

SDAO Legislative Committee Meeting
March 17, 2009 | 10:30 am to 1:00 pm
SDAO Main Office Conference Room | Salem

Agenda

1. Introductions - Todd Heidgerken
2. SDAO Priority Legislation
 - A. Recreational Immunity (HB 2879) - Mark Landauer
 - B. Multi-Purpose Service District (HB 2520) - Kelly Ross
 - C. Election Costs (HB 3107) - Mark Landauer
 - D. Cancer Presumption (HB 2420) - Hasina Squires
 - E. Enterprise Zones - Hasina Squires
 - F. Oregon Tort Cap (SB 311) - Hasina Squires
3. Finance and Taxation
 - A. Urban Renewal – (HB 2615, 2642, 2643, 2809, 3056, 3147, 3356, 3448, SB 439, 642, 744, 879) - Mark Landauer
 - B. HB 3057- Educational Development Zones - Hasina Squires
 - C. HB 2912 - Transmission Exemption - Hasina Squires
 - D. HB 2561 - Willamalane Fix - Hasina Squires
 - E. SB 726 - Tribe EZones - Hasina Squires
4. Public Contracting (HB 2037, 2867, 2731) - Mark Landauer
5. SDCs (HB 2865) - Mark Landauer
6. Storm Water (HB 3454) - Mark Landauer
7. Labor
 - A. HB 2831 - Collective Bargaining - Hasina Squires
 - B. HB 2975 - 1039 PERS Exemption - Hasina Squires
 - C. Medical Marijuana (HB 2497, 2503, 2881, 3052, 3274) - Mark Landauer
8. Land Use
 - A. HB 3153 - Prohibits Utility Facilities on EFU Lands - Kelly Ross
 - B. HB 3306 - Prohibits Parks on EFU Lands - Kelly Ross

9. Ethics - Genoa Ingram

- A. SB 30
- B. SB 938

10. Public Safety - Genoa Ingram

- A. SB 935 - First Responder Mapping
- B. HB 2183 - Field Burning
- C. HB 2460 - Tax Credits for EMT's
- D. HB 2950 - OSFM Building Code Limit
- E. HB 3136 - Towing Liability
- F. SB 581 & SB 5552- 911 - Hasina Squires

11. Budget Reduction Instructions for 09-11 - Mark Landauer

12. Other

13. Adjournment

HB 2520 – Conceptual Amendments
March 9, 2009

1. Instead of using Chapter 451 to authorize a multi-service district with an elected Board, use Chapter 198 to authorize a new type of special district that may provide no more than three types of service subject to the limitations in Section 2, subsection (1)(a)-(c) of the existing bill and #3 below.
2. Use same formation requirements in 198.805.
3. Add requirements that:
 - a. All existing cities and districts within one mile of proposed district shall be notified of petition for formation.
 - b. Proposed district may not duplicate service provided by an adjacent city or district without consent of that city or district.
 - c. For a proposed district within an acknowledged urban growth boundary, there must be urban service agreements with all adjacent cities and districts prior to providing service.

House Bill 3107

Sponsored by Representative ROBLAN (at the request of Special Districts Association of Oregon)

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**.

Exempts district from paying expenses for district election held on same date as date of primary or general election.

A BILL FOR AN ACT

1
2 Relating to elections; amending ORS 255.305.

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

4 **SECTION 1.** ORS 255.305 is amended to read:

5 255.305. (1) Except as otherwise provided by ORS 198.775, 261.210, 568.542 and 607.025, the ex-
6 penses incurred for a district election **held on a date other than the date of a primary or gen-**
7 **eral election** shall be paid by that district.

8 (2) When two or more districts hold an election on the same day, the expenses of the election
9 shall be equitably apportioned among the districts.

10 (3) The Secretary of State by rule:

11 (a) May designate a formula for the apportionment of expenses under subsection (2) of this sec-
12 tion; and

13 (b) Designate categories of election expenses that are chargeable to a district.
14

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.

House Bill 3057

Sponsored by Representative READ; Representatives BENTZ, CANNON, CLEM, FREEMAN, GARRARD, HUFFMAN, JENSON, SHIELDS

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.

Authorizes counties to designate educational development zones in which graduates of Oregon post-secondary institutions may defer payment of property taxes on newly purchased homes.

Directs Director of Economic and Community Development Department to adopt rules directing counties in designating zones and establishing criteria for eligibility.

Directs Director of Department of Revenue to adopt rules establishing terms of and procedures for claiming tax deferral.

Applies to tax years beginning on or after July 1, 2010.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1 Relating to property tax deferral; and prescribing an effective date.

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

3 **SECTION 1. (1) A county may designate educational development zones in which a grad-**
4 **uate of a post-secondary institution located in Oregon may defer payment of property taxes**
5 **on a principal residence purchased on or after the effective date of this 2009 Act.**

6
7 **(2) The Director of the Economic and Community Development Department shall adopt**
8 **rules pursuant to which a county may designate an educational development zone and es-**
9 **tablish the criteria for eligibility for tax deferral under subsection (1) of this section.**

10 **(3) The Director of the Department of Revenue shall adopt rules establishing the terms**
11 **of and the procedures for claiming a tax deferral under subsection (1) of this section.**

12 **SECTION 2. The tax deferral allowed under section 1 of this 2009 Act applies to tax years**
13 **beginning on or after July 1, 2010.**

14 **SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the reg-**
15 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

16

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.

House Bill 2912

Sponsored by COMMITTEE ON REVENUE

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**.

Exempts from taxation property leased to United States in connection with electric transmission in Pacific Northwest.

Applies to tax years beginning on or after July 1, 2008.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of the property of the United States; creating new provisions; amending ORS
3 307.040; and prescribing an effective date.

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

5 **SECTION 1.** ORS 307.040 is amended to read:

6 307.040. (1) **As used in this section, "United States" means the federal government or an**
7 **agency or instrumentality of the federal government.**

8 (2) Except as provided in ORS 307.050, 307.060, 307.070 and 307.080, all property of the United
9 States[, *its agencies or instrumentalities,*] is exempt from taxation to the extent that taxation thereof
10 is forbidden by law.

11 (3) **For purposes of this section, property, the title to which is held by a nongovernmental**
12 **entity, is property of the United States if:**

13 (a) **The property is used in furtherance of a statutory responsibility of the United States**
14 **with respect to a high-voltage electric transmission system that the United States owns and**
15 **operates within the Pacific Northwest;**

16 (b) **The property is constructed on or affixed to real property interests of the United**
17 **States; and**

18 (c) **The United States has the option upon expiration of the lease either to purchase the**
19 **property or renew the lease for a nominal price, and, in the event it does not exercise the**
20 **option, the United States is obligated to remove the property from the site.**

21 **SECTION 2.** The amendments to ORS 307.040 by section 1 of this 2009 Act apply to tax
22 years beginning on or after July 1, 2008.

23 **SECTION 3.** This 2009 Act takes effect on the 91st day after the date on which the reg-
24 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.

25

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.

House Bill 2561

Sponsored by Representative BEYER; Senator MORRISETTE (at the request of Willamalane Park and Recreation District and Lane Transit District)

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.

Permits public bodies leasing land from other exempt public bodies to file claim for property tax exemption for prior tax years by April 1, 2010.

Applies to property tax years beginning on or after July 1, 2002, and on or before July 1, 2008. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to late applications for exemption from property tax; and prescribing an effective date.

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

4 **SECTION 1.** (1) For purposes of this section, "public body lessee" means a public body
5 that leases or subleases property from another public body.

6 (2) Notwithstanding the time periods set forth in ORS 307.166, a public body lessee qual-
7 ifying for exemption from property taxation under ORS 307.166 may file a claim in writing
8 with the county assessor, on forms supplied by the assessor, by April 1, 2010. The claim must
9 contain the information and verification required under ORS 307.166. A claim for exemption
10 for multiple tax years must specify the tax years for which the public body lessee claims the
11 exemption.

12 (3) If taxes on the exempt value have been paid, the taxes shall be refunded in the man-
13 ner prescribed in subsection (4) of this section. If taxes on the exempt value have not been
14 paid, the taxes and any interest thereon shall be abated.

15 (4) The tax collector shall notify the governing body of the county of any refund required
16 under this section. Upon receipt of notice from the tax collector, the governing body shall
17 cause a refund of the taxes and any interest paid to be made from the refund reserve ac-
18 count, if the county has established a refund reserve account under ORS 311.807, or from the
19 unsegregated tax collections account described in ORS 311.385. The refund under this sub-
20 section shall be made without interest. The county assessor and tax collector shall make the
21 necessary corrections in the records of their offices.

22 **SECTION 2.** Section 1 of this 2009 Act applies to property tax years beginning on or after
23 July 1, 2002, and on or before July 1, 2008.

24 **SECTION 3.** This 2009 Act takes effect on the 91st day after the date on which the reg-
25 ular session of the Seventy-fifth Legislative Assembly adjourns sine die.
26

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Senate Bill 726

Sponsored by Senator FERRIOLI; Senators ATKINSON, BOQUIST, DEVLIN, KRUSE, TELFER, VERGER, Representatives BERGER, FREEMAN, HUFFMAN, JENSON, KAHL, RILEY, ROBLAN, G SMITH, WHISNANT

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.

Authorizes certain Indian tribes to request Economic and Community Development Department to designate reservation trust land zones.

Authorizes certain Indian tribes to cosponsor reservation partnership zones.

Makes exemptions and tax credits that are available in connection with enterprise zones available in connection with reservation enterprise zones.

Eliminates median income and unemployment rate requirements for reservation enterprise zones.

A BILL FOR AN ACT

1
2 Relating to reservation enterprise zones; creating new provisions; and amending ORS 285C.306 and
3 285C.320.

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

5 **SECTION 1.** ORS 285C.306 is amended to read:

6 285C.306. *[(1) Trust land of an Indian tribe that meets all of the following requirements is design-*
7 *ated as a reservation enterprise zone for the purposes of ORS 285C.300 to 285C.320:]*

8 **(1) As used in this section, "eligible Indian tribe" means each of the Burns Paiute Tribe,**
9 **the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated**
10 **Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians**
11 **of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated**
12 **Tribes of Warm Springs, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of**
13 **Indians and the Klamath Tribes, as long as each remains a federally recognized Indian tribe.**

14 **(2)(a) The government of an eligible Indian tribe may request the Economic and Com-**
15 **munity Development Department to designate one reservation trust land zone. The reserva-**
16 **tion trust land zone may cover an area of no more than 12 square miles, which does not have**
17 **to be contiguous.**

18 *[(a) The Indian tribe is a federally recognized Indian tribe;]*

19 *[(b) The reservation of the Indian tribe is entirely within the boundaries of this state;]*

20 **[(c)] (b) Upon request, the department shall designate a reservation trust land zone if the**
21 **land for which zone designation is sought is:**

22 **(A) Land held in trust by the United States for the benefit of the [Indian tribe and is] tribe;**

23 **(B) Land for which an application to transfer the land into trust has been filed with the**
24 **federal government and is pending; or**

25 **(C) Land that is located [entirely] within the boundaries of the tribe's reservation[;].**

26 *[(d) Fifty percent or more of the households within the boundaries of the reservation have incomes*
27 *below 80 percent of the median income of this state, as defined by the most recent federal decennial*
28 *census; and]*

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1 *[(e) The unemployment rate within the reservation for all enrolled members of the tribe is at least*
 2 *2.0 percentage points greater than the comparable unemployment rate for this state, as defined by the*
 3 *most recently available data published or officially provided and verified by the United States Gov-*
 4 *ernment, the Employment Department, the Portland State University Population Research Center or a*
 5 *special study conducted under a contract with a regional academic institution.]*

6 *[(2) At the request of a tribal government, the Economic and Community Development Department*
 7 *shall determine if trust land is designated as a reservation enterprise zone under this section.]*

8 **(3)(a) The government of an eligible Indian tribe may cosponsor a reservation partnership**
 9 **zone comprising an area of up to 12 square miles. Reservation partnership zones may include**
 10 **both lands held in trust by the federal government for the benefit of the tribe and lands**
 11 **within the boundaries of the tribe’s reservation.**

12 **(b) A reservation partnership zone must be cosponsored by the government of an eligible**
 13 **Indian tribe and a city, county or port pursuant to an agreement formed under ORS 190.110**
 14 **to perform the duties imposed on a sponsor under ORS 285C.050 to 285C.250.**

15 **SECTION 2.** ORS 285C.320 is amended to read:

16 285C.320. (1) A reservation enterprise zone [*shall be considered to be*] is a rural enterprise zone
 17 for purposes of ORS 285C.050 to 285C.250. The tribal government of the reservation [*shall be con-*
 18 *sidered to be*] is the sponsor of the reservation enterprise zone.

19 (2) Reservation enterprise zones may not be taken into account in determining the number of
 20 rural enterprise zones allowable in this state under ORS 285C.050 to 285C.250, and are not subject
 21 to numerical limitation under ORS 285C.050 to 285C.250.

22 **(3) Exemptions and tax credits available in connection with an enterprise zone are avail-**
 23 **able in connection with a reservation enterprise zone.** In order for property within a reservation
 24 enterprise zone to be exempt under ORS 285C.175, the business firm and property must meet [*all*
 25 *of*] the requirements applicable to business firms and property in [*any rural*] an enterprise zone.

26 (4) As used in this section, “business firm” has the meaning given that term in ORS 285C.050.

27 **SECTION 3.** **An eligible Indian tribe that operates a designated reservation enterprise**
 28 **zone on the effective date of this 2009 Act may request designation of a reservation trust**
 29 **land zone or cosponsor a reservation partnership zone but not both, unless its current res-**
 30 **ervation enterprise zone has been terminated.**

31

House Bill 3454

Sponsored by COMMITTEE ON RULES

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**.

Modifies requirements for tapping water out of or discharging water into irrigation canal or drainage ditch.

A BILL FOR AN ACT

1
2 Relating to water control; amending ORS 549.180.

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

4 **SECTION 1.** ORS 549.180 is amended to read:

5 549.180. (1) [*No person shall tap or bring additional water into any drainage district or drainage*
6 *district ditch already dug without paying a reasonable compensation therefor and securing the written*
7 *permission of district officials*] **A person may not tap water out of or discharge water into an**
8 **irrigation canal or a drainage ditch unless the person has obtained written permission from**
9 **the owner or operator of the canal or ditch and paid appropriate compensation to the owner**
10 **or operator.**

11 (2) **The imposition of a criminal penalty for violation of this section** [*shall not relieve the de-*
12 *fendant*] **does not relieve a person from civil liability for damages.**

13

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.

House Bill 2831

Sponsored by Representative SCHAUFLEER, Senator ROSENBAUM; Representatives DEMBROW, HOLVEY, WITT

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.

Includes temporary employees in definition of "appropriate bargaining unit" for purposes of collective bargaining between public employers and public employees. Eliminates requirement that both issue of representation by labor organization and issue of designation of organization as exclusive representative be placed on ballot for representation elections for faculty of certain universities. Prohibits public employer from hiring permanent replacements for public employees engaged in lawful strike.

Repeals expedited bargaining process in collective bargaining between public employers and employees.

A BILL FOR AN ACT

1
2 Relating to public employment; creating new provisions; amending ORS 240.212, 243.650, 243.686,
3 243.702, 243.726, 410.614, 443.733 and 657A.430; and repealing ORS 243.698.

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

5 **SECTION 1.** ORS 243.650 is amended to read:

6 243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

7 (1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board
8 or voluntarily recognized by the public employer to be appropriate for collective bargaining. "**Ap-**
9 **propriate bargaining unit**" includes, but is not limited to, temporary employees, seasonal
10 employees and limited duration employees hired under grants and for special projects, if such
11 employees perform substantially the same work as other employees in the bargaining unit.
12 A temporary, seasonal or limited duration employee may not be considered a casual employee
13 unless the employee has worked less than an average of four hours per week during the
14 employee's employment or the quarter preceding the filing of a unit clarification or repre-
15 sentation petition, whichever period is shorter. However, an appropriate bargaining unit may
16 not include both academically licensed and unlicensed or nonacademically licensed school employ-
17 ees. Academically licensed units may include but are not limited to teachers, nurses, counselors,
18 therapists, psychologists, child development specialists and similar positions. This limitation does
19 not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school dis-
20 trict with fewer than 50 employees.

21 (2) "Board" means the Employment Relations Board.

22 (3) "Certification" means official recognition by the board that a labor organization is the ex-
23 clusive representative for all of the employees in the appropriate bargaining unit.

24 (4) "Collective bargaining" means the performance of the mutual obligation of a public employer
25 and the representative of its employees to meet at reasonable times and confer in good faith with
26 respect to employment relations for the purpose of negotiations concerning mandatory subjects of
27 bargaining, to meet and confer in good faith in accordance with law with respect to any dispute
28 concerning the interpretation or application of a collective bargaining agreement, and to execute

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1 written contracts incorporating agreements that have been reached on behalf of the public employer
2 and the employees in the bargaining unit covered by such negotiations. The obligation to meet and
3 negotiate does not compel either party to agree to a proposal or require the making of a concession.
4 This subsection may not be construed to prohibit a public employer and a certified or recognized
5 representative of its employees from discussing or executing written agreements regarding matters
6 other than mandatory subjects of bargaining that are not prohibited by law as long as there is mu-
7 tual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

8 (5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute
9 are required by law to submit their differences to a third party for a final and binding decision.

10 (6) "Confidential employee" means one who assists and acts in a confidential capacity to a per-
11 son who formulates, determines and effectuates management policies in the area of collective bar-
12 gaining.

13 (7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indi-
14 rect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of
15 employment.

16 (b) "Employment relations" does not include subjects determined to be permissive, nonmanda-
17 tory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

18 (c) After June 6, 1995, "employment relations" does not include subjects that the Employment
19 Relations Board determines to have a greater impact on management's prerogative than on employee
20 wages, hours, or other terms and conditions of employment.

21 (d) "Employment relations" does not include subjects that have an insubstantial or de minimis
22 effect on public employee wages, hours, and other terms and conditions of employment.

23 (e) For school district bargaining, "employment relations" excludes class size, the school or ed-
24 ucational calendar, standards of performance or criteria for evaluation of teachers, the school cur-
25 riculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking,
26 gum chewing and similar matters of personal conduct, the standards and procedures for student
27 discipline, the time between student classes, the selection, agendas and decisions of 21st Century
28 Schools Councils established under ORS 329.704, requirements for expressing milk under ORS
29 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this
30 subsection.

31 (f) For employee bargaining involving employees covered by ORS 243.736, "employment
32 relations" includes safety issues that have an impact on the on-the-job safety of the employees or
33 staffing levels that have a significant impact on the on-the-job safety of the employees.

34 (g) For all other employee bargaining except school district bargaining and except as provided
35 in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues
36 (except those staffing levels and safety issues that have a direct and substantial effect on the on-
37 the-job safety of public employees), scheduling of services provided to the public, determination of
38 the minimum qualifications necessary for any position, criteria for evaluation or performance ap-
39 praisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress,
40 grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar
41 matters of personal conduct at work, and any other subject proposed that is permissive under par-
42 agraphs (b), (c) and (d) of this subsection.

43 (8) "Exclusive representative" means the labor organization that, as a result of certification by
44 the board or recognition by the employer, has the right to be the collective bargaining agent of all
45 employees in an appropriate bargaining unit.

1 (9) "Fact-finding" means identification of the major issues in a particular labor dispute by one
 2 or more impartial individuals who review the positions of the parties, resolve factual differences and
 3 make recommendations for settlement of the dispute.

4 (10) "Fair-share agreement" means an agreement between the public employer and the recog-
 5 nized or certified bargaining representative of public employees whereby employees who are not
 6 members of the employee organization are required to make an in-lieu-of-dues payment to an em-
 7 ployee organization except as provided in ORS 243.666. Upon the filing with the board of a petition
 8 by 30 percent or more of the employees in an appropriate bargaining unit covered by such union
 9 security agreement declaring they desire that the agreement be rescinded, the board shall take a
 10 secret ballot of the employees in the unit and certify the results thereof to the recognized or certi-
 11 fied bargaining representative and to the public employer. Unless a majority of the votes cast in an
 12 election favor the union security agreement, the board shall certify deauthorization of the agree-
 13 ment. A petition for deauthorization of a union security agreement must be filed not more than 90
 14 calendar days after the collective bargaining agreement is executed. Only one such election may be
 15 conducted in any appropriate bargaining unit during the term of a collective bargaining agreement
 16 between a public employer and the recognized or certified bargaining representative.

17 (11) "Final offer" means the proposed contract language and cost summary submitted to the
 18 mediator within seven days of the declaration of impasse.

19 (12) "Labor dispute" means any controversy concerning employment relations or concerning the
 20 association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to
 21 arrange terms or conditions of employment relations, regardless of whether the disputants stand in
 22 the proximate relation of employer and employee.

23 (13) "Labor organization" means any organization that has as one of its purposes representing
 24 employees in their employment relations with public employers.

25 (14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior
 26 to the date scheduled for an interest arbitration hearing.

27 (15) "Legislative body" means the Legislative Assembly, the city council, the county commission
 28 and any other board or commission empowered to levy taxes.

29 [(16) "*Managerial employee*" means an employee of the State of Oregon who possesses authority to
 30 formulate and carry out management decisions or who represents management's interest by taking or
 31 effectively recommending discretionary actions that control or implement employer policy, and who has
 32 discretion in the performance of these management responsibilities beyond the routine discharge of du-
 33 ties. A "managerial employee" need not act in a supervisory capacity in relation to other employees.
 34 Notwithstanding this subsection, "managerial employee" does not include faculty members at a com-
 35 munity college, college or university.]

36 [(17)] (16) "Mediation" means assistance by an impartial third party in reconciling a labor dis-
 37 pute between the public employer and the exclusive representative regarding employment relations.

38 [(18)] (17) "Payment-in-lieu-of-dues" means (18) an assessment to defray the cost for services by the
 39 exclusive representative in negotiations and contract administration of all persons in an appropriate
 40 bargaining unit who are not members of the organization serving as exclusive representative of the
 41 employees. The payment must be equivalent to regular union dues and assessments, if any, or must
 42 be an amount agreed upon by the public employer and the exclusive representative of the employees.

43 [(19)] (18) "Public employee" means an employee of a public employer but does not include
 44 elected officials, persons appointed to serve on boards or commissions, incarcerated persons working
 45 under section 41, Article I of the Oregon Constitution, or persons who are confidential

1 employees[,] or supervisory employees [*or managerial employees*].

2 [(20)] (19) "Public employer" means the State of Oregon, and the following political subdivisions:
 3 Cities, counties, community colleges, school districts, special districts, mass transit districts, metro-
 4 politan service districts, public service corporations or municipal corporations and public and
 5 quasi-public corporations.

6 [(21)] (20) "Public employer representative" includes any individual or individuals specifically
 7 designated by the public employer to act in its interests in all matters dealing with employee rep-
 8 resentation, collective bargaining and related issues.

9 [(22)] (21) "Strike" means a public employee's refusal in concerted action with others to report
 10 for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or
 11 his or her absence in whole or in part from the full, faithful or proper performance of his or her
 12 duties of employment, for the purpose of inducing, influencing or coercing a change in the condi-
 13 tions, compensation, rights, privileges or obligations of public employment; however, nothing shall
 14 limit or impair the right of any public employee to lawfully express or communicate a complaint or
 15 opinion on any matter related to the conditions of employment.

16 [(23)] (22) "Supervisory employee" means any individual having authority in the interest of the
 17 employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline
 18 other employees, or responsibly to direct them, or to adjust their grievances, or effectively to re-
 19 commend such action, if in connection therewith, the exercise of the authority is not of a merely
 20 routine or clerical nature but requires the use of independent judgment. [*Failure to assert supervi-*
 21 *sory status in any Employment Relations Board proceeding or in negotiations for any collective bar-*
 22 *gaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board*
 23 *proceeding or contract negotiation.*] **The exercise of any function of authority enumerated in this**
 24 **subsection does not require the conclusion that the individual exercising the function is a**
 25 **supervisory employee.** Notwithstanding the provisions of this subsection, a nurse, charge nurse or
 26 similar nursing position may not be deemed to be supervisory unless that position has traditionally
 27 been classified as supervisory.

28 [(24)] (23) "Unfair labor practice" means the commission of an act designated an unfair labor
 29 practice in ORS 243.672.

30 [(25)] (24) "Voluntary arbitration" means the procedure whereby parties involved in a labor
 31 dispute mutually agree to submit their differences to a third party for a final and binding decision.

32 **SECTION 2.** ORS 410.614 is amended to read:

33 410.614. Notwithstanding ORS 243.650 [(19) and (20)] (18) and (19), the Home Care Commission
 34 shall be considered a public employer and home care workers shall be considered public employees
 35 governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate
 36 in the activities of labor organizations of their own choosing for the purpose of representation and
 37 collective bargaining with the commission on matters concerning employment relations. These rights
 38 shall be exercised in accordance with the rights granted to public employees with mediation and
 39 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 40 cess. Home care workers do not have the right to strike.

41 **SECTION 3.** ORS 443.733 is amended to read:

42 443.733. (1) As used in this section, "adult foster care home provider" means a person who op-
 43 erates an adult foster home in the provider's home and who receives fees or payments from the state
 44 for providing adult foster care home services. "Adult foster care home provider" does not include
 45 a person:

1 (a) Who is a resident manager of an adult foster home who does not provide adult foster care
2 home services in the resident manager's own home or who does not have a controlling interest in,
3 or is not an officer or partner in, the entity that is the provider of adult foster care home services;

4 (b) Who is not a natural person; or

5 (c) Whose participation in collective bargaining is determined by the Department of Human
6 Services to be inconsistent with this section or in violation of state or federal law.

7 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
8 the public employer of record of adult foster care home providers.

9 (3) Notwithstanding ORS 243.650 [(19)] (18), adult foster care home providers are considered to
10 be public employees governed by ORS 243.650 to 243.782. Adult foster care home providers have the
11 right to form, join and participate in the activities of labor organizations of their own choosing for
12 the purposes of representation and collective bargaining on matters concerning labor relations.
13 These rights shall be exercised in accordance with the rights granted to public employees, with
14 mediation and interest arbitration under ORS 243.742 as the method of concluding the collective
15 bargaining process. Adult foster care home providers may not strike.

16 (4) Notwithstanding subsections (2) and (3) of this section, adult foster care home providers are
17 not for any other purpose employees of the State of Oregon or any other public body.

18 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
19 collective bargaining negotiations with the certified or recognized exclusive representative of an
20 appropriate bargaining unit of adult foster care home providers. The Oregon Department of Admin-
21 istrative Services is authorized to agree to terms and conditions of collective bargaining agreements
22 on behalf of the State of Oregon.

23 (6) Notwithstanding ORS 243.650 (1), an appropriate bargaining unit for adult foster care home
24 providers is any bargaining unit recognized by the Governor in an executive order issued prior to
25 January 1, 2008.

26 (7) This section does not modify any right of an adult receiving foster care.

27 **SECTION 4.** ORS 657A.430 is amended to read:

28 657A.430. (1) As used in this section:

29 (a) "Certified family child care provider" means an individual who operates a family child care
30 home that is certified under ORS 657A.280.

31 (b) "Child care subsidy" means a payment made by the state on behalf of eligible children for
32 child care services provided for periods of less than 24 hours in a day.

33 (c) "Exempt family child care provider" means an individual who provides child care services
34 in the home of the individual or in the home of the child, whose services are not required to be
35 certified or registered under ORS 657A.250 to 657A.450 and who receives a child care subsidy.

36 (d) "Family child care provider" means an individual who is a certified, registered or exempt
37 family child care provider.

38 (e) "Registered family child care provider" means an individual who operates a family child care
39 home that is registered under ORS 657A.330.

40 (2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is
41 the public employer of record of family child care providers.

42 (3) Notwithstanding ORS 243.650 [(19)] (18), family child care providers are considered to be
43 public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to
44 form, join and participate in the activities of labor organizations of their own choosing for the pur-
45 pose of representation and collective bargaining on matters concerning labor relations. These rights

1 shall be exercised in accordance with the rights granted to public employees, with mediation and
 2 interest arbitration under ORS 243.742 as the method of concluding the collective bargaining pro-
 3 cess. Family child care providers may not strike.

4 (4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not
 5 for any other purpose employees of the State of Oregon or any other public body.

6 (5) The Oregon Department of Administrative Services shall represent the State of Oregon in
 7 collective bargaining negotiations with the certified or recognized exclusive representatives of all
 8 appropriate bargaining units of family child care providers. The Oregon Department of Administra-
 9 tive Services is authorized to agree to terms and conditions of collective bargaining agreements on
 10 behalf of the State of Oregon.

11 (6) Notwithstanding ORS 243.650 (1):

12 (a) The appropriate bargaining unit for certified and registered family child care providers is a
 13 bargaining unit of all certified and registered family child care providers in the state.

14 (b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit
 15 of all exempt family child care providers in the state.

16 (7) This section does not modify any right of a parent or legal guardian to choose and terminate
 17 the services of a family child care provider.

18 **SECTION 5.** ORS 243.686 is amended to read:

19 243.686. (1) The Employment Relations Board shall place on the ballot only those labor organ-
 20 izations designated to be placed on the ballot by more than 10 percent of the employees in an ap-
 21 propriate bargaining unit.

22 (2) The ballot shall contain a provision for marking no representation.

23 (3) The board shall determine who is eligible to vote in the election and require the employer
 24 to provide a complete list of all such eligible persons, their names, addresses and job classifications
 25 to each candidate organization on the ballot at least 20 days before the election is to occur.

26 (4) The labor organization which receives the majority of the votes cast in an election shall be
 27 certified by the board as the exclusive representative.

28 (5) In any election where there are more than two choices on the ballot and none of the choices
 29 receives a majority of the votes cast, a runoff election shall be conducted. The ballot in the runoff
 30 election shall contain the two choices on the original ballot that received the largest number of
 31 votes.

32 *[(6)(a) In conducting an election involving the faculty of a university administered by the State
 33 Board of Higher Education, the Employment Relations Board shall place on the same ballot provisions
 34 for voting on two issues:]*

35 *[(A) For or against representation; and]*

36 *[(B) For those labor organizations designated to be placed on the ballot by more than 10 percent
 37 of the employees in an appropriate bargaining unit.]*

38 *[(b) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of no represen-
 39 tation, the board shall not count the votes cast for labor organizations and shall certify no represen-
 40 tative for the unit.]*

41 *[(c) If a majority of votes in paragraph (a)(A) of this subsection are cast in favor of representation,
 42 the board shall count the votes in paragraph (a)(B) of this subsection for the designated labor organ-
 43 izations and, if an organization receives a majority of those votes cast, shall certify that organization
 44 as the exclusive representative. If no labor organization receives a majority of the votes cast in para-
 45 graph (a)(B) of this subsection, a runoff election shall be conducted. The ballot in the runoff election*

1 *shall contain only the two labor organizations that received the largest number of votes.]*

2 [(7)] (6) Nothing in this section is intended to prohibit the waiving of hearings by stipulation for
 3 the purpose of a consent election, in conformity with the rules of the board.

4 **SECTION 6.** ORS 243.702 is amended to read:

5 243.702. [(1)] In the event any words or sections of a collective bargaining agreement are de-
 6 clared to be invalid by any court of competent jurisdiction, by ruling by the Employment Relations
 7 Board, by statute or constitutional amendment or by inability of the employer or the employees to
 8 perform to the terms of the agreement, then upon request by either party the invalid words or
 9 sections of the collective bargaining agreement shall be reopened for negotiation.

10 [(2) *Renegotiation of a collective bargaining agreement pursuant to this section is subject to ORS*
 11 *243.698.*]

12 **SECTION 7.** ORS 243.726 is amended to read:

13 243.726. (1) Participation in a strike shall be unlawful for any public employee who is not in-
 14 cluded in an appropriate bargaining unit for which an exclusive representative has been certified
 15 by the Employment Relations Board or recognized by the employer; or is included in an appropriate
 16 bargaining unit that provides for resolution of a labor dispute by petition to final and binding arbi-
 17 tration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650
 18 to 243.782, 292.055 and 341.290.

19 (2) It shall be lawful for a public employee who is not prohibited from striking under subsection
 20 (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to par-
 21 ticipate in a strike over mandatory subjects of bargaining provided:

22 (a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes
 23 have been complied with in good faith;

24 (b) Thirty days have elapsed since the board has made public the fact finder's findings of fact
 25 and recommendations or the mediator has made public the parties' final offers;

26 (c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike
 27 and stating the reasons for its intent to strike to the board and the public employer;

28 (d) The collective bargaining agreement has expired, or the labor dispute arises pursuant to a
 29 reopener provision in a collective bargaining agreement or renegotiation under ORS 243.702 [(1) or
 30 *renegotiation under ORS 243.698*]; and

31 (e) The union's strike does not include unconventional strike activity not protected under the
 32 National Labor Relations Act on June 6, 1995, and does not constitute an unfair labor practice un-
 33 der ORS 243.672 (2)(f).

34 (3)(a) Where the strike occurring or is about to occur creates a clear and present danger or
 35 threat to the health, safety or welfare of the public, the public employer concerned may petition the
 36 circuit court of the county in which the strike has taken place or is to take place for equitable relief
 37 including but not limited to appropriate injunctive relief.

38 (b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of
 39 Marion County.

40 (c) If, after hearing, the court finds that the strike creates a clear and present danger or threat
 41 to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall in-
 42 clude an order that the labor dispute be submitted to final and binding arbitration within 10 days
 43 of the court's order pursuant to procedures in ORS 243.746.

44 (4)(a) No labor organization shall declare or authorize a strike of public employees that is or
 45 would be in violation of this section. When it is alleged in good faith by the public employer that

1 a labor organization has declared or authorized a strike of public employees that is or would be in
2 violation of this section, the employer may petition the board for a declaration that the strike is or
3 would be unlawful. The board, after conducting an investigation and hearing, may make such dec-
4 laration if it finds that such declaration or authorization of a strike is or would be unlawful.

5 (b) When a labor organization or individual disobeys an order of the appropriate circuit court
6 issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall
7 be punished according to the provisions of ORS 33.015 to 33.155, except that the amount of the fine
8 shall be at the discretion of the court.

9 (5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike.
10 The board upon the filing of an unfair labor charge alleging that a public employer has committed
11 an unfair labor practice during or arising out of the collective bargaining procedures set forth in
12 ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the
13 court of competent jurisdiction for appropriate relief or a restraining order.

14 (6) As used in this section, "danger or threat to the health, safety or welfare of the public" does
15 not include an economic or financial inconvenience to the public or to the public employer that is
16 normally incident to a strike by public employees.

17 **SECTION 8.** ORS 240.212 is amended to read:

18 240.212. The management service shall comprise all positions not in the unclassified or exempt
19 service that have been determined to be confidential employees[,] or supervisory employees [*or*
20 *managerial employees*], as defined in ORS 243.650.

21 **SECTION 9.** ORS 243.698 is repealed.

22 **SECTION 10.** Section 11 of this 2009 Act is added to and made a part of ORS 243.650 to
23 243.782.

24 **SECTION 11.** A public employer may not hire permanent replacements for public em-
25 ployees who are engaging in a lawful strike. A public employer may hire temporary replace-
26 ments for striking public employees. When the bargaining unit representative of the public
27 employees who are on strike makes an unconditional offer to return to work on behalf of the
28 striking employees, all temporary replacements hired to replace public employees who are
29 on strike shall be terminated and the striking employees returned to the positions the em-
30 ployees held prior to going on strike.

31

House Bill 2975

Sponsored by Representative BOONE; Representative SCHAUFLEER (at the request of Oregon Fire Chiefs Association)

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.

Provides that 1,039-hour limit on re-employment of retired member of Public Employees Retirement System does not apply to retired member who is employed as fire chief, assistant fire chief or deputy fire chief by city or by fire district. Establishes requirements for exemption from limitation. Sunsets January 2, 2014. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public employee retirement; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 238.**

5 **SECTION 2. (1) The provisions of this section apply only to a person:**

6 **(a) Who is a retired member of the Public Employees Retirement System;**

7 **(b) Who did not retire under the provisions of ORS 238.280 (1) or (3); and**

8 **(c) Who is re-employed to serve as a fire chief, an assistant fire chief or a deputy fire**
9 **chief by a city or by a fire district.**

10 **(2) A city or fire district may re-employ a retired member of the Public Employees Re-**
11 **irement System under the provisions of this section if the public employer makes a written**
12 **finding that there is a demonstrated need to re-employ the retired member, including but**
13 **not limited to:**

14 **(a) Insufficient interest by other employees of the public employer in the position;**

15 **(b) A lack of qualified applicants for the position; and**

16 **(c) A public need for the experience and ability of the retired member.**

17 **(3) The limitations on employment imposed by ORS 238.082 (2) do not apply to a retired**
18 **member who is re-employed under this section.**

19 **(4) A person may not be re-employed under this section by a city or fire district if the**
20 **city or fire district was the person's last public employer before the person retired.**

21 **(5) Employment under this section does not affect the status of a person as a retired**
22 **member of the Public Employees Retirement System and a recipient of retirement benefits**
23 **under this chapter.**

24 **SECTION 3. Section 2 of this 2009 Act is repealed January 2, 2014.**

25 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
27 **on its passage.**

28

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.



Oregon

Theodore R. Kulongoski, Governor

Public Employees Retirement System

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11410 S.W. 68th Parkway, Tigard, OR
Mailing Address:
P.O. Box 23700
Tigard, OR 97281-3700
(503) 598-7377
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www.oregon.gov/pers

March 5, 2009

TO: Members of the PERS Board
FROM: Steven Patrick Rodeman, Deputy Director
Susan Riswick, Legislative Coordinator and
Interim Administrator, PPLAD
SUBJECT: Policy Issue – Retiree Return to Work Exceptions

Staff is seeking direction from the PERS Board on a policy position for the 2009 legislature on proposals to add exceptions to the 1039-hours standard for retired PERS members returning to public employment. Current law generally allows retired PERS members to work up to 1039 hours for a public employer without affecting their monthly retirement benefit, but exceptions have been adopted that allow members to exceed this limit for certain types of employment.

LEGISLATIVE BACKGROUND

ORS 238.078 explains the consequences to a PERS retired member who returns to public employment. The member's retirement is cancelled and, depending on whether the member returned to employment more or less than six months after retiring, the member may have to return all benefit payments received. ORS 238.082 places conditions on an employer's ability to rehire a PERS retired member, and further provides that, so long as that employment meets certain conditions, the consequences of ORS 238.078 are not applied to that member. After satisfying the overall condition that the employment must be in the public interest, ORS 238.082 sets the standard of employment at less than 1040 hours in a calendar year (put another way, work up to 1039 hours, which is the usual terminology for this limit).

Since a return to work limit was adopted in 1987, the legislature has, in each succeeding session, chipped away at the standard by adopting exceptions for certain occupations or positions that allow the member to work an unlimited number of hours in that occupation or position without affecting their benefit payment. An overview of the history of these changes is attached. Generally, these exceptions have been for an occupation or geographic area where the work force has not been sufficient to meet employment demand. Some recent exceptions have been limited further by the need to declare a particular work force shortage or had a sunset clause attached.

ISSUES OF RETIRED MEMBERS RETURNING TO PUBLIC EMPLOYMENT

As stated above, ORS 238.082 imposes conditions on employers and retired members that must be met to avoid the consequences set forth in ORS 238.078. Unfortunately, the patchwork nature of the limitation and these exceptions has led to numerous situations where members

inadvertently exceeded the limitation and PERS has been forced to exact those consequences. From a plan administration viewpoint, the current laws result in frustrated expectations and unintended consequences far too often.

The statutory structure overlays a retirement benefit constraint on what is inherently an employer-employee decision of whether a retired member should continue in the public workforce. Consequently, that decision is affected by a dynamic that has resulted in a patchwork of exceptions that employers and retired members cannot apply consistently and predictably.

Lastly, there's the issue of applying this constriction only on public employment. A retired member can return to employment outside the public sector without affecting their retirement benefit in any way. Whatever policy consideration led to imposing the return-to-work restrictions has been eroded by the myriad of exceptions, leaving only a mine field that employers and members have not been able to successfully cross.

FEDERAL LAW OVERLAY

Federal tax law does require, generally, that a retirement plan not pay benefits unless the member has a "bona-fide" retirement. In other words, the payment of retirement benefits should only be triggered by a retirement. What constitutes a bona-fide retirement is not specified, but commencing benefits after the member has reached normal retirement age or been retired for a sufficient period like six months has been sufficient. These standards have been incorporated into ORS 238.082 so the only members who can return to public employment for unlimited hours are those that are of normal retirement age (by actual age or years of service) or have been retired at least six months.

STAFF RECOMMENDATION

At the very least, any additional exceptions need to be narrowly tailored and clearly defined so employers and employees can clearly establish their application. If the exception is needed to address a critical work force shortage, the elements of a declaration establishing that shortage and a sunset provision seem appropriate. In a longer term view, however, staff would advocate for a policy position that removes the retirement benefit component from the employment decision: if an employer and employee want to work together, a retirement plan should only intrude into that dynamic to the extent necessary to assure federal law restrictions are met. Admittedly, that broader policy decision would need its own concept and does not address the immediate question for proposals introduced during the 2009 session.

BOARD OPTIONS

1. Direct PERS staff to oppose legislation that would create an exception to the 1039-hour standard unless that exception is narrowly tailored and clearly defined, and includes a declaration establishing a work force shortage or other special situation and a sunset clause.
2. Direct PERS staff to apply a different standard in deciding whether to support or oppose legislation to create additional 1039-hour exceptions.

3. Direct PERS staff to oppose any legislative proposal on return to work unless that proposal would remove any restrictions on a retired member returning to public employment beyond those restrictions needed to comply with federal law.
4. Direct PERS staff to take no position on legislation that would create 1039-hour exceptions, but limit the agency's comments to evaluating the fiscal impact of any such proposals.

Staff recommends the PERS Board choose Option #1.

Senate Bill 30

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 Committee on Rules and Executive Appointments)

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**.

Removes requirement to list names of relatives and members of household on statement of economic interest.

A BILL FOR AN ACT

Relating to government ethics; creating new provisions; and amending ORS 244.060.

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

SECTION 1. ORS 244.060 is amended to read:

244.060. The statement of economic interest filed under ORS 244.050 shall be on a form prescribed by the Oregon Government Ethics Commission. The public official or candidate for public office filing the statement shall supply the information required by this section and ORS 244.090, as follows:

(1) The names of all positions as officer of a business and business directorships held by the person or a member of the household of the person during the preceding calendar year, and the principal address and a brief description of each business.

(2) All names under which the person and members of the household of the person do business and the principal address and a brief description of each business.

(3) The names, principal addresses and brief descriptions of the five most significant sources of income received at any time during the preceding calendar year by the person and by each member of the household of the person, a description of the type of income and the name of the person receiving the income.

(4)(a) A list of all real property in which the public official or candidate for public office or a member of the household of the public official or candidate has or has had any personal, beneficial ownership interest during the preceding calendar year, any options to purchase or sell real property, including a land sales contract, and any other rights of any kind in real property located within the geographic boundaries of the governmental agency of which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

(b) This subsection does not require the listing of the principal residence of the public official or candidate.

[(5) The name of each member of the household of the person who is 18 years of age or older.]

[(6) The name of each relative of the person who is 18 years of age or older and not a member of the household of the person.]

SECTION 2. The amendments made to ORS 244.060 by section 1 of this 2009 Act apply to

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.

1 **statements of economic interest filed on or after the effective date of this 2009 Act.**

2

Senate Bill 938

Sponsored by Senator VERGER; Senators BURDICK, METSGER, MORRISETTE, PROZANSKI, STARR, Representatives BARNHART, BRUUN, D EDWARDS, ESQUIVEL, HUFFMAN (at the request of Teddy Keizer)

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.

Creates Government Ethics Savings Fund. Directs Oregon Government Ethics Commission, for each biennium, to deposit one percent of amount appropriated to or received by commission into fund. Specifies that commission may make expenditures only from interest income of fund.

Continuously appropriates moneys from fund to commission for purposes of carrying out duties of commission.

Declares emergency, effective July 1, 2009.

A BILL FOR AN ACT

1
2 Relating to Oregon Government Ethics Commission; appropriating money; and declaring an emer-
3 gency.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 244.**

6 **SECTION 2. (1) The Government Ethics Savings Fund is established in the State Treas-**
7 **ury, separate and distinct from the General Fund. Interest earned by the Government Ethics**
8 **Savings Fund shall be credited to the fund.**

9 **(2) Subject to subsection (4) of this section, the moneys in the fund are continuously**
10 **appropriated to the Oregon Government Ethics Commission for the purposes of carrying out**
11 **the duties, functions and powers of the commission.**

12 **(3) For each biennium, the commission shall deposit into the fund an amount equal to**
13 **one percent of any moneys appropriated to the commission from the General Fund or oth-**
14 **erwise received by the commission pursuant to ORS 244.255.**

15 **(4) The commission may make expenditures from the fund:**

16 **(a) Only from moneys earned in interest by the fund; and**

17 **(b) For the purposes of carrying out the duties, functions and powers of the commission.**

18 **SECTION 3. This 2009 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
20 **July 1, 2009.**

DEPARTMENT OF JUSTICE
INTEROFFICE MEMO

DATE: February 26, 2009

TO: Steve Wolf, AIC, Government Services Section *SW*

FROM: Serena D. Hewitt, Assistant Attorney General *SDH*
Government Services Section

SUBJECT: Transfer of 9-1-1 Tax Revenue to General Fund;
DOJ File No. 248-001-GG0102-09

You ask if any portion of monies from the Emergency Communications Account may be transferred to the General Fund. Specifically, you ask if the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (2008) (NET 911 Improvement Act), the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (codified at 47 USC 942) and implementing federal regulations, or ORS 401.792 to 401.816 (the 911 tax) restrict such a transfer or if any transfer may cause a loss of federal funding. You also ask if any other state or federal provision would prohibit such a transfer. Because we found no state or federal provision prohibiting the state from transferring 911 funds other than those cited above, we have limited our discussion to those provisions

Based on the analysis below, we conclude that landline taxes may be transferred to the General Fund if those taxes have not been dedicated to enhanced 911 services. The legislature must amend the statutory scheme authorizing the collection of 911 taxes before transferring any funds. Further, all 911 taxes collected from commercial mobile services (cell phones) and Voice-over-Internet Protocol (IP-enabled voice or VoIP) services and funds dedicated to enhanced 911 services may not be transferred. We also conclude that the federal grant certification required by the ENHANCE 911 Act refers to state taxes designated or presented as dedicated to enhanced 911 services as well as enhanced 911 federal grant funds, but does not require certification for non-enhanced 911 funds.

1. Funds Dedicated by Oregon Statute

The 911 tax is a \$.75 tax imposed on the telecommunications circuit designated for a particular subscriber. ORS 401.792. Specifically, ORS 401.792 provides:

(1) There is imposed on each paying retail subscriber who has telecommunication services with access to the 9-1-1 emergency reporting system a tax equal to 75 cents per month. The tax shall be applied on a

telecommunications circuit designated for a particular subscriber. One subscriber line shall be counted for each circuit that is capable of generating usage on the line side of the switched network regardless of the quantity or ownership of customer premises equipment connected to each circuit. For providers of central office based services, the tax shall be applied to each line that has unrestricted connection to the switched network. * * * For cellular, wireless or other radio common carriers, the tax shall apply on a per instrument basis and only if the subscriber's place of primary use, as defined and determined under 4 U.S.C. 116 to 126, is within this state.

ORS 401.792(1). The 911 tax is collected into the Emergency Communications Account, separate and distinct from the General Fund. ORS 401.806(1). Use of the fund is statutorily limited to funding emergency communications capabilities. *Id.*

All tax moneys in the Emergency Communications Account are distributed quarterly to the Enhanced 9-1-1 Subaccount, the Enhanced 9-1-1 Equipment Replacement Subaccount, cities and counties on a per capita basis and are used to cover administrative costs. ORS 401.808(10). The legislature must amend ORS 401.792 before transferring funds from the Emergency Communications Account to the General Fund because those funds are currently dedicated to emergency communications services and equipment. The legislature must also amend ORS 401.808 because the statute provides for the distribution of the Emergency Communications Account funds and requires all funds in the account to be distributed in accordance with ORS 401.808.¹ Any transfer of funds from the Emergency Communications Account is limited by the NET 911 Improvement Act and the ENHANCE 911 Act, as described below.

2. NET 911 Improvement Act and Transfer of 911 Taxes

The NET 911 Improvement Act, Title I, section 6, specifies that a state may impose and collect a fee or charge applicable to cell phones or IP-enabled voice services, if that fee or charge is used only for 911 or enhanced 911 services:

'(f) State Authority Over Fees-

'(1) AUTHORITY- Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge *applicable to*

¹ For example, ORS 401.808(7) provides that if "any unexpended and unobligated balances in the [Enhanced 9-1-1 Equipment Replacement S]ubaccount exceed \$500,000, such excess amount shall be transferred and credited to the Emergency Communications Account and shall be used for the purposes otherwise provided by law." There is a question whether funds returned to the Emergency Communications Account from an enhanced 911 account that are then diverted to the General Fund may impermissibly divert E-911 funds. Any amendment to ORS 401.808 should address this issue as part of the effort to transfer funds to the General Fund.

*commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, * * * for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.* For each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.

NET 911 Improvement Act, Title I, § 6 (emphasis added).

Section 6 is silent on the subject of charges collected for landline services. The limitation against diverting fees therefore applies only to cell phone and VoIP services and does not prevent Oregon from diverting funds collected from landline services.

Our conclusion is supported by the cost analysis submitted by the Congressional Budget Office (CBO). In 2007, prior to the passage of the NET 911 Improvement Act, the CBO's cost estimate noted that:

The most recent data available indicate that four states use 911 fees, including wireless and wireline fees, for purposes other than 911 or emergency communications services. *Two of those states currently levy 911 fees on VoIP and would be prevented by the bill from using those fees for nonemergency communications purposes.* One additional state that currently has a 911 fee on VoIP allows counties and local governments to collect and use those revenues. CBO cannot estimate the extent to which counties and local governments use that revenue for nonemergency communications purposes because that information is not maintained by the states. CBO believes, however, that the costs to state and local governments from the bill's limitation on the use of fees, while they also might grow over time, would likely be small over the next five years.

H.R. Rep. No. 110-442, at 11 (2007) (emphasis added). The CBO's interpretation of the law does not mention fees on cell phone services because it was only later that an amendment added "commercial mobile services" to the fee limitation language of the NET 911 Improvement Act. S. Amdt. 4982, 110th Cong. (June 16, 2008).

We conclude that the state is prohibited from diverting taxes collected from cell phone and VoIP accounts from the Emergency Communications Account to the General Fund, pursuant to the NET 911 Improvement Act. Taxes collected from these accounts may be expended only in support of 911 or enhanced 911 services. The Act does not prohibit the state from transferring taxes collected from landlines to the General Fund.

3. ENHANCE 911 Act and Grant Certification Issues

The federal government offers grants to implement, operate and support enhanced 911 services. 47 USC § 942. Oregon, as a grant applicant, is eligible for a minimum of \$500,000 in federal grant funds. To receive grant funds under this program, an applicant must certify that it is not diverting designated E-911 charges:

Each applicant for a matching grant * * * shall certify * * * that no portion of any **designated E-911 charges** imposed by a State or other taxing jurisdiction within which the applicant is located are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented during the period beginning 180 days immediately preceding the date of the application and continuing through the period of time during which the funds from the grant are available to the applicant.

47 USC § 942(c)(2) (emphasis added).

When signing the certification, the state certifies that no “designated E-911 charges imposed by a State” may be diverted. 47 USC § 942(c)(2). “Designated E-911 charges” “mean any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve **E-911 services.**” 47 CFR § 400.2 (emphasis added). “E-911 services,” in turn, is defined to “mean both phase I and phase II **enhanced** 911 services, as described in 47 CFR 20.18.” *Id.* (emphasis added). Because the certification requires only that “designated E-911” charges not be diverted, i.e. **enhanced** 911 charges, the state makes no certification as to 911 charges imposed by the state that are not dedicated to enhanced 911 services when it applies for this federal grant.

Further, in accordance with ORS 401.808(2)-(3), the state does not dedicate funds to the enhanced 911 subaccounts until the Emergency Communications Account is distributed at the end of each quarter. As a result, the funds become dedicated to enhanced 911 purposes on the date of distribution. ORS 401.806(2)-(3). The state would not divert funds from an enhanced 911 account by diverting funds from the Emergency Communications Account because those funds are not yet dedicated to enhanced 911 purposes.² Accordingly, the State does not “provide false or inaccurate information” on its certification when transferring non-enhanced 911 charges to the General Fund.

The proposed regulations implementing the ENHANCE 911 Act provide that “[i]n accordance with 4[7] U.S.C. 942(c), where a State provides false or inaccurate information in its certification” the state must return all grant funds. 73 Fed. Reg. 57576 (Oct. 3, 2008) (to be codified at 47 CFR § 400.8).³ However, the code provision provides

² But see footnote 1, above, for discussion on text of ORS 401.808(7).

³ 73 Fed. Reg. 57576 (Oct. 3, 2008) includes a typographical error misstating the statute as 49 USC § 942(c).

that “[a]ny applicant that provides a certification under paragraph (1) *knowing* that the information provided in the certification was false” must, among other things, return the grant money. 47 USC § 947(c)(4) (emphasis added). Based on the language in the code, there may be a good faith argument that the state is not knowingly providing a false certification because we have concluded that the certification applies only to state and federal *enhanced* 911 funds, which the state does not seek to transfer.

The certification provision uses the term “designated E-911 charges.” “Designated E-911 charges” includes taxes “designated or **presented as dedicated** to deliver or improve E-911 services.” 47 USC § 942(c)(1) (emphasis added). We could find no information concerning the meaning of “presented as dedicated.” It is possible that the phrase could include a phone bill that states the \$.75 tax is for enhanced 911 services. The telephone bill may present to the taxpayer that the tax is dedicated and is therefore not subject to diversion. There may be other examples where the tax is “presented as dedicated” about which we are unaware. We bring this to your attention only because the definition of “designated E-911 charges” may be broader than those charges specifically designated by law as dedicated to enhanced 911 purposes.

Conclusion

We conclude that landline taxes may be transferred to the General Fund if those taxes have not been dedicated to enhanced 911 services. The legislature must amend the statutory scheme authorizing the collection of 911 taxes before transferring these funds. All 911 taxes collected from cell phone and VoIP services and funds dedicated to enhanced 911 services may not be transferred. Certification refers to designated enhanced 911 charges imposed by a state as well as federal enhanced 911 grant funds.

Please let me know if you have any questions about this advice.



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March 11, 2009

Hasina Squires
Special Districts of Oregon
727 Center Street
Salem, Oregon 97301

Ms. Squires:

Consolidation of 9-1-1 Centers has been a key topic of conversation amongst Public Safety Answering Points (PSAP's), and Legislators for several years in Oregon. It is of great importance for our profession to research past and current efforts, as well as to investigate options for future efficiencies in 9-1-1.

To aid this process and in following with one of the vision points created in the Oregon Chapter APCO/NENA 2009-2013 strategic plan created June 2008, the Chapter is establishing a Consolidation Task Force to discuss 9-1-1 consolidation efforts in Oregon.

This Consolidation Task Force will consist of the President of the Oregon Chapter of APCO/NENA, and 8 PSAP representatives following the AOC regions. We are asking for a representative from your organization to participate in this task force as there is direct impact on members of the AOC and the citizens we both serve. Your input and participation on this task force would be greatly appreciated.

The goal of this consolidation task force is to outline consolidation efforts that have occurred in the past, efforts that are currently in progress, and to identify potential efficiencies for the future. The Consolidation Task force will work to keep the Governor's office, legislators, and other interested parties, apprised of our progress, and future goals.

These efforts are not limited to full consolidation, but will also research current and future technological efficiencies.

Please provide me with the name and contact information of your organization's representative to this committee as soon as possible. I may be reached at (503) 823-4762 and email: laura@ci.portland.or.us

Sincerely,

Laura Wolfe, President
Oregon Chapters APCO/NENA