

**Board on Public Safety Standards and Training**  
**Executive Committee Meeting**  
**Minutes**  
**May 3, 2011**

The Executive Committee of the Board on Public Safety Standards and Training held a telephonic meeting on May 3, 2011, at the Public Safety Academy in Salem, Oregon. Chair Andrew Bentz called the meeting to order at 1:50 p.m.

**Board Members Present:**

Andrew Bentz, Chair of the Board on Public Safety Standards and Training  
Todd Anderson, Chair of the Corrections Policy Committee (Present)  
Rob Poirier, Chair of the Telecommunications Policy Committee

**Board Members Absent:**

Jeff Martin, Chair of the Private Security/Investigators Policy Committee  
Mark Prince, Chair of the Fire Policy Committee

**DPSST Staff:**

Eriks Gabliks, Director of the Department of Public Safety Standards and Training (DPSST)  
Marilyn Lorange, Standards and Certification Program Supervisor  
Linsay Bassler, Compliance Coordinator  
Tammera Hinshaw, Executive Assistant to Director



**Chair's Administrative Announcement**

“This is a public meeting, subject to the public meeting law and it will be tape recorded.”

**1. Minutes of March 15, 2011 meeting**

*To see complete text of the meeting minutes, please go to the Executive meeting minutes of March 15, 2011, which can be found at:*

[http://www.oregon.gov/DPSST/BD/Policy\\_Committee\\_Minutes/EC\\_Minutes/Exec31511.pdf](http://www.oregon.gov/DPSST/BD/Policy_Committee_Minutes/EC_Minutes/Exec31511.pdf)

*Todd Anderson moved to accept the minutes as presented. Rob Poirier seconded the motion. The motion carried with a unanimous vote.*

**2. OAR 259-025-0000 – Proposed Rule (See attachment A)**

Public Records Requests – Linsay Bassler reviewed.

The rule was brought before the Executive Committee on March 15, 2011, and opened for public comment from April 1 to April 21, 2011. During that time, one comment was received suggesting ways to better clarify our public records process. After research the suggestions, staff determined the originally proposed language better met the needs of DPSST.

*Rob Poirier moved to approve filing the originally proposed language for OAR 259-025-0000 with the Secretary of State as a permanent rule. Todd Anderson seconded the motion. The motion carried with a unanimous vote.*

**3. OAR 259-008-0072, 259-009-0072, and 259-060-0305 – Proposed Rule Repeal (See attachment B)**

Department/Agency Representative at Contested Case Hearing – Lindsay Bassler reviewed.

Oregon Revised Statute previously allowed DPSST employees to serve as department representatives during contested case hearings. A version of this authority appears in rule currently under Division 8 for Criminal Justice, Division 9 for Fire and Division 60 for Private Security. Since the adoption of these rules, the statutory authority is no longer in existence. The agency is now represented by DOJ on contested case hearings. Staff is requesting approval to repeal these three rule numbers granting this authority.

*Rob Poirier moved to approve repealing Administrative Rules 259-008-0072, 259-009-0072, and 259-060-0305. Todd Anderson seconded the motion. The motion carried with a unanimous vote.*

**4. Fire Policy Committee (FPC) Reappointment**

Michelle Stevens, Oregon Fire Marshal Association

Director Gabliks explained that Michelle Stevens currently serves on the Fire Policy Committee as the Oregon Fire Marshal Association representative. She would like to serve a second term and her association is interested in having her remain on the committee.

*Todd Anderson moved to approve the reappointment of Michelle Stevens to the Fire Policy Committee. Rob Poirier seconded the motion. The motion carried with a unanimous vote.*

**5. Budget Update – Director Gabliks**

We continue to have discussions with the Legislative Fiscal Office. The Fire Insurance Premium Tax programs are not being affected. The telephone tax 9-1-1 programs are also not being effected.

The Private Security fee increase has caused consternation with the Ways and Means Committee. They are concerned about what that will do to business. We have had discussions about what if we don't increase the fee as well as reducing the amount of the fee increase. If we reduce or don't implement the increase, we wouldn't roll back; we would go forward from there. If we don't go forward with the fee increase, there will possibly be three positions lost in the Private Security Program, which is self-funding. We anticipate they will approve a reduced fee increase and then as part of 2013-2015, we'll have to ask for that to be bumped up again. We won't know for sure until the Joint Ways & Means Committee takes formal action.

Criminal Justice – Reductions may still come. One of the things we're still discussing is a 6.5% reduction in services and supplies. For DPSST, that is approximately a half million dollars. There are also discussions about reducing one or two Basic Police classes, which will take us down from the 15 that were planned. This will result in reducing additional staff in Training Division. We

keep working numbers with the Legislative Fiscal Office. DPSST has its work session with Ways and Means on May 17.

**6. Legislative Update – Marilyn Lorange**

The University Police authorization bill is up next week.

The DOC certification bill had a hearing on its second side. There was no controversy. On Monday, she was downtown for the Polygraph Program change and anticipates that both will move.

A lot of the bills we were concerned about have died in committee.

Director Gabliks shared that he was contacted by the US Attorney's Office at the request of US Marshal Berger for the District of Oregon. They are looking to do a one-day officer safety seminar at DPSST. It is schedule for June 8. This a joint effort by the Marshals Service, FBI, US Attorney's Office, the Chiefs and Sheriffs, OSP, and DPSST. This is to provide information on fugitive taskforce work, grants for agencies to apply for body armor as well as use of force issues, dealing with mental health, and returning veterans. It will be a 6-hour day and we will provide lunch and lodging. We know it conflicts with the Chiefs and Sheriffs Conference, but feel that there's still enough interest that people should be able to send some people to both the meetings.

With nothing more to be brought before the Committee, Chair Bentz adjourned the meeting at 1:50 p.m.

**7. Next Meeting – June 9, 2011 at 1:30 p.m.**

**Attachment A.**

**Department of Public Safety Standards and Training  
Memo**

**Date:** May 12, 2011

**To:** Executive Committee

**From:** Linsay Bassler  
Rules Coordinator

**Subject:** Report on Comments Received – Proposed Rule  
OAR 259-025-0000 – Public Record Requests

**Background:** The Oregon Public Records law and Attorney General’s Public Records and Meetings Manual allows for a public body to establish fees “reasonably calculated” to reimburse the public body for the actual cost of providing public records if the amount and manner of calculating the fees are made available to the public. DPSST’s rule on record request procedures and fees was reviewed to ensure compliance with this requirement. This proposed update would remove language referring to obsolete practices and establish a more comprehensive fee schedule, taking into consideration the labor and materials needed to fulfill a request. Language will be added that allows the Department to withhold records until payment is received. The rule would also be reorganized for clarity.

**Executive Committee:** On March 15, 2011, the Executive Committee met and reviewed staff’s proposed amendments to OAR 259-025-0000. The Committee voted to approve filing the proposed language with the Secretary of State as a proposed rule, and permanent rule if no comments were received.

On April 1, 2011 the public comment period was open. During that period, one public comment was received.

**Finding of Fact:**

1. On March 15, 2011, a Notice of Proposed Rulemaking was filed with the Secretary of State’s office.
2. On April 1, 2011, the Notice of Proposed Rulemaking was published in the Secretary of State’s monthly publication.
3. During the month of April 2011, the Notice of Proposed Rulemaking was posted on the Department of Public Safety Standards and Training website.
4. The public comment period closed at 5:00 p.m. on April 21, 2011.

The Department provided notice of a proposed rulemaking hearing to:

- a. The Secretary of State office;
- b. Legislative Counsel;
- c. The agency interested parties' list; and
- d. The department's website.

**Public Comment:**

Lindsay,

I have a few comments.

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Section (5):

"actual costs" could be perceived as double dipping.

Would it be okay to just say "costs?"

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Section (5) (a) Staff time to research, locate, review, redact, compile and copy records  
Section 6 "less than 10 minutes", and  
Section (7) "for the first 1-10 pages"

Seems like a lot of variables.

I'd go for a flat rate.

"Staff time" is an unknown charge. It could depend on who's doing the work - an OS2 at step 3 or an AS1 at step 8. Seems the rule is setting a fee, but the fee is not disclosed. How about a flat rate, e.g. \$5 per hour, with a minimum of \$5?

Same thing for sheets (or number of copies). A sheet is a sheet. A copy is a copy. How about a flat rate of \$.50 per sheet per copy?

Flat rates can be applied evenly, regardless of the staff time, type of record, or number of sheets.

Also, do you copy records onto CD for folks? If so, there could be a flat rate for providing the CD, too (e.g. \$2.50 per).

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Just a couple of thoughts. Hope it's helpful.

Connie Dalke  
Office of State Fire Marshal  
Fire & Life Safety  
Executive Support to Stacy Warner  
(503) 934-8204

## *Premier Public Safety Services*

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The following revised language for OAR 259-025-0000 contains recommended additions (**bold and underlined**) and deletions (~~strikethrough text~~).

### **259-025-0000**

#### **Department Fees and Public Records Requests**

(1) All information in the custody of ~~the Director~~ of the Department of Public Safety Standards and Training (Department) will be disclosed or protected from disclosure in accordance with ORS Chapter 192 and other applicable state and federal laws.

~~(2) As used in this rule, the following definitions apply:~~

~~(a) "Certified copies" means, photocopies, that on the date copied, are true and accurate copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.~~

~~(b) "Research" means the compilation or retrieval of information:~~

~~(A) That is not readily and immediately available from a single source or a group of related sources; or~~

~~(B) For which a search is required before the requested information can be located.~~

#### **Records Request Procedure**

~~(3)~~ **2** A request for photocopies, facsimile (fax) copies, electronically distributed (e-mail) copies and certifications of public records that are on file with the Department must be made in writing; **Submission may be** made by **mail**, fax, ~~or by e-mail~~, or in person ~~by e-mail~~. ~~(a)~~ The request must **include**:

~~(A)~~ **a** Include **The name, and address, and telephone number** of the person requesting the public record;

~~(B)~~ Include telephone number of the person requesting the public record; and

**(b) The date the request is being made; and**

(C) ~~An Adequate describe~~ **description of** the record(s) **being** requested including subject matter; and approximate creation date(s) when applicable.

~~(b) The request should:~~

~~(A) Be dated;~~

~~(B) Identify or be signed by the person requesting the public record; and~~

~~(C) Indicate a date by which the records are being requested.~~

(4 ~~3~~) The Department will ~~respond to the~~ **acknowledge records** requests in a reasonable amount of time. (a) In its response, the Department will:

(A) ~~Acknowledge the request~~ **Indicate if they are in possession of the requested records;**

**(B) Identify the requested records that are exempt from disclosure under current Public Records Law;**

~~(B C)~~ Provide an estimate of the expected cost of meeting the request; **and**

**(D) Identify an estimated date by which the information will be provided.;**

~~(C) Identify any requested records that may be exempt from disclosure; and~~

~~(D) Identify the estimated date by which the information will be provided.~~

(b ~~4~~) The regular duties of the Department will **not** be ~~neither~~ interrupted ~~nor~~ interfered with because of time or effort required to respond to ~~the~~ **records** requests.

### **Records Request Fees**

(5) Unless otherwise provided by statute or other administrative rule, **the Department may charge fees for recovering actual costs of:**

~~(a) Fees for in-stock publications, pamphlets or outlines will be as listed below:~~

~~(A) 1-10 pages — \$5.00;~~

~~(B) 11-25 pages — \$7.50;~~

~~(C) 26-50 pages — \$10.00;~~

~~(D) 51-100 pages — \$15.00;~~

~~(E) Over 100 pages — \$15.00 plus twenty-five cents (\$.25) per page for each additional page over 100.~~

~~(b) Documents other than publications will be charged at the rate of \$5.00 for the first 1-10 pages and \$.50 for each additional page.~~

**(a) Staff time to research, locate, review, redact, compile and copy records;**

**(b) All material and media; and**

**(c) Postage, where applicable.** fees will be calculated as follows:

**(6) Basic records requests requiring less than 10 minutes of staff time to compile and provide electronically will be charged a flat rate of \$5.**

**(7) Records requests that require no redacting and are copied and provided to the requestor in paper form will be charged at the rate of \$5 for the first 1-10 pages and \$.50 for each additional page.**

~~(6) The Department may charge fees for recovering actual costs of staff time;~~

~~(a) For locating, compiling, making available for inspection and delivering public records; and~~

~~(b) Researching and documenting information.~~

~~(7 8) No charge will be made~~ **There will be no charge** for furnishing normal and necessary records or publications to public safety officers; or public safety agencies.

**(9) The Department may require payment in advance.**

### **Other Fees**

~~(8 10) The Department may charge for the use of facilities at the Public Safety Academy.~~

~~(9 11) The Department may charge replacement cost for lost or damaged keys, equipment, or meal cards.~~

Stat. Auth.: ORS 181.640 & 703.230

Stats. Implemented: ORS 181.640 & 703.230

**Staff Analysis:** In developing this proposed rule update, staff consulted with those responsible for handling DPSST record requests. This proposed language takes into consideration the various types of record requests received by the Department as well as the different processes used to satisfy the requests.

**ACTION ITEM 1:** Determine whether to approve filing the previously proposed language for OAR 259-025-0000 with the Secretary of State as a permanent rule.

**Attachment B.**

**Department of Public Safety Standards and Training  
Memo**

**Date:** May 12, 2011

**To:** Executive Committee

**From:** Linsay Bassler  
Rules Coordinator

**Subject:** OAR 259-008-0072, 259-009-0072, and 259-060-0305 – Proposed Rule Repeal – Department/Agency Representative at Contested Case Hearing

**Issue:** Oregon Revised Statutes previously allowed for Department employees or officers of DPSST to act as a Department representative during a contested case hearing, however the statutes granting this authority no longer exist. DPSST is no longer authorized to use lay representatives in a contested case hearing. The agency is represented by the Oregon Department of Justice at all such proceedings.

This proposed rule update would repeal the rules defining this authority found in Division 008 (Criminal Justice), Division 009 (Fire), and Division 60 (Private Security).

The following is the language contained in the rules that are proposed to be repealed:

**Department Representative at Contested Case Hearing**

(1) Subject to approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department in all contested case hearings conducted by the Department or Board.

(2) The Department representative may not make legal argument on behalf of the Board or Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case hearing.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application to the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(3) When the Department officer or employee represents the Board or Department, the presiding officer shall advise each representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the Department's officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

**ACTION ITEM 1:** Determine whether to approve repealing Administrative Rules 259-008-0072, 259-009-0072 and 259-060-0305.