

Oregon State Bar

2009 *Legislative Tips Handbook*

Public Affairs Department

Legislative Tips Workshop

January 8, 2009

LEGISLATIVE TIPS WORKSHOP

Thursday, January 8, 2009

Oregon State Bar Center • 16037 SW Upper Boones Ferry Road • Tigard, Oregon

Agenda

- 8:00 – 8:30 a.m. Registration**
- 8:30 – 8:40 a.m. Welcome & Introduction**
Gerry Gaydos, *Gaydos, Churnside & Balthrop, Oregon State Bar President*
Dave Barrows, *Dave Barrows & Associates, Program moderator*
- 8:40 – 9:25 a.m. Panel of Bar Experts**
Moderator: Dave Barrows, *Dave Barrows & Associates*
Panelists: Christopher D. Crean, *Beery Elsner Hammond LLP*
Robin Pope, *OSB Adoption Law Subcommittee*
- Featuring information on:**
- Role of the bar
 - Legislative guidelines
 - Section/committee legislative process
 - Overview of 2007 & 2008 session and bill tracking
 - How do you move a bill through the process?
 - Internet resources
- 9:25 – 10:15 a.m. Panel of Political Experts**
Legislative Members:
Senator Floyd Prozanski, *Senate Judiciary Committee Chair*
Senator Suzanne Bonamici, *Senate Judiciary Committee Member*
Representative Greg Macpherson, *Former House Judiciary Committee Chair*
Representative Wayne Krieger, *House Judiciary Committee Member*
- Featuring information on:**
- Who's who in the process
 - How to get a legislator's attention
 - Communicating with your legislator – what your legislator likes and doesn't like
 - Making the most of your time with a legislator
 - Possible annual sessions
- 10:15 – 10:30 a.m. Break**
- 10:30 – 11:45 a.m. Panel of Process Experts**
William Taylor, *Judiciary Committee Counsel, Dexter Johnson, Legislative Counsel*
Kenneth Rocco, *Legislative Fiscal Office*
- Featuring information on:**
- Tips for effective and successful lobbying
 - Practical aspects of lawyer "lobbying"
 - Oregon law on lobbying
 - Role of staff
 - How to monitor legislation
 - Working with Legislative Counsel
 - The drafting process
- 11:45 – 12:15 p.m. How to Give Testimony**
Speaker: Lawyer-lobbyist, Jon Chandler, *Oregon Home Builders Association*
- 12:30 – 1:30 p.m. Complimentary lunch featuring presentation on SB 10 – Status of Pending Legal Challenges.**
Speaker: John DiLorenzo, Jr., *Davis Wright Tremaine LLP*

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Public Affairs Department Background

Overview

The Oregon State Bar is directed to advance the science of jurisprudence and to improve the administration of justice. As a consequence, it has an obligation to the citizens of Oregon to participate in the law improvement process. The knowledge and expertise of its members is an invaluable resource to our citizen legislators. If the bar ever withdraws from the legislative arena, other organizations representing special interest groups will attempt to step in to fill the void. Unfortunately, those groups do not have the same balanced approach engendered by bar groups. Nor would they achieve the same level of success when it comes to enacting important statutory revisions.

The Oregon State Bar's commitment to improving its relations with the legislature was initiated by the membership at the 1978 annual meeting. The resolution adopted at that time directed the bar to develop a full time public affairs position to coordinate an expanded government relations program. The public affairs committee of the BOG was created at the same time to act on issues and to determine the program's emphasis. Later, support staff was approved to provide legislative assistance during the session. In 1990, due to increasing demands caused by the growing number of lawyers in Oregon, the BOG expanded that temporary position into a law improvement coordinator position. Now the bar's government relations program includes the responsibility for lobbying activities, and a wide variety of special projects involving public policy and law improvement.

Why Lawyers Should be Involved

The bar's law improvement program provides an important service to its members and the public by developing and maintaining a strong and effective presence in the legislature. Contrary to popular belief, most legislators are not lawyers. This means the intricacies of certain complex legal issues and the broad impact of legislative actions are not always understood by non-lawyers.

Moreover, many issues addressed by legislative bodies are of particular interest to lawyers, their clients and the public. Examples of these issues from the past include the legislature's attempt to regulate the legal profession by imposing mandatory pro bono requirements, eliminating the bar exam and imposing a surcharge tax on professional services.

There are many reasons for lawyers to be involved in the legislative process: 1) lawyers have the legal training,

education, experience and expertise to provide valuable assistance to legislative bodies; 2) lawyers can provide objective, well-reasoned and analytical responses to difficult and complex questions; and 3) lawyers can play the role of technical advisor rather than advocate, and can provide "white papers" on topics of interest to the legislature. Sections and committees frequently provide the best, and sometimes only, structure for delivery of these important services and a balanced perspective to the legislature.

Keller v. State Bar of California

In light of the U.S. Supreme Court opinion in *Keller v. State Bar of California*, (June 4, 1990), the Oregon State Bar BOG reevaluated its program planning and operations to ensure that the bar is operating within the broad guidelines set forth in that case. During this process the bar, as a member service organization, emphasized volunteer hours. The bar's success with its law improvement program and its growing influence as a valuable resource in the legislative community was recognized as a vital part of the bar's mission to further the administration of justice, ensure the provision of legal services and monitor the practice of law. The board was careful not to overreact to Keller and unduly restrict the range of activities in which it is involved. Sections and committees continue to have authority to act on relevant issues. On occasion, you may be asked to provide the board's Public Affairs Committee with the detailed reasons your group believes a particular request is within the scope of *Keller*.

During the past few years the public affairs program has drawn the line between 1) law improvement information and 2) aggressively pursued public affairs positions. Law improvement information services can be categorized as non-lobbying activities and the Public Affairs Committee minimizes interference with that process. The regulation and oversight of bar lobbying on public affairs positions (state bar positions), because it is where any major public policy influence would be exerted, should continue to be the focus of the Public Affairs Committee.

Although infrequent, section and committee activity that has a major political or policy impact must be endorsed by the Public Affairs Committee.

In the past, sections and committees have been cooperative and stayed within their prescribed jurisdictions. It is important that sections and committees represent the interests of their membership and are well balanced in their approach to issues in each substantive area of law.

In *Keller*, a member of the California bar contested the bar's use of compulsory bar dues to support and/or advocate "political or ideological" views in violation of his first Amendment rights. The U.S. Supreme Court held that the petitioner's rights were not violated if "the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal service available to the people of the state."

The court did not specifically elaborate on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were: endorsing or advancing gun control or a nuclear weapons freeze as unacceptable, on the one hand; and disciplining bar members or proposing the profession's ethics code as acceptable, on the other hand. The broad middle area of law improvement is appropriate if it is germane to the OSB's role in improving the quality of legal services to the people of the state of Oregon or relates to the regulation of the legal profession. As an example, we believe judicial administration issues constitute an appropriate activity under *Keller*.

Contrary to a few other integrated bars, the Oregon State Bar has operated in a reasonable, thoughtful manner in its program planning and operations, including its legislative program. The bar's track record during recent years suggests that it has been in compliance with the *Keller* principles. Moreover, the *Keller* case has improved the bar's ability to maintain an aggressive, effective law improvement program.

OSB Public Affairs Program

The law improvement program is responsible for improving the bar's liaison role with all levels of government on a year-round basis. This is intended to enhance the organization's credibility on issues of public policy that concern the practice of law, the administration of justice and quality of legal services. Staff duties include representing official bar positions; keeping abreast of legislation of interest to the bar; facilitating the exchange of information between governmental bodies and bar members involved in sections, committees or other related bar organizations; and responding to inquiries from lawyers, the public, and legislators and their staff.

Due to the joint effort of bar volunteers and bar staff, law improvement legislation sent to the legislature during recent sessions has fared well. The bar works for more law improvement legislation with more success than any other group.

The effectiveness of the law improvement program can be attributed to its organization. The Public Affairs Committee of the Board of Governors commits many hours to issue review and to direct interaction with decision-makers. In 1979, a bar ad hoc committee headed by now Chief Justice Wallace P. Carson, Jr. reviewed the structure and operations of the bar's legislative program. The ad hoc committee was formed as a result of controversy surrounding the bar's involvement in several high profile public policy issues in the 1979 session. The current public affairs program and the provisions of the *Bar Bylaws on Legislation and Public Policy, Article 12* are the product of that commission's findings and recommendations.

Section/Committee Legislative Process

Bar sections and committees are encouraged to have a legislative subcommittee that is involved in the legislative process. Some groups will be more active in the process than others, e.g., some will initiate legislation, and all sections and committees are requested to monitor legislative activity in their respective area of expertise and to provide objective technical assistance. For more information, see, *BOG Policies on Legislation and Public Policy, Article 12*.

Sections and committees should be prepared to provide technical analysis on key bills relating to their particular area of expertise. This type of assistance amounts to what the bar calls “law improvement.” This includes reviewing proposed legislation or amendments for internal consistency and consistency with existing law, suggesting technical changes to better address the intent of the drafters, and preparing summaries and commentaries. Assistance from bar groups is invaluable because it is often more objective than the comments of the proponents who testify on the merits of a proposal.

When a section or committee provides input or feedback on a request, either from the bar or from someone at the legislature, it is important that program staff is notified. This is particularly important if your section or committee wants to take a position for or against a bill. Also, if your group is interested in particular issues within your area of expertise, let us know so we can help you during the session.

If a section or committee decides to take a position on a bill, it must make a written request to the Public Affairs Committee setting forth its position and how it is appropriate under the legislative guidelines established by the Board of Governors. See, *BOG Policies Section Article 12, Section 12.4*. The section or committee is then responsible for monitoring and presenting its position and testimony on that bill.

Department staff lobbies only on positions that are designated as bar priorities by the Public Affairs Committee. Bar priorities include major public policy and political issues and must receive the BOG's Public Affairs Committee approval.

The public affairs program is available to assist with fine-tuning section proposals. We appreciate being informed of executive committee or legislative subcommittee meetings dealing with legislative issues. This allows us to stay current on the status of individual projects. It also allows us to share information with you and various interest groups affected by the legislation.

Most of the legislation from bar groups go through the judiciary committees of the legislature. Please encourage members of your group to maintain contact with their own legislators and any lawyer legislators with whom they are acquainted.

2009 Legislative Session

The legislative session that will convene on January 12, 2009 will probably be consumed with keeping basic state services in operation during a deep and likely long recession, and with taking action to blunt the recession's effects. Democrats will be in firm control of both legislative chambers, with majorities large enough to pass revenue measures without any Republican votes, assuming that they can maintain party discipline. Democrats also control all statewide elective offices. There are indications that the legislative leadership wants to move the session quickly and meet again for a short session in 2010.

State agencies will be scrambling to minimize budget reductions in light of worsening revenue forecasts. While the Judicial Department situated somewhat differently as a separate branch of government, it seems likely that the courts will be asked to tighten their belts along with everyone else. It is unclear whether the courts' ambitious plans for establishing an eCourt system and for beginning to address crumbling court facilities will benefit from the various "stimulus plans" that will be considered both at the state and the national levels as part of the state infrastructure. It is quite likely that the courts will have to make do with general fund appropriations below that required to maintain services at current levels.

The number of legally trained legislators has increased marginally. On the Senate Judiciary Committee two members of the five are legally trained; in the House Judiciary Committee four of ten are - although all four are representatives in their first year. Another crucial committee for the justice system is the Ways and Means Subcommittee on Public Safety: only one of nine members is legally trained - and that member is a law student.

All in all, the legal community can expect a legislature that is receptive to justice system needs but with its hands tied by bleak economic circumstances. The Public Affairs Committee of the Board of Governors will continue to work to improve bar relations with legislators, and we encourage you to do likewise. We look forward to working with you during the 2009 session.

OSB Bylaws (Effective Nov. 20 2004)

Article 12 Legislation and Public Policy

Section 12.1 Guidelines

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section 12.2 Initiation of Legislation

Subsection 12.200 House of Delegates and Membership

The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

Subsection 12.201 Board of Governors

The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

Section 12.3 Legislative Process

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of

the Bar's legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

Section 12.4 Committees and Sections

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may not represent to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar's Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board's Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

Section 12.5 Professional Liability Fund Legislation

The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of

the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission

A member of the Bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be in writing and filed with the Executive Director of the Bar. The Board will review each written objection received by the Executive Director at its next scheduled board meeting following receipt of the objection. The Board will respond through the Executive Director in writing to each objection. The Board's response will include an explanation of the Board's reasoning in agreeing or disagreeing with each objection.

Subsection 12.601 Refund

If the Board agrees with the member's objection, it will immediately refund the portion of the member's dues that are attributable to the activity, with interest paid on that sum of money from the date that the member's fees were received to the date of the Bar's refund. The statutory rate of interest will be used. If the Board disagrees with the member's objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The Executive Director and the member must sign an arbitration agreement approved as to form by the Board.

Subsection 12.602 Arbitration

If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") for the designation of three active-status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one peremptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a peremptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound

by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although the arbitrator may ask the state bar representative and the objecting member and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. The arbitrator will promptly decide the matter, applying the standard set forth in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the Executive Director within 14 days after the hearing. The arbitrator's decision is final and binding on the parties. If the arbitrator agrees with the member's objection, the Bar will immediately refund the portion of the member's dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member's fees were received to the date of the Bar's refund. If the arbitrator agrees with the Bar, the member's objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

Public Affairs and Law Improvement Services

The department provides the following services:

1. Advice on legislation and related communications – participation in strategy sessions.
2. Assistance in obtaining board or BOG-PAC ratification of proposed positions and consideration of requests for bar lobbying assistance on major bills or positions.
3. Coordinate written dissemination of issues and legislative information within the bar through the *Bulletin* and the *Capitol Insider* newsletter, and the program website, <http://www.osbar.org/pubaffairs/publicaffairs.html>.
4. Forward legislative information, circulate key bills and respond to questions from bar groups.
5. Provide general liaison services between sections and government agencies, legislators and their staff, bar related organizations and the public.
6. Assist in coordination among sections and committees on legislative bills.
7. Assist in identification of and prioritization of appropriate legislation and issues as they develop.
8. Respond to public policy or government related requests from bar groups.

2009 Oregon State Bar Legislative Proposals

OSB PUBLIC AFFAIRS COMMITTEE

BOG Governance Provisions

LC 565 – Amends ORS Ch. 9 to add two new board members to the Board of Governors, modifies the regions and modifies the definition of UPL.

Military Assistance Panel

LC 566 – Creates provisions allowing attorney fees, liquidated damages, and an exemption from arbitration in cases under Servicemember Civil Relief Act.

OSB SECTIONS

Business Law

LC 567 – Changes the required notice period for short form mergers with a subsidiary from 30 to 10 days, conforms to Model Business Corporation Act.

LC 568 – Amends ORS 60.441(3) to treat classes and series of stock alike when determining voting groups, and to allow articles of incorporation to provide for separate voting groups.

Consumer Law

LC 569 – Allows a debtor to choose either the federal or state exemptions in bankruptcy cases.

Criminal Law

LC 570 – Corrects an error in 2003 legislation by reinstating a time period after which a motion in arrest of judgment is “deemed denied” if the trial court has not yet ruled upon the motion.

LC 571 – Codifies existing case law to create a clear procedure that governs the pleading and proof of all previous-conviction elements.

Debtor/Creditor

LC 572 – Clarifies the procedure used to enforce a purchaser’s right to possession of property purchased at a foreclosure or execution sale, and that the F.E.D. statutes are available in such situations.

LC 573 – Amends ORS Ch. 18 to provide that information provided on Judgments and Writs of Garnishment forms be truncated to omit full SSN.

LC 574 – Excludes outright debt buyers from ORS Ch. 697, which regulates collection agencies.

LC 575 – Changes to HB 3630, mortgage lending bill, passed in 2008 Session. Amends ORS 86.750(3) to require that a trustee foreclosing a residential trust deed record affidavits of mailing and service of the notice required, and to provide a bar date for the grantor to raise the issue that they did not receive notice.

Elder Law

LC 576 – Clarifies that courts have authority to enter a judgment, not just an order, on the award of costs and attorney fees in probate proceedings.

Estate Planning

LC 577 – Makes technical corrections to the Uniform Trust Code.

LC 578 – Implements the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

LC 580 – Clarifies application of the disclaimer statute in cases of intestate succession.

LC 581 – Amends ORS 127.007 and 127.015 to authorize springing powers of attorney.

LC 583 – Increases the small estate limits under the probate code: personal property increased from \$50,000 to \$100,000, and real property from \$150,000 to \$250,000.

LC 584 – Allows a trustee, personal representative, or executor to apply to the Oregon Department of Revenue for a determination of inheritance tax and discharge from tax liability.

LC 585 – Allows conservatorships to be extended from current age of 18 to 21.

Family Law

LC 586 – Modifies family abuse restraining orders (FAPA) orders

LC 587 – Adds language to stalking and Family Abuse Prevention Act (FAPA). Statutes clarifying that legal service of process, not done for purpose of harassment, is not a violation of court orders.

Indian Law

LC 588 – Brings uniformity to treatment of corporations and other entities established by American Indian Tribal Government in the Oregon statutes.

Procedure and Practice

LC 1410 – Amends ORS 12.020 action commenced upon filing complaints

Real Estate Land Use

LC 589 – Makes service requirements on LUBA consistent with other appeals.

LC 590 – Clarifies ORS 197.298(1) to allow local governments to bring higher quality farmland and forestland into UGB only when lands of lower quality are not sufficient.

LC 591 – Clarifies parties who may act without a real estate license in selling their property.

LC 592 – Clarifies language describing a “trust or estate” in Oregon statutes.

Public Affairs Committee General Legislation Guidelines

The bar is committed to promoting legislation that serves one or more of the following goals and to opposing legislation that conflicts with one or more of them:

1. To provide access to justice for all Oregonians, including ensuring adequate support for low-income legal services and adequately funding indigent defense services.
2. To improve the efficiency and effectiveness of the judicial system, including adequate funding and facilities for the courts.
3. To increase the consistency and uniformity of laws, including statutes of limitation.
4. To support and improve the ability of attorneys to serve the interests of the citizens of the state competently and to advise the legislature of problems proposed legislation might present to competent representation.
5. To ensure a fair and effective system of criminal justice.
6. To monitor tort reform proposals.
7. To promote access to public records generally and to professional licensing and discipline records in particular.
8. To improve regulation of the legal profession and the lawyer discipline system.
9. To improve the juvenile justice system and encourage better coordination between the different components of the system.

2009 OSB Legislation Contacts

(Please note this contact list is subject to change)

Below is a list of bar legislative contacts. If you have particular questions or comments regarding legislation we encourage you to contact the appropriate person. Please contact Camille Greene at 503.431.6376 or cgreene@osbar.org if a contact assignment changes.

(* indicates person is also the section/committee chair)

Administrative Law	Frank MussellJanice Krem	Elder Law	Ryan Gibb
Admiralty	John Dudrey	Energy, Telecom & Utility.....	David F. White
Affirmative Action	Frank Garcia (OSB)	Environmental Law	David AshtonMichael R. Campbell
Agriculture	Tim Bernasek*	Estate Planning	Bill BrewerPenny Serrurier*Eric Vetterlein
Alternative Dispute Resolution	Bill BoydScott BellowsRobert Banks*	Family Law	David GannettSean E. Armstrong
Animal Law	Scott Beckstead	Adoption Law Subcommittee.....	Robin Pope
Anti-Trust	R. Scott Seidman	Government Law	Steven Lounsbury
Appellate Law	Marc BrownRyan KahnKeith M. Garza	Health Law	Lauren Rhoades
Aviation	Richard VialThomas J. Flaherty	Indian Law	Christopher Burford
Bar Act and Bar Priorities	Gerry GaydosSusan Grabe (OSB)	Intellectual Properties.....	Ambyr O'DonnellAnna McCoy*
Business Law	Chris Hall	International Law	William Clydesdale
Business Litigation	Keith Dubanevich	Judicial Administration and Funding	Ann Christian*Eric Waxler
Civil Rights	Amy Angel	Juvenile Law	Julia Maureen Hagan,*Thomas P. Cleary
Computer and Internet Law	Paula Holm Jensen	Labor & Employment	Richard Meneghello
Constitutional Law.....	Greg ChaimovErin Lagesen	Law Practice Management.....	David L. Carlson
Construction Law	Jason Alexander	Legal Ethics	Sylvia Stevens (OSB)
Consumer Law.....	Keith Karnes	Legal Services	Judith Baker (OSB)
Corporate Counsel	Dan J. Field	Litigation	Lindsey Hughes
Criminal Law	Tim SylwesterRebecca Duncan	Pro Bono.....	David J. Petersen*Cathy Petrecca
Debtor/Creditor	David Hercher	Procedure and Practice	Mustafa Kasubhai*Courtney Dippel
Disability Law	Sherri Rita	Product Liability	Jeffrey Bowersox
Diversity	Tony A. Padilla	Professional Liability	Barbara Fishleder

.....	Ira Zarov
Public Service & Information	Kay Pulju (OSB)
Quality of Life	Ellen K. Jones*
Real Estate and Land Use	
Real Estate	Greg Nelson
Land Use	Chris Crean
Securities Regulation.....	David Matheson
.....	Timothy DeJong
.....	Gustavo Cruz, Jr.*
Sole and Small Firm Practitioners.....	Kelly Doyle
.....	Velda Rogers
.....	Donna G. Goldian
Taxation	Mark Huglin
.....	Robert Manicke
.....	Jeff Abbott
Unlawful Practice & Independent Paralegals	J. O’Shea Gumusoglu*
.....	Helen Hirschbiel (OSB)
Workers’ Compensation	Jennifer Roumell

LAW IMPROVEMENT QUESTIONS

.....	David Nebel (OSB)
.....	Sally LaJoie (OSB)

OTHER INTEREST GROUPS

Access to Justice	Judith Baker (OSB)
Bar, Press and Broadcasters	Dan Keppler,
.....	Kateri Walsh (OSB)
New Lawyers Division	Ross Williamson

The Political Process: Roles and Responsibilities

1.0 Introduction

In the public policy arena, the bar plays a significant role in the evaluation and consideration of administration of justice issues in the legislative and political processes. The board encourages bar groups to be involved in legislative activities within their jurisdiction subject to the bar's legislative guidelines and relevant election laws. There is a long tradition of lawyers working through the bar process to improve the quality of laws in the state of Oregon and the bar's law improvement program has served to raise the credibility of lawyers as an resource for expertise in a wide variety of areas.

The Oregon State Bar Board of Governors guidelines for legislative and political activity are set forth in BOG Bylaws Article 12. The guidelines are drawn from the bar's statutory purposes, constitutional limits on the use of mandatory membership fees, and election law limits on the activities of public employees. They also reflect the recognition that the Oregon State Bar has a diverse membership with differing views on many subjects.

1.1 Statutory Authority

By way of background, the Oregon State Bar is a “public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon...” ORS 9.010(1). Although the board has statutory authority to “at all times direct its power to the administration of the science of jurisprudence and the improvement of the administration of justice” (see ORS 9.080(1)), its actions are still constrained by other applicable law, including *Keller v. State Bar of California*, 496 U.S. 1 (1990). As a state entity, the bar's funds are subject to audit by the Secretary of State pursuant to ORS 297.210 and, for purposes of the expenditure of bar resources, bar “funds” are considered “public funds” and board members may be subject to the restrictions on the expenditure of public funds under ORS 294.100 as public officials.

As a mandatory membership organization, the Oregon State Bar cannot engage in the wide-range of activities allowed voluntary organizations. Even though the bar is partially funded by membership fees as opposed to state

general fund revenues, its unique statutory composition makes it subject to various laws. Thus, in pursuing any activity, the expenditure of public funds by the board must be related to the purposes for which the bar exists. If it is not, the public officials who permit the unauthorized expenditure may be subject to personal liability under ORS 294.100 if the expenditure constitutes malfeasance or wanton neglect of duty.

1.2 Keller Standard

The U.S. Supreme Court's decision in *Keller v. State Bar of California* set the parameters for what a mandatory state bar can do under the First Amendment. In *Keller*, a member of the California bar contested the bar's use of compulsory dues to support and/or advocate "political or ideological" views in violation of his First Amendment rights. The U.S. Supreme Court held that a mandatory state bar's use of compulsory dues to finance political and ideological activities violates the First Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

The court did not establish a particularly clear standard on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were endorsing or advancing gun control or a nuclear weapons freeze which were prohibited on the one hand and disciplining bar members or adopting changes to the profession's ethics code as acceptable on the other hand. We believe the broad middle area of law improvement is appropriate if it is germane to the bar's role in improving the quality of legal services to the people of the State of Oregon or relates to the regulation of the legal profession. The Board of Governors has set the scope of OSB permitted activities under *Keller* in BOG Bylaws Article 12.

Additionally, the bar's guidelines for legislative and policy activities require that the Board of Governors "endeavor to respect the divergent opinions of subgroups within the profession" and make reasonable efforts to "avoid committing bar funds to issues which are divisive or result in creating factions within the profession." See BOG Bylaws Article 12.

1.3 Oregon Election Law

Bar employees are not public employees within the meaning of ORS 260.432. Therefore, bar staff may participate in advocacy efforts on behalf of the bar.

1.4 OSB Board Member ("Elected Official") Roles and Responsibilities

The board may do the following:

- 1) Advocate support or opposition to a measure or candidate. A board member may use staff-prepared informational and advocacy materials.
- 2) Use public resources and staff to develop and distribute objective material on the effects of an initiative measure on the bar and the justice system.
- 3) Take a position on an initiative measure. Public announcement of the board's position by way of a press release is permissible.
- 4) Provide, at bar expense, a content neutral forum at which proponents and opponents of an initiative measure may present their views.
- 5) Personally campaign for or against a measure.

1.5 Recent bar activities

In 2006 the Board of Governors reviewed its policy on involvement in the initiative and electoral process and substantially expanded the scope of its activities.

In 2008 the Board of Governors and House of Delegates passed resolutions opposing both Initiative Petitions 51 and 53, imposed limits on contingency fees and created additional sanctions for "frivolous pleadings." The bar worked closely with other interest groups to oppose the measures and was ultimately successful when both initiatives were withdrawn by the petitioners after challenges were made to their signature gathering procedures.

The Board of Governors also voted to oppose Measure 59 which would have created an unlimited deduction for federal income taxes on individual taxpayers' state tax returns. This measure failed by a wide margin.

1.6 OSB Section/Committee Roles and Responsibilities

Sections and committees of the bar operate under the umbrella of the bar and thus are subject to the same legal constraints as the board. In light of the political restrictions outlined above, here are some examples of activities that are permitted and some that are restricted:

- 1) Bar groups may propose legislation within their area of jurisdiction subject to BOG approval.
- 2) Bar groups may take positions or respond to public policy activities on legislation. OSB Section/Committee leaders cannot use bar funds to advocate a position on a ballot measure. This means money, staff time during working hours, travel allowances,

facilities or equipment. Section/committee members or officers cannot ask staff to research or write a speech designed to support or oppose a ballot measure or charge travel expenses for attending a meeting at which such a position is advocated.

- 3) Bar groups may coordinate or liaison with any group to engage in information gathering on issues involving the bar, the judicial system, the judicial department budget and issues relating to the administration of justice. Meetings to develop strategies to pass or defeat any measure or candidate are not permitted.
- 4) Bar groups can develop legislation for sponsorship to be included in the bar's legislative package or take positions on legislation that fall within *Keller* and legislative guidelines subject to OSB Public Affairs Committee approval.
- 5) Bar groups may not advocate a political position for or against an initiative or referendum or candidate.

Legally Trained Legislators

Despite what many people may assume, there are relatively few lawyers in the Oregon legislature. Only 13 of the 90 members of the 74th Legislative Assembly have any formal legal education, and only 10 are members of the Oregon State Bar.

State Elected Officials with Legal Training 13 Legislators with Legal Training in the 2009 Session

Oregon Senate:

Suzanne Bonamici (D), District 17, NW Portland, NE Washington County

Peter Courtney (D), District 11, Keizer, Gervais, Woodburn

Elizabeth "Betsy" Johnson (D), District 16, Scappoose*

Dave Nelson (R), District 29, Pendleton*

Floyd Prozanski (D), District 4, Parts of Lane, Douglas and Coos Counties

Oregon House of Representatives:

Phil Barnhart (D), District 11, Central Lane and Linn Counties

Brent Barton (D), District 51, Clackamas

Cliff Bentz (R), District 60, Ontario

Chris Garrett (D), District 38, Lake Oswego, SW Portland

Nick Kahl (D), District 49, Wood Village, Gresham**

Dennis Richardson (R), District 4, Central Point, Rogue Valley

Jefferson Smith (D), District 47, Mid-Multnomah County

Judy Stiegler (D), District 54, Bend

* Indicates law degree but not licensed to practice in Oregon.

** Indicates law student.

Statewide Office

Ted Kulongoski (D), Governor

John Kroger (D), Attorney General

Ben Westlund (D), Treasurer

Kate Brown (D), Secretary of State

Brad Avakian (D), Commissioner of the Bureau of Labor and Industries

Information Numbers

Legislative Committees(503) 986-1813

House Democratic Office..... (503) 986-1900

House Republican Office.....(503) 986-1400

Senate Republican Office.....(503) 986-1950

Senate Democratic Office.....(503) 986-1700

Legislative Counsel..... (503) 986-1243

Distribution Center

(for copy of legislative bills)..... (503) 986-1180

www.leg.state.or.us

Oregon State Bar,

Government Relations.....(503) 620-0222 ext. 376

Governor's Legal Counsel,

Kelly Skye(503) 378-6246

2009 Legislative Committees

2009 Joint Judiciary Committees

Senate

Sen. Floyd Prozanski, Chair
Sen. Brian Boquist, Vice Chair
Sen. Suzanne Bonamici
Sen. Jackie Dingfelder
Sen. Doug Whitsett

House

Rep. Jeff Barker, Chair
Rep. Judy Stiegler, Vice Chair
Rep. Gene Whisnant, Vice Chair
Rep. Brent Barton
Rep. Kevin Cameron
Rep. Chris Garrett
Rep. Wayne Krieger
Rep. Andy Olson
Rep. Chip Shields
Rep. Jefferson Smith

2009 Joint Public Safety Subcommittee

Sen. Joanne Verger, Co-Chair
Sen. Vicki Walker
Sen. Doug Whitsett
Rep. Chip Shields, Co-Chair
Rep. Jeff Barker
Rep. Tim Freeman
Rep. Nick Kahl
Rep. Nancy Nathanson
Rep. Greg Smith

2009 Joint Ways & Means Subcommittee

Sen. Margaret Carter, Co-Chair
Sen. Betsy Johnson, Vice Chair
Sen. Alan Bates
Sen. Vicki Walker
Sen. Joanne Verger
Sen. Rod Monroe
Sen. Jackie Winters
Sen. David Nelson
Sen. Doug Whitsett
Sen. Fred Girod
Rep. Peter Buckley, Co-Chair
Rep. Nancy Nathanson, Vice Chair
Rep. David Edwards
Rep. Larry Galizio
Rep. Bill Garrard
Rep. George Gilman
Rep. Bob Jenson
Rep. Betty Komp
Rep. Tina Kotek
Rep. Dennis Richardson
Rep. Chip Shields
Rep. Greg Smith

2009 Oregon Legislators

SENATE DISTRICT#	REGION	SENATE LEGISLATORS (18D – 12R – 1I)
SD1	S. Coast, Roseburg	Jeff Kruse R
SD2	Grants Pass	Jason Atkinson R
SD3	Ashland, Medford	Alan Bates D
SD4	Lane, Douglas County	Floyd Prozanski* D
SD5	Central Coast	Joanne Verger D
SD6	Springfield	Bill Morrisette D
SD7	Eugene	Vicki Walker D
SD8	Albany, Corvallis	Frank Morse R
SD9	Rural Willamette Valley	Fred Girod R
SD10	Salem	Jackie Winters R
SD11	Salem	Peter Courtney* D
SD12	McMinnville	Brian Boquist R
SD13	S Washington Co., Keizer	Larry George R
SD14	Beaverton	Mark Hass D
SD15	Hillsboro	Bruce Starr R
SD16	N. Coast, St. Helens	Betsy Johnson* D
SD17	Beaverton	Suzanne Bonamici* D
SD18	SW Portland, Tigard	Ginny Burdick D
SD19	Lake Oswego	Richard Devlin D
SD20	Oregon City, Canby	Kurt Schrader D
SD21	SE Portland, Milwaukie	Diane Rosenbaum D
SD22	N, NE Portland	Margaret Carter D
SD23	SE, NE Portland	Jackie Dingfelder D
SD24	SE, NE Portland	Rod Monroe D
SD25	Gresham	Laurie Monnes-Anderson D
SD26	Clackamas, Hood River	Rick Metsger
SD27	Deschutes County	Chris Telfer R
SD28	Klamath Falls	Doug Whitsett R
SD29	NE Oregon	Dave Nelson* R
SD30	Wasco to Malheur County	Ted Ferrioli R

* indicates law school graduate.

HOUSE DISTRICT#	REGION	HOUSE LEGISLATORS (23R – 37D)
HD1	South Coast	Wayne Krieger R
HD2	Roseburg	Tim Freeman R
HD3	Grants Pass	Ron Maurer R
HD4	Rogue River	Dennis Richardson* R
HD5	Ashland	Peter Buckley D
HD6	Medford	Sal Esquivel R
HD7	Lane, Douglas	Bruce Hanna R
HD8	Central Lane	Paul Holvey D
HD9	Florence, Coos Bay	Arnie Roblan D
HD10	Central Coast	Jean Cowan D

HD11	Lane, Linn	Phil Barnhart*	D
HD12	Springfield	Terry Beyer	D
HD13	Eugene	Nancy Nathanson	D
HD14	Eugene, Junction City	Chris Edwards	D
HD15	Albany	Andy Olson	R
HD16	Corvallis	Sara Gelser	D
HD17	Linn, Marion	Sherrie Sprenger	R
HD18	S. Clackamas	Vic Gilliam	R
HD19	Salem	Kevin Cameron	R
HD20	W. Salem	Vicki Berger	R
HD21	E. Salem	Brian Clem	D
HD22	Salem, Woodburn	Betty Komp	D
HD23	Polk, Benton	Jim Thompson	R
HD24	McMinnville	Jim Weidner	R
HD25	Keizer	Kim Thatcher	R
HD26	S. Washington	Matt Wingard	R
HD27	Raleigh Hills	Tobias Read	D
HD28	Beaverton	Jeff Barker	D
HD29	Forest Grove	Chuck Riley	D
HD30	Hillsboro	David Edwards	D
HD31	Astoria	Brad Witt	D
HD32	North Coast	Deborah Boone	D
HD33	NW Portland	Mitch Greenlick	D
HD34	Beaverton	Chris Harker	D
HD35	Tigard	Larry Galizio	D
HD36	SW Portland	Mary Nolan	D
HD37	West Linn	Scott Bruun	R
HD38	Lake Oswego	Chris Garrett*	D
HD39	Oregon City	Bill Kennemer	R
HD40	Gladstone	Dave Hunt	D
HD41	Milwaukie	Carolyn Tomei	D
HD42	SE Portland	Jules Kopel-Bailey	D
HD43	N, NE Portland	Chip Shields	D
HD44	N, NE Portland	Tina Kotek	D
HD45	NE Portland	Michael Dembrow	D
HD46	SE, NE Portland	Ben Cannon	D
HD47	SE, NE Portland	Jefferson Smith*	D
HD48	Outer SE Pdx	Mike Schaufler	D
HD49	Gresham	Nick Kahl **	D
HD50	Gresham	Greg Mathews	D
HD51	Central Clackamas	Brent Barton*	D
HD52	Mount Hood	Suzanne VanOrman	D
HD53	Deschutes	Gene Whisnant	R
HD54	Bend	Judy Stiegler*	D
HD55	South-central Oregon	George Gilman	R
HD56	Klamath Falls	Bill Garrard	R
HD57	NE Oregon	Greg Smith	R
HD58	Pendleton	Bob Jenson	R
HD59	N-central Oregon	John Huffman	R
HD60	SE Oregon	Cliff Bentz*	R

* indicates law school graduate. ** indicates law student

How To Testify Before a Legislative Committee

Committees are the heart of Oregon’s legislative process. The committee process provides legislators more opportunity to closely study a measure than would be possible in a floor debate. Committees may hear from many people who support or oppose the measure.

Giving public testimony before a legislative committee can be an exciting and fulfilling experience if you are prepared.

Your testimony may influence the committee’s action. It also becomes part of the permanent record and may be used in future research.

Listed below are suggestions to help make your presentation successful.

Know Your Audience

The members of the committee are “citizen legislators.” They care that you have taken time out of your day to come and testify before them.

- Be respectful.
- Don't accuse committee members of causing your particular problem.
- Resist the temptation to scold, put down, or insult the decision makers or other witnesses. This tactic will likely alienate them from your cause.

Know the Issue

Support your personal opinions with as many facts as possible. Be knowledgeable of the “other side of the story.” You may be asked to discuss the differences. Draw from your own knowledge and experience.

Be Familiar with the Committee Process

- Know the location of the building, the meeting room, and the meeting time.
- Agendas will be posted outside the meeting room. Check to make sure the measure you are interested in has not been removed from the agenda. The measures may not be heard in the printed order.
- If possible, attend a committee meeting before you testify to become familiar with the process and room layout.
- When you arrive at the meeting, sign the witness registration sheet. Witnesses are not necessarily called in chronological order.

Presenting Your Written Testimony

1. When you are called to testify, give copies of your testimony to committee staff before you begin your presentation. The number of copies requested is printed on the bottom of the committee meeting agenda.
2. Begin your presentation by addressing the chair person first, then members of the committee.
“Chair____, members of the committee . . .”
3. For the record, state your name, address, and the organization or group you represent.
4. State whether you support or oppose the legislative measure being heard and briefly explain. Do not read your testimony to the committee word for word. Prepare an outline.
5. Keep in mind you may have a ten minute version of your testimony – be prepared to summarize it in one minute – that may be all the time you are allowed!
6. Thank the committee members and offer to answer any questions. "Thank you for the opportunity to testify before you today. I would be happy to answer any questions."
7. When a member asks you a question respond:
“Chair _____, Senator/Representative (state name), the answer to your question is . . .”
8. Relax! The members understand that this can be an intimidating experience—they don't expect a perfect presentation.

Group Testimony

- Select several people to cover different topics so the testimony is not repetitive.
- Address the problem, possible solutions, and your group's best solution.

Special Needs

If you require special accommodation in order to testify before a committee, please contact the committee administrator or support staff 24 hours BEFORE the meeting with your request.

Contact Numbers:

(503) 986-1813 or (503) 986-1187
TDD (503) 986-1467 (inside Salem)
1-800-332-2313 (outside Salem)

If you need information regarding the legislative process, email the Legislative Liaison, or call 503-986-1000.

Communicating With Your Legislator

What your Legislator Likes

1. Your legislator likes to hear opinions from home and wants to be kept informed of conditions in the district. Base your letter on your own pertinent experiences and observations.
2. Write about a specific bill; describe it by number or its popular name. Your legislator reviews hundreds of bills in the course of a six-month period. Write only about one subject in your letter.
3. Your legislator likes intelligent, well thought-out letters that present a definite position, even if your legislator does not agree with it.
4. Even more important and valuable is a concise statement of the reasons for your position, particularly if you are writing about a field in which you have specialized knowledge. Your legislator has to vote on many matters with which he has little or no first-hand experience. Some of the most valuable help comes from facts presented in letters from persons who really know what they're talking about. (However, if you are not sure about the specifics of the bill, it is better to just indicate that you support it because you feel it is important legislation rather than indicating a number of reasons which are not sound ones.)
5. Short letters are always best. Members of the Legislature receive many letters each day, and a long one may not get as prompt a reading as a brief statement.
6. Letters should be timed to arrive while the issue is still alive. If your legislator is a committee member, he will appreciate having your views while the bill is before him for study and action.
7. A legislator likes to know when he has done something of which you approve. Do not hesitate to write if your legislator has supported and voted for legislation in which you are interested.

What Your Legislator Does Not Like

1. Your legislator does not like letters that merely demand or insist that he vote for or against a certain bill or that tell him what you want him to vote for but not why. Your legislator has no way of knowing whether your reasons are good or bad, and is not greatly influenced.
2. Your legislator does not like to be threatened with promises of defeat at the next election.
3. Your legislator does not like to be told how influential the writer is in his own locality.
4. Your legislator does not like to be asked to commit on a particular bill until the committee in charge of the subject has had a chance to hear evidence and dig out all of the pros and cons.
5. Your legislator does not like form letters, or letters that include excerpts from other peoples' letters on the same subject.
6. Your legislator does not like to be deluged by letters from the same person on the same subject. Quality, not quantity, is what counts.

Tips for Effective and Successful Lobbying

Follow a few common-sense guidelines when lobbying for state bar positions and your efforts will be more productive and less frustrating.

Be prepared. Legislators rely heavily on correspondence and committee hearings for information to make decisions. Take extra copies of written testimony with you.

Know the players. Develop and maintain relationships with key players who may have an interest in your issues or who represent a part of your community. They can often provide guidance or important entrees in the legislative process.

Maintain your credibility. Be candid and avoid making demands or overstating the truth. An effective witness is regarded as a valuable resource. Most legislators respond best to well-reasoned arguments.

Be concise. Be direct and to the point. Focus on your primary message. If necessary, written testimony can include additional attachments and longer explanatory information.

Be positive. Demonstrate positive advocacy and provide constructive feedback on issues. Remember, legislators are trying to solve problems, real or perceived. Flat-out opposition may arouse hostility.

Be persistent. Do not give up. Persistence makes the difference in the statehouse.

Build relationships. Build widespread support from a variety of interest groups for your legislative proposal or position. Bills are often torpedoed by interest groups that feel they were excluded from the formulation of the policy. When appropriate, recruit section and committee support.

Monitor the status of bills. Carefully follow the progress of your legislation. Do not lose sight of your bill until it is signed into law by the governor.

Consider fiscal implications. Do not overlook the importance that financial impact may have on the success or failure of a legislative proposal.

Recognize the art of compromise. Remember, half a loaf is better than nothing. Be professional, because today's opponent may be tomorrow's ally.

Practical Aspects of Lawyer "Lobbying"

The legislative process is complex. Failure to understand basic principles of the process and organization frequently result in an inability to effectively pursue necessary legal changes. To render valuable service to clients, the public and the law itself, a lawyer should know fundamental rules of the legislative process. These include:

Who's Who: Speaker of the House and President of the Senate, Majority and Minority Leaders, Committee Chairs, Committee Members, Clerk, Secretary, floor staff, legislative assistants, committee and caucus staff.

What's What: Committee rooms, offices in the Capitol, chambers, Coffee Shop, rules in the hall.

Bill Drafting and Introduction: Legislative Counsel (how to get a "note from mother"), pre-session filing, interim committees, requests, priorities, amendments, and relating clauses.

Bill Tracking: Following the agenda in both chambers, hearing schedules (24-hour and 36-hour rules; suspension in final days), floor motions, debate and votes, conference committees, veto/signing by governor, Session Laws.

Lobbying: Preparing testimony and exhibits, visiting members in office, after hours, in committee and during floor session. What a legislator needs from a lawyer lobbyist and when lawyers should keep out of sight.

Ethic Issues for Lobbyists

1. What is lobbying?

It is defined as influencing or attempting to influence legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain good will of legislative officials. ORS 171.725(8).

2. What are some of the fine points regarding the question “What is lobbying?”

Oregon Attorney General Opinion 8259 (August 7, 1998) discusses the following issues, among others:

- a. Is providing information without taking a position either in support of or opposition to specific legislative action lobbying? Short answer: No.
- b. Is office work such as creating, drafting, editing and finalizing legislative presentations lobbying? Short answer: No. Lobbying only includes the acts of imparting or transmitting testimony or presentations to legislative officials and does not encompass the acts of creating and preparing testimony.
- c. Is waiting to testify, in and of itself, lobbying? Short answer: No.
- d. Does lobbying include attending meetings of interested stakeholders for the purpose of obtaining approval or compromise on proposals for legislative measures? Short answer: Yes, if attendees request or urge members of the stakeholder group to communicate with legislative officials about the group’s work for the purpose of having proposed measures sponsored, supported, passed, or defeated.

3. Who are “legislative officials”?

ORS 171.725(7) defines “legislative official” to mean “any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.”

4. How is “lobbyist” defined?

As defined in ORS 171.725(9), lobbyists include:

- a. any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
- b. any person not otherwise within a. above who provides personal services as a representative of

a corporation, association, organization or other group, for the purpose of lobbying.

- c. any public official who lobbies.

“Public agency” means a commission, board, agency or other governmental body. ORS 171.725(10).

“Public official” means any member or member-elect of any public agency and any member of the staff or an employee of the public agency. ORS 171.725(11).

5. When do “lobbyists” have to register with the Oregon Government Ethics Commission (OGEC)?

The statutes that answer this question are not models of clarity. Once a person spends more than 24 hours during any calendar quarter lobbying or spends more than \$100 lobbying during any calendar quarter, the person must register as a lobbyist. ORS 171.735(4).

Difficult to define, lobbying activities are undertaken for the purposes of influencing legislation or engendering goodwill. Such activities include testimony at legislative hearings, formal appointments, casual conversations, written correspondence (letters, memos, e-mails, notes), telephone conversations, and providing dining or drinks, or travel and accommodations. Since the focus is on providing information or direct provision of benefits to public officials, travel time would not seem to count towards the 24 hour limit, and personal expenses for travel, meals and lodging would not seem to count against the \$100 limit.

Once an individual or other entity passes either the 24 hour or \$100 threshold in a calendar quarter, the individual or entity must register with the OGEC within three working days. ORS 171.740(1).

6. Are there any other exceptions to registration?

Yes. See ORS 171.735. The one most relevant to this discussion is contained in ORS 171.735(3). “Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies” is exempt from registration so long as the person is not otherwise registered with the OGEC.

7. Beyond registering, what must lobbyists do?

They must file quarterly statements of lobbying expenditures in accordance with the requirements of ORS 171.745.

8. What must employers of lobbyists do?

Any person on whose behalf a lobbyist was registered, or was required to register with the OGEAC at any time during the preceding calendar year, must file with the OGEAC quarterly statements of expenditures in accordance with the requirements of ORS 171.750.

9. What other important restrictions apply to lobbyists?

- a. Lobbyists may not instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition to the legislative action. ORS 171.756(1).
- b. Lobbyists may not attempt to influence the vote of any member of the Legislative Assembly by the promise of financial support of the candidacy of the member, or by threat of financing opposition to the candidacy of the member, at any future election. ORS 171.756(2).
- c. Persons may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity. ORS 171.756(3).
- d. Lobbyists cannot, pursuant to ORS 171.764(1), make false statements or misrepresentations to any legislative or executive official or, knowing a document to contain a false statement, cause a copy of such document to be received by a legislative or executive official without notifying such official in writing of the truth as prescribed in ORS 171.764(2).

10. What are the rules surrounding gifts to legislators?

The 2007 legislature passed a complicated and far reaching government ethics bill that drastically affects the extent to which groups and individuals can make gifts to public officials and candidates. ORS 244.025(2) provides:

During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

ORS 244.025(3) contains the same gift limit for candidates. "Gift" is broadly defined in ORS 244.020(5)(a) as "something of economic value"; however ORS 244.020(5)(b) contains 14 exceptions to the definition. Gifts of entertainment are prohibited at any cost. ORS 244.025(4). Honoraria are also restricted. ORS 244.042.

Note that these prohibitions do not apply only to lobbyists: they apply to anyone with a legislative or administrative interest, defined in ORS 244.020(8) as follows:

"Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

The bottom line: these rules apply to bar members engaging in legislative advocacy. The rules are new, complicated and are likely to be construed broadly to restrict gifts to public officials. Anyone contemplating bestowing anything of value on any public official should review these statutes and the OPEC rules carefully beforehand.

11. Are there additional restrictions that apply to lawyer-lobbyists?

Yes. Oregon lawyers must comply with all applicable provisions of the Oregon Rules of

Professional Conduct (ORPC) while engaging in lobbying activities. Some of the more important rules include:

- a. ORPC 3.9: A lawyer representing a client before a legislative body must disclose that the appearance is in a representative capacity. The lawyer must comply with the duties of candor in ORPC 3.3, the requirements of fairness to opposing parties and counsel in ORPC 3.4, and the rules in ORPC 3.5 regarding impartiality and decorum.
- b. ORPC 8.4(a)(3): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.
- c. ORPC 7.1(a)(5): A lawyer may not make any communication that states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate the ORPC or other law.
- d. ORPC 1.11: Lawyers who hold public office must comply with rules relating to special conflicts of interest for former and current government officers and employees.

12. Is it unlawful to make political contributions to elected officials during a legislative session?

No. The 2001 Oregon Legislative Assembly enacted ORS 260.076 in an effort to address some of the concerns related to contributions received during a legislative session. ORS 260.076(1) provides that “A legislative official, statewide official or candidate therefor, or the official’s or candidate’s principal campaign committee, shall file statements showing contributions received by or on behalf of the official, candidate or committee during the period beginning January 1 immediately preceding a regular biennial session of the Legislative Assembly and ending upon adjournment of the regular biennial session of the Legislative Assembly, or during any special session of the Legislative Assembly.” The required statement “shall be filed not later than two business days after the date a contribution is received” on a form prescribed by the Secretary of State. ORS 260.076(5).

13. Are members of the Board of Governors, OSB Committee Chairs and Members, and OSB Section Executive Committee Chairs and Members required to register as lobbyists for the Oregon State Bar?

As a general proposition, yes, if they spend more than 24 hours during any calendar quarter lobbying or spend more than \$100 lobbying during any calendar quarter.

The exception contained in ORS 171.735(3) should be restated here: “Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies” does not have to register as a lobbyist.

ORPC 1.11: Special Conflicts of Interest Rules for Government Officers and Employees

Except as otherwise permitted, a lawyer who has formerly served as a public officer or employee of the government has a duty not to use confidential information to the government's disadvantage. This duty continues after the conclusion of the lawyer's service. ORPC 1.9(c). In addition, the lawyer may not otherwise represent a client in matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents in writing to the representation. ORPC 1.11(a).

When a lawyer is disqualified under ORPC 1.11(a), other lawyers in her or his firm are disqualified as well, unless the disqualified lawyer is screened from participation in accordance with ORPC 1.10(c) and written notice is promptly given to the appropriate governmental agency to enable it to monitor compliance. ORPC 1.11(b).

A lawyer with confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client with adverse interests in a matter in which the information could be used to the person's disadvantage. A firm with which that lawyer is associated is not disqualified if the disqualified lawyer is screened from participation in accordance with ORPC 1.10(c). ORPC 1.11(c).

A lawyer currently serving as a public officer or employee is subject to the general conflicts rules in ORPC 1.7 and 1.9 applicable to current and former clients. ORPC 1.11(d) (1). In addition, the lawyer may not:

1. Use the lawyer's public position to obtain or attempt to obtain special advantage in legislative matters for the lawyer or for a client.
2. Use the lawyer's public position to influence or attempt to influence a tribunal to act in favor of the lawyer or a client.
3. Accept anything of value from any person when it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
4. Either while in or after leaving office, use information the lawyer knows is confidential government information obtained while a public official to represent a private client.
5. Participate in a matter in which the lawyer participated personally while in nongovernmental employment, unless the lawyer's former client and the appropriate governmental agency give informed written consent.
6. Negotiate for private employment with anyone who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially. ORPC 1.11(d) (2).

Consistent with the debate clauses in the state and federal constitutions, and notwithstanding any ORPC, a lawyer-legislator is not subject to discipline for words uttered in legislative debate. ORPC 1.11(e).

A member of a lawyer-legislator's firm is not subject to discipline for representing a client in a claim against the state, provided that the lawyer-legislator is screened from participation or representation under ORPC 1.10(c) and does not directly or indirectly receive a fee from such representation. ORPC 1.11(f).

MCLE Credits for Legislative Service*

*Current at the time of this handbook's publication.

OSB MCLE Rules and Regulations
RULE 5 — ACCREDITATION STANDARDS

5.2(e) Other CLE Activities — Legislative Service

Two general credit hours per month shall be given for each full month of service as a member of the Oregon Legislative Assembly while it is in session.

Oregon Lobbying Statute

171.725 Definitions for ORS 171.725 to 171.785.

As used in ORS 171.725 to 171.785, unless the context requires otherwise:

- (1) "Compensation" has the meaning given that term in ORS 292.951.
- (2) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.
- (3) "Executive agency" means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.
- (4) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.
- (5) "Judge" means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.
- (6) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.
- (7) "Legislative official" means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.
- (8) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.
- (9) "Lobbyist" means:
 - (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
 - (b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.
 - (c) Any public official who lobbies.
- (10) "Public agency" means a commission, board, agency or other governmental body.
- (11) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee of the public agency. [1973 c.802 §2; 1975 c.747 §1; 1977 c.588 §1; 1987 c.566 §1; 1991 c.378 §1; 2001 c.751 §1; 2007 c.877 §6]

171.730 Legislative finding. The Legislative Assembly finds that, to preserve and maintain the integrity of the legislative process, persons who engage in efforts to influence legislative action, either by direct communication with legislative officials or by solicitation of executive officials or other persons to engage in those efforts, should regularly report their efforts to the public. [1973 c.802 §1; 2001 c.751 §2; 2007 c.877 §6a]

171.735 Exceptions to application of ORS 171.740 and 171.745. ORS 171.740 and 171.745 do not apply to the following persons:

- (1) News media, or their employees or agents, that in the ordinary course of business directly or indirectly urge legislative action but that engage in no other activities in connection with the legislative action.
- (2) Any legislative official acting in an official capacity.
- (3) Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies.
- (4) A person who does not spend more than an aggregate amount of 24 hours during any calendar quarter lobbying and who does not spend an aggregate amount in excess of \$100 lobbying during any calendar quarter.
- (5) The Governor, chief of staff for the Governor, deputy chief of staff for the Governor, legal counsel to the Governor, deputy legal counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer,

Chief Deputy State Treasurer appointed pursuant to ORS 178.060, chief of staff for the office of the State Treasurer, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries, members and staff of the Oregon Law Commission who conduct the law revision program of the commission or any judge. [1973 c.802 §3; 1974 c.72 §27; 1975 c.747 §2; 1977 c.588 §1a; 1979 c.666 §1; 1981 c.528 §1; 1987 c.566 §2; 1991 c.378 §2; 1993 c.714 §1; 2001 c.751 §3; 2007 c.877 §6b]

171.740 Lobbyist registration; contents of state-

ment. (1) Within three business days after exceeding the limit of time or expenditure specified in ORS 171.735 (4), a lobbyist shall register with the Oregon Government Ethics Commission by filing with the commission a statement containing the following information:

- (a) The name, address and telephone number of the lobbyist.
 - (b) The name, address and telephone number of each person that employs the lobbyist or in whose interest the lobbyist appears or works.
 - (c) A general description of the trade, business, profession or area of endeavor of any person designated under paragraph (b) of this subsection, and a statement by the person that the lobbyist is officially authorized to lobby for the person.
 - (d) The name of any member of the Legislative Assembly employed, retained or otherwise compensated by:
 - (A) The lobbyist designated under paragraph (a) of this subsection; or
 - (B) A person designated under paragraph (b) of this subsection.
 - (e) The general subject or subjects of the legislative action of interest to the person for whom the lobbyist is registered.
- (2) The designation of official authorization to lobby shall be signed by an official of each person that employs the lobbyist or in whose interest the lobbyist appears or works.
- (3) A lobbyist must file a separate registration statement under this section for each person that employs the lobbyist or in whose interest the lobbyist appears or works. If a lobbyist appears or works for a person for whom the lobbyist has not registered, the lobbyist shall register with the commission not later than three business days after the day the lobbyist first appears or works for the person.

- (4) If any of the information submitted by a lobbyist in the statement required under subsection (1) of this section changes, the lobbyist shall revise the statement within 30 days of the change.
- (5) A lobbyist registration expires December 31 of an odd-numbered year. If a lobbyist renews the registration before March 31 of the following even-numbered year, the commission shall consider the registration to have been effective as of December 31 of the odd-numbered year on which the registration expired.
- (6) For the statement required by this section, an entity comprised of more than one lobbyist may file one statement for the lobbyists who comprise the entity. The statement the entity files must include the names of the individuals authorized to lobby on behalf of the client listed in the statement. [1973 c.802 §4; 1974 c.72 §28; 1975 c.747 §3; 1987 c.566 §3; 1993 c.714 §2; 2001 c.751 §4; 2007 c.877 §6c]

171.743 [1993 c.714 §3; repealed by 2001 c.751 §9]

171.745 Lobbyist statements of expenditures. (1) A lobbyist registered with the Oregon Government Ethics Commission or required to register with the commission shall, according to the schedule described in ORS 171.752, file with the commission a statement showing for the applicable reporting period:

- (a) The total amount of all moneys expended for food, refreshments and entertainment by the lobbyist for the purpose of lobbying.
 - (b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure. This paragraph applies if the total amount expended on the occasion by one or more persons exceeds \$50.
- (2) Statements required by this section need not include amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses. If the amount of any expenditure required to be included in a statement is not accurately known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.
- (3) A statement required by this section shall include a copy of any notice provided to a public official under

ORS 244.100 (2).

- (4) For each statement required by this section, an entity comprised of more than one lobbyist may file one statement that reports expenditures by the entity and not by individual lobbyists. [1973 c.802 §5; 1974 c.72 §29; 1975 c.747 §4; 1979 c.666 §2; 1987 c.158 §32; 1987 c.566 §4; 1991 c.354 §1; 1991 c.677 §2; 1993 c.743 §4; 2001 c.751 §5; 2007 c.865 §39; 2007 c.877 §6d]

Note: Section 41, chapter 877, Oregon Laws 2007, provides:

Sec. 41. (1) Section 5 of this 2007 Act [171.752] and the amendments to ORS 171.745 and 171.750 by sections 6d and 7 of this 2007 Act apply to statements required to be filed for reporting periods beginning on or after January 1, 2008.

- (2) The first statement filed under ORS 171.745, as amended by section 6d of this 2007 Act, shall include amounts expended prior to January 1, 2008, that were not included in a statement filed prior to January 1, 2008.
- (3) Notwithstanding ORS 171.750, as amended by section 7 of this 2007 Act, a person required to file a statement under ORS 171.750 for the calendar year 2007 shall file the statement not later than January 31, 2008.
- (4) The amendments to ORS 171.772 and 244.290 by sections 8 and 9c of this 2007 Act apply to statements required to be filed on or after January 1, 2008.
- (5) The amendments to ORS 171.992 and 244.350 by sections 10 and 11a of this 2007 Act apply to:
- (a) Violations of any provision of ORS 171.740 to 171.762, any rule adopted under ORS 171.725 to 171.785, ORS chapter 244 or any resolution adopted under ORS 244.160 occurring on or after January 1, 2008;
- (b) Violations of ORS 293.708 occurring prior to, on or after January 1, 2008; and
- (c) Statements of economic interest required to be filed on or after January 1, 2008.
- (6) The amendments to ORS 244.360 by section 12a of this 2007 Act apply to violations of any provision of ORS chapter 244 occurring prior to, on or after January 1, 2008.
- (7) The amendments to ORS 244.050 by section 13 of this 2007 Act apply to statements of economic interest required to be filed on or after January 1, 2008.

- (8) The amendments to ORS 260.407 by section 14 of this 2007 Act apply to expenditures or distributions of contributions made on or after January 1, 2008.
- (9) The amendments to ORS 244.045 by section 15 of this 2007 Act apply to persons who cease being members of the Legislative Assembly on or after January 1, 2008. [2007 c.877 §41; 2007 c.877 §48]

171.750 Lobbyist employer statements of expenditures.

(1) Any person on whose behalf a lobbyist was registered, or was required to register, with the Oregon Government Ethics Commission at any time during the calendar year shall file with the commission, according to the schedule described in ORS 171.752, a statement showing for the applicable reporting period:

- (a) The total amount of all moneys expended for lobbying activities on the person's behalf, excluding living and travel expenses incurred for a lobbyist performing lobbying services.
- (b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure is made for the purposes of lobbying by the person, and the date, name of payee, purpose and amount of that expenditure. This paragraph applies if the total amount expended on the occasion by one or more persons exceeds \$50. This paragraph does not apply to information reported in compliance with ORS 171.745.
- (c) The name of each registered lobbyist or entity comprised of more than one lobbyist to whom the person paid moneys for lobbying activities on the person's behalf, excluding living and travel expenses incurred for a lobbyist performing lobbying services, and the total amount of moneys paid to that lobbyist or entity.
- (2) A statement required under subsection (1) of this section shall include a copy of any notice provided to a public official under ORS 244.100 (2). [1973 c.802 §6; 1975 c.747 §5; 1979 c.666 §3; 1987 c.566 §5; 1991 c.677 §3; 2001 c.751 §6; 2007 c.865 §40; 2007 c.877 §7]

Note: See note under 171.745.

171.752 Time for filing statements. Statements required to be filed with the Oregon Government Ethics Commission under ORS 171.745 and 171.750 shall be filed in each calendar year:

- (1) Not later than April 15, for the accounting period beginning January 1 and ending March 31;
- (2) Not later than July 15, for the accounting period beginning April 1 and ending June 30;

- (3) Not later than October 15, for the accounting period beginning July 1 and ending September 30; and
- (4) Not later than January 15 of the following calendar year, for the accounting period beginning October 1 and ending December 31. [2007 c.877 §5]

Note: See note under 171.745.

Note: 171.752 was added to and made a part of 171.725 to 171.785 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

171.755 [1965 c.488 §1; repealed by 1973 c.802 §15]

171.756 Prohibited conduct. (1) A lobbyist may not instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition to the legislative action.

- (2) A lobbyist may not attempt to influence the vote of any member of the Legislative Assembly by the promise of financial support of the candidacy of the member, or by threat of financing opposition to the candidacy of the member, at any future election.
- (3) A person may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity.
- (4) A legislative or executive official may not receive consideration other than from the State of Oregon for acting as a lobbyist in Oregon. [1973 c.802 §7; 1974 c.72 §30; 1975 c.747 §6; 1987 c.566 §6; 1989 c.340 §1; 1993 c.743 §5; 2001 c.751 §7]

171.760 [1965 c.488 §4; repealed by 1973 c.802 §15]

171.762 Verification of reports, registrations and statements. (1) Each report, registration or statement required by ORS 171.725 to 171.785 shall contain or be verified by a written declaration that it is made under the penalties of false swearing. Such declaration shall be in lieu of any oath otherwise required.

- (2) No person shall willfully make and subscribe any document which contains or is verified by a written declaration for false swearing which the person does not believe to be true and correct to every matter. [1973 c.802 §8; 1979 c.666 §4]

171.764 False statement or misrepresentation by lobbyist or public official; defense. (1) No lobbyist or public official, as defined in ORS 244.020, shall make any false statement or misrepresentation to any legislative or executive official or, knowing a document to contain a false statement, cause a copy of such document to be received by a legislative or executive official without notifying such official in writing of the truth as prescribed in subsection (2) of this section.

- (2) It is a defense to a charge of violation of subsection (1) of this section if the person who made the false statement or misrepresentation retracts the statement or misrepresentation and notifies the official in writing of the truth:
 - (a) In a manner showing complete and voluntary retraction of the prior false statement or misrepresentation; and
 - (b) Before the subject matter of the false statement or misrepresentation is submitted to a vote of a legislative committee or either house of the Legislative Assembly or is relied upon by an executive official in an administrative hearing.
- (3) As used in this section:
 - (a) "False statement or misrepresentation" means the intentional misrepresentation or misstatement of a material fact.
 - (b) "Material" means that which may have affected the course or outcome of any proceeding or transaction if known prior to the proceeding or transaction. [1993 c.743 §6]

171.765 [1965 c.488 §2; repealed by 1973 c.802 §15]

171.766 Status of reports, registrations and statements. All information submitted to the Oregon Government Ethics Commission in any report, registration or statement required by ORS 171.725 to 171.785 is a public record. [1973 c.802 §9; 1983 c.740 §38]

171.770 [1965 c.488 §3; repealed by 1973 c.802 §15]

171.772 Forms for reports, registrations and statements; rules; electronic filing. In carrying out the provisions of ORS 171.725 to 171.785, the Oregon Government Ethics Commission shall:

- (1) Prescribe by rule forms for registrations, statements and reports required to be filed by ORS 171.725 to 171.785 and provide the forms to persons required to register and to file the statements and reports.
- (2) Accept and file any information voluntarily supplied that exceeds the requirements of ORS 171.725 to 171.785.
- (3) Make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copying facilities available at a charge not to exceed actual cost.
- (4) Adopt by rule an electronic filing system under which statements required to be filed under ORS 171.745 and 171.750 may be filed with the commission in an electronic format. The commission may not charge a fee for filing a statement under this

subsection. The commission shall accept statements filed under ORS 171.745 and 171.750 in a format that is not electronic.

- (5) Provide training on procedures for filing statements under subsection (4) of this section.
- (6) Make statements filed under ORS 171.745 and 171.750, including statements that are not filed in an electronic format, available in a searchable format for review by the public using the Internet. [1973 c.802 §10; 1983 c.740 §39; 2007 c.865 §27; 2007 c.877 §8]

Note: The amendments to 171.772 by section 8a, chapter 877, Oregon Laws 2007, become operative January 1, 2010. See section 8b, chapter 877, Oregon Laws 2007. The text that is operative on and after January 1, 2010, is set forth for the user's convenience.

171.772. In carrying out the provisions of ORS 171.725 to 171.785, the Oregon Government Ethics Commission shall:

- (1) Prescribe by rule forms for registrations, statements and reports required to be filed by ORS 171.725 to 171.785 and provide the forms to persons required to register and to file the statements and reports.
- (2) Accept and file any information voluntarily supplied that exceeds the requirements of ORS 171.725 to 171.785.
- (3) Make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copying facilities available at a charge not to exceed actual cost.
- (4) Adopt by rule an electronic filing system under which statements required to be filed under ORS 171.745 and 171.750 must be filed with the commission in an electronic format. The commission may not charge a fee for filing a statement under this subsection.
- (5) Provide training on procedures for filing statements under subsection (4) of this section.
- (6) Make statements filed under ORS 171.745 and 171.750 available in a searchable format for review by the public using the Internet.

Note: See note under 171.745.

171.775 [1965 c.488 §5; repealed by 1973 c.802 §15]

171.776 Commission duties; advisory opinions; status of opinions. (1) In addition to the duties prescribed in ORS 171.772, the Oregon Government Ethics Commission may make inquiries or investigations in the manner prescribed in ORS 171.778 with respect to registrations,

statements and reports filed under ORS 171.725 to 171.785, and with respect to any alleged failure to register or to file any statements or reports required under ORS 171.725 to 171.785, and upon signed complaint by any individual or on its own instigation, with respect to apparent violation of any part of ORS 171.725 to 171.785.

- (2) Upon written request of any lobbyist, lobbyist employer or any person, or upon its own motion, the commission, under signature of the chairperson, may issue and publish opinions on the requirements of ORS 171.725 to 171.785, based on actual or hypothetical circumstances.
- (3) If any lobbyist or lobbyist employer associated with the lobbyist is in doubt whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785, the lobbyist or lobbyist employer may request in writing a determination from the commission. The requester shall supply such information as the commission requests to enable it to issue the interpretation.
- (4) A lobbyist or lobbyist employer associated with the lobbyist shall not be liable under ORS 171.725 to 171.785 for any action or transaction carried out in accordance with an advisory interpretation issued under subsection (3) of this section. Such an advisory interpretation shall be considered a formal opinion having precedential effect and shall be subject to review by legal counsel to the commission before the interpretation is sent to the requester. [1973 c.802 §11; 1983 c.740 §40; 1993 c.743 §7]

171.778 Complaint and adjudicatory process; confidential Preliminary Review Phase; Investigatory Phase; possible actions by order; report of findings; contested case procedure; limitation on commission action.

(1)(a) Any person may file with the Oregon Government Ethics Commission a signed written complaint alleging that there has been a violation of any provision of ORS 171.725 to 171.785 or of any rule adopted by the commission under ORS 171.725 to 171.785. The complaint shall state the person's reason for believing that a violation occurred and include any evidence relating to the alleged violation.

(b) If at any time the commission has reason to believe that there has been a violation of a provision of ORS 171.725 to 171.785 or of a rule adopted by the commission under ORS 171.725 to 171.785, the commission may proceed under this section on its own motion as if the commission had received a complaint.

(2)(a) Not later than two business days after receiving a complaint under this section, the commission shall notify the person who is the subject of the complaint.

- (b) Before approving a motion to proceed under this section without a complaint, the commission shall provide notice to the person believed to have committed the violation of the time and place of the meeting at which the motion will be discussed. If the commission decides to proceed on its own motion, the commission shall give notice to the person not later than two business days after the motion is approved.
- (c) The commission shall give notice of the complaint or motion under paragraph (a) or (b) of this subsection by mail and by telephone if the person can be reached by telephone. The notice must describe the nature of the alleged violation. The mailed notice must include copies of all materials submitted with a complaint. If the commission will consider a motion to proceed without a complaint, the notice must provide copies of all materials that the commission will consider at the hearing on the motion.
- (3) After receiving a complaint or deciding to proceed on its own motion, the commission shall undertake action in the Preliminary Review Phase to determine whether there is cause to undertake an investigation.
- (4)(a) The Preliminary Review Phase begins on the date the complaint is filed or the date the commission decides to proceed on its own motion and ends on the date the commission determines there is cause to undertake an investigation, dismisses the complaint or rescinds its own motion. The Preliminary Review Phase may not exceed 135 days unless a delay is stipulated to by both the subject person and the commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) During the Preliminary Review Phase, the commission may seek, solicit or otherwise obtain any books, papers, records, memoranda or other additional information, administer oaths and take depositions necessary to determine whether there is cause to undertake an investigation.
- (c) The Preliminary Review Phase is confidential. Commission members and staff may acknowledge receipt of a complaint but may not make any public comment or publicly disclose any materials relating to a case during the Preliminary Review Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.
- (d) At the conclusion of the Preliminary Review Phase, the commission shall conduct its deliberations in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause to undertake an investigation, dismisses a complaint or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.
- (e) The time limit imposed in this subsection and the commission's inquiry are suspended if:
- (A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission, unless the parties stipulate otherwise; or
- (B) A court has enjoined the commission from continuing its inquiry.
- (5)(a) If the commission determines that there is not cause to undertake an investigation, the commission shall dismiss the complaint or rescind its motion and formally enter the dismissal or rescission in its records. The commission shall notify the person who is the subject of the inquiry of the dismissal or rescission. After dismissal or rescission, the commission may not take further action involving the person unless a new and different complaint is filed or action on the commission's own motion is undertaken based on different conduct.
- (b) If the commission makes a finding of cause to undertake an investigation, the commission shall undertake action in the Investigatory Phase. The commission shall notify the person who is the subject of the investigation, identify the issues to be examined and confine the investigation to those issues. If the commission finds reason to expand the investigation, the commission shall move to do so, record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant, if any, and the person who is the subject of the investigation of the expansion and the scope of the investigation.
- (6)(a) The Investigatory Phase begins on the date the commission makes a finding of cause to undertake an investigation and ends on the date the commission dismisses the complaint, rescinds its own motion, issues a settlement order, moves to commence a contested case proceeding or takes other action justified by the findings. The Investigatory Phase

may not exceed 180 days unless a delay is stipulated to by both the subject person and the commission, with the commission reserving a portion of the delay period to complete its actions.

- (b) During the Investigatory Phase, the commission may seek any additional information, administer oaths, take depositions and issue subpoenas to compel attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to complete the investigation. If any person fails to comply with any subpoena issued under this paragraph or refuses to testify on any matters on which the person may be lawfully interrogated, the commission shall follow the procedure described in ORS 183.440 to compel compliance.
- (c) The time limit imposed in this subsection and the commission's investigation are suspended if:
 - (A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission, unless the parties stipulate otherwise; or
 - (B) A court has enjoined the commission from continuing its investigation.
 - (d) At the end of the Investigatory Phase, the commission shall take action by order. The action may include:
 - (A) Dismissal, with or without comment;
 - (B) Continuation of the investigation for a period not to exceed 30 days for the purpose of additional fact-finding;
 - (C) Moving to a contested case proceeding;
 - (D) Entering into a negotiated settlement; or
 - (E) Taking other appropriate action if justified by the findings.
 - (e) The commission may move to a contested case proceeding if the commission determines that the information presented to the commission is sufficient to make a preliminary finding of a violation of any provision of ORS 171.725 to 171.785 or of any rule adopted by the commission under ORS 171.725 to 171.785.
- (7) A person conducting any inquiry or investigation under this section shall:
 - (a) Conduct the inquiry or investigation in an impartial and objective manner; and
 - (b) Provide to the commission all favorable and unfavorable information the person collects.
- (8) The commission shall report the findings of any inquiry or investigation in an impartial manner. The commission shall report both favorable and unfavorable findings and shall make the findings available to:
 - (a) The person who is the subject of the inquiry or investigation; and
 - (b) Any employer of the person.
- (9) Hearings conducted under ORS 171.725 to 171.785 must be held before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The procedure shall be that for a contested case under ORS chapter 183.
- (10) The commission may not inquire into or investigate any conduct that occurred more than four years before a complaint is filed or a motion is approved under subsection (1) of this section.
- (11) This section does not prevent the commission and the person alleged to have violated any provision of ORS 171.725 to 171.785 or any rule adopted by the commission under ORS 171.725 to 171.785 from stipulating to a finding of fact concerning the violation and consenting to an appropriate penalty. The commission shall enter an order based on the stipulation and consent.
- (12) At any time during proceedings conducted under this section, the commission may enter into a negotiated settlement with the person who is the subject of action under this section.
- (13) As used in this section, "cause" and "pending" have the meanings given those terms in ORS 244.260. [1993 c.743 §2; 1993 c.747 §1; 1999 c.849 §§48,49; 2003 c.75 §27; 2007 c.865 §24]

Note: Section 46 (10), chapter 865, Oregon Laws 2007, provides:

Sec. 46. (10) The amendments to ORS 171.778, 244.260 and 244.400 by sections 23, 24 and 26 of this 2007 Act apply to complaints filed on or after January 1, 2008, and actions first commenced by the Oregon Government Ethics Commission on its own motion on or after January 1, 2008. [2007 c.865 §46(10)]

171.780 [1973 c.802 §14; repealed by 1981 c.522 §2]

171.785 Sanctions prescribed by either chamber of Legislative Assembly; uniform application. (1) In addition to such penalties as otherwise may be provided by law, a person is subject to such sanctions as either house of the Legislative Assembly may prescribe if the person:

- (a) Violates any provision of ORS 171.740 to 171.762; or
 - (b) Fails to file any report, registration or statement or to furnish any information required by ORS 171.725 to 171.785 and 171.992.
- (2) The sanctions referred to in subsection (1) of this section shall be uniformly applied to all persons subject to ORS 171.725 to 171.785 and 171.992. [1973 c.802 §12]

Contact With Legislative Assembly

171.790 Contact with Legislative Assembly by local government officials and employees. Notwithstanding any provision of a city or county charter or any ordinance or order adopted thereunder, a city or county shall not:

- (1) Prohibit an elected official, other officer or employee of the city or county from initiating contacts with legislators or giving testimony before public sessions of committees of the Legislative Assembly or public hearings of state agencies when:
 - (a) The contacts are made or testimony given as a representative of the city or county;
 - (b) The contacts are made or testimony given to represent the interests of the city or county or the residents thereof;
 - (c) No substantial part of the duties performed by the official, officer or employee consists of influencing or attempting to influence matters which may be the subject of action by either house of the Legislative Assembly or any of its committees;
 - (d) The official, officer or employee receives no consideration for making the contacts or giving testimony other than the remuneration ordinarily paid to the official, officer or employee out of the funds of the city or county in return for duties performed for the city or county, together with reimbursement for expenses actually and necessarily incurred in appearing before the legislative committees or state agencies; and
 - (e) The official, officer or employee is not required to register with the Oregon Government Ethics Commission under ORS 171.725 to 171.785 and the rules of the commission adopted thereunder.
- (2) Prohibit an elected official, other officer or employee of the city or county from initiating contacts with legislators when the contacts are made to express personal political views and do not occur during working hours while the official, officer or employee is on the job.
- (3) Prohibit an elected official, other officer or employee of the city or county from responding to requests from legislators or committees of the Legislative Assembly for information, data or opinions. [1985 c.788 §1]

171.795 Electronic distribution of information. (1)

The Legislative Assembly finds and declares that it is now possible and feasible in this electronic age to distribute information more widely by way of electronic communication. The Legislative Assembly further finds that it is desirable to make information available to the citizens of this state in a timely manner and for the least possible cost. The use of electronic communication will:

- (a) Better inform the public of legislative proceedings and matters pending before the Legislative Assembly;
 - (b) Allow broader participation among Oregonians in the legislative process;
 - (c) Make information regarding legislative matters and proceedings more readily available to the citizens of this state;
 - (d) Allow constituents to better communicate with their elected representatives, irrespective of where they reside;
 - (e) Make administrative rules adopted or amended by state agencies more readily available to the citizens of this state; and
 - (f) Provide the public with a better insight into the operations of state government.
- (2) This section and ORS 173.763, 173.766 (1) and (2) and 183.365 may be cited as the Oregon Public Access Act. [1995 c.614 §§1,2; 2007 c.775 §2]

Attorney General Opinion on Agency Lobbying

August 7, 1998

No. 8259

This opinion is issued in response to questions from Chris Dearth, Legislative Director, Office of the Governor, concerning application of the state lobbying regulations, ORS 171.725 to 171.785, to certain activities by state employees.

FIRST QUESTION PRESENTED

Are any of the following activities by a state employee "lobbying" for purposes of ORS 171.725 to 171.785?

- a. Creating and preparing testimony to be presented at a legislative hearing that takes a position on a legislative measure?⁽¹⁾
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure?
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure?
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea?
- e. Developing legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, which may or may not result in pre-session or session filing of a legislative measure?
- f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills?
- g. Pre-session meetings with stakeholders discussing the proposed agency budget?
- h. Session testimony stating support of the agency budget?

ANSWER GIVEN

- a. Creating and preparing testimony that takes a position on a legislative measure is not "lobbying."
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure is not "lobbying" so long as the state employee does not engage in any activities that would be "lobbying" during the waiting period.
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying."
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea is "lobbying."
- e. The activities of state employees in developing legislative measures are not "lobbying" if those activities are internal to

the agency and do not involve communications with others, except for obtaining input to the agency. If agency employees hold or attend stakeholder meetings for approval or compromise during the interim, the employees are "lobbying" to the extent that during such meetings they communicate with legislative officials to attempt to influence sponsorship, voting or other legislative action on the measure, or solicit the stakeholders to do so.

f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills is not "lobbying" so long as there is no communication with legislative officials to influence or attempt to influence legislative action on the budget or solicitation of others to attempt to influence legislative action on the budget.

g. State employees' pre-session meetings with stakeholders discussing the proposed agency budget are "lobbying" if the employees solicit the stakeholders to attempt to influence legislative action on the budget, whether or not any of the stakeholders so solicited carried through with any attempt to influence legislative action.

h. Presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying."

SECOND QUESTION PRESENTED

For purposes of the answers to the first question, would it make a difference if:

- a. The individual is registered as a lobbyist?
- b. The activity is performed by agency support staff at the request of the agency's registered lobbyist?
- c. The testimony or activity is invited or requested by a legislator or the legislator's aide?
- d. The testimony or activity is neither in support of or opposition to a legislative measure, but merely provides information?

ANSWER GIVEN

Our answers to the first question would not change merely because the individual is registered as a lobbyist, the activity is performed by agency support staff at the request of the agency's registered lobbyist, or the testimony or activity is invited or requested by a legislator or the legislator's aide. If the testimony or activity described in the first question is neither in support of or opposition to a legislative measure, but merely provides information, the testimony or activity would not be "lobbying."

THIRD QUESTION PRESENTED

If any of the activities identified in the first question are "lobbying," must they be reported? If so, by whom -- the agency staff person performing the activity, the agency's registered lobbyist, the employer?

ANSWER GIVEN

Unless exempt under ORS 171.735 from the reporting requirements, ORS 171.745 requires any state employee who

engages in any lobbying activities to report, at regular intervals, all moneys expended by that employee "for the purpose of lobbying." If a state agency employs a lobbyist who was registered or required to register with the Government Standards and Practices Commission (GSPC), ORS 171.750 requires the agency to report annually all moneys expended "for lobbying activities" in behalf of the state agency. See the discussion below for an explanation of how these requirements apply in the situations identified in the first question.

DISCUSSION

I. Lobbying

In 1973, the Oregon Legislative Assembly enacted ORS 171.725 to 171.785, finding that to preserve and maintain the integrity of the legislative process, it is necessary that the identity, expenditures and activities of certain persons *who engage in efforts to persuade members of the Legislative Assembly* or the executive branch to take specific actions, either by direct communication to such officials or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

ORS 171.730 (emphasis added). To accomplish this purpose, ORS 171.725 to 171.785 require "lobbyists" to register with the Oregon Government Standards and Practices Commission (GSPC), ORS 171.740, and to file periodic reports detailing their lobbying expenditures, ORS 171.745.

For purposes of these statutes, a "lobbyist" is:

- (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
- (b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.
- (c) *Any public official who lobbies.*

ORS 171.725(8) (emphasis added). Public officials were expressly added to the definition of "lobbyist" in 1975. Or Laws 1975, ch 747. A "public official" is defined as "any member or member-elect of any public agency and any member of the staff or an employee thereof." ORS 171.725(10). A public agency is "a commission, board, agency or other governmental body." ORS 171.725(9).

"Lobbying" is defined as:

influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials.

ORS 171.725(7). "Legislative action" includes the introducing of, or testifying, voting or any other official action on any measure or other matter that may be the subject of action by either house of the Legislative Assembly, or any legislative committee. ORS 171.725(4).⁽²⁾

We are asked whether different types of activities by a state employee would be "lobbying" under the above statutes. To answer these questions, we must interpret the statutory definition of "lobbying."

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context, the search ends

there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *Id.* at 611-612. If, after considering text, context and legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

The primary element of "lobbying" is "influencing, or attempting to influence, legislative action." ORS 171.725(7). The terms "influencing" or "attempting to influence" are not defined in the lobbying statutes. Webster's Third New International Dictionary (unabridged 1993) (*hereinafter* Webster's) defines the verb "influence" as:

1 : to affect or alter the conduct, thought or character of by indirect or intangible means * * * **2** : to have an effect on the condition or development of : determine partially * * * .

Id. at 1160. None of the dictionary definitions of the term "influence" in either its verb or noun sense includes any element that the conduct of influence be limited to advocacy or efforts to persuade. Arguably, providing "neutral" information to legislative officials could be "lobbying" if it influences legislative action, even if the person providing the information takes no position on a particular legislative action. Further insight into whether the legislature intended this very broad interpretation of the term "influence" may be found in the remainder of the statutory definition of "lobbying."

"Lobbying" includes not only "influencing" but also "attempting to influence" legislative action. The term "attempt" means "to make an effort to do, accomplish, solve, or effect." Webster's, *supra*, at 140. "Attempting to influence legislative action" inherently requires some intent to accomplish or effect a certain result, which strongly suggests that advocating a particular position must be an element not only of the attempt, but also of "influencing." Thus, the legislature may not have intended to include in "lobbying" merely providing neutral information to legislators when the person making that communication takes no position on the legislative action.

At the first level of statutory interpretation, we consider not only the text of the statute, but also its context. ORS 171.730 expresses the legislative purpose for the lobbying statutes, i.e., to regulate "certain persons who engage in efforts to persuade members of the Legislative Assembly * * * to take specific actions." Relying on this purpose statement, this office previously concluded that the Oregon Council on Crime and Delinquency did not engage in "lobbying" by publishing "information bulletins" on juvenile justice issues because those bulletins did not advocate "either the passage or defeat of any particular bill." Letter of Advice dated April 10, 1979, to Keith A. Stubblefield, Administrator, Law Enforcement Council of Oregon, (OP 4617), at 3.

In light of the purpose statement in ORS 171.730, we believe that it is reasonable to conclude that "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Because we cannot say that this is the only plausible interpretation of the statute, however, we turn to legislative history. See *State v. Allison*, 143 Or App 241, 251, 923 P2d 1224 (1996),

Before 1973, the Oregon statutes provided minimal regulation of persons who engaged in "lobbying," which was defined as "influencing, or attempting to influence, the passage or defeat of a measure by the Legislative Assembly or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction, regarding passage, defeat or veto of legislation." ORS 171.755(1) (1971). When ORS 171.725 to 171.825 were enacted in 1973, David B. Frohnmayer testified on behalf of Common Cause, at whose request the legislation was introduced, about "deficiencies" in Oregon's existing lobbying law. One of those deficiencies was that "the existing law could exempt informational lobbying which, of course, is one of the major loopholes in the federal lobbying Act." Joint Special Committee on Professional Responsibility (HB 2530), May 7, 1973, tape 7, side 1 at 380. This statement corresponded to item nine in the Statement of Common Cause Oregon Policy Advisory Committee, which further described that "loophole" as follows:

[E]xpenditures and efforts made in attempts to 'inform' as opposed to 'influence' need not be reported. The Oregon law defines lobbying in such a way that it appears to refer exclusively to influence or advocacy situations.

Thus, the proponents of the legislation apparently understood the then-existing definition of "lobbying" in ORS 171.755(1) (1971) (i.e., "influencing, or attempting to influence") to exclude providing neutral information to legislators. Mr. Frohnmayer was asked by the committee co-chairs to provide a definition of "lobbying," as the proposed legislation did not contain one.

On May 14, 1973, Dick Allen, representing the Capitol Club, testified about the lack of a definition of "lobbying" in the bill. Mr. Allen stated that there was an existing definition of "lobbying" in ORS 171.755 (1971), which we think is pretty

good. It seems to take care of the usual and the usually thought of definition and we think it is concise enough to take in most of what most of us think of as lobbying.

Testimony of Dick Allen, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 224. Mr. Frohnmayer then noted that he felt a separate definition of "lobbying" was unnecessary, but that he had prepared a memorandum for the committee with various definitions of lobbying from other states. In this memorandum, Mr. Frohnmayer recommended that the legislation define lobbying as "influence directed at public decision makers," giving as an example those statutes that include virtually any *influence* situation in which legislators and other parties are involved. The Wisconsin Act, specific in most respects, typically declares that lobbying is

"... the practice of *promoting or opposing* the introduction or enactment of legislation before the legislature, or the legislative committees, or the members thereof."

While other statutes in this group do not always define "lobbying" or "lobbyists" in quite these terms, their applicability is essentially the same. Thus Virginia does not define lobbying, but it defines "legislative counsel and agent" as

"... any person employed *to promote or oppose* in any manner the passage by the General Assembly of any legislation."

Memorandum from David B. Frohnmayer to Senator Jack D. Ripper and Representative Robert C. Ingalls, Joint Special Committee on Professional Responsibility, May 14, 1973, at p. 3 (emphasis added). Mr. Frohnmayer then stated that although he had some technical adjustments to suggest, the definition of lobbying provided by Dick Allen, which he described as "the intent to influence the passage or defeat of a measure," was a good starting point. Testimony of David B. Frohnmayer, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 235.

Ultimately, the definition of "lobbying" in the 1973 legislation, codified as ORS 171.725(4), differed from the previous definition in ORS 171.755(1) only by the addition of the language shown below as bold and the deletion of the language in brackets.

"Lobbying" means influencing, or attempting to influence, **by direct communication**, the passage or defeat of [*a measure by the Legislative Assembly*] **legislative action** or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction regarding passage, defeat or veto of legislative action.

Or Laws 1973, ch 802, § 3(4). In effect, the "loophole" identified by Common Cause in the pre-1973 definition of "lobbying" -- that it did not cover efforts to "inform" -- was not fixed by the 1973 legislation. Based on the above history, we believe that, when enacted in 1973, that definition was not intended to include neutral information provided to legislators, but only communications that take a position on the passage or defeat of legislative action.

In 1975, "public officials" were expressly added to the definition of lobbyists. Or Laws 1975, ch 747, § 1. During the debate over whether public officials should be included, the issue of what was considered "lobbying" again came up. John Richardson, Assistant to the Chancellor of Higher Education, suggested that if public officials were included, and the Department of Agriculture then asked an Oregon State University (OSU) professor for assistance in preparing legislation, the OSU professor "would have to register." Testimony of John Richardson, House Elections Committee (HB 2757), April 15, 1975, tape 15, side 1 at 222. Representative Earl Blumenauer responded:

I would differ with you on your interpretation * * *. He may have been contacted because of his expertise to draft legislation, but he's not really up here selling it unless he's really coming up here and testifying and trying to push a particular idea through the legislature. I would think that he still remains an employee of the institution and not really a lobbyist. But when, I think, people from some of these institutions come and they say, "we've got a point of view and we would want to tell you about it -- that affects our budget," I think that's very much the same as any other interest group that's telling their story.

Testimony of Rep. Blumenauer, *id.*, at 224. No one controverted this point of view.

The resulting legislation significantly simplified the definition of "lobbying" to provide merely: "'Lobbying' means influencing, or attempting to influence, legislative action." Or Laws 1975, ch 747, § 1(6). The former references to "direct communication" and to the "passage or defeat" of legislative action were deleted.

That definition remained in the statute until 1987 when a bill was introduced at the request of the Government Ethics Commission to clarify the meaning of the phrase "attempting to influence legislative action," which the Commission felt was ambiguous after the phrase "by direct communication" was deleted from the definition of "lobbying" in 1975. *See* Minutes, Senate Judiciary Committee (HB 2171-A), May 26, 1987, Exhibit A.⁽³⁾ There was no discussion of whether or not "influencing" or "attempting to influence" would include providing only neutral information to a legislator. Ultimately, the words shown in bold below were added to the end of the definition:

"Lobbying" means influencing, or attempting to influence, legislative action **through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials.**

Or Laws 1987, ch 566, § 1.

Based on the text, context and legislative history of the definition of "lobbying" in ORS 171.725, we conclude that for purposes of ORS 171.725 to 171.785, "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Taking a position in support of or opposition to specific legislative action includes not only seeking a legislator's vote on the merits of a legislative measure, but also suggesting or seeking sponsorship, testimony, debate or any other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, or an appointment, report, or any other matter that may be the subject of action by the legislature or a legislative committee. *See* ORS 171.725(5).

With this interpretation of "lobbying" in mind, we turn to the specific activities by state employees identified in the first question.

A. Creating and Preparing Testimony for Legislative Hearing

We are first asked whether creating and preparing testimony to be presented at a legislative hearing is "lobbying" if the testimony takes a position on a legislative measure. The relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Creating and preparing the testimony is not by itself a communication "with" a legislative official. Unless the testimony being prepared is actually presented to a legislative official, merely creating and preparing testimony cannot be "lobbying." When such testimony is presented, however, the question becomes whether the acts of creating and preparing the testimony are integral to the testimony and therefore an inseparable part of the "communication" with legislative officials.

The term "communication" can mean either "the act or action of imparting or transmitting" or the "information communicated." Webster's, *supra*, at 460. We believe that the legislature intended "lobbying" to include only the acts of imparting or transmitting the testimony to legislative officials and not to encompass the acts of creating and preparing the testimony.

"Lobbying" is accomplished through communication "with" legislative officials. Because the acts of creating and preparing testimony often are done by someone other than the person presenting the testimony, those acts are clearly separable from any contact "with" legislative officials. Moreover, the legislative purpose expressed in ORS 171.730 is to regulate the activities of "certain persons who engage in efforts to persuade members of the Legislative Assembly * * * either by *direct communication* to such officials or by solicitation of others to engage in such efforts." (Emphasis added.) Thus, based on its text and context, the definition of "lobbying" appears to be limited to acts of directly communicating with someone, not the acts of preparing the communication.

Because we cannot say that this is the only plausible interpretation, however, we also consider legislative history. One of the bills introduced by the Oregon Government Ethics Commission during the 1987 legislative session would have added "research and preparation of testimony or other materials related to legislative action" to the definition of "lobbying." HB 2169 (1987). This language raised concerns that it would include many people in a law firm or lobbyist's office "who have never met a legislator * * * [but] have been preparing testimony, doing research and putting other materials related to legislative action together * * * much of * * * which will get tossed out, maybe the whole thing will." Testimony of Roger Martin, Capitol Club Ethics Committee, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, tape 70, side A at 180-200. *See also* Testimony of Representative Ron Cease, *id.* at 232 ("[I]n response to what Roger has said, if

you had three or four staff people in your office that were involved in preparing testimony, this presumably would cover those people, and I don't know why that makes any sense at all."). The Ethics Commission already had proposed an amendment to delete that provision regarding research and preparation of testimony, which Betty Reynolds, Executive Director of the Ethics Commission, described as "overly broad." Testimony of Betty Reynolds, *id.* at tape 71, side A at 140, 307. The amendment was passed unanimously (one member excused). Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, at 7.

We recognize that the legislature's failure to include "research and preparation of testimony" in the definition of "lobbying" is of dubious value in interpreting legislative intent. See *Kola Tepee, Inc. v. Marion County*, 99 Or App 481, 484, 782 P2d 955 (1989), *rev den* 309 Or 441, 789 P2d 5 (1990) ("The defeat of an amendment to existing law, even if it directly concerns a substantive aspect of a law, is of dubious value, if any at all, in determining legislative intent."); see also *Oregon State Emp. Assn. v. Workers' Compensation Dept.*, 51 Or App 55, 624 P2d 1078, *rev den OSEA v. Workers' Compensation Dept.*, 291 Or 9, 631 P2d 340 (1981). But the legislature not only rejected the proposal to include the preparation of testimony in the definition of "lobbying," the legislature instead added language clarifying that "influencing or attempting to influence legislative action" was only "lobbying" when it was done "through oral or written communication with legislative officials." This new language addressed the ambiguity created in 1975 when the phrase "by direct communication" was deleted from the definition of "lobbying," which is what the Ethics Commission sought to accomplish. See Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, Exhibit A at 1. The legislature resolved the ambiguity as to whether research and preparation of testimony was "lobbying" not only by refusing to add those acts to the definition, but also by limiting the influence aspect of "lobbying" to communication "with" legislative officials.

Accordingly, based on text, context and legislative history, we conclude that the legislature intended to exclude from "lobbying" the acts of creating and preparing testimony, whether or not that testimony is actually presented to a legislative committee in support of or opposition to a particular legislative measure.

B. Waiting to Testify at a Public Hearing

We are next asked whether waiting to testify at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Although waiting is often a necessary aspect of communicating with legislative officials, it is not an oral or written communication; nor does it express any position or attempt to affect any particular legislative action. Thus, time spent waiting to testify is not "lobbying," regardless of whether the testimony to be presented is "lobbying," so long as the employee does not engage in any activities that would be considered "lobbying" during the waiting period.

This conclusion is supported by legislative history. In one of the hearings on House Bill 2171 (1987), Senator William Frye, Chairman of the Senate Judiciary Committee, suggested that a lobbyist might sit in the audience of one of the committee meetings for about three days waiting to testify, to which Senator Jan Wyers responded: "That's not lobbying, Mr. Chairman. * * * [i]t's when you're trying to influence legislative action. It's when you're actually talking with somebody trying to -- ." This statement was supported by Betty Reynolds, Executive Director of the Ethics Commission, at whose request the legislation was introduced. Testimony, Senate Judiciary Committee (HB 2171), May 26, 1987, tape 158, side A at 145, 160.

During the time spent waiting to testify before a legislative committee, an individual may do more than just wait. Thus, if a state employee, while waiting to testify, communicates with a legislative official in a manner that influences or attempts to influence any legislative action, that would be "lobbying." "Lobbying" includes not only communication with legislative officials in support of or opposition to legislative action, but also "solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials." ORS 171.725(7). If the employee engages in any of these activities while waiting to testify, that also would be "lobbying."

C. Testimony at a Legislative Hearing

We are also asked whether testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Again, the relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Whether presented orally or in writing, testimony at a legislative hearing is a "communication with legislative officials."

Because the testimony in the question posed takes a position in support of or opposition to a legislative measure, it is "lobbying." This would include testimony that proposes, supports or opposes amendments to a bill, no matter how minor or technical, as well as testimony that states support for or opposition to the bill in its entirety.

D. Private Discussions with Individual Legislators

We are next asked about a discussion with a legislator in the legislator's office, when the discussion includes the reasons why the state employee, representing the position of the Governor, thinks that a particular legislative measure is a good or bad idea. The definition of "lobbying" includes any attempt to influence legislative action through oral or written communication with "legislative officials." ORS 171.725(7). Although the term "legislative officials" is in the plural, we do not believe that the legislature intended to exclude from the definition of "lobbying," communications with individual legislators. *See* ORS 174.110(1) (as used in Oregon statutes, the singular may include the plural and the plural, the singular). Thus, we conclude that any attempt to influence legislative action through oral or written communication with one or more legislators is "lobbying."

Legislative officials include not only legislators, but also "any staff person, assistant or employee." ORS 171.725(6).⁽⁴⁾ A private meeting with a legislator or staff person to express the position of the Governor on a particular legislative measure falls squarely within the definition of "lobbying." The statute draws no distinction based on the location where the communication with legislative officials takes place. If the meeting includes any communication in support of or opposition to the merits of the measure or suggests sponsorship, testimony, debate or any other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, then the state employee is "lobbying."

E. Developing Legislative Measures

We are asked about activities to develop legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, that may or may not result in legislative bills. "Lobbying" includes three distinct acts: (1) "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials," (2) "solicitation of others to influence or attempt to influence legislative action," and (3) "attempting to obtain the good will of legislative officials." ORS 171.725(7).

We first consider activities by state employees to develop legislative measures that are internal to the agency and do not involve stakeholder meetings or other contacts with persons outside of the agency. An example might be when agency employees prepare a "legislative concept." Because these activities do not involve contact with persons outside of the agency, such activities are not communications "with" legislative officials, nor "solicitation of others," nor attempts to obtain the "good will" of legislative officials. Therefore, activities to develop legislative measures that are internal to the agency are not "lobbying." Even if other persons were to meet with agency employees to provide information or suggestions *to* the agency, those activities would not be "lobbying" so long as the agency employees are not soliciting others to influence or attempt to influence legislative action.

We next consider the participation of state employees in stakeholder meetings held for purposes of obtaining approval or compromise on proposals for legislative measures. If any legislative officials are present during such a meeting, state employees who participate in the meetings would likely be "lobbying." This would be the case if the employees make any oral statements or hand out written materials that encourage the sponsorship or passage of the proposed measure. Even if legislative officials are not present during the stakeholder meeting, "lobbying" may occur if, for instance, the employees request or urge members of the stakeholder group to communicate with legislative staff or interim committees about the group's work for the purpose of having the proposed measure sponsored, supported or passed (or contrary legislation defeated). Such actions by the state employees would be "solicitation of others to influence or attempt to influence legislative action" even if none of the stakeholders so solicited carried through with any attempt to influence legislative action.

In sum, whether or not a legislative measure is actually introduced during the session, the activities of state employees in developing a legislative measure is "lobbying" if the employees communicate with legislative officials to attempt to influence the sponsorship, voting or other legislative action on the measure, or solicit others to do so.

F. Pre-session Work on Agency Budgets

The next three activities about which we are asked involve the preparation of agency budgets and their presentation to the legislature as appropriations bills. The budget process involves the efforts of many persons in state agencies, coordinating with the Department of Administrative Services and ultimately the Governor to present a state budget to the Legislative Assembly. ORS 291.200 to 291.224. The first step in this process is for the agency to assess the cost of its programs to determine what size of a budget the agency needs to implement and administer those programs.

When state employees prepare the agency budget or assist in the preparation of the budget, they are not "lobbying." "Lobbying" does not occur when there is neither oral or written communication "with" legislative officials nor solicitation of others to communicate with legislative officials in support of the agency budget.

G. Pre-session Discussions with Stakeholders on Proposed Agency Budget

State employees who participate in stakeholder meetings to discuss the agency's proposed budget would likely be "lobbying" if the purpose of the meetings is to engender support for the agency budget and to have that support conveyed to legislative officials or to others who might themselves make a request to legislative officials to support the agency budget. It would be "lobbying" for agency employees, by word or manner, to solicit the stakeholders to attempt to influence legislative action, i.e., approval of the agency budget even if none of the stakeholders so solicited carried through with any attempt to influence legislative action. In contrast, if the purpose of the meeting is to obtain input from stakeholders about what should be included in the agency budget, or to explain what the agency has put in its budget, agency employees who participate in the meeting would not be "lobbying" so long as there was no solicitation of the stakeholders to influence or attempt to influence legislative action. Caution is appropriate, however, because the agency budget ultimately is legislation and the line between providing information about that budget and soliciting others to support that budget may be difficult to ascertain.

H. Session Testimony in Support of Agency Budget

The presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying." The presentation is a communication with legislative officials, the sole purpose of which is to influence legislative action, i.e., the adoption of the agency's budget. ORS 171.725(5), (7).

II. Factors Affecting Whether an Activity Is "Lobbying"

The second question asks whether our answers to the first question would be affected by any of several factors. Specifically, we are asked whether it would make any difference to our answers if the individual performing the activity is a registered lobbyist. It would not. An activity is "lobbying" if it comes within the definition of that term. ORS 171.725(7). Whether or not the individual is a registered lobbyist may affect the duty to report, but it does not alter whether the activity itself is "lobbying."

We are asked whether our answers would differ if the activity is performed by agency support staff at the request of the agency's registered lobbyist. Again, that fact would not be determinative of whether the activity is "lobbying."

We are also asked whether the fact that the testimony or activity is invited or requested by a legislator or legislative aide would affect our answers. It would not. The definition of "lobbying" makes no distinction between meetings or activities initiated by the legislative official or the state employee. If the activity meets the definition of "lobbying," then the state employee is lobbying.

Finally, we are asked whether our answers would differ if the testimony or activity is neither in support of nor opposition to a legislative measure, but merely provided information. As discussed above, at pages 5 to 8, we do not believe that "lobbying" includes merely providing neutral information to legislative officials without taking a position either in support of or opposition to specific legislative action. Therefore, if the employee merely provides information to legislative officials, either in testimony at a legislative hearing or in private discussions, without taking a position in support of or in opposition to a particular legislative measure (or amendments thereto) or other legislative action, the employee would not be "lobbying." Likewise, employee meetings with stakeholders would not be "solicitation of others to influence or attempt to influence legislative action" if the employee did not request the stakeholders to take a position in support of or in

opposition to a legislative measure or the proposed agency budget.

III. Reporting Requirements

The next question relates to the reporting requirements. Two different statutes require the filing of reports with the GSPC. ORS 171.745 requires lobbyists to report expenditures by the lobbyist. ORS 171.750 requires employers of lobbyists to file a report of moneys expended for lobbying activities in the employer's behalf. We discuss each of these requirements below.

A. Lobbyist Reporting Requirements

ORS 171.745(1) requires "[a]ny lobbyist who engages in any lobbying activities" to file reports at regular intervals with the GSPC, showing the total amount of "all moneys expended by the lobbyist for the purpose of lobbying." Provided they are not already registered with the GSPC, the following persons are exempt from the lobbyist reporting requirements of ORS 171.745:⁽⁵⁾

(1) News media or their employees or agents * * * .

(2) Any legislative official acting in an official capacity.

(3) Any individual who receives no additional compensation for lobbying and who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, if the individual testifies, registers an appearance in the records of such committees or agencies.

(4) A person who spends not more than 24 hours during any calendar quarter lobbying, excluding travel time, and who does not spend an amount in excess of \$100 lobbying during any calendar quarter excluding the cost of personal travel, meals and lodging. * * *

(5) The Governor, Executive Assistant to the Governor, Legal Counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer, Chief Deputy State Treasurer appointed pursuant to ORS 178.060, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries and any judge.

ORS 171.735. Thus, any public official who "lobbies" and who is not exempt under ORS 171.735 is subject to the lobbyist reporting requirements of ORS 171.745.

Two of the above exemptions are most relevant to the questions we have been asked. ORS 171.735(3) exempts any individual: (1) who receives no additional compensation for lobbying, (2) whose lobbying activities are limited *solely* to formal appearances to give testimony before public sessions of committees of the Legislative Assembly or public hearings of state agencies, and (3) who registers an appearance in the records of such committees or agencies before which he or she testifies. State employees do not receive additional compensation for their lobbying activities above their regular state salary and, thus, would meet that element. However, the exemption applies only if both of its other elements are also met. Thus, if a state employee speaks privately with a legislator on a single occasion to express reasons why a particular bill is a good or bad idea, asks other persons to support or oppose a legislative measure, or engages in any other lobbying activity than formal, registered appearances at public sessions of legislative committees, the employee would not come within this exemption. In that case, *all* moneys expended by the employee "for the purpose of lobbying" would need to be reported, even those expenditures for prior formal appearances that the employee registered in committee or agency records, unless he or she comes within one of the other exemptions.⁽⁶⁾

ORS 171.735(4) exempts any individual who, during any calendar quarter, does not spend more than 24 hours or more than \$100 lobbying, excluding travel, meals and lodging. All of the activities that we identify in response to the first question as "lobbying" would be counted toward this 24-hour or \$100 threshold. Once either the 24-hour or \$100 threshold is exceeded by an employee, the employee must comply with the lobbyist reporting requirements of ORS 171.745. If a state employee meets the exemption in ORS 171.735(3) because he or she only makes formal, registered appearances before legislative committees, however, the employee would be exempt from the lobbyist reporting requirement even if

those appearances totaled more than 24 hours or \$100 in expenditures. If the employee does not meet the exemption in ORS 171.735(3) because the employee does not limit his or her lobbying activities to formal, registered appearances before legislative committees, any such appearances would count toward the 24-hour threshold.⁽⁷⁾

If a state employee is not exempt from the lobbyist reporting requirements, the lobbyist's report must show the total amount of all moneys "expended by" that individual "for the purpose of lobbying" in the preceding reporting period.⁽⁸⁾ ORS 171.745(1)(a). We believe that ORS 171.745 requires the employee to report only those amounts actually paid out by the lobbyist personally. The term "expend" means "to pay out or distribute : spend." Webster's, *supra*, at 799. Under this definition, a state employee expends only those moneys that he or she pays out; the employee does not "expend" funds when he or she arranges the purchase of goods or services that are billed to the state agency.⁽⁹⁾ In other words, we believe that the employee must include in the lobbyist's report only his or her out-of-pocket expenses.

These amounts must be reported by general category, including but not limited to (A) food, refreshments and entertainment; (B) printing, postage and telephone; (C) advertising and public relations, education and research;⁽¹⁰⁾ and (D) miscellaneous. *Id.* The expenditures required to be reported do not include "amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses."⁽¹¹⁾ ORS 171.745(3).

The lobbyist's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion "for the purposes of lobbying." ORS 171.745(1)(b).⁽¹²⁾ The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

Further explanation of the lobbyist reporting requirements may be found in the GSPC rules, OAR 199-010-0060 to 199-010-0081.⁽¹³⁾

B. Employer Reporting Requirements

ORS 171.750 contains a separate reporting requirement for the employers of lobbyists who were registered or required to register with the GSPC at any time during the preceding calendar year.⁽¹⁴⁾ This employer reporting requirement expressly applies to public agencies. The exemptions in ORS 171.735 do not directly apply to the employer reporting requirements. Thus, if an employer has at least one employee who was registered or required to register with the GSPC because he or she did not come within any of the exemptions in ORS 171.735, the employer must file the employer report showing expenditures for all lobbying activities for the preceding calendar year, including those of any exempt lobbyists.

The employer's report must show the "total amount of all moneys expended for lobbying activities in the employer's behalf, excluding living and travel expenses incurred during a session of the Legislative Assembly." ORS 171.750(1)(a). Unlike ORS 171.745(1)(a), which requires a lobbyist to report moneys expended "for the purpose of lobbying," ORS 171.750(1)(a) requires the employer to report moneys expended "for lobbying activities." Thus, the employer's report needs to include only expenditures for those activities that are "lobbying." ORS 171.750 does not, however, exclude the office overhead directly related to those activities. Thus, the employer's report must include that portion of the salary, benefits and directly related overhead of any employees who engage in "lobbying," but not the salaries, benefits or overhead for support personnel or other persons who may assist the lobbyist but do not themselves engage in any "lobbying" activities.⁽¹⁵⁾ Unlike the lobbyist's expenditure report, the employer's report need not list expenditures by category.

The employer's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion by the employer for "the purpose of lobbying," but not including information previously reported in a lobbyist's report filed in compliance with ORS 171.745. ORS 171.750(1)(b).⁽¹⁶⁾ The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

C. Examples

To more clearly explain how the principles discussed above would apply to state agency employees in the situations identified in the first question, we discuss several examples below.

Example #1: Employee A presents testimony in support of a legislative measure at a public session of a legislative committee and has registered that appearance in the records of the committee.

Assuming that Employee A does not engage in any other lobbying activities, Employee A would be exempt under ORS 171.735(3) from the lobbyist reporting requirement. If Employee A engages in lobbying activities other than registered, formal testimony, Employee A would need to file the lobbyist's expenditure reports if the total of his or her lobbying activities, including formal committee appearances, exceeds either the 24-hour or the \$100 threshold.

If Employee A is not exempt under ORS 171.735(3) or (4) from the lobbyist reporting requirement, then he or she is also required to register with the GSPC. In that case, the agency that employs this individual must file an employer expenditure report showing the portion of this employee's salary, benefits and overhead attributable to this employee's lobbying activities, as well as all other moneys expended "for lobbying activities" in the agency's behalf. Even if Employee A is exempt from the lobbyist reporting (and registration) requirement, the agency must report expenditures for Employee A's lobbying activities if any other persons employed by the agency were registered or required to register with the GSPC.

Example #2: Employee B creates and prepares the formal testimony presented by Employee A in the above example.

Creating and preparing testimony in support of a legislative measure is not "lobbying," whether or not done at the direction of the lobbyist who presents the testimony. Assuming that Employee B does not engage in any other activities that would be "lobbying," Employee B does not need to file a lobbyist's expenditure report.

The agency that employs Employee B does not need to report the salary or other expenses attributable to Employee B's creation and preparation of testimony because those expenditures are not "for lobbying activities."

Even if Employee A is required to file a lobbyist's expenditure report, he or she would not need to include in that report the portion of Employee B's salary attributable to Employee B's creation and preparation of the testimony. Although Employee B's activities were "for the purpose of lobbying" by Employee A, the lobbyist's report need not include office overhead or staff salaries.

If Employee B does engage in activities that are "lobbying," he or she would need to file the lobbyist's expenditure reports unless he or she is otherwise exempt under ORS 171.735. If Employee B, or any other person employed by the agency as a lobbyist, is required to register and to file a lobbyist's expenditure report, the agency employer would need to file an employer expenditure report that shows the total amount of all moneys expended "for lobbying activities" in the agency's behalf. This would include the portion of Employee B's salary, benefits and overhead attributable to Employee B's lobbying activities, but not Employee B's creation and preparation of testimony because that is not a "lobbying" activity.

Example #3: Employee C and Employee D each spend approximately 25 hours working together to develop a legislative concept and approximately 10 hours at stakeholder meetings at which they encourage the stakeholders to contact their representatives to support the proposed legislation. In addition, Employee D authorizes an expenditure of \$150 for printing and advertising for the meetings, which will be paid by the agency employer. These are the only activities engaged in by Employees C and D that could be considered "lobbying."

Assuming that Employee C does not engage in other "lobbying" activities, Employee C does not need to file a lobbyist's expenditure report. Because 25 hours of Employee C's activities were internal to the agency and did not entail communicating with legislative officials or stakeholders, they are not "lobbying." The 10 hours that Employee C spent at the stakeholder meetings does not exceed the 24-hour threshold.

Assuming that Employee D does not engage in other "lobbying" activities, Employee D does not need to file a lobbyist's expenditure report. The 10 hours that Employee D spent "lobbying" at stakeholder meetings does not exceed the 24-hour threshold. Although the expenditure of \$150 that Employee D authorized for printing and advertising for the stakeholder meetings exceeds the \$100 expenditure threshold, Employee D did not personally expend or pay out those moneys.

Because neither Employee C nor Employee D is required to register or to file a lobbyist's expenditure report, the agency employer is not required to file an employer expenditure report unless other agency employees are registered or required to register with the GSPC. If any agency employee is registered or required to register with the GSPC during the calendar year, then the agency employer must file an employer expenditure report that includes the portion of both Employee C's and Employee D's salary, benefits and overhead directly related to the 10 hours that they spent at the stakeholder meetings, as well as the \$150 expenditure authorized by Employee D and all other moneys expended for "lobbying activities" in the

agency's behalf. Because the 25 hours that Employee C and Employee D spent in developing the legislative concept is not "lobbying," the agency's expenditures for those activities does not need to be included in the agency's report.

IV. Caveat

This opinion construes statutory provisions that have not been interpreted by the courts or by the GSPC in advisory opinions issued pursuant to ORS 171.776. We recognize that our answers to several of the questions differ from that of the GSPC in its informal advice to lobbyists and in the GSPC rules.

The GSPC has authority to issue and publish opinions on the requirements of ORS 171.725 to 171.785 based on actual or hypothetical circumstances. ORS 171.776(2). Any lobbyist or lobbyist employer may request in writing a determination from the GSPC whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785. An advisory opinion issued by the GSPC in response to such a request is considered a formal opinion having precedential effect. ORS 171.776(4). A lobbyist or lobbyist employer who relies on such a formal opinion shall not be liable for violation of the lobbying statutes for any action or transaction carried out in accordance with the GSPC opinion. *Id.* Although we believe that our interpretation of the reporting requirements is correct and would be shared by the GSPC if it were asked to address those questions, an opinion from this office does not guarantee the same protection from liability.

HARDY MYERS

Attorney General

HM:AV:naa/JGG11E72

1. By "creating and preparing" testimony, we understand you to be describing the creative acts of devising the content of the testimony, not the manual acts of typing and formatting a written document.

Return to [previous location](#).

2. ORS 171.725(5) provides in its entirety:

"Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter which may be the subject of action by either house of the Legislative Assembly, or any committee thereof or the approval or veto thereof by the Governor.

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3. Two bills introduced at the request of the Oregon Government Ethics Commission, HB 2169 and 2171, would have amended the lobbying statutes. HB 2169, which contained the original "clarifying" language to the definition of "lobbying," was consolidated into HB 2171.

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4. "Legislative official" is defined as:

any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

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any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

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5. These same persons are exempt from the registration requirements in ORS 171.740. ORS 171.735.

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6. The employee would also no longer be exempt from the registration requirement in ORS 171.740 unless he or she came within another exemption.

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7. It is conceivable, though perhaps unlikely, that a state employee might spend more than 24 hours in formal, registered appearances before legislative committees during a calendar quarter. If such an individual were then to engage in some other lobbying activity (e.g., a 5-minute conversation with a legislator outside the committee room urging the legislator to support an amendment to a bill), the employee would no longer be exempt under ORS 171.735(3) from the reporting requirements. Because this employee had already exceeded the 24-hour limit for exemption under ORS 171.735(4) at the time he or she became no longer exempt under ORS 171.735(3), he or she would now be required to comply with the registration requirements of ORS 171.740 and the lobbyist reporting requirements of ORS 171.745. The employee would need to register with the GSPC within three working days after losing the exemption under ORS 171.735(3). The employee would have to file a report with the GSPC on the next reporting date, showing the total amount of all moneys expended by the employee for the purpose of lobbying "in the preceding reporting period." ORS 171.745(1)(a). The employee must also include in this report any expenditures made to, or for the benefit of, a legislative or executive official. ORS 171.745(1)(b). Although the statute does not specify, we believe that such reportable expenditures are also limited to those in the preceding reporting period.

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8. These reports must be filed on January 31 and July 31 of each even-numbered year and on January 31, April 30 and July 31 of each odd-numbered year. ORS 171.745(1).

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9. The GSPC rules provide that all expenditures "incurred by a lobbyist or at the lobbyist's direction or instigation for the purpose of lobbying" must be reported, even though the employer pays the bills. OAR 199-010-0075(1). We believe this rule is overly broad in that it requires reporting by the lobbyist of amounts that are not actually "expended by the lobbyist." See ORS 171.745(1)(a).

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10. ORS 171.745(1)(a)(C) requires a lobbyist who engages in any lobbying activities to file a statement showing the "total amount of all moneys expended by the lobbyist for the purpose of lobbying," expressly including "research." This provision requires expenditure reporting of research only when it is done "for purposes of lobbying," not research prepared initially for other purposes. To the extent testimony at a legislative hearing incorporates information or research from a report or other document prepared initially for other purposes, the work of researching and preparing the earlier report or document would not be "lobbying" because it was not done for the purpose of influencing legislative action. In the 1973 hearing on House Bill 2530, one of the senators asked whether lobbying included all research done on the subject of the law merely because it becomes available to a legislator or whether the research had to be done specifically in order to influence legislation. David B. Frohnmayer responded:

I would say the latter conclusion and I would point to the language [of the bill] which says "all amounts received or expended directly or indirectly for lobbying activities." And while something clearly could do double duty, it seems to me that the purpose of that expenditure would not initially have been for the purpose of influencing a given legislator and therefore that would not be reported.

Using the Media

The media is powerful in all our lives. It is infinitely more powerful in the lives of our legislators. Used effectively, a media strategy can reinforce your work in Salem when major policy issues are involved. Because of legislators' unique sensitivity to the media, any public comment or publicity needs to be part of a larger media strategy.

Much like successful legislative work, an effective media strategy depends on building relationships. Media tools include press kits, news releases, op-ed articles/guest editorials, editorial meetings, establishment as a resident "expert," and participation in community forums. Together, they add tremendously to the power of your legislative message.

Most law improvement projects will not usually be of great interest to the media. However, Kateri Walsh, OSB media relation coordinator, would be happy to work closely with any group or individual in developing a more comprehensive plan for working on specific topics which may have media involvement.

Here are some media tips!

- Don't trump your legislator. In fact, the legislature should be your first point of contact, and media conversations should flow from those communications, not vice-versa.

Rule no. 1 is to not grandstand with the media in any way that trumps the efforts of the legislators who have the power to advance - or table - the larger agenda.

- Prepare your legislator. Nothing that comes from you or your office should come as a surprise to any of the legislators you have contacted.
- Develop one or two key messages, and keep coming back to them. Most of the issues you'll be commenting on are complex. But most news stories have a finite capacity for complexity. You will stay on track if you have one or two messages that you focus on consistently throughout a conversation, or communication.
- Repeat, repeat, repeat. The rule in media is that nothing reaches the public consciousness until it is presented at least three times. Establish your key message, but then find multiple ways of presenting it to the media. Keep it fresh.
- Don't speak off the cuff. If you get an unsolicited call from a reporter, don't feel like you have to talk with them at that moment. Ask them what their deadline is, and offer to call them back. It gives you an opportunity to develop your key message and language, and think through the potential questions and implications. If appropriate, you can even call your legislators and chat with them about their public priorities prior to shaping your response.
- Be consistent as you move from legislative to media communications. From a public relations standpoint, it can be tempting to alter your message slightly depending on the audience. Don't tell your legislator one thing, and then alter it for presentation to the media. It impacts your credibility with Salem, dilutes your message, and adds fuel to the other side of the issue.
- Tie news releases to a hard news angle. Soft news stories and features can be quite effective in making an issue "real" to the public. But whenever possible, tie your message to hard news. Find a study that's recently out that reinforces your message. Provide hard, tangible numbers to illustrate your point of view.
- Plan your responses to the toughest potential questions. You have two goals: to establish your expertise on a topic; and to present yourself as a citizen who wants to help facilitate public discussion. Don't appear to get agitated if questions get tough. It's part of facilitating the discussion. Have your responses ready, preferably in the form of some hard numbers, statistics or facts. Avoid emotional arguments. And keep coming back to your key messages.
- Know the media outlet before meeting with them. Particularly in dealing with print media, or with radio talk shows, be aware of the institution's or the individual's bias prior to talking.
- Eliminate all legalese. Simplify the issue - and your language - to its simplest components. Understand that the reporters did not attend law school, and their readers/audience often didn't attend college, or even high school. Be patient if the issue requires some lengthy explanation. Everybody's better off ensuring that the reporter gets it right before you leave.
- Provide a list of further contacts that will reinforce your message. Reporters want to have a list of recognized "experts." Make it easy on them. Provide them with names, phone numbers, and titles or other reason for their expertise.

Legislative Resources

Contact Numbers

Oregon State Bar

Public Affairs Department. (503)431-6376
www.osbar.org/pubaffairs/publicaffairs.htmlpubaff@osbar.org

Oregon Legislature

Legislative Committees. (503) 986-1813
 House Democratic Office(503) 986-1900
 House Republican Office.(503) 986-1400
 Senate Republican Office(503) 986-1950
 Senate Democratic Office. (503) 986-1700
 Legislative Counsel (503) 986-1243
 Distribution Center (for copy of legislative bills) (503) 986-1180

Web site Resources

Oregon Legislature

www.leg.state.or.us

Legislative Measures (Search Engine)

www.leg.state.or.us:8765/

2007 Oregon Revised Statutes (ORS) (Search Engine)

www.leg.state.or.us:8765/

Oregon Secretary of State Elections Division

www.sos.state.or.us/elections/elechp.htm

Oregon State Archives

<http://arcweb.sos.state.or.us/>

United States Congress

<http://thomas.loc.gov/>

United States House of Representatives

www.house.gov/

House Judiciary Committee

www.house.gov/judiciary/

United States Senate

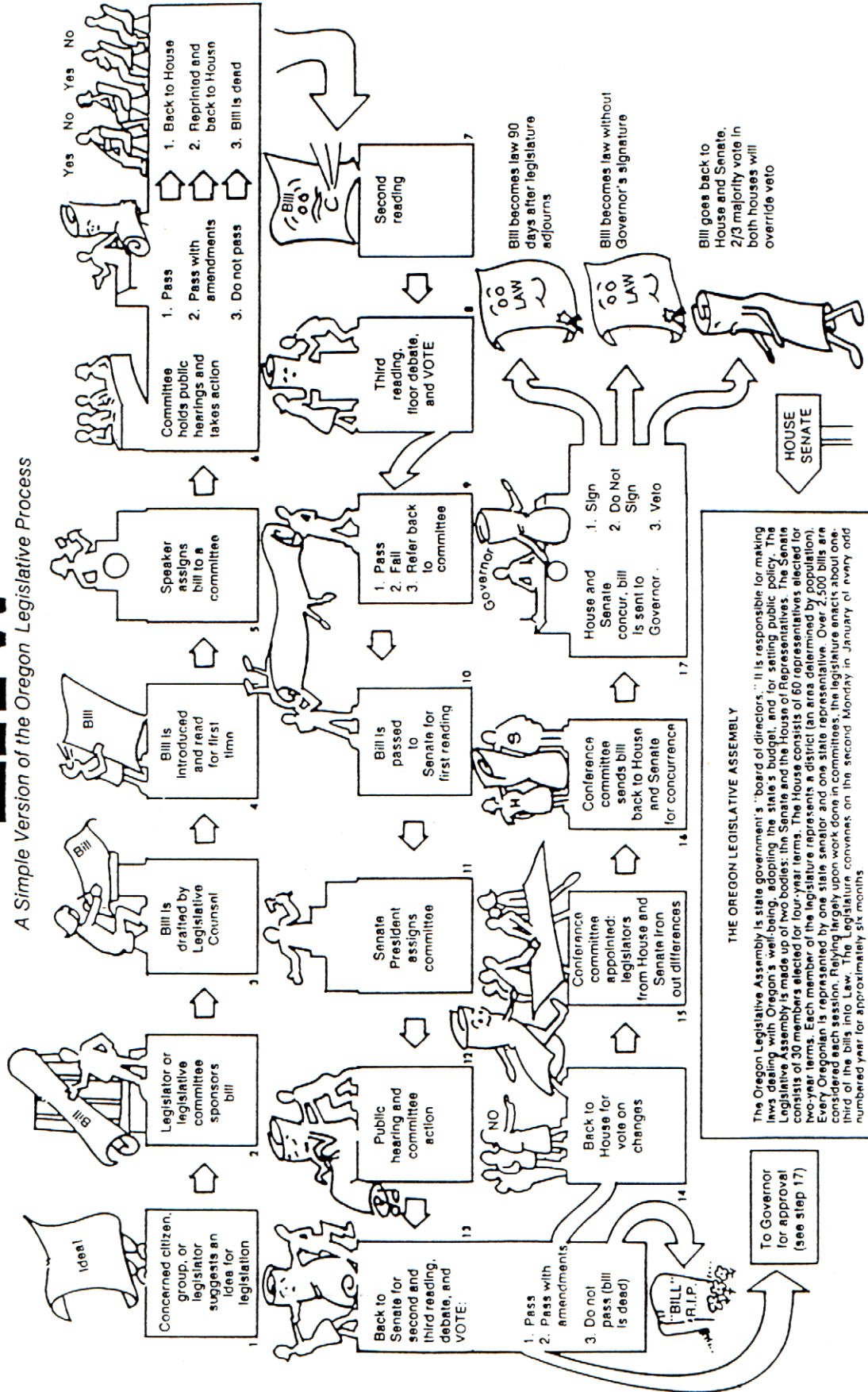
www.senate.gov/

Senate Judiciary Committee

www.senate.gov/judiciary

How An Idea Becomes LAW

A Simple Version of the Oregon Legislative Process



Legislative Summary Format

This is a suggested legislative summary format for bar group sponsored legislation. The legislative summary will be the cornerstone of communications with other legal interest groups as well as the basis for future written and oral testimony provided to legislative committees during session. It may also serve as a useful format to analyze bills under consideration during the session. The summary should be no more than 1-2 pages in length. More in-depth measure analysis may be attached as an additional document if necessary.

OREGON STATE BAR Legislative Summary of Proposal

RE: Legislative Concept

FROM: Committee or Group proposing legislation

Legislative Contact:

Name:

Telephone:

Fax:

Email:

This bill would amend ORS _____

1. PROBLEM PRESENTED

Briefly state the PROBLEM PRESENTED (include ORS or case citation if applicable)

2. SOLUTION

Identify the SOLUTION to the problem (include proposed language change)

3. PUBLIC POLICY IMPLICATION

Identify any PUBLIC POLICY IMPLICATIONS (this includes legal, constitutional, financial, and any other issues as well as potential sources of opposition)

Sample of Legislative Summary

OREGON STATE BAR Legislative Summary of Proposal

RE: Requirement that trustee under the Oregon Trust Deed Act file notice of amount necessary to cure or pay off 15 days prior to foreclosure sale. (LC 443)

FROM: OSB – Debtor/Creditor

Legislative Contact:

Name:

Phone Number:

Fax:

Email:

This bill would amend ORS 86.705, et. seq., the Oregon Trust Deed Act and, specifically, we anticipate amending 86.750(3).

1. PROBLEM PRESENTED

The problem arises in that more and more out-of-state “trustee services companies” are conducting non-judicial foreclosures in Oregon. These “foreclosure mills” are nearly inaccessible to borrowers, holders of junior encumbrances and potential investors wishing to bid at foreclosure sales, to obtain information on the amounts necessary to cure or the minimum bid at the sale. Some of these trustee services companies do not even list their telephone numbers on the trustee’s notices of sale. Most have automated phone systems that give parties endless options to choose, where a live person cannot be reached. Some have actually disseminated recorded information that is incorrect. Despite repeated requests, it is often difficult for borrowers to obtain cure amounts or payoffs, if they have refinances or sales of their property. Their only alternative is to file an action to enjoin the sale or file for bankruptcy protection.

2. SOLUTION

The solution to the problem is to require the trustee to record an affidavit prior to the sale that sets forth the information that a borrower, junior encumbrancer or investor may need to tender a cure or pay off the loan. In this way, a tender may be made prior to the sale.

3. PUBLIC POLICY IMPLICATION

The requirement to record the affidavit will not significantly burden the trustee nor the existing procedures for non-judicial sales. While the “foreclosure mills” may oppose this additional requirement, it is generally within the contemplations of the act. Currently, ORS 86.753 allows a borrower or its successor in interest to cure the defaults at any time prior to five days before the last date set for the sale. That statute currently does not require the trustee or the beneficiary to give the borrower the amount necessary to cure. In many cases, due to complex interest accruals, late charges, foreclosure costs and attorney’s fees, the borrower may not know the amount necessary to tender. We believe that this change will conform with current public policy.

Sample Letter to Legislator

LANE
 POWELL
 SPEARS
 LUBERSKY
 LLP


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June 14, 2001

VIA FACSIMILE (503) 986-1778

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 www.lanepowell.com*

Senator John Minnis
 900 Court Street NE, S-311
 Salem, OR 97301

Dear Senator Minnis:

I am writing to you on behalf of the Executive Committee of the Oregon State Bar's Estate Planning Section. I previously had testified before your committee on behalf of two bills which our committee had sponsored. I am writing to you today to express our committee's support for that portion of SB 166 relating to so-called "pet trusts." Our committee previously had supported HB 2739, which incorporated this legislation. I realize that, at first blush, such legislation appears trivial. However, our committee believes that it is nevertheless substantial legislation for the following reasons.

First, believe it or not, many of our clients ask that trusts be established for their pets, and it is not clear under current Oregon law whether such trusts are allowed. Second, this legislation is being introduced together with federal legislation that would provide a charitable income tax deduction for trusts that are created for pets, where the remainder interest on the pet's death passes to charity. Adopting the Oregon "pet trust" bill would allow Oregon residents to create such charitable trusts once the federal legislation is passed. For these reasons, our committee endorses that portion of SB 166 relating to pet trusts, and we respectfully ask for your support and approval as well. If you have any questions, please feel free to contact me.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP



Christopher P. Cline

CPC:jrm

cc: J. Alan Jensen, Esq.
 Susan Grabe, Esq.
 Craig Heath, Esq.

999999.2001/325984.1

*Anchorage, AK
 Mount Vernon, WA
 Olympia, WA
 Portland, OR
 Seattle, WA
 London, England*

Sample Legislation

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

House Bill 2372

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Judiciary Committee for the Procedure and Practice Committee of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows taking of testimony in civil jury trial by simultaneous transmission from different location. Requires showing of compelling need.

A BILL FOR AN ACT

Relating to testimony in civil trials; creating new provisions; and amending ORS 45.010.

Be It Enacted by the People of the State of Oregon:

SECTION 1. In civil jury trials the court may, on timely notice and for good cause shown, in compelling circumstances and with appropriate safeguards, permit presentation of testimony in open court by simultaneous transmission from a different location.

SECTION 2. ORS 45.010 is amended to read:

45.010. The testimony of a witness is taken by [*five*] **six** modes:

(1) Affidavit.

(2) Deposition.

(3) Oral examination.

(4) Telephone examination under ORS 45.400.

(5) Examination before a grand jury by means of simultaneous television transmission under ORS 132.320.

(6) Examination by simultaneous communication device under section 1 of this 2001 Act.

Sample of Testimony Before House Judiciary Committee

*Wednesday January 22, 2003
In Support of HB 2064*

Chair Williams, members of the committee, my name is Kevin Chames. I have been a lawyer since 1987. I currently maintain an office in Wilsonville and have practiced in the Portland metropolitan area since admission to the bar. I am here as a member of the Oregon State Bars' Procedure and Practice Committee as a whole and the subcommittee assigned to study HB 2064.

The Procedure and Practice Committee is composed of attorneys throughout the state, including Pendleton, Bend, Corvallis, Eugene, Medford and Wilsonville as well as Portland. The Committee prides itself on maintaining an evenly balanced membership of attorneys who represent both defendants and plaintiffs in civil litigation. In my practice I represent both. Our committee works hard to build a consensus on each issue we look at. We are charged with assessing the practical impact on the day-to-day workings of our civil judicial system, posed by bills presented to the legislature. Today, I am here to comment on HB 2064 on behalf of our committee.

Currently, ORS allows for testimony to be given in certain situations by means of a notarized affidavit. The notary requirement increases the time and expense of litigation, especially in less populated areas of Oregon where there are a limited number of public notaries. Even where the number of notaries is more plentiful, the notary requirement still increases the time spent by both the lawyer and the client; which, ultimately costs the client more in the form of attorney fees and both the lawyers and client's productivity in having to take the time to get statements notarized.

HB 2064 would amend statutes to allow for the use of a "declaration," subject to the penalty of perjury, as an additional mode of offering testimony. The types of declarations are currently used in federal courts in Oregon.

I urge the Judiciary Committee to move this bill to the full House with a "do pass" recommendation. Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

Sample of Legislative Testimony Before the Senate Judiciary Committee – Civil

*May 14, 2001
In Favor of HB 2363*

My name is Ruth Simonis. I am co-chair of the Legislative Committee of the Elder Law Section of the Oregon State Bar Association.

During the 1998 legislative session, new notice requirements were added in cases involving a petition for guardianship over an allegedly incapacitated adult. These requirements were codified in ORS 125.070(3), which included a statutorily prescribed notice form. The intent was that the traditional notice requirements in ORS 125.070(2) be given in addition to the new notice form in ORS 125.070(3).

Unfortunately, due to inartful drafting, the notice requirements under ORS 125.070(2), which was originally required to be given to all respondent's in a guardianship are now only required for minor respondents in a guardianship. Adult respondents are required to receive only the statutory notice form created last session under ORS 125.070(3). Experienced elder law attorneys have continued to give both the traditional notice information and the new notice form to adult respondents, but the statute itself is unclear. Attorneys unfamiliar with this area of law would not know that both kinds of notice should be provided.

This bill would solve this problem by providing that the pre-1998 traditional notice requirements in ORS 125.070(2) would apply only to the appointment of a conservator for a financially incapable respondent, or for a guardian/conservator of a minor respondent. The new notice requirements passed last session and codified, as ORS 125.070(3), would be amended to include those notice requirements listed in ORS 125.070(2) which were not included in subsection (3). The result would be one standardized, comprehensive statutory notice form to all adult respondents in a guardianship. The consolidation of notice requirements into ORS 125.070(3) will provide clear direction to practitioners and ensure that the important information about the guardianship proceeding is provided in a readable and uniform manner to all adult respondents in a guardianship.

Sample Letter Requesting a Hearing



B.B. Bouneff • John Chally
Sandra Hodgson*

*Admitted in Oregon and Montana

Legal Assistants
Leslie East
Shelly Reynolds

March 26, 2001

Senator Bill Fisher
Chair, Senate Health and Human Services Committee
900 Court Street NE S-209
Salem, OR 97301

RE: Senate Bill 125

Dear Senator Fisher:

I am writing to request you to schedule a hearing on Senate Bill 125. I am a member of the Standing Committee on Adoption for the Family Law Section of the Oregon State Bar. Our committee worked with the Coalition of Oregon Adoption Agencies on this bill, and we believe it provides a needed service for birth parents who are placing their children for adoption.

SB 125 adds a new section to the adoption statutes that would require written notice to a birth parent who is voluntarily relinquishing a child for adoption that he or she has the right to receive adoption related counseling in either an independent or agency adoption. The prospective adoptive parents would be required to pay for the uninsured costs of the counseling. The counseling would be limited to three sessions prior to relinquishment and three sessions after relinquishment.

There is no financial or constitutional impact from this bill.

It is currently standard practice in adoption situations for the adoptive parents to pay for birth parents' adoption counseling. This bill would insure that all consenting birth parents were notified of the availability of counseling.

Please schedule a hearing on SB 125 so that it can be considered this session. Thanks for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads 'Sandra Hodgson'. The signature is written in dark ink and is positioned above the printed name.

Sandra Hodgson

SH:srr
Enclosures
cc: Susan Grabe, Oregon State Bar

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