



Overview of Boards, Commissions, & Small Entities

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INTRODUCTION

Welcome to the online training for new board and commission members and executive directors.

This training does not and cannot override state law, rules, policies, or procedures. While the intent is to periodically update the material to comply with applicable laws it is incumbent upon the user to use the current and effective laws, rules, policies, and procedures. Where in conflict, the applicable law, rule, policy, or procedure takes precedence over information contained in this training.

For purposes of this training we will be using the term public entity to refer to any city, county, state agency, special district, government body, public body, public agency etc. We will be using the term board to include boards, commissions, or small entities. Board member will be used to include board and commission members, and director to include administrator and executive directors.

Most major state agencies are headed by policy-making boards or commissions appointed by the Governor. Many additional boards and commissions establish policy in given areas or serve in advisory roles.

The board system contributes to the success of Oregon state government. It is key to bringing local citizens' talent and interest to the state level, keeping government innovative and responsive and improving state performance.

A public official is defined as any person who is serving the state of Oregon or any of its political subdivisions or any other public body as an elected official, appointed official, employee or agent.

Board members are not employees unless they are in an actual salaried position. Board members are public officials and in their official capacity act on behalf of Oregon state government.

If you are an administrator or executive director of a board, commission, or small entity you are an employee of Oregon state government and you are also considered a public official.

As a steward of public resources, you are held to a higher standard of conduct than a private citizen. Any actions of public officials are open to critical examination. As public officials, board members and directors are required to abide by the laws and policies of the state.

This training will cover the following topics:

- Overview of Oregon State Government
- Overview of Boards, Commissions, and Small Entities
- General Activities of Boards, Commissions, and Small Entities
- Operations and Management of Boards, Commissions, and Small Entities
- Introduction to Diversity and Inclusion
- Oregon State Government Ethics



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MODULE 1 – OVERVIEW OF OREGON STATE GOVERNMENT

This module provides a high-level overview of Oregon state government.

Branches of Government

Governmental authority and functions in the state rest in 3 branches of government. Separate functions and powers are assigned to each of the three branches of government.

- The legislative branch makes laws.
- The executive branch carries out the laws.
- The judicial branch interprets the laws the legislative branch makes.

Legislature

The Senate and the House of Representatives are responsible for making or changing laws. The legislature consists of 30 Senators and 60 Representatives. Representatives are elected for 2 year terms. Senators are elected for 4 year terms. Elections are held in even-numbered years.

The Legislature convenes annually in February. Sessions may not exceed 35 days in even-numbered years and 160 days in odd-numbered years. The Legislative Assembly convenes on the second Monday in January, to swear-in newly elected officials, elect legislative leaders, adopt rules, organize and appoint committees, and begin introducing bills. The leader of the Senate is the President of the Senate and the leader of the House is the Speaker of the House.

Executive Branch

Five statewide officials are elected to manage the executive branch of government. The officials are the Governor, the Secretary of State, the Treasurer, the Attorney General, and the Commissioner of Labor and Industries.

The Governor is the leader and is responsible for planning and coordinating the executive branch. The executive branch is commonly grouped into 8 program areas including:

1. Economic & Community Development;
2. Education;
3. Human Services;
4. Natural Resources;
5. Public Safety;
6. Transportation;
7. Administration; and
8. Consumer & Business Services.

All executive branch agencies fall within one of these program areas.



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Judicial

Oregon's judicial branch is made up of different courts. They are responsible for interpreting and enforcing the laws the legislative branch makes.

The Judicial Branch consists of the following courts:

- The Supreme Court has the most authority and they regulate the lower courts in Oregon. The Supreme Court makes sure all laws follow Oregon's Constitution.
- The Court of Appeals has jurisdiction to review appeals of most civil and criminal cases and most state administrative agency actions.
- The Tax Court is the only court able to make decisions in cases involving tax issues such as income tax and property tax.
- The Circuit Courts are the state trial courts.

Overview of the Legislative Process

A bill is a proposed law. All statutes, except those initiated by the people, must be enacted through a bill.

Bills from state agencies must have the Governor's approval before they are introduced.

There are 6 types of measures: a bill, a joint resolution, a concurrent resolution, a resolution, a joint memorial, and a memorial.

The legislative process is governed by rules, laws and procedures, making it somewhat mechanical in nature. Although the legislative process is long and complex, all laws begin as ideas.

An idea for a law can come from anyone; an individual or group of citizens, a legislator or legislative committee, the executive or judicial branch, or a lobbyist.

A bill, the most common type of measure, is a proposal for a law.

In order for a bill to become law, it must be passed by both houses in the identical form. A bill may be introduced in either the Senate or the House with the exception of revenue bills which must originate in the House.



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MODULE 2 – OVERVIEW OF BOARDS

It is important to keep in mind all members have been appointed to the board to serve the public at large. The concerns and points of view of all interested parties must be represented and considered, but ultimately, the primary responsibility of every board member is to protect the health, safety and welfare of the general public.

If you were recommended by a professional association or special interest group, board members are expected to provide the board with their technical expertise, and to bring the point of view of the group to the board. However, they are not appointed to serve only as the representative of a specific group. When the group's interest conflicts with the general public, their primary responsibility is to the public. All board members must work for the benefit of the public first.

Authority

Some of the basic operating rules in state government are different from those in the private sector. One of these rules relates to authority.

A private citizen may do anything the law does not prohibit.

However, a board may only do what the law authorizes. Thus, a board has no inherent authority to act. A board may take an action only if the law provides authority for the intended action. A single board member acting alone has no authority unless specifically granted, as in the case of a chair, and an individual cannot take action to bind.

Make sure to have an understanding of what your board has authority for. Understanding and interpreting the laws that grant your board authority is vital to your decision-making. You should carefully review your enabling laws. Litigation frequently results when a board takes action based on authority that is unclear or implied. It is important to remember if a board acts without authority, the action does not bind the state. Actions taken without authority may be overturned and, in some circumstances, the person taking the unauthorized action may be personally liable for the consequences of the action. For these reasons, we recommend you consult with DOJ legal counsel when you have any questions about you or your board's authority to act.

Oregon Law Structure

Public officials and boards get their authority from Statutes, Administrative Rules, policies, and procedures.

- Oregon Revised Statutes are laws passed by the legislature. They must be followed by the people and institutions under their jurisdiction. Oregon Revised Statutes are the umbrella laws for all rules, policies, and procedures. Statutes are state laws which define what public agencies must do, can do, and cannot do.
- Oregon Administrative Rules further articulate the statutes and provide additional guidance to boards. OARs are written or adopted by state agencies to provide guidelines or process requirements for actions impacting the public. Rules may be more restrictive than statutes, but not more lenient.



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- Policies and procedures are guidelines to assist internal operations of the individual board.

Types of Boards

The purpose and scope of each board are determined by the state law or executive order that created it. There are four main types of boards. Each is created to meet a specific need in the management of state government, so it is important to understand the distinctions between each type.

Policy Making Boards are given statutory power by the legislature to make policy decisions and enforce regulations. Policy is developed by interpreting legislative intent as outlined in the board's governing statutes or in officially adopted administrative rules, and by implementing procedures to carry out those laws or rules. Members of policy making boards are generally final decision makers, accountable directly through the Governor to the public.

Some policy making boards are also Governing Boards, responsible for directing a state agency or appointing the agency director.

Advisory Boards may be created by the Governor, the legislature, state agencies, or existing boards. They serve as advisors on policy matters to their appointing authority who is responsible for the management and administration of the policy. These boards study existing policy and make recommendations for change or implementation. Although they do not have final authority to make or enforce rules, their research and advice to decision makers contribute to effective changes in state government.

Licensing Boards examine and license members of a profession or occupation to practice in Oregon. Some also have the power to discipline members of the regulated profession or occupation, and to suspend or revoke licenses.

Judgment Boards are created by the legislature as review and appeals boards which hear and rule on individual cases. The decisions made by most of these and all other boards may be appealed to a higher court.

Bylaws

Boards should have a set of bylaws to direct and clarify its actions, procedures and organization. Bylaws are the guidelines by which a board functions. They should include expectations of members and cover issues such as attendance, responsibilities and discipline.



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Administrative Help

Most boards work within an agency or have access to assistance and advice from the agencies. Typically, if a board works within an agency, certain central support services are provided to manage internal business. Some boards have their own staff to perform their day to day administrative functions. Most often, the primary role of board staff is to carry out the rules, policies and programs developed by the board. Board staff also bring to the attention of the board issues of importance, prepare meeting agendas, and compile background information for board study.

Key Agencies

These agencies may affect your board and they also provide some support services.

Department of Administrative Services

The Director of DAS, who also serves as the State Chief Operating Officer, is appointed by the Governor. DAS was established to administer the Governor's programs and to provide policy direction and support services to boards. Most state agencies report to the Governor through the DAS Director.

Department of Justice

DOJ is the state's law firm, headed by the attorney general. DOJ provides most of the same services as do private law firms, but with a few important differences. By statute, the attorney general and lawyers within DOJ are the sole providers of legal advice and representation to agencies and officials. DOJ acts as a legal adviser at meetings, and is an advocate for the state in hearings, trials and appeals. Each board is assigned at least one assistant attorney general who specializes in the area of law affecting the agency. DOJ helps identify any legal problems posed by existing or proposed agency policies or actions. Your attorney is there to facilitate your policy choices by pointing out potential problems and evaluating the legal effect of other policy options to accomplish the desired goal more easily. If you act on the advice of counsel, DOJ will defend you in court and any liability will be assumed by the state. Acting without consulting your lawyer, or acting contrary to their advice, may result in personal liability.

Secretary of State

The Secretary of State is an elected official who serves as the state's chief elections and public records officer, the auditor of public accounts and the administrator of the State Archives. There are two divisions within the Secretary of State's office which boards will work with regularly. The Audits Division performs fiscal, performance, and compliance audits of all boards. The Archives Division preserves permanent government records and establishes retention schedules for public records of all boards. Boards must follow the guidelines established by the division on the care, accessibility, storage and destruction of its public records. No official records may be destroyed without the approval of the division.

Governor's Office

Most agencies are relatively independent within their areas of responsibility. Overall policy guidance and direction are provided by the governor, as the state's chief executive officer, and by the legislature, which writes laws and appropriates operating funds. To provide an overall management structure, the governor uses DAS. The governor coordinates the activities of agencies; actively participates in the design, development and approval of state agency budgets; appoints many agency directors, board members and

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other officials; and approves or disapproves all legislation affecting agencies. Board activities are subject to both legislative and executive oversight. Actions by the governor and the legislature may result in revision of a board's authority or changes in appropriations. Many board members have some involvement with the legislature during their period of service.

Legislature

Many boards work with the legislature in changing and developing state law. Your board may propose legislation and track bills relating to the work and concerns of your board. As a board member, you may also testify before legislative committees and advise legislators on issues concerning your board. The knowledge and expertise provided by boards can be very helpful to the legislature. Be careful to not represent yourself as a spokesperson for your board without the board's and the governor's prior consent and approval.



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MODULE 3 – GENERAL ACTIVITIES OF BOARDS

Budget Process

Oregon's budget is a tool to carry out the state's law and policy decisions. It allocates the state's General Fund, Federal Funds, and Other Funds.

The budget also sets limits on other types of revenues and state positions.

Oregon's budget must be balanced.

Each board's budget is called an appropriations bill which authorizes the budget, specifies the maximum amount a board can spend, and allows the board to spend money.

The budget covers two fiscal years, which is called a biennium.

The budget runs from July 1 of an odd-numbered year to June 30 of the next odd-numbered year.

Approval of the budget is one of the principal issues of the legislature. The Oregon Constitution does not allow the state to spend money in excess of its revenues.

The Joint Committee on Ways and Means conducts hearings and receives testimony on the Governor's Recommended Budget.

The budget is then reviewed and approved by both houses of the legislature and approved by the Governor. Upon signature or effective date, the budget bill becomes law.

Funding Types

A budget specifies the maximum amount a board can spend. A board's revenue comes primarily from three sources:

- The General Fund is primarily from taxes and fees. General Fund money is generally used for programs dealing with health, education, public welfare, correctional institutions, legislative and judicial functions, general governmental administrative functions, or for programs without a dedicated revenue source.
- Some boards are funded in whole or in part by federal funds. Boards must get permission to apply for this money. Budget approval for a board financed with federal funds establishes the maximum amount of money it can spend from its income source. This is called an expenditure limitation.
- Most boards get their funds from Other funds which come from fees, tuition, or sales of services or commodities. Generally, these sources are established by the legislature specifically to support the board or program.

Regardless of revenue source, authority for all board expenditures rests with the legislature.



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Budgeting Process

The budget process starts early in even-numbered years to develop the agency request budget. This lays out finances and policies for consideration. Boards send their budget request to the Chief Financial Office by September 1.

The governor and the CFO review the budget request. They use the governor's priorities, budget policies and current law to make budget decisions. The governor's recommended budget document summarizes those decisions. It gives data on all the state's revenues, expenditures, and information on each agency's budget.

The governor presents the recommended budget to the legislature when it meets at the start of the next calendar year. Legislative committees review the proposed budget. They hold public hearings to hear from each agency and the public. Each budget bill has a budget report presenting the committee recommendations. The legislature votes on each budget bill. The budget bills enacted into law make up the legislatively adopted budget. Agencies carry out, or execute, the budget over the two year budget period.

Rulemaking

The Administrative Procedures Act defines a rule as any agency directive, standard, or statement of general applicability that implements, interprets or prescribes law or policy.

Rulemaking is required:

- When a board must interpret its governing statutes, prescribe board procedures, or articulate board policy decisions.
- When a board's enabling legislation does not tell the board and the persons subject to the law what to do, or when and how to do it.
- When a statute specifically requires rulemaking.

There are times when the need to have a rule in effect within a particular timeline makes it impossible for a board to comply with all of the public notice and comment requirements. A board may adopt, amend or suspend a rule without prior or limited notice or a hearing if it meets the requirements outlined in ORS 183.335. The temporary rule is only valid for 180 days and cannot be re-adopted.

Typically, a board should set all policy affecting the public through rulemaking.

Rulemaking Process

When a board is adopting, amending, or repealing a rule the following process must be followed.

Step 1 - Notice

Before adopting, amending, or repealing any rule the board must give notice of its intended action. The notice of proposed rulemaking must be given in four ways:

1. In a manner established by your agency's notice rule;



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2. By publication in the Secretary of State's bulletin;
3. By mail to individuals who request notice; and
4. To certain legislators.

The notice must state the subject matter and purpose of the new or amended rule in sufficient detail to inform a person that the person's interests may be affected. The notice must state the time, place and manner in which an interested person may comment on the rule to the board.

Step 2 - Opportunity for Public Comment or Hearing

A board must give interested persons reasonable opportunity to submit comments on the proposed rule. A public hearing is usually optional unless it is required by an enabling statute or when the board receives a request for a hearing from 10 persons or from an association having at least 10 members. Otherwise, the board can accept comments in writing.

When setting a deadline for public comment the board has broad discretion. The deadline set in the notice applies to everyone outside the board who wants to make comments. The board can extend the deadline and may reopen the rule for public comment after the deadline to receive all comments or comments on limited issues. The deadline must be extended if someone asks for more time or the board determines the fiscal impact statement is inadequate after review by a fiscal impact advisory committee.

When the board receives all the comments they need to be put in the official rulemaking record. All the comments need to be seriously considered and then make the appropriate changes to the draft rule. The board does not need to respond to any comments, unless required to do so by law.

Step 3 - Adoption and Filing

The board may adopt the rule only after fully considering all data and views presented. The final rule does not need to be identical to the proposed rule. There is no set timeline for when the rule must be adopted after the end of the comment period.

Rules must be adopted by resolution and vote in a public meeting for a board.

The board must file a Certificate of Filing signed by someone with rulemaking authority and then file it electronically with the Secretary of State. Within 10 days after filing the adopted or amended rule with the Secretary of State, the board must file a copy with the Legislative Counsel.

Review of Rules

The Legislative Counsel may review a proposed or adopted rule of a board either on its own initiative, or upon request of any person affected by the rule, or when requested by any member of the legislature.

When reviewing the rule, the Legislative Counsel must determine whether the rule:

1. Appears to be within the intent and scope of the enabling legislation; and
2. Raises any other constitutional issue.



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The Legislative Counsel may make a negative determination and post it on their website, but they may not invalidate the rule.

Every board must review all of its new rules within five years of adoption. The review must include an analysis of whether the rule had its intended effect, whether the fiscal impact was under or overestimated; whether the rule remains consistent with the law; and whether the rule is still needed.

Rules are subject to review by Oregon's courts. A court may declare a rule invalid if the rule is unconstitutional, exceeds the board's authority, or was adopted without compliance with the applicable rulemaking procedures.

Regulatory Board Activities

Many boards engage in regulatory activities. The philosophy of government regulation assumes the public would suffer physical, emotional or financial injury if the state did not exercise some oversight or control. Occupational and professional regulation is intended to ensure people engaged in those activities having an impact on the public's health, safety or welfare, provide Oregon citizens with honest and competent service. In addition, the regulation system provides a means for the public to provide input through a fair and objective process.

Members of regulatory boards help to set policy and give guidance to the regulated industry or profession under governing statutes.

Effectively constructed and administered tests provide an important contribution to licensure. Licensing tests should be designed to ensure an applicant's education and experience have adequately prepared them to assume an occupational or professional role impacting the public's health, safety, and welfare.

A principal responsibility of licensing boards is to determine whether a person should obtain or retain a license. Licensing boards with regulatory authority establish the standards and prescribe the qualifications required for a license to practice and regulate the services provided by the licensee by enforcing compliance with those standards.

Most licensing boards may revoke, suspend or refuse to renew any license, registration or certificate they issue, and some are authorized to stay a suspension on probationary conditions.

Most boards receive complaints about licensees. Complaints are usually received from consumers of licensee services, other licensees or professionals, other regulatory agencies, or as a result of routine inspections or investigations. Each complaint must be reviewed, and every effort must be made to mediate and satisfactorily resolve all complaints.

In some cases, an administrative hearing will be held to resolve a complaint. The Administrative Procedures Act establishes specific procedures to be followed to take disciplinary actions against individuals or firms. If the board conducts a hearing required by the Administrative Procedures Act, board members should not participate in the investigative or pre-hearing complaint handling functions. They



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must be impartial parties to the hearing.

Individual board members should disqualify themselves if bias or significant interest prevents fair and impartial participation in the hearing. If members have any conflicts of interest or have received any communication on a fact or issue made outside the hearing during review of a case, they must place on the record a statement on the nature of the conflict or substance of the communication.

Public Records & Meetings

Oregon enacted the Public Records and Public Meetings Laws in 1973. These laws reflect the legislature's policy choice that the public is entitled to know how the government's business is conducted. The Public Records Law advances this policy by requiring public bodies to retain records and by granting the public a broad right to examine records created, maintained, cared for or controlled by public bodies. The Public Meetings Law does so by opening to the public many public bodies' information gathering and decision-making processes.

Defining Public Records

ORS 192.410(4) states public records include 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.

The term "writing" is broadly defined in ORS 192.410(6) as including every type of documentation. For instance, hand written documents, photographs, computer discs, emails, instant messages, text messages, etc. Even after electronic records are deleted, they continue to exist on computer back-ups which are still public records.

Emails are public records even if sent or received on a personal email account. As a board member you may receive a state issued email account. If so, do all your board communications using the state email account. If you don't receive a state email account, it is highly encouraged you create a separate email account to use for conducting your board communications.

Records Request

Every board is required to have a written policy on how the public requests a public records. Click on the question icon to learn more.

The policy must contain at a minimum:

- How the board accepts requests and identify the name and address of a person who the requests are sent to.
- In what form the records request will be received.
- The fees and how fees are calculated.
- Notification to the requestor if the estimated fee might exceed \$25.
- If advance payment is required of estimated fees.



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- If a fee waiver or reduction may be available.

Work with your board administration to familiarize yourself with the policy.

Public Records Custodian

The public records custodian is the public body mandated, directly or indirectly, to create, maintain, care for or control a public record. In general, any public body that possesses a record for purposes related to one of its functions is a “custodian” of the record.

The custodian is responsible for:

- Providing proper and reasonable opportunity for inspection of the public records.
- Segregating exempt material from nonexempt material and disclosing the nonexempt material.
- If a public record contains exempt information, the custodian has a duty to delete it and to disclose the remainder, if it is possible to do so.
- Give the requestor a copy of the record (if the record can be copied).
- Provide the public record in an alternative format if requested by a person with a disability. A public body may not charge a person with a disability to cover the costs of providing the record in an alternative form, although a charge for all actual costs may be made.

The custodian has the right to:

- Make reasonable rules to protect the records and prevent interference with work in the office.
- Consult with counsel before responding to a request.
- Establish fees to reimburse for the actual cost of making the record available.
- Waive or reduce the fee if the custodian determines it is in the public’s best interest.

Public Record Exemptions

Most public records are subject to disclosure, but there are exemptions. For instance, records related to an active criminal investigation or confidential communications between public officials and lawyers. If a public body claims an exemption, it must show the need for confidentiality outweighs the public interest.

The Public Records Law contains a list of exemptions from disclosure. Most exemptions are conditional, and the public body is required to consider whether the public interest requires disclosure of the record even if the terms of the exemption are satisfied. Other exemptions are unconditional, and permit nondisclosure if the terms of the exemption are met. Few exemptions in the Public Records Law, prohibit disclosure, although other statutes outside of the Public Records Law may prohibit disclosure.

The exemptions are found in ORS chapter 192. Your board may have confidentiality statutes or other exemptions outside the Public Records Law that apply to the records your board collects.

Your board should consult with legal counsel if there is uncertainty about whether a specific record is exempt from disclosure. Because the Public Records Law is primarily a disclosure law, a public body that denies a records request has the burden of proving the record is exempt from disclosure. The Oregon



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courts have interpreted the law in favor of disclosure and have applied a narrow or restrictive interpretation of the exemptions from disclosure.

Public Meetings

Oregon's public meetings law serves two purposes:

1. To provide a means by which the public can be informed about the deliberations and decisions of state government; and
2. To ensure governing bodies in Oregon have an open decision-making process.

Except for executive sessions, any member of the public may attend any public meeting.

The Public Meetings Law applies to state and local government "governing bodies" of "public bodies."

"Governing body" means the members of any public body consisting of two or more members (for instance, a board, commission, committee, subcommittee or council) with authority:

- To make decisions for a public body on policy or administration, or
- To make recommendations to a public body on policy or administration.

"Public body" includes the state, cities, counties, districts, boards, commissions, committees, subcommittees, advisory groups and similar bodies. It does not include individual agency heads.

Advisory body or subcommittee of a public body is covered by this law if it has authority to make decisions for or recommendations to a public body on policy or administration.

Meetings Subject to the Law

A meeting is a convening of a governing body for which a *quorum is required* to make a decision or deliberate toward a decision. A public meeting can include:

- Information-gathering sessions, except for on-site inspections, and attendance at association meetings.
- Working lunches, but not purely private social gatherings at which no official business is discussed.
- Electronic meetings.

In a recent opinion, the Court of Appeals held that serial communications among a quorum of a governing body, even if conducted through an intermediary, can constitute a "meeting" for purposes of the Public Meetings Law.

Requirements for Conducting Public Meetings

There are four basic requirements for conducting a public meeting:

1. Advance notice must be provided to interested parties of meetings, location, and the main subjects.
2. Meetings must be open to public attendance, unless it's an executive session.
3. The meeting must be recorded or written minutes must be made.



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4. Votes must be cast publicly and recorded.

Required Notice

Advance noticed must be given for all public meetings. The notice should include the time, place, and main subjects.

- For executive session, notice must include reference to the law authorizing executive session.
- For regular meetings, the timing of the notice must be reasonably calculated to give actual notice to interested persons.
- For special meetings, at least 24 hours' notice required.
- For emergency meetings, there must be notice "appropriate to the circumstances." An "actual emergency" must exist, and the minutes must describe the emergency justifying less than 24 hours notice.

In accordance with ORS 184.483(4), the notice must be posted on the Oregon transparency website. The board is not required to place notices in paid advertising publications.

Minutes & Recordings

Minutes and recordings must include the following information at a minimum:

- The members who are present at the meeting.
- All motions, proposals, resolutions, orders, ordinances and measures proposed, and their nature.
- Results of all votes and vote of each member by name. Secret ballots are prohibited.
- Matter of all discussions.
- Reference to all documents discussed.
- For emergency meetings, a description of the emergency justifying the meeting.

Minutes or recordings must be made available to the public within a reasonable time.

Executive Sessions

A meeting can be closed to the public if a governing body goes into executive session. The law governing executive sessions is designed to allow a public body to have confidential discussions, but does not allow any decisions to be made in secret. All decisions by a governing body must be made in public. Journalists may attend most executive sessions, but cannot report or broadcast what was said.

Executive sessions should not be confused with meetings exempt from the public meetings law altogether. An executive session is a type of public meeting and must conform to all related provisions of the public meetings law.

The public meetings law provides very specific provisions allowing the governing body of a public body to convene and participate in executive sessions to discuss specific topics when certain conditions and prerequisites are met. The presiding officer must publicly announce the statutory authority or lawful basis



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for holding the executive session prior to convening the executive session. Topics not covered by one of the stated reasons for the executive session cannot be discussed.

Examples of topics that may be discussed in an executive session include labor negotiations, legal counsel, hiring, disciplining, or firing a public employee. For a complete listing of lawful topics refer to DOJs Public Records and Meetings Manual in the resources section of this training.

If you have any questions regarding appropriate topics, certain discussions or the prerequisites for executive sessions you should seek counsel from your board's DOJ attorney.

Parliamentary Procedure

Parliamentary Procedure is a set of rules for conduct at meetings allowing everyone to be heard and to make decisions. Part of any meeting should be a systematic plan for the orderly conduct of business. The sequence in which business is taken up during a meeting is known as the "Order of Business." The Order of Business is a blueprint for the meeting and typically has the following components.

- The presiding officer should never call the meeting to order until a quorum is present. A quorum is the number of members entitled to vote who must be present in order for business to be legally transacted. Quorum is typically defined in the governing documents. Once a quorum is present, the presiding officer calls the meeting to order by stating, "The meeting will come to order."
- A roll call of members present is completed.
- In meetings when minutes are to be approved, the minutes are typically distributed to all members. Corrections and approval are normally done by unanimous consent. The presiding officer can ask, "Is there any objection to approving the minutes as read [or distributed]." If there is no objection, the minutes are approved.
- The first substantive item of business in meetings is typically hearing from the officers and established committees.
- The logic in this order of arrangement is to give priority to the items of business from the leadership. Typically, the presiding officer learns in advance who needs to report and only calls on those committees.
- Reports are generally for information only. In such instances, no motion is necessary following the reports unless there are recommendations to be implemented. A motion "to adopt" or "to accept" a report is seldom wise except when the report is to be issued or published in the name of the organization. On the other hand, it is common the reporting member end by making a motion if there is a specific recommendation for action.
- Unlike standing committees established in the governing documents, special committees do not have continual existence. Instead, special committees exist solely for the purpose of a specific project. For example, a special committee might be created to plan a specific function or event. Special committees typically go out of existence upon their final report.
- Unfinished business refers to matters carried over from a previous meeting. This category of business is sometimes incorrectly referred to as "old business."
- Instead, unfinished business items typically fall into one of several specific categories. For organizations meeting at least four times a year, unfinished business may include: (1) any matter



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- pending when the previous meeting adjourned; (2) any matters on the previous meeting's agenda not reached; or (3) matters that were postponed to the present meeting.
- The presiding officer should know if there are any items to be considered under unfinished business. As a result, the presiding officer should not ask, "Is there any unfinished business?" Instead, the presiding officer should simply state the question on the first item of business. If there is no unfinished business, the presiding officer should skip this category of business.
 - Much of the work in a meeting is accomplished during new business. In this category of business, members can introduce any new item for consideration (unless there are notice requirements). In some instances, the presiding officer may be unaware of what items of business will arise under new business. The presiding officer introduces the heading of new business by asking, "Is there any new business?" Any member can then introduce new items of business by making a motion and obtaining a second. Following the consideration of each item, the chair repeatedly asks, "Is there any further new business?" This process continues until there are no additional business items.
 - In most assemblies the presiding officer can adjourn the meeting without waiting for a motion to adjourn. If all items of business have been considered, the presiding officer can ask, "Is there any further business?" If there is no response, the presiding officer simply states, "Since there is no further business, the meeting is adjourned."
 - If custom or tradition requires a motion to adjourn be made, the presiding officer can ask, "Is there a motion to adjourn?" Once the motion is made and seconded, the presiding officer can ask, "Is there any objection to adjourning the meeting? Hearing no objection, the meeting is adjourned."

Process for Making a Motion

There are 4 basic types of motions:

- **Main Motions:** The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
- **Subsidiary Motions:** The purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
- **Privileged Motions:** The purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
- **Incidental Motions:** The purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

Here's the typical steps for making a motion:

1. **Obtaining the Floor:** Wait until the last speaker has finished. Rise and address the Chair. Wait until the Chair recognizes you.
2. **Make Your Motion:** Speak in a clear and concise manner. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...". Avoid personalities and stay on your subject.
3. **Wait for Someone to Second Your Motion:** Another member will second your motion or the Chair will call for a second. If there is no second to your motion it is lost.
4. **The Chair States Your Motion:** The Chair will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action. The membership then either



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debates your motion, or may move directly to a vote. Once your motion is presented to the membership by the chair it becomes "assembly property", and cannot be changed by you without the consent of the members.

5. Expanding on Your Motion: The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it. The mover is always allowed to speak first. All comments and debate must be directed to the Chair. Keep to the established time limit for speaking. The mover may speak again only after other speakers are finished, unless called upon by the Chair.
6. Putting the Question to the Membership: The Chair asks, "Are you ready to vote on the question?" If there is no more discussion, a vote is taken.
7. Voting on a Motion: The method of vote on any motion depends on the situation and the bylaws or policy of your board. There are five methods used to vote by most boards, they are:
 - ~ **By Voice:** The Chair asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
 - ~ **By Roll Call:** Each member answers "yes" or "no" as their name is called. This method is used when a record of each person's vote is required.
 - ~ **By General Consent:** When a motion is not likely to be opposed, the Chair says, "if there is no objection ...". The membership shows agreement by their silence, however if one member says, "I object," the objection will be recorded as long as the required majority does not object.
 - ~ **By Division:** This is a slight variation of a voice vote. It does not require a count unless the Chair so desires. Members raise their hands or stand.
 - ~ **By Ballot:** Members write their vote on a slip of paper, this method is used when secrecy is desired.



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MODULE 4 – OPERATIONS & MANAGEMENT OF BOARDS

Now let's take a look at common operations and management of a board.

Procurement Authority

A board's procurement authority comes from either its own statutory authority, from a written delegation of authority from DAS Procurement Services, or by DAS Administrative Rule. DAS Procurement Services can delegate procurement authority at certain dollar thresholds to agency heads and Designated Procurement Officers. A written document specifying an entities authority must be on file before purchasing goods or services with taxpayer money. Agencies may be permitted to sub-delegate procurement authority granted by DAS, but the responsibility for operating within the rules remains with the employee to whom authority was initially granted. Authority and accountability for procurements is delegated to individuals based on the knowledge, skills and abilities of staff assigned to procurement duties. The delegation of authority to procure goods and services is usually tied to thresholds outlined in the procurement statutes or in a tiered delegation agreement with an agency.

Boards must follow:

- Oregon Revised Statutes 279A, B and C;
- Oregon Administrative Rules Chapter 125 and 137; and
- The Oregon Accounting Manual.

Buy Decision Making Process

A board is allowed to enter into intergovernmental or interagency agreements without competitive bidding when it is with another board, state agency, public entity (for instance a city, county, community college, etc.), or the federal government. However, legal sufficiency will apply to an intergovernmental agreement exceeding \$150,000 in value.

If you don't use an intergovernmental or interagency agreement, you must purchase goods and services using these sources in this order.

Surplus provides a central repository for the collection, reutilization and, public sale of excess and surplus property and vehicles for all state agencies and public entities.

This is the first place a board must look to see if the goods are available.

A QRF is a non-profit rehabilitation organization employing individuals with disabilities. QRFs provide services such as janitorial services, recycling services, food and beverage services, temporary staffing services, etc. Boards are required to purchase goods or services from a QRF before going out to the open market.

Oregon Corrections Enterprises (OCE) provides inmates full-time work or on-the-job training through the state's correctional institutions. OCE provides goods and services such as furniture, office seating, signs,



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park equipment, printing services, call centers, laundry services, etc. Boards are required to purchase goods or services from OCE before going out to the open market.

All state agencies, boards, and commissions are required to purchase needed goods and services from the DAS statewide price agreements when other steps in the “Buy Decision” do not meet needed results. A board may purchase services or supplies from a price agreement without further competition, because they have already been competitively solicited. Most commonly used products and services are found on the price agreements.

This is the fifth and final source selection method. This means going out for bid or a request for proposal from private firms. Certification Office for Business Inclusion and Diversity are included in the open market procurement process and must be included when getting quotes for a project, but they are not given preference in award of contracts.

If a board goes out to the open market you must consider:

1. First, do you have the authority to purchase the needed service or commodity? And;
2. Second, what is the value of the projected contract which will affect the procurement process that can be used.

Contracts valued between \$10,000 and \$150,000 are considered intermediate procurements and must be competitively solicited by law. Agencies, boards and commissions have the authority to conduct intermediate procurements, but must advertise them using the Oregon Procurement Information Network.

Contracts with a value exceeding \$150,000 must receive legal sufficiency approval from Department of Justice. This review is intended to ensure contracts contain all the elements needed to make the agreement legally binding. Legal sufficiency review does not ensure the board is making a good business decision.

Notice of all contracts with a value exceeding \$10,000 must be provided to the Certification Office for Business Inclusion and Diversity which is done through posting the solicitation on the Oregon Procurement Information Network.

Boards must submit a procurement request to DAS for a purchase exceeding their authority which usually is \$150,000 for personal services, trade services and commodities and \$100,000 for construction contracts.

Purchasing in the Open Market

When you need to go to the open market here are the mechanisms used to purchase goods and services.

A request for quote is an informal process used to get pricing information.

An invitation to bid is an intermediate or formally advertised solicitation. This process is intended to ensure the contract is awarded to the lowest responsible bidder.



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A request for proposal is an advertised intermediate or formal solicitation. This process is intended to ensure that the contract is awarded to the most qualified company based on evaluation factors other than cost. Including negotiated Best Value contracts for information technology projects.

An emergency procurement is used when a circumstance could not reasonably be foreseen and creates a substantial risk of loss, damage, interruption of services, or threat to public health or safety. When an emergency takes place, the chief executive or another duly authorized person must prepare a written declaration. An agency must keep a written record of the competition process used to award contracts. Agencies must get quotes when possible for all procurements.

A sole source procurement is used on very rare occasions when there is only one source or provider for the needed item or service.

Special procurements are an exempted process used when it is determined competition will not be harmed and the state will realize substantial savings. The DAS Chief Procurement Officer must approve all special procurements in advance. Forms to apply for a special procurement may be found on the Oregon Procurement Information Network.

Contract Types

There are five contract types commonly used to acquire goods and services.

Trade services contracts are usually industry standard, easily definable skills associated with a trade. For example, an electrician, a plumber, etc.

Goods contracts are for consumable products, equipment, and materials; these are often found on price agreements established by DAS. For example, office supplies, computers, cars, etc.

Personal services contracts require specialized skills, knowledge and professional judgment. For example, a lawyer, an interpreter, etc.

Public improvement contracts are projects for construction, reconstruction, or major renovation on state-owned real property. Public works contracts fall under public improvements, but have separate rules and usually are used to repair or update existing structures. A public works contract does not always qualify as a public improvement project.

Information technology contracts are projects requiring hardware, software and associated services. Many IT projects must be reviewed by the State Chief Information Office prior to being implemented.



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Contract Administration

Following the award of a contract, contract administration is the management actions to be taken to assure full compliance with all of the terms and conditions contained within the contract. Before administering a contract you need to determine the who, where, when and how the contract will be administered.

You will need to determine who will provide oversight of the project, services or deliverables.

You will need to determine who and how the work will be reviewed and progress monitored.

You will need to determine who reviews and matches deliverables to the contract payments.

You will need to determine who will approve bills and invoices.

Who and how will changes or amendments to the contract be managed.

All actions must be documented in the procurement files. The procurement files also must be properly maintained and retained according to the retention schedule.

You will need to determine who and how you'll perform compliance reviews.

Contract Amendments

If you need to make any changes to a contract make sure to do the following:

- Review the original solicitation and contract to ensure the changes are still within the scope of the procurement.
- Review prior amendments.
- Check your budget in the event there will be a fiscal impact.
- Make sure the contract is not at term and can't be amended.
- Use the amendment process to update anything in the contract needing to be addressed such as timelines or delivery schedules.
- If an amendment will alter the terms or conditions of the contract substantially, consult with DOJ prior to authorizing the amendment.
- Do not sign off on amendments unless you are sure they are in order - check with your Designated Procurement Officer before signing contract documents.

Human Resources

Authority for work is defined by statute. Each agency has an enabling statute identifying the authority and responsibility of the entity. New or significantly augmented positions or work are requested through policy option packages which are analyzed by both DAS and the Legislative Fiscal Office before they can go forward for legislative action. This analysis includes review of a written business case for the need, position descriptions, and fiscal analysis. Positions are authorized by the legislature.



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OAR 105-040-0040(1) provides each agency head the authority to recruit and fill positions. According to ORS 240.015, an officer who has the power to make appointments is called an Appointing Authority. The authority to make appointments to positions comes after a position has been established.

ORS 240.400 allows an Appointing Authority to assign delegates with written notice to DAS - Chief Human Resources Office. The signature of an Appointing Authority on the position description form gives permission for the work to be done.

DAS - CHRO is governed by ORS 240 and is tasked with overseeing state agencies' human resources functions. CHRO provides enterprise-wide policy leadership. CHRO develops and maintains statewide HR policies, administrative rules, and assists state agencies with HR management. These policies apply to most executive branch agencies that are subject to ORS 240, the State Personnel Relations statutes. There are several semi-independent agencies that are excluded (ORS 182.454). CHRO provides interpretation and recommendations on application of the rules and policies.

If an agency doesn't have an internal human resources office, they can contract with DAS to provide human resource services for the agency.

Agency human resource offices are responsible for interpreting and administering state and federal human resource laws, rules, and policies for the employees of their agency. The role of HR includes strategic planning, facilitating change, encouraging learning, and integrating HR functions into the management of the agency and its programs.

DAS - CHRO has an executive recruiter who is responsible for recruiting agency directors for the executive branch and to support boards that are DAS clients by recruiting for executive directors for the board.

Board seats are volunteer positions and have an average expectation of approximately 10-15 hours of work per month. However, members may be eligible to receive reimbursements and per diem for the time serving on the board.

Board members, who are appointed by the Governor, are prohibited from being a paid employee by the board while serving. In addition, they are not able to be employed by that board for one year after their term expires. (ORS 236.145)

Paychecks, leave balances, and benefits depend on accurate time and attendance records. Payroll transactions are no different than any other board expenditure, requiring the same application of internal controls. Therefore, review and approval of the time records is critical.

Time records not being reviewed and authorized may introduce incorrect data into the state payroll and accounting systems and cause unauthorized expenditures of state funds. If you are responsible for reviewing and authorizing time records and fail to do so it is considered an inappropriate action and board management can apply penalties according to the Oregon Accounting Manual.

If you are expected to report your time and attendance make sure it is accurate. If any changes occur make note of it immediately so you won't forget to update your records before submitting them.



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Managers are expected to review all time reported for accuracy and appropriateness. A manager's signature or time locking verifies approval of time. If there is a revision made to an employee's time by someone else, for instance payroll or their manager, the employee must be informed of the changes made.

For more information refer to the Oregon Accounting Manual 45.07.00 located in the resources section of this training.

FLSA

The Fair Labor Standards Act (FLSA) is a federal statute. FLSA establishes the federal minimum wage and the 40-hour work week; sets overtime to be paid at time and one-half; and regulates the exemptions to the 40-hour work week and over time rule.

The 40-hour work week is defined by state policy and the Department of Labor as a fixed, regular recurring period of 168 hours during seven consecutive 24-hour periods or days.

Certain workers are not covered by FLSA. These non-covered workers include elected officials and their staffs, political appointees and legal advisors, volunteers, independent contractors, and prison inmates. Other employees, while covered by some provisions of the FLSA, are not covered by the overtime and minimum wage requirements. They are "exempted" from such coverage.

Non-exempt employees are paid overtime compensation when they have worked in excess of the established 40-hour work week. There are exceptions to this for jobs such as firefighters, police officers, certain hospital employees, and articles in collective bargaining agreements may be more generous. All time worked by an employee under FLSA must be paid for even if the time was not authorized by the employer.

Managers must ensure the FLSA, state wage and hour, and collective bargaining obligations are all met. If violated, FLSA penalties may include back wages, liquidated damages, civil penalties, injunctive relief, and even criminal penalties.

Oregon Accounting Manual

The Oregon Accounting Manual (OAM) provides a comprehensive set of policies and procedures to assist with financial transactions in accordance with generally accepted accounting principles, federal regulation, and the Internal Revenue Service requirements.

When boards develop internal procedures to implement standards or guidelines contained in the OAM, those procedures should be consistent with OAM provisions. Boards may, at their discretion, adopt procedures more restrictive than the requirements of the OAM.



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Internal Controls

Proper segregation of responsibilities is a necessary condition to make control procedures effective. Management should ensure adequate separation of authorization for the execution of transactions, recording of transactions, custody of assets, and periodic reconciliation of existing assets to recorded amounts.

All transactions are supported by copies of source documents such as vendor invoices, detailed receipts, or time sheets. This documentation must be detailed to provide clear evidence of the transaction.

- Receipts or invoices must be itemized to show specific transaction.
- A restaurant receipt must indicate the itemized purchases and not the total bill.
- A vendor invoice must have the details of the purchases.

Specific individuals with expenditure authority may have limits placed on their expenditure approvals, which vary depending on agency needs. For example, an agency director and board chair may have spending authority for all fiscal transactions, mid-level management at \$50,000 and an office staff up to \$5,000.

OAM policy 10.90.00.PO sets control standards for the authorization of agency head transactions such as time reporting, travel reimbursements, and state credit card purchasing. Mid to large sized agencies who have a deputy director or CFO position are authorized to approve agency head transactions. Many smaller agencies do not have a deputy director or CFO position required to approve agency head transactions. In these cases, board members will be required to approve agency head transactions.

An agency head is authorized to make expenditure decisions by statute and legislative appropriation. An agency head may delegate **expenditure decision authority** to subordinates, in writing. Any person who exercises expenditure decision authority will be legally responsible and accountable for the expenditure.

Many agencies will have certain board members with expenditure authority, in cases where the agency head is unavailable or to sign for agency head transactions.

Stipends & Travel

Board members may be eligible to receive a stipend for attending regular board meetings and other official board activities. In addition, board members may be eligible for travel and meal reimbursements.

Stipends are outlined in state law and can vary for each board. For travel, the General Services Administration (GSA) publishes annual per diem rates for meals, lodging, and mileage.

Board members who travel on business for the state, must follow the policies set forth by the GSA, the Oregon Accounting Manual, the state travel policy, and any internal travel policies. Contact your board administration for more information.



MODULE 5 – DIVERSITY & INCLUSION

This module will explore communication skills for promoting diversity and inclusion.

There are many dimensions to diversity including organizational, external, and internal. These dimensions include a broad spectrum of characteristics including, but not limited to, race, color, ethnicity, national origin, gender, age, religion, culture, language, disability, sexual orientation, gender identity or expression, socioeconomic status, family structures, geographic differences, diversity of thought, perspectives, talents, technical expertise, and life experiences.

The term “inclusion” has been used to describe the active, intentional, and ongoing engagement with diversity. Inclusion describes the ways in which individuals might connect increasing one’s awareness, content knowledge, intellectual complexity, and emphatic understanding of the intricate ways individuals interact.

Bias is NOT a bad word. Bias is a predisposition to see events, people or items in a positive or negative way. Bias is an attitude or belief. It’s not until we act it out in behavior that our bias affects someone else - it may advantage or disadvantage an individual or a group. When it comes to communication, bias shows up in many different ways, such as in statements, jokes or stereotypes.

A stereotype is an oversimplified image or statement applied to a whole group of people, without regard for the individual. Stereotypes imply all people in the group are identical, based on some dimensions of diversity they share. Stereotypes often contain a judgment. For example, good or bad, honest or dishonest, hard working or lazy.

Stereotypes typically have 3 characteristics:

1. They imply all people in the group are the same.
2. They contain judgment. Notice that the judgment often reveals more about the person’s beliefs or expectations than it does about the stereotyped individual.
3. Stereotypes are fairly inflexible. When we encounter someone who does not fit our stereotype, it’s easier to consider that person the “exception to the rule,” rather than question the validity of the stereotype.

In order to deal with stereotypes you must be able to recognize them when they occur.

Stereotypes and bias exist and are prevalent in our society. No one person or group owns bias or stereotyping. The same person can be both recipient and sender of biased statements. Stereotypes touch every person - we may send stereotypes, be the recipient or target of stereotypical statements, or we may be a bystander witnessing stereotypes. We either speak up or stay silent in the face of stereotypes and other biased statements.

As board members and executive directors you are typically trying to get your message across to a broad audience. Using language that includes and demonstrates respect for everyone will help people receive the message you are trying to send.



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MODULE 6 – OREGON STATE GOVERNMENT ETHICS

This module covers the following topics:

- Key definitions
- Who is considered a public official
- Use of position or office
- Private employment of public officials
- Conflicts of interest
- Gifts
- Nepotism

The provisions in the ethics laws restrict some choices, decisions or actions of a public official. The restrictions placed on public officials are different than those placed on private citizens because service in a public office is a public trust and the provisions in ORS 244 were enacted to provide one safeguard for that trust.

Overview of OGEC

The Ethics Commission is a seven-member citizen commission charged with enforcing and implementing the ethics laws.

- ORS 244 relates to the conduct of public officials prohibiting use of office for financial gain and requiring public disclosure of economic conflict of interest;
- ORS 171.125 through 171.992 relates to lobbying regulations requiring lobbyists and the entity's they represent to register and report expenditures; and
- ORS 192.660 relates to the executive session provisions in the public meetings law.

Who is a Public Official?

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county, city government, or special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health & Science University.

As a public official you are held personally responsible for complying with the provisions in the ethics laws. This means you must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose conflicts of interest. If you fail to comply with the ethics laws, a violation cannot be dismissed by placing the blame on the public entity that you represent. In addition to the ethics laws your public entity may have policies and procedures that are more restrictive.



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Use of Position

The ethics law prohibits you from using or attempting to use the position you hold as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by you. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Volunteers

If any one of the following elements apply to a volunteer position, the person holding that volunteer position is a public official:

- Responsible for specific duties.
- The duties are performed at a scheduled time and designated place.
- The volunteer is provided with the use of the public entity's resources and equipment.
- The duties performed would have a financial impact on any person, business or organization served by the public entity.

This list is not exhaustive, contact the Ethics Commission if you have any questions.

Relatives

There are provisions in the ethics law that may restrict or prohibit:

- A public official from using or attempting to use official actions of the position held to benefit a relative or household member;
- The value of financial benefits accepted by a relative or household member of the public official; and
- Require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit.

A Business Associated with Public Officials

The same sound judgment you exercise when participating in actions that could result in a financial benefit for you or your relative should be used when participating in actions that could result in a financial benefit to a business with which you or your relative is associated.

There are provisions in ORS 244 that restrict or prohibit you from using actions of the position held to benefit a business with which you or your relative is associated. The provisions may also require you to disclose the nature of a conflict of interest when a business may receive a financial benefit.

Confidential Information

As a public official you often have access to or manage information that is confidential and not available to the general public. The ethics law specifically prohibits you from attempting to use confidential information gained because of the position you hold or by carrying out assigned duties to further your own personal gain.



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The ethics law also prohibits a former public official from attempting to use confidential information for their own personal gain or others if that information was obtained while holding the position as a public official, from which access to the confidential information was obtained. OAR 199-005-0035(5) “Confidential Information”

Financial Benefits Prohibited

There are a variety of actions a public official may take or participate in that could be prohibited. The use of a position could be voting in a public meeting, placing a signature on a public entity’s document, making a recommendation, making a purchase with a public entity’s funds, conducting personal business on a public entity’s time or resources in which you, a relative, member of your household, or business with which either are associated would receive a financial benefit that would not otherwise be available but for you holding your position as a public official.

Prohibited gains can be obtaining a financial gain or a benefit with a monetary value or avoiding an expense and they do not have to result in any cost for the public entity.

Financial Benefits That May Be Accepted

The following financial benefits are not prohibited and may be accepted some may also be accepted by your relative or a member of your household. [ORS 244.040(2)]

Official Compensation: You may accept any financial benefit that is identified by the public entity you serve as part of your official compensation package. If the public entity identifies such benefits as salary, health insurance or various paid allowances in the employment agreement or contract, those financial benefits are part of the your official compensation package. [ORS 244.040(2)(a)]

Reimbursement of Expenses: You may accept payments from your public entity for reimbursement of expenses that you personally paid for while conducting the public entity’s business. [ORS 244.040(2)]

Honorarium: A payment or something of economic value given to you in exchange for services that you provide is an honorarium when the setting of the economic value has been prevented by custom or propriety. You are allowed to accept an honorarium as long as the value does not exceed \$50. Make sure you know how an honorarium is defined because there are many occasions when someone will offer you a financial benefit and call it an honorarium, but it does not meet the definition of honorarium. The services you provide may include but not be limited to speeches or other services provided in connection with an event. [ORS 244.040(2)(b)]

Awards for Professional Achievement: You may accept an award, if you did not solicit the award, and the award is offered to recognize a professional achievement you made. [ORS 244.040(2)(d)]

Legal Expense Trust Fund: A public official may establish a legal expense trust fund if the public official incurs or reasonably expects to incur legal expenses. Proceeds from the trust fund may be used by the public official to defray legal expenses incurred by the public official in any civil, criminal or other legal



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proceeding or investigation that relates to or arises from the course and scope of duties of the person as a public official. [ORS 244.205]

Gifts: You may accept gifts that do not exceed the limits specified in ORS 244.025. There are circumstances in which there are no limits on the quantity or aggregate value of gifts that you can accept. On the other hand, there are circumstances when the aggregate value of gifts you accept is restricted. There may also be reporting requirements that apply when you accept gifts.

Employment

The ethics law does not prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a governing body.

Many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation, but choose to seek additional sources of income. Some work for a private business and others establish a private business of their own.

You are prohibited from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by your vote, official action, or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, you may obtain employment with a private employer or engage in private income producing activity of your own. You must not use the position you hold as a public official to create the opportunity for additional personal income. You must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the governing body's time and resources.

The ethics law restricts the subsequent employment of certain public officials. For instance the Director of the Oregon State Lottery, Deputy Attorney General, State Treasurer. For a detailed listing and what the restrictions are, visit the Guide for Public Officials on the Resources tab in this training.

A person who no longer holds a position as a public official may not have a direct beneficial financial interest in a public contract, for two years after authorization of the contract if the contract:

- Was authorized by the public official, in their former capacity as a public official.
- Was authorized by a governing body that the former public official was a member of when the contract was authorized.

Here are guidelines to follow in order to avoid violating the ethics law when engaged in private employment or a personally owned business.

- Use no governing body time
- Use no governing body resources
- Take no official action that could financially impact your private enterprise
- Use no confidential information obtained through your position as a public official



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- Disclose all conflicts of interest

Conflict of Interest

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words “would” and “could.” You are met with an actual conflict of interest when you participate in an action that **would** affect the financial interest of yourself, your relatives, or a business with which you or your relative is associated.

You are met with a potential conflict of interest when you participate in an action that **could** affect the financial interest of yourself, your relatives, or a business with which you or your relative is associated.

Conflicts of interest have the following components:

- An action, decision, or recommendation made in the individual’s official capacity which causes
- A private financial benefit or detriment for the public official, the public official’s relatives, or a business associated with the public official or the public official’s relative.

If you or your relative has an economic interest in a business, you must be constantly aware of whether that business entity is involved in or affected by your official actions, decisions or recommendations. If such a business is directly or indirectly involved, a conflict of interest is possible.

Questions to ask when faced with a conflict of interest.

- Will the action, decision or recommendation have a financial effect on you, your relative, or a business with which either are associated?
- Is the impact of the action, decision or recommendation on your economic interest certain? Is it direct or indirect?

Disclosing Conflicts of Interest

If you encounter an actual or potential conflict of interest you will need to disclose it. Click on public official to see how a conflict of interest must be disclosed.

Legislative Assembly: Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules.

Judges: Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest.

Public Employees: Public employees must:

- Provide a written notice to the person who appointed or employed them before participating in any discussion or taking any action on the matter.
- In the notice describe the nature of the conflict of interest.



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- The written notice needs to be made on each occasion the conflict of interest is met.
- Maintain a copy of the notice in your own records. [ORS 244.120(1)(c)]

Elected Official or Appointed Board Member:

- When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action in the capacity of a public official; or
- When met with an actual conflict of interest, announce publicly the nature of the actual conflict and 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.
- If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

Gifts

In some circumstances there are restrictions on the monetary value of gifts you are allowed to receive. The ethics law establishes a framework of conditions for you to apply when you, your relatives, or members of your household are offered gifts. If offered a gift, you must analyze the offer and decide if "something of value" can be accepted with or without restrictions. In addition to the ethics laws your public entity may have policies and procedures that are more restrictive on whether or not gifts may be accepted.

You are directly and personally responsible for understanding the circumstances when the aggregate value of gifts may be restricted.

In order to determine if the ethics law places restrictions on a particular gift, you must know:

- Whether the gift meets the definition of a gift as defined in ORS 244.020(6)(a);
- Whether the gift meets any of the exceptions defined in ORS 244.020(6)(b);
- Who is the source of the gift; and
- If that source has any legislative or administrative interest in the public official.

If the source of a gift has a legislative or administrative interest, any gift offered to you, your relative, or a member of your household, may only be offered and accepted under certain conditions. If however the source of a gift does not have a legislative or administrative interest, gifts are not restricted or prohibited. ORS 244.020 identifies 16 exceptions for certain kinds of gifts that are allowed without limit under specific conditions. Make sure to look at the statute before accepting any gifts.

With regard to gifts, the phrase "distinct from that of the general public" refers to a distinct economic interest held by the source of a gift. That economic interest is in the financial gain or loss that could result from any votes cast or decisions made by a public official. If the source of a gift could reasonably be expected to realize a financial gain or detriment from a vote or decision of a public official, that source has an economic interest in that public official.



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- Make sure you know the identity of the source of the gift. Remember, the source of a gift is the person or entity that made the ultimate payment for the gift's expense.
- Determine if the source of the gift has an economic interest in decisions or votes you make in your official capacity as a public official. If that economic interest is distinct from the interest held by members of the general public it is a legislative or administrative interest.
- If the source does not have a legislative or administrative interest, gifts from that source are not prohibited or limited as to value or quantity.
- If the source has a legislative or administrative interest, you must answer the following questions:
- Is the gift offered under the conditions that would allow you to accept the gift because it is excluded from what is defined as a "gift"?
- What is the value of the gift? Remember, you can accept gifts from a single source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year.

Economic Interest

There are approximately 5,500 Oregon public officials who must file an Annual Verified Statement of Economic Interest with the Ethics Commission by April 15 of each calendar year. Refer to ORS 244.050 to determine if your specific position requires you to file.

Nepotism

Public officials cannot participate in any personnel action taken by the governing body that would impact the employment of a relative or member of the public official's household. This includes appointing, employing, promoting, discharging, firing, demoting, or interviewing.

If you are assigned duties that include performing "ministerial acts" related to any stage of a relative's or member of your households employment you are not prohibited from performing such acts. "Ministerial acts" would include mailing or filing forms or correspondence, taking and relaying messages, scheduling appointments or preparing documents and minutes for public meetings.

If you have a relative or a member of your household who has applied to be or serves as an unpaid volunteer, you may participate in any personnel action that involves the relative or member of the household.