listed in ORS 352.002;
- One graduate student at a public university listed in ORS 352.002;
- One faculty member at a public university listed in ORS 352.002;
- One student at a community college in this state;
- One faculty member at a community college in this state; and
- One nonfaculty member of the staff from either a public university listed in ORS 352.002 or a community college.

The members of the Commission must be residents of Oregon who are well informed on the principles of higher education (ORS 350.055).

C. Vacancies

The Governor fills vacancies by appointment; nominations to voting positions must be confirmed by the Senate. Appointments made to fill vacancies occurring prior to the expiration of a term are for the remainder of the unexpired term (ORS 350.050(4)).

D. Chair & Vice Chair

The Higher Education Coordinating Commission shall select one of its members as chairperson and another as vice chairperson. Terms shall be for one year and members are eligible for re-election.

The duties of the chair include the following:

- Setting meeting dates
- Setting agendas
- Presiding at meetings

- Creating subcommittees and work groups and setting membership of those groups
- Being the primary spokesperson for the Commission to the press
- Enforcing parliamentary procedure
- Ensuring fairness and impartiality
- Serving as an ex-officio member on subcommittees and workgroups

The duties of the vice chair include the following:

- Should the chair be absent from any Commission meeting, the vice chair shall serve as chair for the meeting.

END OF POLICY

POLICY #3

COMMISSION AUTHORITY & RESPONSIBILITIES

Any duty imposed upon the Commission as a body will be performed at a regular or special meeting and will be made a matter of record.

A. Policy Setting Authority

The Higher Education Coordinating Commission is established for the purpose of ensuring post-secondary students of this state reach the education outcomes established for the state by carrying out the responsibilities described in ORS 350.014.

The Commission shall:

- Develop state goals for the postsecondary system, including community colleges, public universities, and student access programs;
- Adopt a strategic plan for meeting the state's post-secondary education goals;
- Authorize degrees to be offered by some private and out-of-state post-secondary institutions under ORS 348.594 to 348.615;
- Oversee the licensing of career schools under ORS 345.010 to 345.450;
- Each biennium, recommend to the Governor a consolidated higher education budget request;
- Advise the Governor, Legislative Assembly, institutions, and other governmental entities on higher education policy issues;
- Adopt rules for the distribution of appropriations from the Legislative Assembly to community colleges, public universities listed in ORS 352.002, and student access programs;
- Approve or disapprove any significant change to the academic program of a community college or public university listed in ORS 352.002;
- Approve statewide transfer pathways, a common course numbering system, and policies and procedures related to the movement of students between community colleges and universities;
- Develop dual credit standards and credit for prior learning standards (ORS 340.310, ORS 341.430, and ORS 350.110);
- For public universities listed in ORS 352.002: approve the mission statement, review and determine whether a proposed annual increase of resident undergraduate enrollment fees of greater than five percent is appropriate, advise the Governor and Legislative Assembly on issues of university governance, and approve and authorize degrees;
- Appoint and oversee an executive director who shall serve at the pleasure of the Commission.

The Commission may take any action that is necessary for the Commission to exercise all of the duties, functions, and powers conferred on it by ORS 350.075.

B. Rule-Making Authority

The Higher Education Coordinating Commission may adopt rules necessary for the administration of the laws that the Commission is charged with administering, in accordance with applicable provisions of ORS chapter 183 (Chapter 747, Oregon Laws 2013). Adoption of such rules shall comply with state and federal law.

C. Delegation of Authority

With the exception of its rulemaking authority, the Commission may delegate any of its powers, duties or functions to a committee of the commission or to the executive director of the commission (ORS 350.075).

D. Commission Management Responsibility¹

Commission members will act in accordance with their role as public representatives of the state.

E. Working with Other Boards

The Commission will monitor and coordinate with those other boards whose responsibilities and interests are closely related or overlap.

F. The Commission will consult with appropriate stakeholders, including but not limited to the Interinstitutional Faculty Senate, Oregon Student Association, Oregon Community College Association, the Oregon Education Association, the American Federation of Teachers-Oregon, SEIU, the Oregon Council of Presidents, the Oregon Alliance of Independent Colleges and Universities, and others as appropriate, when developing higher education policy for the state.

G. Effective Practices

The Commission will adopt practices that support effective meetings, such as the use of a consent calendar and subcommittees or work groups. Members will identify and attend appropriate member training sessions, conduct periodic self-evaluations and audits of Commission practices, and periodic evaluations of Commission staff.

END OF POLICY

¹ Department of Administrative Services and Legislative Fiscal Office. *Budget Note Report on Performance Measures for Boards and Commissions*. Prepared for July 6, 2006 Joint Legislative Audit Committee.

POLICY #4

INDIVIDUAL MEMBER RESPONSIBILITIES & AUTHORITY

Commission members have certain responsibilities as described in this policy. Regular attendance at meetings is expected of each Commission member. A member should notify the chair or Commission staff at least 24 hours in advance of a meeting if the member is unable to attend. In an emergency, the member shall contact the chairperson or Commission staff as soon as reasonably possible.

To make efficient use of Commission time, members shall read distributed meeting materials prior to the meeting.

Commission members will have authority to act on behalf of the Commission only when legally in session. The Commission cannot be bound by statements or actions of individual Commission members or employees, except when such a statement or action is pursuant to policies of the Commission or as delegated by the Commission.

Commission members do not have the authority to direct the staff work. The chair may, however, ask staff to prepare materials for presentation to the full Commission. The chair may do this in anticipation of questions Commission members may have about a specific issue.

Commission members will not presume to speak for the Commission unless the Commission has arrived at a formal decision. Members should also be cautious about voicing personal opinions since those views may be interpreted as representing Commission opinion. Members should not, for example, write a letter to the editor on an Oregon higher education issue, unless the Commission has authorized it.

END OF POLICY

POLICY #5

MEETINGS

A. Regular Meetings & Special Meetings

The Higher Education Coordinating Commission shall meet at such times and places specified by the call of the chair or a majority of the members of the Commission, no less frequently than once every three months (ORS 350.060).

The members of the Commission will be given at least 10 days' notice, in writing, of the date and place of each regular meeting (ORS 182.020). No special meeting shall be held without at least 24 hours' notice to the members of the Commission, the news media which have requested notice, and the general public (ORS 192.640).

A regular or special meeting of the Commission may be held by telephone, video conferencing or other electronic means in which all Commission members may hear each other. If a Commission member is unable to attend any meeting in person, the member may participate via telephone, video conferencing or other electronic means. Members attending through such electronic means shall be included in constituting a quorum.

B. Meeting Requirements

1. Public Meeting Law Compliance

The Higher Education Coordinating Commission is a governing body of a public body and as such, is subject to the provisions of ORS Chapter 192, *Records, Public Reports, Public Meetings*.

- All meetings of the Commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by law.
- Any subcommittees, task forces, or work groups that are charged with making recommendations as a whole to the Commission shall comply with the provisions of Chapter 192.²
- The Commission shall give public notice reasonably calculated to give actual notice to interested persons including news media who have requested notice, of the time and place for holding of its meetings, including its committees and work groups. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting (ORS 192.640).
- The notice shall provide the name of a person and telephone number at the public body to contact to make a request for an interpreter for the hearing impaired or for other communication aids (AG recommendation re: ORS 192.630).
- The Commission may not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, national origin or disability is practiced. It is discrimination on the basis of disability for the Commission to meet in a place inaccessible to the disabled, or, upon request of a deaf or hard-of-hearing person, to fail to make a good faith effort to have an interpreter for deaf or hard-of-hearing persons provided at a regularly scheduled meeting (ORS 192.630).

² A body that has authority to make recommendations to a public body on policy or administration is a governing body (ORS 192.610(3); *Attorney General's Public Records and Meetings Manual*, 2014, p. 131-134. Subcommittees, task forces, and work groups that are charged with making recommendations as a whole, to the Commission, are subject to the public meetings law.

2. Quorum

A majority of the members of the Commission constitutes a quorum (ORS 350.060). Absent a quorum, the Commission may meet for purposes of gathering information but no formal action may be taken.

A quorum of the Commission may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by law (ORS 192.640).

3. Minutes and Other Written Records

The Commission shall provide for the sound, video, or digital recording or the taking of written minutes of all its meetings. All minutes shall be available to the public within a reasonable time after the meeting and shall include at least the following information:

- All members of the Commission present;
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- The results of all votes and the vote of each member by name;
- Disclosures of actual and potential conflicts of interest;
- The substance of any discussion on any matter; and
- Subject to public records law, a reference to any document discussed at the meeting. (ORS 192.650)

Minutes and other reports presented to the Commission shall be available to the public and posted to the Commission's website (ORS 192.243).

4. Archiving Records

The Commission shall follow the retention schedule approved by the Secretary of State's Archivist (ORS 192.105).

5. Penalties

Any decision made in violation of the public meetings law is voidable (ORS 192.680). The Government Standards and Practices Commission may impose civil penalties not to exceed \$1,000 for violating any provision of law pertaining to executive sessions. However, a civil penalty may not be imposed under this subsection if the violation occurred as a result of the Commission acting upon the advice of the public body's counsel (ORS 244.350).

C. Meeting Protocol

1. Discussion

The Chair will direct discussion, determining who may question a speaker and the length of the questioning. Members wishing to question speakers must seek recognition from the Chair before proceeding. The Chair may participate in the discussion.

2. At least once per year, the Commission will provide an opportunity for invited testimony from stakeholders, including but not limited to the Interinstitutional Faculty Senate, Oregon Student Association, Oregon Community College Association, the Oregon Council of Presidents, the Oregon Education Association, AFT-Oregon, SEIU, the Oregon Workforce Partnership, and the Oregon Alliance of Private Colleges and Universities, in addition to the regular period for public testimony. Representatives of those organizations may also sign up for public testimony at any meeting.

3. Motions

Any member may make a motion. The Chair will repeat the motion for clarity. Motions may be modified or withdrawn if a majority of the Commission agrees. A motion need not be seconded by another member. All members, including the Chair, may discuss the merits and demerits of the motion.

4. Voting

All members are expected to participate in voting unless a conflict of interest exists. For a motion to be adopted, a majority of appointed members must vote in favor of it (ORS 350.060). Votes may be taken either by individually calling member names, by a group voice vote, or by “unanimous consent.” The chair may say, “If there is no objection . . .” If an objection is lodged, a roll call vote must then be taken. Following the vote, the chair will announce the vote and whether the motion has failed or passed. All votes must be recorded in the minutes indicating how each member voted.

D. Conflicts of Interest

When a potential conflict of interest exists for a member, the member will announce the nature of the conflict and be allowed to vote. When an actual conflict exists, the member will announce the nature of the conflict and refrain from participating in the debate or vote. A member with an actual conflict of interest may be allowed to vote if the vote is necessary to meet a quorum requirement (ORS 244.120).³ The conflict will be recorded in the minutes (ORS 244.130).

When a Commission member is confronted with an actual conflict of interest, the Commission member shall:

1. Announce publicly the nature of the actual conflict.
2. Refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, unless the member’s vote is necessary to meet the quorum requirement.

See Commission Policy #7 (“D. Conflicts of Interest”) for further discussion.

E. Parliamentary Procedure

Except as otherwise provided by law, these Policies and Procedures, or where the Commission directs or acts to the contrary, *Robert’s Rules of Order* shall govern parliamentary processes of the Commission.⁴ The Chair or the Chair’s designee will serve as parliamentarian.

F. Subcommittees & Work Groups

Subcommittees (consisting only of Commission members) and work groups (consisting of Commission and non-Commission members) may be appointed by the chair with specific instructions on matters to be investigated by the subcommittees.

³ The exception in ORS 244.120(2)(b)(B) is quite narrow, and allows a member with an actual conflict of interest to vote only if the vote is necessary to meet a quorum requirement. For example, if only five members are present, five members is the minimum number for a quorum, and one has an actual conflict of interest, then that member could vote, but not participate in the discussion or debate. Even in this narrow circumstance, the member may be at risk because he or she could be violating other provisions of the ethics laws despite complying with (2)(b)(B). In this circumstance, the member should be encouraged to get advice from the Oregon Government Ethics Commission.

⁴ See the discussion at *Attorney General’s Public Records and Meetings Manual (2011)*, C-1.

Subcommittees and work groups are not required to have a quorum to meet or to make recommendations to the full Commission; however, they must comply with public meeting law in order to take a recommendation to the full Commission.

G. Executive Sessions

1. Meetings

The Commission may schedule an “executive session,” closed to the public, under certain circumstances allowed by law, including the following:

- To consider the employment of the executive director;
- 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;
- To review and evaluate employment-related performances. The Commission may not use an executive session for purposes of evaluating a 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 (ORS 192.660);
- To conduct deliberations with persons designated by the governing body to negotiate real property transactions;
- To consider information or records that are exempt by law from public inspection.

No executive session may be held for the purpose of taking any final action or making any final decision. Representatives of the news media shall be allowed to attend executive sessions but the Commission may require that specified information be undisclosed. When the Commission convenes an executive session for the purposes of conferring with counsel on current litigation or litigation likely to be filed, the Commission 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 (ORS 192.660).

If an executive session is to be held, the meeting notice shall be given to the members of the Commission, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session (ORS 192.640(2), Attorney General’s Public Records and Meetings Manual, 2014, p. 171-174).

A record of any executive session may be written minutes or 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 (ORS 192.650).

END OF POLICY

POLICY #6

COMPENSATION & REIMBURSEMENT

A. Compensation

Higher Education Coordinating Commission members are entitled to compensation as provided in ORS 292.495. Effective September 1, 2021, ORS 292.495 requires agencies to pay per diem compensation and expenses for “qualified members,” defined as members who are (1) not in full-time public service, and (2) have an adjusted gross income for the previous tax year of less than \$50,000, or less than \$100,000 reported on a joint income tax return. The only exception to the requirement is if the qualified member declines compensation. Qualified members will be compensated at an amount equal to the per diem compensation paid to members of the Legislative Assembly for each day or portion thereof which members spend time performing board or commission duties. This rate will be available to Commission members for time spent in performance of official duties.

B. Reimbursement

Commission members, including those employed in full-time public service, may receive actual and necessary travel or other expenses actually incurred in the performance of their official duties within the limits provided by law or by the Oregon Department of Administrative Services under ORS 292.210 to 292.250 (ORS 292.495).

As a state entity, the Commission is subject to the provisions of the Oregon Accounting Manual (OAM 01.05.00.PO, section .105). Commission members are directed to use state per diem meal and lodging reimbursement allowances. Under this option, receipts are not required for meal expenses (Oregon Accounting Manual 10.40.00.PO, section .108). Receipts for lodging are required. Receipts for meals are required when the expenses exceed the state per diem or if gratuities are claimed. Gratuities of 15% actual meal costs are permissible if reasonable and necessary for the conduct of state business and need to be documented on the receipt (Oregon Accounting Manual 10.40.00.PO, section .150).

Reimbursement for expenses incurred in a privately owned motor vehicle shall be at the rate established and regulated by the Oregon Department of Administrative Services. Reimbursement shall be paid only for distances actually traveled and trips made in the performance of official or state related duties. The rate is deemed to include gasoline, oil, repair parts, depreciation, taxes, insurance and maintenance and upkeep of every kind and nature (ORS 292.250).

C. Prior Authorizations

Commission members shall receive prior authorization from the Executive Director (or an employee who has been designated by the Executive Director) for any actual or necessary expenses incurred in the performance of their official duties. Prior authorization shall not be required for expenses resulting from:

1. participation in regular or special Commission meetings, subcommittee meetings, or Commission-appointed workgroups of which the Commissioner is a designated member; or
2. actual and necessary in-state travel expenses incurred by the Chair in the performance of his/her official duties.

Commission members shall receive prior authorization from the Executive Director (or an employee who has been designated by the Executive Director) before engaging in any out-of-state travel incurred in the

performance of their official duties or any travel that is paid for by a third-party entity in accordance with ORS 244.020(6)(b)(F). All travel paid by a third party entity shall conform to the Oregon Government Ethics Commission guidelines for travel paid by outside entities (see Oregon Administrative Rules 199-005-0020(3)(b)).

END OF POLICY

POLICY #7

MEMBER ETHICS

A. Code of Ethics

Commission members are public officials under state law. Public office is a public trust and, as one safeguard of that trust, the people require all public officials to adhere to the code of ethics set forth in ORS Chapter 244. Commission members should not make private promises that are binding upon the duties of a Commission member, because a Commission member has no private word that can be binding on public duty (ORS 244.010). Members should familiarize themselves with Oregon's ethics laws; this policy highlights some key features but is not comprehensive. In the event of any conflict between this policy and Oregon ethics laws, the law supersedes the policy.

B. Financial Gain

No Commission member may use, or attempt to use, their official position or office to obtain financial gain or avoidance of financial detriment for the Commission member, a relative or household member of the Commission member, or any business with which the Commission member or a relative, or member of the household of the Commission member is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the member's holding of the official position. Permitted is official salary, honoraria, (except as prohibited below), reimbursement of expenses or an unsolicited award for professional achievement for the Commission member, the Commission member's relative, or for a household member of the Commission member (ORS 244.040).

A Commission member may not solicit or receive, whether directly or indirectly, honoraria for himself or for any member of the member's household with a value of \$50 or more if the honoraria is solicited or received in connection with the official duties of the Commission member. Honoraria does not include a certificate, plaque, commemorative token or other item with a value of \$50 or less, or honoraria for services performed in relation to the private profession, occupation, avocation or expertise of the Commission member. Any person that provides a Commission member or household member of the Commission member with an honorarium as allowed under ORS 244.042 with a value exceeding \$15 shall notify the member in writing of the value of the item within ten days after the event for which the item was received (ORS 244.042, ORS 244.100).

No Commission member may solicit or receive, either directly or indirectly, and no person shall offer or give to any Commission member any pledge or promise of future employment, based on any understanding that such Commission member's vote, official action or judgment would be influenced by such a pledge or promise (ORS 244.040).

No Commission member or former Commission member may attempt to further or further the personal gain of the Commission member through the use of confidential information gained in the course of or by reason of the official position or activities of the Commission member in any way (ORS 244.040).

No Commission member may attempt to represent or represent a client for a fee before the Higher Education Coordinating Commission. This subsection does not apply to the person's employer, business partner or other associate (ORS 244.040).

C. Gifts

No person shall offer during any calendar year any gifts with an aggregate value in excess of \$50 from any single source to any Commission member or their relative or household member, if the person offering the gift could reasonably be known to have a legislative or administrative interest in the Higher Education Coordinating Commission.

No Commission member, their relative, or household member shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$50 from any single source who could reasonably be known to have a legislative or administrative interest in the Commission member. "Legislative or administrative interest" means an economic interest, distinct from that of the general public in any matter subject to the decision or vote of the Commission member acting in the Commission member's capacity as a public official. (ORS 244.020, ORS 244.025).

Gifts do not mean:

- (a) Gifts from relatives or members of the Commission member's household.
- (b) Unsolicited tokens of appreciation with a resale value of less than \$25.
- (c) Informational material, publications, or subscriptions related to the performance of the Commission member's public duties.
- (d) Admission/cost of food or beverage consumed by a Commission member, or a member of the household when accompanying the Commission member at a reception, meal, or meeting held by an organization when the Commission member represents state government.
- (e) Reasonable expenses paid by any local, state, or federal government; a state or nationally recognized Native American tribe; a membership organization to which a public body pays membership dues; or a not-for-profit corporation for attendance at a convention, fact-finding mission or trip, or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government.
- (f) Reasonable food, travel, or lodging expenses provided to a public official, or a relative/household member/staff member of the Commission member accompanying the Commission member when the Commission member is representing state government and the event is either an officially sanctioned trade-promotion or fact-finding mission or part of officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.
- (g) Food or beverage consumed by a Commission member at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.
- (h) Entertainment provided to a Commission member/relative/member of the household that is incidental to the main purpose of another event.
- (i) Entertainment provided to a Commission member/relative/member of the household where the Commission member is acting in an official capacity while representing state government for a ceremonial purpose
- (j) Anything of economic value that is part of the usual and customary practice of the person's private business, employment, or volunteer activities and bears no relationship to the Commission member's official position.

Any organization, unit of government, tribe, or corporation that provides a Commission member with expenses with an aggregate value exceeding \$50 for an event (convention, trip, certain meetings) shall notify the Commission member in writing of the amount of the expense. The notice shall be sent to the Commission

member within 10 days from the date such expenses are incurred (ORS 244.100).

D. Conflicts of Interest

An actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated (ORS 244.020).

A potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the Commission of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

Member Ethics: Conflicts of Ethics

When confronted with a <u>potential</u> conflict of interest, a Commission member shall:	When confronted with an <u>actual</u> conflict of interest, a Commission member shall:
<ul style="list-style-type: none">• Announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.	<ul style="list-style-type: none">• Announce publicly the nature of the actual conflict.• Refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, unless the member's vote is necessary to meet the quorum requirement.

Conflicts and potential conflicts and their disposition shall be recorded in the minutes and may be reported to the Oregon Government Ethics Commission at the discretion of the Commission (ORS 244.130).

The Oregon Government Ethics Commission may impose civil penalties not to exceed \$5000 for violating any provision of this chapter or any resolution adopted under ORS chapter 244 (ORS 244.350). Commission members who have financially benefited by a conflict of interest may be required to forfeit twice the amount of the gain realized (ORS 244.360).

E. Bribery

A person commits the crime of bribe-giving if the person offers, confers or agrees to confer any pecuniary

benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in an official capacity. (ORS 162.015). Bribe giving is a Class B felony, punishable with up to 10 years in jail and a \$250,000 fine (ORS 161.625, ORS 161.605).

A public servant commits the crime of bribe-receiving if the public servant: (a) solicits any pecuniary benefit with the intent that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or (b) accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced (ORS 162.025). Bribe receiving is a Class B felony punishable with up to 10 years in jail and a \$250,000 fine (ORS 161.625, ORS 161.605).

F. Official Misconduct

A Commission member commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person (ORS 162.405). Official misconduct in the second degree is a Class C misdemeanor, punishable with up to 30 days in jail and a \$1250 fine (ORS 161.615, ORS 161.635).

A Commission member commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another: (a) the public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or (b) the public servant knowingly performs an act constituting an unauthorized exercise in official duties (ORS 162.415). Official misconduct in the first degree is a Class A misdemeanor, punishable with up to one year in jail or a \$6250 fine (ORS 161.635, ORS 161.615).

END OF POLICY

POLICY #8

PUBLIC RECORDS

A. Definition of Public Records

For retention purposes, a “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 (ORS 192.005).

For public access purposes, a “public record” is 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” (ORS 192.410(4)).

Commission docket items, handouts, administrator files, Commission e-mails, correspondence, and minutes are all public records required to be retained and accessible by the public (ORS 192.005, OAR 166-350-0010).

“Public record” does not include any writing that does not relate to the conduct of the public’s business and that is contained on a privately owned computer (ORS 192.410(4)(b)).

B. Access to Public Records

All Commission materials are public documents and available to the public upon request. In addition, work done on private e-mail accounts as well as personally purchased computers and hand held devices might be considered a public record for both access and retention/disposition.

C. Retention of Public Records

The Higher Education Coordinating Commission will follow the retention schedule approved by the Secretary of State’s Archivist (ORS 192.105; OAR 166-350-0010). Tampering with a public record is punishable by a year in prison and a \$5000 fine (ORS 162.305).

- Audio Tapes: Retention: 1 year following transcription; destroy
- Minutes: Retention: Permanent; transfer to State Archives after 10 years
- Other meeting records: Retention: 5 years; destroy
- Commission Records (correspondence, budgets, committee reports, reports, reference material) --Retention: 4 years, destroy
- Member Personnel Records (appointment letters, employee data sheets) - Retention: 10 years after final term expires, destroy
- Organizational Records (bylaws, mission/goal statements, work plans, policy) - Retention: Permanent, transfer to State Archives after 10 years
- Commission Lobbyist Records (registration, correspondence, reports) - Retention: Expenditure reports: 5 years, destroy; Other: 5 years after last activity

D. Charging for Records Requests

The Oregon Public Records Law expressly authorizes a public body to establish fees “reasonably calculated to reimburse it for its actual cost in making such records available.” It further permits local government to include in its fees “costs for summarizing, compiling or tailoring a record to meet the person’s request.”

“Actual cost” may include a charge for the time spent by staff to locate the requested records, review the records to delete exempt material, supervise a person’s inspection of the original documents in order to protect the records, copy records, certify documents as true copies or send records by special methods such as express mail. It also includes the cost of an attorney reviewing and segregating records that should not be disclosed. The Commission may not charge a fee greater than \$25 unless the public body first provides the requestor with a written notification of the estimated amount of the fee and the requestor confirms that the requestor wants the public body to proceed with making the public record available (ORS 192.440).

END OF POLICY

POLICY #9

OREGON ADMINISTRATIVE RULES

A. Definition

Under Oregon law, an administrative 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:

- Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:
 - Between agencies, or their officers or their employees; or
 - Within an agency, between its officers or between employees.
- Action by agencies directed to other agencies or other units of government which do not substantially affect the interests of the public.
- Declaratory rulings issued pursuant to ORS 183.410 or 305.105.
- Intra-agency memoranda.
- Executive orders of the Governor.
- 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:
 - Placement in segregation or isolation status in excess of seven days.
 - Institutional transfer or other transfer to secure confinement status for disciplinary reasons.
 - Disciplinary procedures adopted pursuant to ORS 421.180. (ORS 183.310)

B. Public Input (ORS 183.333)

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.

1. Advisory Committees

The Commission 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 Commission in drafting the rule.

If the Commission appoints an advisory committee for consideration of a rule, the Commission shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the Commission shall seek the committee's recommendations on compliance with ORS 183.540.

The Commission shall consider an advisory committee's recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

If the Commission does not appoint an advisory committee for consideration of a permanent rule under

subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the Commission's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the Commission shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the Commission determines that the statement does not adequately reflect the rule's fiscal impact, the Commission shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The Commission shall include any recommendations from the committee in the record maintained by the Commission for the rule.

2. Interested Parties

Any Commission 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 (ORS 183.333).

3. Hearing

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. A Commission 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. The Commission shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The Commission shall consider fully any written or oral submission (ORS 183.335).

C. Notice (ORS 183.335, 183.341)

Prior to the adoption, amendments or repeal of any rule, the Higher Education Coordinating Commission shall give notice of the proposed adoption, amendment or repeal:

- In the *Secretary of State's Bulletin* referred to in ORS 183.360 at least 21 days prior to the effective date of the rule to be adopted;
- By mailing or emailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the Higher Education Coordinating Commission's mailing list established pursuant to ORS 183.335(7);
- Persons who wish to be placed on the Higher Education Coordinating Commission's mailing list may request in writing that the Commission mail to the person copies of its notice of proposed rulemaking;
- By mailing or emailing a copy of the notice to persons, organizations, and publications identified by the Commission and established educational, student, and parent organizations that have submitted mailing or emailing addresses to the Commission.

D. Content of Notice (ORS 183.335)

The required notice may be given in written or electronic form and must include:

- A caption of not more than 15 words that reasonably identifies the subject matter of the Commission's intended action. The Commission shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.
- An objective, simple and understandable statement summarizing 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.
- A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the

rule;

- A citation of the statute or other law the rule is intended to implement;
- A statement of the need for the rule and a statement of how the rule is intended to meet the need;
- A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Commission in considering the need for and in preparing the rule, and their location;
- 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;
- 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 Commission in drafting the rule; and
- 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.
- When providing notice of an intended action under subsection (1) (c) of this section, the Commission shall provide a copy of the rule that the Commission 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 striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

E. Temporary Rules (ORS 183.335)

The Commission may adopt a temporary rule that adopts, amends or suspends a rule without prior notice or hearing or upon any abbreviated notice and hearing, if the Commission prepares:

- 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;
- A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
- A statement of the need for the rule and a statement of how the rule is intended to meet the need;
- A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Commission 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.

A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of no longer than 180 days.

F. Filing of Rules (ORS 183.355)

Each Commission shall file in the office of the Secretary of State a certified copy of each rule adopted by it. Each rule is effective upon filing as required, unless another effective date is given.

G. Rules Review (ORS 183.405)

Not later than five years after adopting a rule, the Commission shall review the rule for the purpose of determining:

- Whether the rule has had the intended effect;
- Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- Whether subsequent changes in the law require that the rule be repealed or amended; and

- Whether there is continued need for the rule.

H. Rules Coordinator (ORS 183.330)

- 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:
- Maintain copies of all rules adopted by the Commission and be able to provide information to the public about the status of those rules;
- Provide information to the public on all rulemaking proceedings of the Commission; and
- Keep and make available the mailing list required by ORS 183.335 (8).

I. Readability (ORS 183.750)

The Higher Education Coordinating Commission shall prepare its public writings in language that is as clear and simple as possible.

END OF POLICY

POLICY #10

EXECUTIVE DIRECTOR

A. Appointment of Executive Director

The Commission shall appoint an executive director to serve at the pleasure of the Commission (ORS 350.065).

Subject to any applicable provisions of ORS Chapter 240, the executive director shall appoint all subordinate officers and employees of the Commission, prescribe their duties, and fix their compensation (ORS 350.065).

B. Delegation of Authority

With the exception of rulemaking authority, the Commission may delegate any of its powers, duties or functions to the executive director of the Commission (ORS 350.075).

C. Oversight of Reimbursements & Other Financial Transactions

Review and approval authority for financial transactions made by the Executive Director, including requests for reimbursement, shall be the responsibility of an employee who has been designated by the Executive Director to be responsible for internal controls. The Commission shall review the financial transactions of the Executive Director annually. These post-transaction reviews and approvals must be documented in the minutes of an annual meeting of the Commission (Oregon Accounting Manual 10.90.00.PO).

Before the Executive Director engages in out-of-state travel or any travel paid for by a third-party entity in accordance with ORS 244.020(6)(b)(F), it must be reviewed and approved by (a) an employee who has been designated by the Executive Director as responsible for internal controls; and (b) the Chair or a subcommittee of the Commission created for the purpose of management oversight.

All travel paid by a third party entity shall conform to the Oregon Government Ethics Commission guidelines for travel paid by outside entities (see Oregon Administrative Rules 199-005-0020(3)(b)).

END OF POLICY

