

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

**FILED**  
3-11-16 11:33 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Department of Forestry  
Agency and Division

629  
Administrative Rules Chapter Number

Department of Forestry and Forest Protective Association Firefighter Criminal Defense Expenditures

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Adoption of rules governing firefighter criminal defense expenditures; to become OAR Chapter 629, Division 170, Rules 0001 to 0040.

**Statutory Authority:**

ORS 526.041 and 477.128

**Other Authority:**

**Statutes Implemented:**

ORS 477.128

**Need for the Rule(s):**

ORS 477.128 provides authority to the State forester to expend funds for defending a firefighter against criminal charges if brought about by actions or omissions alleged to have occurred, by the firefighter, while performing fire suppression activities as part of the firefighter's duties. The likelihood of using this authority is very small, and it may be many years before it is needed, if ever, or between events. The proposed rules are needed and intended to provide context for the authority and to establish procedures that ensure proper decision-making and use of state funds in what would be highly unusual circumstances.

The statute and rules also address the need to maintain a highly trained, highly skilled workforce of firefighters and fire managers, by demonstrating that if the firefighter makes the effort to train and gain the necessary experience to manage highly complex operations, and does the job conscientiously, the department is able to pay toward their legal defense.

**Documents Relied Upon, and where they are available:**

Documents relied upon are contained within the agenda materials and minutes of previous Board of Forestry meetings and are available at the Department of Forestry Headquarters, 2600 State St. in Salem or by contacting the Department of Forestry's Rules Coordinator, Sabrina Perez, at (503) 945-7311 or by email to [sabrina.perez@oregon.gov](mailto:sabrina.perez@oregon.gov)

**Fiscal and Economic Impact:**

The fiscal and economic impact of these rules is no more or less than exists under the statutory provisions of ORS 477.128. The rules do not regulate activities of forest landowners, operators, the general public or any agencies of the state or local government, other than the Department of Forestry. Costs to the department will be rare and cannot be predicted as they will be different for each specific set of circumstances. At current costs of legal defense, it might be estimated that a single instance might cost between \$5,000 and \$100,000. There have been no occurrences of the type contemplated by these rules in the 105 years experience of the department, but it is remotely possible. Depending on funds available to the State Forester at the time, the costs might be paid from General Funds already appropriated, an Emergency Board request, federal grant funds already allocated, or from forest protection district budgets. Any of these funding types would have an indirect effect on the taxpaying public or a forest landowner that pays forest patrol, but the cost to any individual owner would be a very minimal portion of the specific incident cost.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

None, other than to the Department of Forestry, in the rare and unlikely instance that criminal charges are brought against an employee of the department or a forest protective association. Any costs will be highly case specific and cannot be predicted other than as stated in the statute as the "costs and reasonable attorney fees that a firefighter...incurs" and any costs involved in investigating the occurrence to determine whether the firefighter should be eligible for such expenditures.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

No small businesses or any type of business or industry is directly subject to the proposed rules. Attorneys or law firms or their associates may voluntarily be involved with the rules to the extent that they may be asked to enter into an agreement describing the processes and

conditions under which they may be paid for services.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

None, except as may be determined in a voluntary agreement between the Department of Forestry and persons providing legal and related services as described above.

**c. Equipment, supplies, labor and increased administration required for compliance:**

None.

**How were small businesses involved in the development of this rule?**

They were not.

**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

However, the need and intent for the rules were presented to the Board of Forestry, with opportunity for public comment. Several employees that would potentially be subject to the rules were asked to provide review and comment of the rule drafts, as were a sampling of landowner representatives that may indirectly pay part of such expenditures through their forest patrol assessment.

04-22-2016 5:00 p.m.	Sabrina Perez	sabrina.perez@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

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