



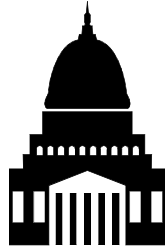
2001 Legislative Tips Handbook

Government Relations and Public Affairs Department



Legislative Tips Workshop
January 19, 2001

2001 Legislative Tips Workshop



January 19, 2001
8:30 a.m. to noon
Greenwood Inn
10700 SW Allen Blvd.
Beaverton, OR 97005
503-626-4558

Workshop Agenda

- 8:30 a.m. **Registration, Coffee and Rolls**
- 9:00 a.m. **Welcome & Introduction**
John Tyner, Public Affairs Committee Chair
- 9:15 a.m. **Ethics**
George Riemer, OSB General Counsel
- 9:45 a.m.-
10:15 a.m. **How to Give Testimony**
Paul Cosgrove, of Counsel, Lindsay Hart Neil Weigler
- 10:15 a.m. **Break**
- 10:30 a.m.-
11:00 a.m. **Panel of Bar Experts**
Moderator: *A. Carl Myers, Legislative Consultant*
Panelists: *Mark Comstock, Garrett Hemann et al*
Tammy Dentinger, Garrett Hermann et al
Jacqueline Koch, Koch & Deering
- 11:00 a.m.-
11:45 a.m. **Oregon State Bar Government Relations
and Public Affairs Department**
- 11:45 a.m.-
noon **Question and Answer Session**

Sponsored by OSB Government Relations and Public Affairs Department
Bob Oleson, Director of Public Affairs

Program approved for 2.0 MCLE credits and .5 Ethics credit.

Board of Governors Public Affairs Committee

John Tyner, Hillsboro, Chair
Jim Brown, Salem
Mary Burrows, Eugene, Public Member
Bill Carter, Medford
Malcolm Scott, Eugene
Charlie Williamson, Portland

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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, p. 8.

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 11.800(A), p. 9. The section or committee is then responsible for monitoring and presenting its position and testimony on that bill. See, OSB Legislative Guidelines, p. 6.

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.

Government Relations and 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 US 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 government relations/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 over-react 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 US 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 government relations and law improvement program.

OSB Public Affairs Program

The government relations and 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 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 improvements with more success than any other group. (During the 1999 Legislative Session 30 out of 33 bills sponsored by bar groups received favorable consideration.)

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 BOG Policies, Ch. 11 are the product of that commission's findings and recommendations.

2001 Legislative Session

The 2001 legislative session promises to embrace unprecedented state fiscal and organizational pressures. Bar groups and individual lawyers need to be involved with the players and issues that will affect them. For example, they should be ready to address proposals for changing and economizing the justice system. It is also important to begin identifying future state bar priorities.

The Public Affairs Committee will continue to give attention to improving bar relations with legislators. We encourage you to do likewise. Please let us our chair John Tyner know if you have suggestions for program adjustments or law improvement projects. We look forward to working with you during the challenging political year ahead.

Government Relations 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 www.osbar.org/programs/lawimprovement
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

OSB Legislative Guidelines

The Board of Governors has determined that the use of bar dues to participate in shaping legislation involving the regulation of the legal profession and matters concerning the improvement of the quality of legal services available to the people of Oregon is germane to the state bar's legitimate role and is in the public interest.

A. Oregon State Bar legislative or policy activities shall be limited to those reasonably related to any of the following subjects:

1. The regulation and discipline of attorneys;
2. The improvement of the functioning of the courts, judicial efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of attorney trust accounts;
5. The education, ethics, competence, integrity and regulation as a body, of the legal profession; or
6. Other activities where:
 - a. The issue is recognized as being of great public interest;
 - b. Lawyers are specially suited by their training and experience to evaluate and explain the issue; and
 - c. the subject matter affects the rights of those likely to come in contact with the judicial system.

B. The bar will make every reasonable effort to inform members of legislative positions taken by it or its committees or sections and encourage as wide a participation as possible in formulating positions on legislative issues.

C. If a bar group such as a section or committee decides to request to take a position on a proposal, the BOG Public Affairs Committee may:

1. Adopt it as a state bar position
 - Thus activating full Public Affairs Program support available including lobbying efforts. This encompasses the following appropriate issues as authorized by §11.800(A):
 - a. Amendments to the Bar Act or related laws (political or policy emphasis);
 - b. Bills that regulate the legal profession or involve related public protections;
 - c. Bills that improve legal services offered by the majority of the membership;
 - d. Bills that have a major impact on the practice of law (taxation, pro bono, indigent defense, etc.); and
 - e. Bills that relate judicial system functions.
2. Designate it as a section or committee position
 - The Public Affairs program monitors and gives staff assistance to volunteers. This includes appropriate measures as authorized by §11.800(A):
 - a. Law improvement bills within the scope of section and committee activities with an emphasis on technical expertise; and
 - b. Proper notice requirements have been met:
 - i. If there is a conflict with other sections or committees that fact must be disclosed in a timely fashion to the Public Affairs Committee so it can coordinate legislative efforts more efficiently and avoid undue conflict. §11.800(C)(2);

ii. If there is a conflict with other sections or committees that fact must be disclosed in a timely fashion to the legislature and the affected section or committee so legislative efforts can be coordinated more efficiently and avoid undue conflict. §11.800(C)(2).

3. Refuse to approve a section or committee position request

- No support by bar, section or committee. This is the response if:
 - a. It is determined that the proposed position violates §11.800(A);
 - b. The issue is highly divisive within the bar (§11.800(C)(2)); or
 - c. The position would have a very negative and critical impact on the rest of the bar's legislative program.

(Note: Every effort is made to avoid this third option and to not interfere with the routine law improvement work of bar groups.)

Board of Governors Policies: Chapter 11

Legislation and Public Policy*

**current at the time of this handbook's publication*

11.100 Committee and Section Legislation

(A) No committee of the bar shall 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 of the bar without the majority approval of the members of that committee and the prior approval of the board, except as is provided in Policy 11.310.

(B) No section of the bar shall 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 section of the bar without the majority approval of the executive committee of that section and the prior approval of the board, except as is provided in Policy 11.310.

11.200 Professional Liability Fund Legislation

The Professional Liability Fund shall 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 the Professional Liability Fund of the bar without the majority approval of the Board of Directors of the Professional Liability Fund and the prior approval of the board, except as is provided in Policy 11.310.

11.300 Submission of Legislation

Appropriate legislation submitted to the membership at the annual meeting of the House of Delegates of the bar, or by special ballot, shall, upon an affirmative vote of the majority of the voting members, be presented to the legislature under the sponsorship of the bar. Such bills or acts may be introduced under the heading, "At the request of the Oregon State Bar," or otherwise, as determined by the board. The board or its public affairs committee, shall have the right to set priorities as to the enactment of such legislation, to propose amendments or consent to amendments to legislation, and to sponsor or take positions on appropriate legislation. The approval and submission of such legislation shall not extend beyond the legislative session which shall follow the annual meeting of the House of Delegates of the bar at which such approval was voted on, or the next session following the approval by special election. Legislation not enacted shall not be sponsored in the following session unless resubmitted to the membership by one of the methods set forth above, provided that the board may, at its discretion, resubmit any such legislation in the following legislative term.

11.310 Response to Legislation

(A) During regular legislative sessions a bar committee or the executive committee of any section may, by majority vote, tentatively approve a position on a bill within its general subject area. Rather than initiating legislation, sections and committees will have the ability with this process to object to or defend bills already introduced or coming to the attention of the section or committee with minimal notice.

(B) The proposed position shall be submitted to the bar's public affairs director or the chairperson of the public affairs committee. After personal receipt of the proposition, the chairperson of the committee shall have up to 72 hours to decide whether or not to refer the tentative position to the entire committee. If the chairperson or committee approves the position, it then becomes an official position of the section or committee and representatives of the section or committee may testify or make other appropriate statements. The public affairs director shall be kept informed about the status of such positions and related activities.

(C) If the proposition is referred to the public affairs committee, it shall determine, on behalf of the board of governors, whether or not it is appropriate (1) for the bar to take an official position or (2) to allow the section or committee to take a position as requested. In considering its actions, the public affairs committee will be acting as a clearinghouse for legislative proposals and will determine whether such requests are consistent with the bar's legisla-

tive program, or in the best interests of the entire bar.

11.400 Legislation of Individual Members

Nothing contained herein shall prevent any individual member of the bar from presenting any legislation, bills or acts which that member shall deem appropriate, providing the same shall not be attributed to the bar or any subdivision, committee or section thereof. While such bills, acts or legislation shall be the responsibility of the individual lawyer, or group of lawyers that may propose them, the bar staff may, with the approval of the board, offer such assistance in preparing said bills and acts and in coordinating efforts as the board may deem advisable.

11.500 Procedures

Any committee or section wishing to sponsor legislation, or any bill or act, shall inform the executive director of the bar, and through that office, the board, of the exact nature of the legislation proposed. A copy of the bill or act to be presented for the consideration and approval of the board must also be submitted to the executive director.

11.600 Uniform State Laws Committee

The uniform state laws committee shall refer any of its proposed legislation to a substantive law section or committee before such legislation can be officially submitted by the board of governors for ratification by the House of Delegates.

11.700 Interim Policy Positions

When the state legislature is not in regular session, a bar committee or section executive committee may (by majority vote) tentatively approve a public policy position within its general subject area. The proposition shall be submitted to the bar's public affairs director or the chairperson of the board's public affairs committee and the same procedure for responding to legislation (Policy 11.310) shall be followed. Bar staff and the public affairs committee of the board will make every effort to accommodate committees and sections which wish to express positions on relevant issues.

11.800 Government Relations Guidelines

(A) Oregon State Bar legislative or policy activities shall be limited to those reasonably related to any of the following subjects:

1. The regulation and discipline of attorneys
2. The improvement of the functioning of the courts, judicial efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of attorney trust accounts;
5. The education, ethics, competence, integrity and regulation as a body, of the legal profession;
- or
6. Other activities where:
 - a. The issue is recognized as being of great public interest;
 - b. Lawyers are specially suited by their training and experience to evaluate and explain the issue; and
 - c. The subject matter affects the rights of those likely to come in contact with the judicial system.

(B) The Bar will make every reasonable effort to inform members of legislative positions taken by it or its committees or sections and will encourage as wide a participation as possible in formulating positions on legislative issues.

(C) Members of the bar should be persuaded to participate in their association's representative process. The board of governors and its public affairs committee should endeavor to respect the divergent opinions of subgroups within the legal profession. Furthermore, providing more assistance to bar sections and committees should become a vital part of the bar's public affairs effort. Such staff support activities deserve a strong commitment of bar resources.

(D) Specific

- (1) Bar positions on major issues will be taken by majority vote at the annual meeting of the House of Delegates. The board and its public affairs committee has the authority between meetings of the House of Delegates to take necessary action on legislative matters pursuant to the guidelines established.
- (2) After receiving input from many different points of view, the board, or at the direction of the board, its public affairs committee will establish priorities for positions taken on public policy proposals. Every reasonable effort will be made to avoid committing bar funds to issues which are divisive or result in creating factions within the profession.
- (3) Public Affairs Committee
 - (a) The public affairs committee shall encompass a balance of interests within the bar and it must consult frequently with the board of governors.
 - (b) Members of the public affairs committee will be assigned liaison responsibilities for the primary legal subgroups and a reasonable effort should be made to keep interested parties informed about the status of particular issues.
- (4) Although the board retains the authority to contract for independent lobbying services, any outside lobbyist utilized by the bar should have the skills and the mandate to provide a range of technical support. Furthermore, board members and bar staff shall have primary responsibility for coordinating the public affairs program and formally presenting bar positions.
- (5) The annual meeting of the House of Delegates shall be used when possible to determine major bar positions, but members should be discouraged from using the meeting to advance the cause of special interests within the bar.
- (6) Communications
 - (a) Attention shall be given to informing bar members about how the bar takes public policy positions.
 - (b) When bar positions are taken, timely membership communications shall occur. General membership involvement in the political process will be stressed.
 - (c) The board may use the referendum mechanism or other techniques to determine the opinion of the membership to find whether a significant membership consensus exists on major public policy questions when possible and practical.
- (7) Committees/Sections
 - (a) Bar staff services to committees and sections shall be expanded and integrated with the public affairs program. Committees and sections are encouraged to be more active in the legislative process.
 - (b) Within their areas of jurisdiction, committees and sections should provide substantial volunteer assistance to policy makers. Whenever possible these bar groups, with board or public affairs committee approval, should be allowed to present their own position on legislation.
 - (c) Bar committees or the executive committees of sections may tentatively approve positions within their jurisdiction. The position of the bar committee or section becomes official only upon approval of the board or Public Affairs Committee.
- (8) The expanded public affairs division of the bar will further develop and utilize the key person network for grassroots contacts. Closer relations with local bars shall be fostered and their leaders asked to designate public affairs contacts. The bar shall pursue the goal of achieving closer cooperation between the members of the so-called legal and judicial lobbies.

11.900 Objections to Use of Bar Dues

- (A) A member of the Oregon State 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 of Governors to review the member's concerns to determine if the board agrees with the member's objections. Member objections shall be in writing and filed with the executive director of the state bar.
- (B) The Board of Governors shall review each written objection received by the executive director at its next scheduled board meeting following receipt of such objection. The board shall respond through the executive director in writing to each objection. The board's response shall include an explanation of the board's reasoning in agreeing or disagreeing with each such objection.
- (C) If the Board of Governors agrees with the member's objection it shall 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 of the receipt of the member's fees to the date of the bar's refund. If the board disagrees with the member's objection it shall immediately offer the member the opportunity to submit the matter to binding arbitration between the state bar and the objecting member. The executive director and the member shall sign an arbitration agreement approved as to form by the board.
- (D) If an objecting member agrees to binding arbitration, the matter shall be submitted to the Oregon Senior Judges Association 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 shall have one preemptory challenge to the list of arbitrators. A preemptory challenge must be filed with the executive director within seven days of the date of the mailing of the list of arbitrators. In the event of no challenges or only one challenge the OSJA shall designate the arbitrator.
- (E) The arbitrator shall promptly arrange for an informal hearing on the objection which hearing may be held at the Oregon State Bar Center or at another location in Oregon which is acceptable to the parties and the arbitrator. The hearing shall be limited to the presentation of written information and oral argument by the state bar and the objecting member. The arbitrator shall not be bound by rules of evidence. The presentation of witnesses shall not be a part of the hearing process though 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 shall be borne by the party requesting it. The state 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.
- (F) The arbitrator shall 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 objected to by the member. The scope of the arbitrator's review shall solely be to determine whether the matters at issue are within those acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator shall apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator shall file a written decision with the executive director within fourteen days of the conclusion of the hearing. The decision of the arbitrator shall be final and binding on the parties. If the arbitrator agrees with the member's objection, the state bar shall immediately refund the portion of the member's dues that are reasonably attributable to the activity with interest paid on the amount from the date of the receipt of the member's fees to the date of the state bar's refund. If the arbitrator agrees with the state bar, the member's objection shall be denied and the file in the matter closed.
- (G) Similar or related objections may by agreement of the parties be consolidated for hearing before one arbitrator.

PAC Public Policy Priorities for 2001

1. Access to Justice

- Includes civil and criminal access to justice

2. Judges and Justice System

- Current service level budget

Other Related Issues

- Judicial Appointment Process
- Number of Judges
- Support Staff and Benefits
- Technology
- Court Facilities

Oregon State Bar Proposals

A. Bar (Organizational) Proposal, ORS Chapter 9

1. LC 566 - Changes to ORS Chapter 9 regarding House of Delegate Rules changes

ORS 9.136(7) - Allow the board to fill all vacancies; eliminate special election process.

ORS 9.145 - Eliminate nomination process and require public members to take office at the same time that the elected delegates take office (3rd Tuesday in April).

ORS 9.152 - Eliminate the 10-signature requirement for nominating petitions for out-of-state delegates.

ORS 9.150 (2) - Delete limitation on terms of elected delegates.

ORS 9.150 (1)(c) - Eliminate committee chairs as ex-officio members.

B. Section Proposals

2. LC 567 (Appellate Law) - Stipulated judgments

Amends ORS 19.245 to allow parties to stipulate to a judgment without waiving any appeal rights. *Rauda v. Roses*

3. LC 568 (Business Law) - Closely held corporations and shareholders rights

Creates new section of the Oregon Business Corporation Act dealing with shareholder remedies for closely held corporations to clarify that there are remedies, other than dissolution, available to shareholders to address minority shareholder oppression.

4. LC 569 (Business Law) - Limited Liability Company clarification bill

Clarifies provisions in Limited Liability Company Act, ORS Chapter 63, dealing with duty of loyalty obligations for members or managers of limited liability companies (SB 51, 1999 session).

5. LC 570 (Business Law) - Multi-Entity merger clarification

Technical clean up of Multi-Entity Merger bill, ORS Chapters 60, 67 and 70 (SB 145, 1999 session).

6. LC 571 (Business Law) - Non-unanimous consent

Amends ORS 60.211 to allow shareholders of a corporation to adopt in their articles of incorporation a provision that would allow the corporation to take action without a meeting with less than unanimous consent.

7. LC 572 (Civil Rights) - CEDAW memorial

Joint memorial requesting the Oregon legislature to support U.S. Senate ratification of the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW).

8. LC 573 (Consumer Law) - Resubmit HB 2286/2288 re Unlawful Trade Practices Act

Resubmit legislation on Unlawful Trade Practices Act and parallel provisions in Oregon Unlawful Debt Collection Act to increase damage recovery amount and to track list of prohibited activities in federal legislation (HB 2286 and HB 2288 from 1999).

9. LC 574 (Elder Law) - Notice in adult protective proceedings

Amend ORS 125.070 to correct inadvertent deletion of notice requirement in adult protective (guardianship/conservatorship) proceedings from 1999 session.

10. LC 575 (Elder Law) - Medicaid payment for guardianship fees and costs

Provides for Medicaid payment of guardianship fees and costs where guardianship required for medical treatment.

11. LC 576 (Elder Law) - Continued validity of power of attorney

Amends ORS Chapter 127 to ensure continued validity of existing powers of attorney (Adopt modified version of Section 5 of the Uniform Probate Code relating to the Uniform Durable Power of Attorney Act).

12. LC 577 (Elder Law) - Medicaid trusts and protective proceedings

Modifies definition of “financially incapable,” ORS 125.005(3) to allow Medicaid applicants and recipients to take advantage of supplemental needs trust provisions in the federal statute on the same basis as residents of other states

13. LC 578 (Elder Law) - Notice of long-term ombudsman in post-guardianship residential placement of protected person

Amend ORS 125.320(3) to require guardians to send copies of intent-to-place notice to former attorneys of the protected person, to the long-term care ombudsman and/or to the Oregon Advocacy Center.

14. LC 579 (Elder Law) - Review of advance directives in protective proceedings

Amend ORS 127.550 to allow a consolidated judicial review proceedings on an advance directive for health care petition and judicial review proceedings on a petition related to guardianship.

15. LC 580 (Estate Planning) - Notice to creditors after death of settlor of revocable trust (“living trust”)

Creates procedure in trust law parallel to probate notice procedure whereby trustee notifies creditors that the settlor has died and trust assets will be distributed.

16. LC 581 (Estate Planning) - After-acquired probate property

Amend ORS 114.505 through .560 to allow after-acquired probate property to be transferred to the decedent’s heirs or beneficiaries under the small estate provisions.

17. LC 582 (Estate Planning) - Uniform Transfer to Minors Act

Amends ORS 126.822 and 126.869 and creates new ORS 126.870 to: 1) allow testamentary transfers without court authorization, in an amount up to \$30,000; and, 2) allow donors of property to make gifts to minors, either during the donor’s lifetime or at death, until any age between 21 and 25.

18. LC 583 (Estate Planning) - Uniform Disclaimer of Property Interests Act

Repeal two current disclaimer statutes in Oregon, ORS 105.525 to 105.640 and ORS 112.650 to 112.667 and replace them with the attached uniform act.

19. LC 585 (Family Law) - Divorce judgment by affidavit upon parties' stipulation

Amend ORS 107.095(4) to allow the court to enter a divorce judgment by affidavit upon the parties' stipulation.

20. LC 586 (Adoption - subgroup of Family Law) - Counseling for consenting birth parents in adoption

Create new section in ORS Chapter 109, relating to adoption matters, that would require written notice to a consenting birth parent of their right to counseling in an independent or private agency adoption.

21. LC 588 (Government Law) - Clarify conflict of interest provisions for public officials

Amend ORS 244.010(3) to clarify definition of "business with which the person is associated" for purposes of determining when a conflict of interest exists for public officials.

22. LC 589 (Land Use subgroup of Real Estate/Land Use) - Technical clean up of ORS Chapter 197 and 215

Clean up bill to eliminate editorial notes and place land use provisions in proper section of the statutes.

23. LC 591 (Land Use subgroup of Real Estate/Land Use) - Clarification of de novo review in land use hearing

Amend ORS Chapter 200 to clarify that in cases where an initial administrative decision is made without a hearing on matters involving discretionary land use permit decisions, the appeal from that decision constitutes the initial evidentiary hearing. Accordingly, the hearing would be open to any party with standing who would be allowed to testify and submit evidence on any relevant issue.

C. Committee Proposals

24. LC 592 (Procedure and Practice) - Simultaneous testimony

Amends ORS 45.010 to create a sixth mode for taking testimony that would allow for simultaneous (or telephone) testimony in civil jury cases.

25. LC 593 (Procedure and Practice) - Prevailing party attorney fees

Codifies Oregon case law in *Newell v. Weston* and *Wilkes v. Zurlinden* regarding the definition of "prevailing party" for purposes of attorney fees in actions where there are multiple claims and counterclaims to ensure a "claim-by-claim" approach to the award of attorney fees.

26. LC 594 (Procedure and Practice) - Non-party deposition testimony

Amends ORS 45.250(c) to allow use of non-party deposition testimony at trial.

D. Joint Oregon State Bar and Oregon Bankers Association Proposal

27. LC 205-1 (UCC Revised Article 9 Workgroup) – Revises UCC Article 9

Revises Uniform Commercial Code Article 9 regarding security interests.

Public Affairs Committee General Guidelines*

The bar is committed to promoting legislation that serves one or more of the following goals:

1. To provide access to justice for all Oregonians, including insuring 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 competently serve the interests of the citizens of the state, and to advise the legislature of problems proposed legislation might present to competent representation.
5. A fair and effective system of crime and punishment.
6. To oppose major new limitations on liability and other so-called “tort reforms”—especially when there is weak justification or demonstrated need.
7. To promote access and decision maker education regarding public records and licensing discipline records.
8. To provide appropriate information and assistance regarding ethical issues to legislators, especially lawyer-legislators.
9. Work to improve the juvenile justice system and have better coordination between the different components of the system.

**Established for 1999 session, and will be updated for 2001.*

OSB Legislative Contacts

Below is a list of bar legislative contacts (current as of 01/05/01). If you have particular questions or comments regarding legislation we encourage you to contact the appropriate person. **Please let us know when a contact assignment changes.**

(* indicates section/committee chair)

Administrative Law	Janice Krem*
Affirmative Action	Hon. Paula Bechtold*, Stella Manabe (OSB)
Agriculture	David Leonard*, Walt Gowell, Larry Rew
Alternative Dispute Resolution	Kris LaMar*, Larry T Coady
Anti-Trust	Gary Grenley*, Darsee R. Staley, Bradley Van Cleve
Appellate Law	Thomas W. Brown*, M. Elizabeth Duncan, Jim Nass
Aviation	Timonthy E Miller*, Rich Vial
Bar Act and Bar Priorities	John Tyner*, Bob Oleson (OSB)
Business Law	Gerry Gaydos*, Andy Morrow
Business Litigation	Dennis Elliott*, Bob McGaughey, Danny Olsen
Civil Rights	Heidi Robinson*, Brian V. Baker
Computer and Internet Law	Donna Jo Coningsby*
Construction Law	David Bartz*, Christopher T. Carson
Consumer Law	Dick Slottee*, Jay Cosgrave
Corporate Counsel	Gregory Baum*, Gary Kerwood, Ellen Bachman
Criminal Law	Tim Sylwester*, Jesse Barton
Debtor/Creditor	Jonathan Cohen*, Tom Stilley, Mark Comstock
Disability Law	Bob Joondeph*
Elder Law	Cinda Conroyd*, Ruth Simonis
Environmental Law	Max Miller*, Brian Chenoweth
Estate Planning	C. Craig Heath*, Ron D. Bailey, Bernie Vail
Family Law	Steve Thomas*, Tammy Dentinger, Shawn O'Neil
Adoption Law Subcommittee	Robin Pope, Sandra Hodgson
Federal Practice & Procedure	Loren W. Collins*
Government Law	Jane Stonecipher*, Mark Pilliod, Dan Olsen
Guardianship & Conservatorship	Rita Cobb
Health Law	Mark Bonanno*, Steve Conklin
Indian Law	Lee Shannon*
Intellectual Properties	Karen Oster*, Owen Dukelow
International Law	Marcy Edwards*, Gregory W. Engrav
Judicial Administration and Funding	Mary Merten James*, Jacques DeKalb
Juvenile Law	Bradley Lechman-Su*, John Richardson
Labor & Employment	Nelson Atkin*, Jeff Chicoine, Harlan Bernstein
Law Practice Management	Stephen Hutchinson*, Robert LeChevallier, Lee Aronson, Candace Haines
Lawyer Referral	Kathleen Cushing*
Legal Ethics	Nancy Cooper*, Sylvia Stevens (OSB)
Legal Services	Tom Matsuda
Litigation	Robert Neuberger*, Greg Mowe, Rich Lane
Pro Bono	David Rees*, Michael Keeney
Professional Liability	Barbara Fishleder, Ira Zarov
Procedure and Practice	Kathleen Dailey*, Jeff Johnson

Product Liability	Linda Eyerman*, Dennis Gerl, Peter Preston
Public Service & Information	Richard Cohn-Lee*, Kay Pulju
Public Utility	Charles Best
Real Estate and Land Use	Pamela Beery*
Real Estate	Craig Chisholm
Land Use	Ken Helm
Securities	David Ludwig*, Dayna Underhill, Michael Zusman
Sole and Small Firm Practitioners	C. Edward Gerdes*
Taxation	Lewis Horowitz*, David Roth, Karey Schoenfeld
Unlawful Practice & Independent Paralegals	Carol Parks*, Cara Lacy
Workers' Compensation	Ronald Bohy*, Christine Jensen
 Law Improvement Questions	 Susan Evans Grabe (OSB)

OTHER INTEREST GROUPS

Access to Justice	Barbara Herget (OSB)
Bar, Press and Broadcasters	Judson Randall*, Brenda Rocklin
Defense of Indigent Accused	Kris Winemiller, Diana Stuart, Jacques DeKalb, Nelson Hall
Election Law	Doug Blomgren, Rich Botteri
Judgeships and Judicial Efficiency	Vern Gleaves
Legal Assistants Council	Roger J. Leo
Medical Profession	Todd McCann*, Robert Bonaparte
New Lawyers Division	Amanda Walkup*, David L. Carlson, Aaron Felton
Uniform State Laws	Oglesby Young, Martha Walters, Joe Willis

Revised 01/05/01

Overview of Lawyer Legislators

While there is a cadre of strong lawyer-legislators currently serving in office, the numbers are small and endangered. Contrary to widely held belief, lawyers make up less than 10 percent of those holding office in Salem.

This is, and should be, an issue of great concern for the bar. Lawyers are uniquely qualified to serve in public office and to make significant contributions to the legal system. A lawyer's education and experience provide the tools to recognize deficiencies in the system and to initiate corrective measures to improve the system. There is also a general ability to craft workable new laws out of legally complicated proposals and to understand the need for an independent judiciary, which is effective.

With "term limits" now in place, all of us should be looking around the state for future candidates. Here are this year's lawyer-legislator candidates:

14 Legislators with Legal Training in the 2001 Session

Kate Brown (D) Senate District 7-Portland
Randy Miller (R) Senate District 13-Lake Oswego, Wilsonville
Peter Courtney (D) Senate District 17-Salem, Keizer
*David Nelson (R) Senate District 29-Pendleton, La Grande
*Elizabeth Johnson (D) House District 1-Astoria
Charlie Ringo (D) House District 6-Beaverton
*Bill Witt (R) House District 7-Portland, Beaverton
Max Williams (R) House District 9-Tigard
Kathy Lowe (D) House District 26-Gladstone, Oregon City
Dan Doyle (R) House District 30-Stayton
Lane Shetterly (R) House District 34-Dallas
Robert L. Ackerman (D) House 39-Eugene
Phil Barnhart (D) House District 40-Eugene
Rob Patridge (R) House District 50-Medford

*** Indicates that the designated people have law degrees, but are not licensed to practice in Oregon.**

Counsel for the Judiciary Committees

Bill Taylor
Marilyn Odell
Andrea Shartel
Craig Prins

2001 Oregon Legislators

HOUSE						
Title	First Name	Last Name	Room #	City, State, Zip	Capitol Phone	District/Party
Rep	Robert	Ackerman	H-374	Salem, OR 97310	503 986-1439	39/D
Rep	Vic	Backlund	H-284	Salem, OR 97310	503 986-1433	33/R
Rep	Phil	Barnhart	H-4770	Salem, OR 97310	503 986-1440	40/D
Rep	Alan	Bates	H-478	Salem, OR 97310	503 986-1452	52/D
Rep	Chris	Beck	H-484	Salem, OR 97310	503 986-1412	12/D
Rep	Jo Ann	Bowman	H-383	Salem, OR 97310	503 986-1419	19/D
Rep	Alan	Brown	H-485	Salem, OR 97310	503 986-1404	4/R
Rep	Tom	Butler	H-289	Salem, OR 97310	503 986-1460	60/R
Rep	Janet	Carlson	H-489	Salem, OR 97310	503 986-1432	32/R
Rep	Betsy	Close	H-493	Salem, OR 97310	503 986-1436	36/R
Rep	Richard	Devlin	H-495	Salem, OR 97310	503 986-1424	24/D
Rep	Dan	Doyle	H-285	Salem, OR 97310	503 986-1430	30/R
Rep	Dan	Gardner	H-395	Salem, OR 97310	503 986-1900	13/D
Rep	Bill	Garrard	H-488	Salem, OR 97310	503 986-1453	53/R
Rep	Gary	Hansen	H-392	Salem, OR 97310	503 986-1417	17/D
Rep	Mark	Hass	H-475	Salem, OR 97310	503 986-1408	8/D
Rep	Cedric	Hayden	H-278	Salem, OR 97310	503 986-1443	43/R
Rep	Jim	Hill	H-283	Salem, OR 97310	503 986-1405	5/R
Rep	Elaine	Hopson	H-376	Salem, OR 97310	503 986-1402	2/D
Rep	Bob	Jenson	H-480	Salem, OR 97310	503 986-1457	57/R
Rep	Betsy	Johnson	H-373	Salem, OR 97310	503 986-1401	1/D
Rep	Deborah	Kafoury	H-473	Salem, OR 97310	503 986-1418	18/D
Rep	Alan	King	H-492	Salem, OR 97310	503 986-1444	44/D
Rep	Tim	Knopp	H-288	Salem, OR 97310	503 986-1454	54/R
Rep	Wayne	Krieger	H-378	Salem, OR 97310	503 986-1448	48/R
Rep	Jeff	Kropf	H-386	Salem, OR 97310	503 986-1437	37/R
Rep	Jerry	Krummel	H-486	Salem, OR 97310	503 986-1427	27/R
Rep	Jeff	Kruse	H-286	Salem, OR 97310	503 986-1445	45/R
Rep	Jan	Lee	H-388	Salem, OR 97310	503 986-1410	10/R
Rep	Randy	Leonard	H-385	Salem, OR 97310	503 986-1421	21/D
Rep	Kathy	Lowe	H-371	Salem, OR 97310	503 986-1426	26/D
Rep	Steve	March	H-384	Salem, OR 97310	503 986-1415	15/D
Rep	Jeff	Merkley	H-490	Salem, OR 97310	503 986-1416	16/D
Rep	Karen	Minnis	H-295	Salem, OR 97310	503 986-1400	20/D
Rep	Laurie	Monnes Anderson	H-390	Salem, OR 97310	503 986-1422	22/D
Rep	Susan	Morgan	H-381	Salem, OR 97310	503 986-1446	46/R
Rep	Bill	Morrisette	H-389	Salem, OR 97310	503 986-1442	42/D
Rep	Donna	Nelson	H-279	Salem, OR 97310	503 986-1429	29/R
Rep	Mary	Nolan	H-375	Salem, OR 97310	503 986-1411	11/D
Rep	Rob	Patridge	H-292	Salem, OR 97310	503 986-1450	50/D
Rep	Charlie	Ringo	H-476	Salem, OR 97310	503 986-1406	6/D
Rep	Diane	Rosenbaum	H-377	Salem, OR 97310	503 986-1414	14/D
Rep	Kurt	Schrader	H-481	Salem, OR 97310	503 986-1423	23/D
Rep	Lane	Shetterly	H-277	Salem, OR 97310	503 986-1434	34/R
Rep	Mark	Simmons	H-269	Salem, OR 97310	503 986-1200	58/R
Rep	Greg	Smith	H-280	Salem, OR 97310	503 986-1459	59/R
Rep	Patti	Smith	H-487	Salem, OR 97310	503 986-1456	56/R
Rep	Tootie	Smith	H-290	Salem, OR 97310	503 986-1428	28/R
Rep	Bruce	Starr	H-380	Salem, OR 97310	503 986-1403	3/R
Rep	Carolyn	Tomei	H-474	Salem, OR 97310	503 986-1425	25/D

2001 Oregon Legislators

Rep	Joanne	Verger	H-372	Salem, OR 97310	503 986-1447	47/D
Rep	Cherryl	Walker	H-472	Salem, OR 97310	503 986-1451	51/R
Rep	Vicki	Walker	H-491	Salem, OR 97310	503 986-1441	41/D
Rep	Ben	Westlund	H-281	Salem, OR 97310	503 986-1455	55/R
Rep	Max	Williams	H-276	Salem, OR 97310	503 986-1409	9/R
Rep	Carl	Wilson	H-496	Salem, OR 97310	503 986-1449	49/R
Rep	Jackie	Winters	H-291	Salem, OR 97310	503 986-1431	31/D
Rep	Kelley	Wirth	H-479	Salem, OR 97310	503 986-1435	35/D
Rep	Bill	Witt	H-287	Salem, OR 97310	503 986-1407	7/R
Rep	Cliff	Zauner	H-391	Salem, OR 97310	503 986-1438	38R

SENATE

Title	First Name	Last Name	Room #	City, State, Zip	Capitol Phone	District/Party
Sen	Jason	Atkinson	S-216	Salem, OR 97310	503 986-1725	25/D
Sen	Lee	Beyer	S-306	Salem, OR 97310	503 986-1721	21D
Sen	Roger	Beyer	S-211	Salem, OR 97310	503 986-1715	15/R
Sen	Kate	Brown	S-323	Salem, OR 97310	503 986-1700	7/D
Sen	Ginny	Burdick	S-317	Salem, OR 97310	503 986-1706	6/D
Sen	Margaret	Carter	S-215	Salem, OR 97310	503 986-1708	8/D
Sen	Susan	Castillo	S-316	Salem, OR 97310	503 986-1720	20/D
Sen	Bev	Clarno	S-210	Salem, OR 97310	503 986-1727	27/R
Sen	Tony	Corcoran	S-305	Salem, OR 97310	503 986-1722	22/D
Sen	Peter	Courtney	S-310	Salem, OR 97310	503 986-1717	17/D
Sen	Ryan	Deckert	S-314	Salem, OR 97310	503 986-1704	4/D
Sen	Gene	Derfler	S-203	Salem, OR 97310	503 986-1600	16/R
Sen	Joanne	Dukes	S-318	Salem, OR 97310	503 986-1701	1/D
Sen	Verne	Duncan	S-219	Salem, OR 97310	503 986-1712	12/R
Sen	Ted	Ferrioli	S-217	Salem, OR 97310	503 986-1728	28/R
Sen	Bill	Fisher	S-209	Salem, OR 97310	503 986-1723	23/R
Sen	Gary	George	S-214	Salem, OR 97310	503 986-1702	2/R
Sen	Avel	Gordly	S-302	Salem, OR 97310	503 986-1710	10/D
Sen	Lenn	Hannon	S-303	Salem, OR 97310	503 986-1726	26/R
Sen	Steve	Harper	S-205	Salem, OR 97310	503 986-1730	30/R
Sen	Tom	Hartung	S-212	Salem, OR 97310	503 986-1703	3/R
Sen	Ken	Messerle	S-218	Salem, OR 97310	503 986-1724	24/R
Sen	Rick	Metsger	S-301	Salem, OR 97310	503 986-1714	14/D
Sen	Randy	Miller	S-206	Salem, OR 97310	503 986-1713	13/D
Sen	John	Minnis	S-311	Salem, OR 97310	503 986-1711	11/R
Sen	David	Nelson	S-223	Salem, OR 97310	503 986-1950	29/R
Sen	Frank	Shields	S-309	Salem, OR 97310	503 986-1709	9/D
Sen	Charles	Starr	S-312	Salem, OR 97310	503 986-1705	5/D
Sen	Cliff	Trow	S-319	Salem, OR 97310	503 986-1718	18/D
Sen	Mae	Yih	S-307	Salem, OR 97310	503 986-1719	19/D

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 one page 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 one page letters are always best. Members of the Legislature receive many letters each day, and a long letter 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 or she will appreciate knowing your views while the bill is before him or her for study and action.
7. A legislator likes to know when he or she has done something of which you approve. Do not hesitate to write a one page letter to your legislator if he or she 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 or she vote for or against a certain bill without providing a reason. 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 or her own locality.
4. Your legislator does not like to be asked to commit to 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. Although term limits may mean that a particular member may no longer be in office, professional legislative staff and “the old guard” of the lobby will be. Be professional, because today’s opponent may be tomorrow’s ally.

Oregon Law on Lobbying, Ethics Generally

Oregon’s government ethics laws regulate the activities of both elected officials and lobbyists. ORS 171.725 et seq regulate and define “lobbying.” Registration is required in certain cases; failure to file may result in a complaint to the Oregon Government Standards and Practices Commission. (See *In Re Mike Scott*). Any attorney who seeks to influence legislation must know when and how to register to avoid the appearance of unethical conduct.

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.

Using the Media

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.

Informational Resources

The Oregon State Bar – Government Relations and Law Improvement
www.osbar.org/programs/lawimprovement

The Oregon Legislature
www.leg.state.or.us

General Information: 503-986-1180 or 1-800-332-2313 (outside Salem)

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Sample Format of Legislative Summary

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.

RE: Legislative Concept

LC # _____

This bill would amend ORS _____.

1. Briefly state the PROBLEM PRESENTED (include ORS or case citation if applicable)
2. Identify the SOLUTION to the problem (include proposed language change)
3. Identify any PUBLIC POLICY IMPLICATIONS (this includes legal, constitutional, financial, and any other issues as well as potential sources of opposition)

Legislative Contact: Name and phone number of summary author

Sample of Legislative Summary

OREGON STATE BAR Legislative Proposal

**RE: Medicaid Payment for Guardianship Fees and Costs Where
Guardianship Required for Medical Treatment**

FROM: OSB – Elder Law

LEGISLATIVE CONTACT:

Name

Phone Number

This bill would amend ORS Chapter 414.

1. PROBLEM PRESENTED

Medicaid pays for most medically necessary expenses for recipients. Medicaid coverage for long-term care allows the state to pay for certain necessary, non-medical expenses for recipient, either directly or by permitting the recipient to deduct payment for such expenses before calculating the amount that the recipient must contribute toward the cost of his/her care. For some individuals in long-term care, a guardianship is needed in order to authorize necessary medical treatment. However, it is often difficult or impossible to pay the costs associated with creating and maintaining a guardianship, because the entire available income of the recipient must be paid toward the cost of medical care.

2. SOLUTION

Legislation should be drafted to permit the costs and fees associated with guardianship to be paid either out of the long-term care Medicaid recipient's income or out of Medicaid funds, where the guardianship is necessary to authorize needed medical treatment.

3. PUBLIC POLICY IMPLICATION

Senior and Disabled Services Division currently will occasionally authorize payment of some of the costs of guardianship for Medicaid recipients. Due to fiscal impact, there may be resistance to creating a systematic right to allow the coverage of such costs. Medicaid programs in other states permit coverage of some or all guardianship costs and fees. The Oregon Medicaid plan may need to be revised to authorize such payment.

\\osb1\public\pubaff\legislative interim\1999-2000\legislative proposals\elder law\summary - medicaid payment for fees when guardianship required.doc

Sample Letter to Legislator

May 6, 1999

Hon. Ryan Deckert
H-478 State Capitol
Salem, OR 97310

Re: SB 50

Dear Representative Decker:

My name is *********. I am chair of the Oregon State Bar's Procedure and Practice Committee. The Committee had proposed SB 50, which, in its original form, was similar to HB 3390, a bill introduced by you.

The original version of SB 50 proposed increasing the limit of ORS 20.080 from \$4,000 to \$7,500. The current version of the bill was amended in the Senate to increase the limit only \$1,000 to \$5,000.

SB 50 is scheduled for a hearing in front of the House Judiciary Committee on Monday, May 10, 1999. At that time we intend to offer an additional amendment increasing the pleading limit to \$7,500. For your information I enclose a letter we have sent to members of the House Judiciary Committee explaining the rationale for our position.

Any support your can give this bill would be greatly appreciated.

Sincerely,

Chair, Procedure & Practice Committee

Ext.347, Fax: (503) 598-6947

Email shankin@osbar.org

SJH:jc
Enclosure

cc: Bob Oleson, Director of Public Affairs

Sample Legislation

70th OREGON LEGISLATIVE ASSEMBLY--1999 Regular Session

Senate Bill 47

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate 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 expert witness to be questioned concerning statements contained in certain treatises, periodicals and pamphlets if treatise, periodical or pamphlet is established as reliable authority. Specifies that such statements may be used for purposes of impeachment but may not be introduced as evidence.

A BILL FOR AN ACT

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Relating to expert witnesses.

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

SECTION 1. Section 2 of this 1999 Act is added to and made a part of ORS 40.310 to 40.585.

SECTION 2. Upon cross-examination, an expert witness may be questioned concerning statements contained in a published treatise, periodical or pamphlet on a subject of history, medicine or other science or art if the treatise, periodical or pamphlet is established as a reliable authority. A treatise, periodical or pamphlet may be established as a reliable authority by the testimony or admission of the witness, by other expert testimony or by judicial notice. Statements contained in a treatise, periodical or pamphlet established as a reliable authority may be used for purposes of impeachment but may not be introduced as evidence.

SECTION 3. Section 2 of this 1999 Act applies only to trials commenced on or after the effective date of this 1999 Act.

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

LC 1181

Sample of Legislative Testimony

TESTIMONY IN FRONT OF HOUSE JUDICIARY COMMITTEE ON
MAY 10, 1999 IN FAVOR OF
SB 50 REGARDING AMENDING ORS 20.080

My name is Greg Mowe. Sitting beside me is Stacy Hankin. We are both attorneys practicing in the Portland area. I am secretary of the Oregon State Bar's Procedure and Practice Committee, while Ms. Hankin is chair of that Committee.

The Procedure and Practice Committee is composed of attorneys throughout the state. The committee is evenly balanced between attorney who primarily represent defendants and those who primarily represent plaintiffs in civil litigation. Members of the committee use their experience and knowledge to enhance the effectiveness of the civil justice system and not on behalf of particular clients or particular causes. It is in this context that the Committee proposed SB 50.

ORS 20.080 currently provides for an award of attorney fees in actions for personal injury or property damage where the amount plead is \$4,000 or less. In order to collect any attorney fees at all the plaintiff must prevail in the action and must be awarded more than what the defendant offered prior to the filing of the lawsuit. The statute provides for an award of attorney fees to a defendant in such an action where the defendant prevails on a counterclaim of \$4,000 or less.

In its current form ORS 20.080 was first enacted in 1955. At that time the pleading limit was \$1,000. The law was intended to balance the rights and duties of parties in small claims. On the one hand, the statute was intended to prevent defendants from refusing to settle and pay just, but small, claims, inasmuch as it would be difficult for a plaintiff to find an attorney to pursue such a claim. On the other hand, the pleading amount was kept low as a warning to plaintiffs not to inflate small claims beyond just amounts in order that the defendant may in good faith settle these claims without resorting to the court system.

The original version of SB 50 would have increased the pleading limit to \$7,500 for both defendants and plaintiffs. On the Senate side the bill was amended at the request of other interested parties to increase the pleading limit only \$1,000 to \$5,000. That is the bill before your Committee.

The Procedure and Practice Committee believes that \$7,500 is still the most appropriate increase because it represents a compromise between all of the competing interests. We therefore offer an amendment to SB 50 to increase the pleading amounts for both plaintiffs and defendants from \$5,000 to \$7,500.

The basis for our amendment is three-fold. First, according to national statistics for the insurance industry, for those claim under \$50,000, the average property claim has increased

Sample of Legislative Testimony

almost 58% since 1985, the last time the pleading limit was raised, from \$1,100 to \$1,900, while the average person injury claim has increased over 56%, from \$4,000 to \$7,043. Second, all of the judges who provided us with input on this issue recommended an increase in the pleading limit. Many of them identified \$10,000 as an appropriate amount. Finally, we consulted with an economist who told us that since 1985 the average rate of inflation was 3%. However, he also told us that using 3% as a baseline does not take into account the fact that medical expenses increase at a greater rate than normal inflation. Based upon all of this information, increasing the pleading limit to \$7,500 would appropriately balance all the competing interests.

We anticipate that increasing the pleading limit to \$7,500 would actually reduce litigation costs. At least one carrier has indicated that by raising the pleading limit to \$7,500 more than 50% of their claims could be subject to ORS 20.080. Currently, very few ORS 20.080 cases go to trial now. By increasing the percentage of cases potentially subject to ORS 20.080, litigation costs would go down as more cases would resolve before trial and potentially before even entering the court system.

The pleading limit in ORS 20.080 has not been increased since 1985. Over the past thirteen years actual claim costs, inflation and other economic realities have tipped the balance away from individuals with small, but meritorious, claims. Increasing the pleading limit to \$7,500 will restore that balance. The Procedure and Practice Committee believes that with this increase defendants and plaintiffs in these cases will be more motivated to fairly evaluate and amicably resolve claims without litigation.

Sample of Legislative Thank You Letter

PACTRUST
Pacific Realty Associates, L.P.

15350 S.W. Sequoia Pkwy., Suite 300
Portland, Oregon 97224
503/624-6300 • Facsimile: 503/624-7755

June 12, 1997

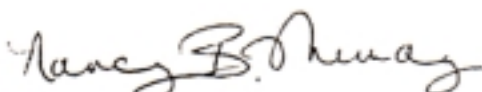
The Honorable Randy Miller
Chair, Senate Rules and Elections Committee
State Capitol - S-211
Salem, OR 97310

Re: HB 2255 and HB 2259
Concerning Real Estate Leases

Dear Chairman Miller:

Thank you and Vice-Chair Derfler for holding a hearing today on HB 2255 and HB 2259, sponsored by the Oregon State Bar's Real Estate Section, and for your support of the bills. We believe these two bills will work to the benefit of Oregon business interests, and we appreciate your time and continued support.

Sincerely,



Nancy B. Murray
Co-Chair, Oregon State Bar
Real Estate Legislative Committee

cc: Vice-Chair Eugene Derfler
Eugene A. Frassetto
Susan Grabe
Bob Oleson

Oregon Lobbying Statute*

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

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) "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.
- (2) "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.
- (3) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee thereof. A member of a state board or commission, other than a member who is employed in full-time public service, shall not be considered an executive official for purposes of ORS 171.725 to 171.785.
- (4) "Judge" means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.
- (5) "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.
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "Public agency" means a commission, board, agency or other governmental body.
- (10) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee thereof. [1973 c.802 s.2; 1975 c.747 s.1; 1977 c.588 s.1; 1987 c.566 s.1; 1991 c.378 s.1]

171.730 Lobbying regulation purpose. The Legislative Assembly finds 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. [1973 c.802 s.1]

171.735 Application of ORS 171.740 and 171.745 to certain persons. Provided such persons are not registered with the Oregon Government Standards and Practices Commission, ORS 171.740 and 171.745 do not apply to the following persons:

- (1) News media or their employees or agents, who in the ordinary course of business publish or broadcast news items, editorials or other comments or paid advertisements which directly or indirectly urge legislative action if such persons engage in no other activities in connection with such legislative action.
- (2) Any legislative official acting in an official capacity.
- (3) Any individual who receives no additional consideration 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. Once either the \$100 or 24-hour amount is exceeded by an individual or by a corporation, association, organization or other group, the individual, corporation, association, organization or other group must comply with the requirements of ORS 171.740 to 171.756 and must register with the Oregon Government Standards and Practices Commission under ORS 171.740 within three working days after exceeding either the expenditure or the time limit, or both.
- (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. [1973 c.802 s.3; 1974 c.72 s.27; 1975 c.747 s.2; 1977 c.588 s.1a; 1979 c.666 s.1; 1981 c.528 s.1; 1987 c.566 s.2; 1991 c.378 s.2; 1993 c.714 s.1]

171.740 Lobbyists required to register; contents of statement. (1) Within three working days after exceeding the limit of time or expenditure specified in ORS 171.735 (4), each lobbyist or public agency shall register with the Oregon Government Standards and Practices Commission by filing with the commission a statement containing the following information:

- (a) The name and address of the lobbyist.
 - (b) The name and address of each person or agency by whom the lobbyist is employed or in whose interest the lobbyist appears or works, a description of the trade, business, profession or area of endeavor of that person or agency, and a designation by each such person or agency that the lobbyist is officially authorized to lobby for that person or agency.
 - (c) The name of any member of the Legislative Assembly who is in any way employed by the lobbyist employer designated in paragraph (b) of this subsection or who is employed by the lobbyist or whether the lobbyist and member are associated with the same business, as defined in ORS 244.020. However, ownership of stock in a publicly traded corporation in which a member of the Legislative Assembly also owns stock is not a relationship which need be stated.
 - (d) The general subject or subjects of the legislative interest of the lobbyist.
- (2) The designation of official authorization to lobby shall be signed by an officer of each such public agency, corporation, association, organization or other group or by each individual by whom the lobbyist is employed or in whose interest the lobbyist appears or works.
- (3) A lobbyist shall notify the Oregon Government Standards and Practices Commission of a change of address of the lobbyist or the person or agency by whom the lobbyist is employed within 30 days of the change.

(4) A lobbyist must revise the statements required by subsection (1) of this section, if any of the information contained therein changes. Revised statements shall be filed within 30 days of the change.

(5) A lobbyist registration expires two years after the date of filing or refiling and must be renewed by application accompanied by the fees described in ORS 171.743. [1973 c.802 s.4; 1974 c.72 s.28; 1975 c.747 s.3; 1987 c.566 s.3; 1993 c.714 s.2]

171.743 Lobbyist registration fee; use. (1) The Oregon Government Standards and Practices Commission shall impose and collect the following lobbyist registration fees:

(a) For each person described in ORS 171.725 (8) and registered with the commission, \$50.

(b) Notwithstanding paragraph (a) of this subsection, for each person described in ORS 171.725 (8)(b) and registered with the commission and who is not compensated for the person's services as a representative of a corporation, association, organization or other group, \$0.

(2) Fees are nonrefundable.

(3) All moneys received by the commission under this section shall be paid into the General Fund in the State Treasury to the credit of the commission. Such moneys are continuously appropriated and shall be used only for the administration and enforcement of the powers and duties of the commission. [1993 c.714 s.3]

Note: 171.743 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 171 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

171.745 Statements of lobbying expenses required; contents; time of filing. (1) Any lobbyist who engages in any lobbying activities shall file with the Oregon Government Standards and Practices Commission, 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, a statement showing:

(a) The total amount of all moneys expended by the lobbyist for the purpose of lobbying in the preceding reporting period, 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; and

(D) Miscellaneous; and

(b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure in excess of \$25 is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure.

(2) Beginning on July 1, 1979, the dollar amount specified in subsection (1)(b) of this section shall be adjusted annually by the commission based upon the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest dollar.

(3) 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 thereof shall be submitted in the statement and designated as such. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.

(4) Notwithstanding ORS 171.735, 171.740 and subsections (1) to (3) of this section, no registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization, shall be required to register as a lobbyist for such organization so long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735 (4).

(5) A statement required by this section shall include a copy of any notice provided to a public official under ORS 244.100 (3). [1973 c.802 s.5; 1974 c.72 s.29; 1975 c.747 s.4; 1979 c.666 s.2; 1987 c.158 s.32; 1987 c.566 s.4; 1991 c.354 s.1; 1991 c.677 s.2; 1993 c.743 s.4]

171.750 Employers of lobbyists required to file expense statements; annual revision of base amount. (1) Any person or public agency which employs a lobbyist who was registered, or who was required to register with the Oregon Government Standards and Practices Commission at any time during the preceding calendar year, shall file with the Oregon Government Standards and Practices Commission, by January 31st of each year, a statement showing, for the preceding calendar year:

(a) 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.

(b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure in excess of \$25 for the purpose of lobbying is made by the employer, but not including information previously reported in compliance with ORS 171.745, and the date, name of payee, purpose and amount of that expenditure.

(2) Using July 1, 1979, as the base, the dollar amount specified in subsection (1)(b) of this section shall be adjusted annually by the commission based upon the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor, or its successor, during the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest dollar.

(3) 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 (3). [1973 c.802 s.6; 1975 c.747 s.5; 1979 c.666 s.3; 1987 c.566 s.5; 1991 c.677 s.3]

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

171.756 Prohibited conduct. (1) No lobbyist shall instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition thereto.

(2) No lobbyist shall 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) No person shall lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity.

(4) No legislative or executive official shall receive consideration other than from the State of Oregon for acting as a lobbyist. [1973 c.802 s.7; 1974 c.72 s.30; 1975 c.747 s.6; 1987 c.566 s.6; 1989 c.340 s.1; 1993 c.743 s.5]

171.760 [1965 c.488 s.4; repealed by 1973 c.802 s.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 s.8; 1979 c.666 s.4]

171.764 False statement or misrepresentation by lobbyist or public official prohibited; 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 s.6]

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

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

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

171.772 Commission to prescribe forms, accept voluntary filings and provide public access to filed information. In carrying out the provisions of ORS 171.725 to 171.785, the Oregon Government Standards and Practices Commission shall:

(1) Prescribe forms for registrations, statements and reports required to be filed by ORS 171.725 to 171.785, and provide such forms to persons required to register and to file such statements and reports;

(2) Accept and file any information voluntarily supplied that exceeds the requirements of ORS 171.725 to 171.785; and

(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. [1973 c.802 s.10; 1983 c.740 s.39]

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

171.776 Commission's duties; advisory opinions; status of opinions. (1) In addition to the duties prescribed in ORS 171.772, the Oregon Government Standards and Practices 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 s.11; 1983 c.740 s.40; 1993 c.743 s.7]

171.778 Investigation and review of complaints of violations of ORS 171.725 to 171.785; procedure; confidentiality; order; court review.

(1) Upon its own instigation or signed complaint of any person, the Oregon Government Standards and Practices Commission may undertake action in the Preliminary Review Phase with respect to any alleged violation of ORS 171.725 to 171.785. The person who is the subject of a complaint or of the commission's own action shall be notified immediately upon receipt of the complaint or upon adoption of a motion by the commission to undertake any action concerning the person. The notice shall be given by telephone if the person can be reached and a notice shall also be mailed to the person. The notice shall include the nature of the complaint or motion and a copy of all materials submitted along with the complaint or materials which give rise to the commission's instigation of action on its own motion. However, the person must also be notified in advance if an issue that may give rise to a motion to undertake action on the commission's own instigation is to be discussed at a commission meeting. Before investigating any complaint or undertaking an investigation on its own instigation, the commission shall make a finding that there is cause to undertake an investigation, notify the person who is the subject of the investigation, identify the issues to be examined and shall confine its investigation to those issues. If the commission finds reason to expand its investigation, it shall move to do so and shall record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant and the person who is the subject of the complaint of the expansion and the scope thereof. If the commission does not make a finding of cause, it shall dismiss the complaint or rescind its motion and shall formally enter the dismissal or rescission on its records. The commission shall notify the person of the dismissal or rescission. After dismissal or rescission, the commission shall take no further action involving the person unless a new and different complaint is filed or action at its own instigation is undertaken based on different conduct.

(2) The commission may:

(a) During the Preliminary Review Phase, 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; and

(b) During the Investigatory Phase, require 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 section or refuses to testify on any matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440 shall be followed to compel compliance.

- (3) The person conducting any inquiry or investigation shall do so in an impartial, objective manner. All favorable and unfavorable information collected by the investigator shall be turned over to the commission.
- (4) The findings of the commission in any inquiry or investigation shall be reported impartially, including both favorable and unfavorable findings, and shall be made available to the person who is the subject thereof and to any employer of the person.
- (5) Hearings relating to any charge of alleged violation of ORS 171.725 to 171.785 may be held before the commission or before a hearing officer assigned from the Hearing Officer Panel established under section 3, chapter 849, Oregon Laws 1999. The procedure shall be that for a contested case under ORS 183.310 to 183.550.
- (6)(a) The period of time from the filing of a complaint or from acting on the commission's own instigation to the finding of cause or dismissal of the complaint or rescission of the motion shall be termed the Preliminary Review Phase and shall not exceed 90 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) The Preliminary Review Phase shall be confidential. Commission members and staff may acknowledge receipt of a complaint but shall make no 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.
- (c) The commission's deliberations of a case at the conclusion of the Preliminary Review Phase shall be conducted in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause, 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.
- (d) 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.
- (7)(a) The period of time from the finding of cause to the beginning of any contested case proceedings shall be termed the Investigatory Phase and shall not exceed 120 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) 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.
- (c) At the end of the Investigatory Phase, the commission shall take action by order, which action may include:
- (A) Dismissal, with or without comment;
- (B) Continuation of the investigation to determine further facts, but no more than one continuation, not to exceed 30 days' duration, shall be taken;
- (C) Moving to a contested case proceeding;
- (D) Seeking a negotiated settlement; or

(E) Taking other appropriate action if justified by the findings.

(8) If, at the end of the Investigatory Phase, the commission takes action by order to move to a contested case proceeding, a person may notify the commission that the person elects to have the commission file a lawsuit against the person in the Marion County Circuit Court in lieu of the contested case proceeding. The court may impose the penalty described in ORS 171.992. The person shall notify the commission of the election in writing no later than 21 days after receiving notification of the commission's action by order to move to the contested case proceeding. The commission shall file suit within 30 days after receiving notice that the person has elected the lawsuit procedure.

(9) The commission shall not inquire into or investigate any complaint or act at its own instigation on alleged conduct that occurred more than four years before the complaint is filed or action is undertaken.

(10) Nothing in this section is intended to prevent the commission and the person alleged to have violated 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 accordingly.

(11) As used in this section, "cause" and "pending" have the meanings given those terms in ORS 244.260. [1993 c.743 s.2; 1993 c.747 s.1; 1999 c.849 s.48]

Note: The amendments to 171.778 by section 49, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 50, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

171.778. (1) Upon its own instigation or signed complaint of any person, the Oregon Government Standards and Practices Commission may undertake action in the Preliminary Review Phase with respect to any alleged violation of ORS 171.725 to 171.785. The person who is the subject of a complaint or of the commission's own action shall be notified immediately upon receipt of the complaint or upon adoption of a motion by the commission to undertake any action concerning the person. The notice shall be given by telephone if the person can be reached and a notice shall also be mailed to the person. The notice shall include the nature of the complaint or motion and a copy of all materials submitted along with the complaint or materials which give rise to the commission's instigation of action on its own motion. However, the person must also be notified in advance if an issue that may give rise to a motion to undertake action on the commission's own instigation is to be discussed at a commission meeting. Before investigating any complaint or undertaking an investigation on its own instigation, the commission shall make a finding that there is cause to undertake an investigation, notify the person who is the subject of the investigation, identify the issues to be examined and shall confine its investigation to those issues. If the commission finds reason to expand its investigation, it shall move to do so and shall record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant and the person who is the subject of the complaint of the expansion and the scope thereof. If the commission does not make a finding of cause, it shall dismiss the complaint or rescind its motion and shall formally enter the dismissal or rescission on its records. The commission shall notify the person of the dismissal or rescission. After dismissal or rescission, the commission shall take no further action involving the person unless a new and different complaint is filed or action at its own instigation is undertaken based on different conduct.

(2) The commission may:

(a) During the Preliminary Review Phase, 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; and

(b) During the Investigatory Phase, require 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 section or refuses to testify on any matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440 shall be followed to compel compliance.

- (3) The person conducting any inquiry or investigation shall do so in an impartial, objective manner. All favorable and unfavorable information collected by the investigator shall be turned over to the commission.
- (4) The findings of the commission in any inquiry or investigation shall be reported impartially, including both favorable and unfavorable findings, and shall be made available to the person who is the subject thereof and to any employer of the person.
- (5) Hearings relating to any charge of alleged violation of ORS 171.725 to 171.785 may be held before the commission or before a hearing officer appointed by the commission. The procedure shall be that for a contested case under ORS 183.310 to 183.550.
- (6)(a) The period of time from the filing of a complaint or from acting on the commission's own instigation to the finding of cause or dismissal of the complaint or rescission of the motion shall be termed the Preliminary Review Phase and shall not exceed 90 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) The Preliminary Review Phase shall be confidential. Commission members and staff may acknowledge receipt of a complaint but shall make no 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.
- (c) The commission's deliberations of a case at the conclusion of the Preliminary Review Phase shall be conducted in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause, 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.
- (d) 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.
- (7)(a) The period of time from the finding of cause to the beginning of any contested case proceedings shall be termed the Investigatory Phase and shall not exceed 120 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) 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.
- (c) At the end of the Investigatory Phase, the commission shall take action by order, which action may include:
- (A) Dismissal, with or without comment;
- (B) Continuation of the investigation to determine further facts, but no more than one continuation, not to exceed 30 days' duration, shall be taken;
- (C) Moving to a contested case proceeding;
- (D) Seeking a negotiated settlement; or

- (E) Taking other appropriate action if justified by the findings.
- (8) If, at the end of the Investigatory Phase, the commission takes action by order to move to a contested case proceeding, a person may notify the commission that the person elects to have the commission file a lawsuit against the person in the Marion County Circuit Court in lieu of the contested case proceeding. The court may impose the penalty described in ORS 171.992. The person shall notify the commission of the election in writing no later than 21 days after receiving notification of the commission's action by order to move to the contested case proceeding. The commission shall file suit within 30 days after receiving notice that the person has elected the lawsuit procedure.
- (9) The commission shall not inquire into or investigate any complaint or act at its own instigation on alleged conduct that occurred more than four years before the complaint is filed or action is undertaken.
- (10) Nothing in this section is intended to prevent the commission and the person alleged to have violated 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 accordingly.
- (11) As used in this section, "cause" and "pending" have the meanings given those terms in ORS 244.260.

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

171.785 Sanctions to be 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 s.12]

CONTACT WITH LEGISLATIVE ASSEMBLY *

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

171.790 Local government officials and employees authorized to contact Legislative Assembly. 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 Standards and Practices 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 s.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 and 183.365 may be cited as the Oregon Public Access Act. [1995 c.614 ss.1,2]

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.

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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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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.

Immunity for Lawyer-Legislators

DR 8-101* Action as a Public Official

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

(A) A lawyer who holds public office shall 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 of a client.
- (3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (4) Either while in office or after leaving office use confidential government information obtained while a public official to represent a private client.
 - (a) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which at the time the information is used the government is prohibited by law from disclosing to the public or has legal privilege not to disclose and which is not otherwise available to the public.

(B) The foregoing provisions of DR 8-101(A) do not preclude a lawyer from acting under a law which specifically authorizes the performance of a governmental function, despite a conflict of interest, if the lawyer complies with all requirements of such law.

(C) Notwithstanding the provisions of DR 8-101(A) or any other disciplinary rule, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article 1, section 6, of the United States Constitution, a lawyer-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.

Background*

The following information is an excerpt from the 1997 HOD Agenda.

Disciplinary Rule 8-101 prohibits a lawyer who holds public office from engaging in certain conduct. Article IV, section 9, of the Oregon Constitution, states, in pertinent part, "Nor shall a member for words uttered in debate in either house be questioned in any other place." The United States Constitution, Article 1, section 6, has a similar provision for the protection of members of Congress. These provisions protect legislators from harassment and intimidation. [Originally], DR 8-101 [did] not recognize either constitutional provision.

The doctrine of legislative immunity has its origins in the struggle between the English Crown and Parliament more than 500 years ago. In 1689, following the "Glorious Revolution," the legislative immunity that the members of Parliament had fought so hard to achieve was codified in the English Bill of Rights as:

That the Freedom of Speech, and Debates or proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament (quoted in *Tenny v. Brandhove*, 341 U.S. 367, 372 (1951)).

By the time of the American Revolution, the doctrine of legislative immunity involving speech or debate was such an integral part of legislative government that the Constitutional Convention adopted Article 1, section 6 without comment, debate or opposition. (Quoted in *Powell v. McCormack*, 395 U.S. 486, 502 (1969).) The Oregon Constitutional Convention of 1857 adopted Section 9, Article IV of the Oregon Constitution with very little debate

and with no known opposition. (Carey, *The Oregon Constitution and Proceedings and Debates of the Constitutional Convention of 1857*, Salem, Oregon (1926).)

Within the last several years, two complaints have been filed with the Oregon State Bar against lawyer-legislators. Although the lawyer-legislators against whom the complaints were filed were ultimately found not to have violated the Code of Professional Responsibility, in the process of reviewing one of the complaints, the Oregon State Bar reviewed how a legislator voted and what a legislator said on the floor of the respective chamber. This type of inquiry has a chilling effect on the legislative process, an effect that the foregoing provisions of the United States and Oregon Constitutions are intended to prevent.

[The] resolution [relating to DR 8-101(C)] is intended to ensure that a lawyer-legislator shall not be subject to discipline or even questioned for constitutionally protected legislative activity in an Oregon State Bar proceeding. [The] resolution [relating to DR 8-101(C)] is intended to protect activity that is not constitutionally protected, such as bribery. Nor would it prohibit the Oregon State Bar from determining if in fact the activity in question is constitutionally protected legislative activity.

MCLE Credits for Lawyer-Legislators*

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

OSB MCLE Rules and Regulations

RULE 5 — ACCREDITATION STANDARDS

5.2(f) 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.

Lawyers in the Legislative Process

The Ethics of Legislative Law Making and Influencing Public Policy

American Bar Association Ethical Considerations*, Canon 8, provides:

“A Lawyer Should Assist in Improving the Legal System”

** At the time of this handbook's publication, Oregon has not adopted the ABA Ethical Considerations into the Code of Professional Responsibility.*

EC8-1

“***By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.”

EC8-4

“Whenever a lawyer seeks legislative or administrative changes, he [or she] should identify the capacity in which he [or she] appears, whether on behalf of himself [or herself], a client, or the public. A lawyer may advocate such changes on behalf of a client even though he [or she] does not agree with them. But when a lawyer purports to act on behalf of the public, he [or she] should espouse those changes which he [or she] consistently believes to be in the public interest.”

EC8-8

“Lawyers often serve as legislators or as holder of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his [or her] personal or professional interests are or foreseeably may be in conflict with his [or her] official duties.”

EC8-9

“The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.”

How An Idea Becomes LAW

A Simple Version of the Oregon Legislative Process

