

Enrolled House Bill 2284

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Office of the Legislative Counsel)

CHAPTER

AN ACT

Relating to correction of erroneous material in Oregon law; creating new provisions; amending ORS 1.310, 8.350, 30.868, 35.015, 105.560, 133.005, 135.037, 138.071, 164.043, 164.045, 165.495, 171.559, 174.535, 181.030, 182.415, 192.820, 238.690, 249.031, 251.049, 251.355, 255.165, 264.335, 267.010, 267.080, 267.085, 267.097, 267.107, 267.410, 284.142, 285B.422, 285B.460, 285B.462, 291.445, 292.500, 294.810, 297.070, 327.006, 339.133, 344.555, 346.640, 352.390, 390.134, 409.510, 410.625, 412.006, 412.014, 412.016, 412.079, 414.660, 416.810, 416.820, 417.345, 427.205, 456.270, 458.310, 468.501, 468.521, 469.421, 469.681, 469.805, 475.902, 507.040, 507.050, 508.485, 508.490, 508.801, 508.828, 564.105, 568.900, 616.992, 625.220, 625.270, 646A.316, 671.595, 671.610, 671.614, 671.997, 701.046, 723.466, 743.405, 743.483, 757.822, 759.385, 778.005, 819.160 and 836.640 and section 11, chapter 516, Oregon Laws 2001, section 31, chapter 736, Oregon Laws 2003, and sections 3 and 4, chapter 249, Oregon Laws 2007, and ORCP 7 D; and repealing ORS 174.106 and 657.222 and section 62, chapter 736, Oregon Laws 2003.

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

SECTION 1. ORS 174.535 is amended to read:

174.535. It is the policy of the Legislative Assembly to revise sections from Oregon Revised Statutes and Oregon law periodically in order to maintain accuracy. However, nothing in chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, [or] chapter 71, Oregon Laws 2007, **or this 2009 Act** is intended to alter the legislative intent or purpose of statutory sections affected by chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, [and] chapter 71, Oregon Laws 2007, **and this 2009 Act** except insofar as the amendments thereto, or repeals thereof, specifically require.

NOTE: Sets forth Reviser’s Bill policy statement.

SECTION 2. ORS 1.310 is amended to read:

1.310. (1) As used in this section:

(a) **“Chief Justice” means the Chief Justice of the Supreme Court of Oregon, except that, if the Chief Justice is the subject judge, then the term “Chief Justice” means the one of the**

remaining judges of the Supreme Court who has served the longest period of time as a judge of that court.

(b) “Disability” means physical or mental incapacitation of such a degree as to cause a judge to be unable to discharge the duties of judicial office.

[(a)] **(c)** “Judge” includes any judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court, or *[of]* any circuit court, of the State of Oregon.

[(b)] **(d)** “Subject judge” means any judge whose alleged disability is involved in proceedings under this section.

[(c) “Disability” means physical or mental incapacitation of such a degree as to cause a judge to be unable to discharge the duties of judicial office.]

[(d) “Chief Justice” means the Chief Justice of the Supreme Court of Oregon; except that, if the Chief Justice is the subject judge, then the term “Chief Justice” means the one of the remaining judges of the Supreme Court who has served the longest period of time as a judge of that court.]

(2) Any judge who becomes disabled may be retired in the manner provided in this section. The Governor, the Chief Justice, the Judicial Conference or the Board of Governors of the Oregon State Bar may file at any time with the Secretary of State a written request for an investigation to determine whether a judge named in *[such]* **the** request has a disability. Upon receipt of *[such]* **a** request, the Secretary of State shall transmit to the subject judge a certified copy of *[such]* **the** request, with a notice to the effect that, unless *[such]* **the** judge files a resignation within 45 days after the date of the notice, an investigation will be made to determine whether the judge has a disability. *[Such]* **The** certified copy and notice shall be served on the subject judge, either by delivering them to the judge in person or by transmitting them by registered mail or by certified mail with return receipt to the judge at the last residence address of the judge as shown in the records of the Secretary of State.

(3) If the subject judge fails to file a resignation within 45 days after the date of the notice, the Secretary of State, within 10 days after the expiration of that period, shall transmit to the Commission on Judicial Fitness and Disability certified copies of the request and notice, with a certificate to the effect:

(a) That the Secretary of State *[had]* served the notice and copy of the request on the subject judge as provided in subsection (2) of this section; and

(b) That the judge *[had not filed]* **did not file** a resignation.

(4) Upon receipt of the certified copies and certificate referred to in subsection (3) of this section, the commission shall make the requested investigation and, after hearing, determine whether the subject judge has a disability. The commission shall prepare an official record *[which]* **that** shall include the testimony taken and the exhibits considered. If the subject judge refuses or is unable to attend, the commission may proceed with the hearing in the absence of the judge.

(5) If a majority of the members of the commission *[shall determine]* **determines** that the subject judge in fact has a disability, *[they]* **the members** shall make and sign written findings of fact upon which the determination is made and transmit *[them]* **the findings** to the Secretary of State. If no appeal is filed, the office of *[such]* **the** judge shall become vacant 10 days after the filing of *[such]* **the** findings,*[,]* and thereupon the Secretary of State shall certify to the Governor the existence of *[such]* **the** vacancy. If a majority of the members of the commission *[do]* **does** not find that the subject judge has a disability, *[they]* **the members** shall sign and file with the Secretary of State a written report to that effect, and thereupon the proceeding shall terminate.

(6) The commission may prescribe rules of procedure for the conduct of the investigation and fix the time and place of the hearing, giving the subject judge due notice thereof. The fees and mileage allowance of witnesses, including experts, shall be fixed by the commission.

(7) *[No]* **A** judge retired under the provisions of this section *[shall]* **may not** be appointed as judge pro tempore to serve upon any court of the State of Oregon.

(8) The subject judge may appeal to the Supreme Court from a determination by the commission that the judge has a disability, by filing a notice with the Secretary of State within 10 days after the date of filing of the written findings of fact by the commission. The Secretary of State shall

thereupon notify the commission and the Chief Justice. The commission shall forthwith transmit the official record to the Supreme Court, which upon receipt of [such] **the** record shall have full jurisdiction of the proceeding.

(9) The Supreme Court shall review the proceeding de novo on the record with authority to affirm, reverse or annul the determination. Prior to [such] a final determination, remand may also be made to the commission for additional findings of fact. In the event that the Supreme Court reverses or annuls the determination of the commission, the proceeding shall thereupon terminate and notice to that effect shall be filed with the Secretary of State. If the determination of the commission is affirmed, a decision to that effect shall be filed with the Secretary of State and the office of the subject judge shall forthwith become vacant. Thereupon, the Secretary of State shall certify to the Governor the existence of [such] **the** vacancy.

NOTE: Alphabetizes definitions in (1); updates punctuation and word choice; corrects grammar.

SECTION 3. ORS 8.350 is amended to read:

8.350. When a report of the proceedings, or any part thereof, has been made in any case as provided in ORS 8.340, if the court or either party to the suit or action or the party's attorney requests [a transcript] **transcription** of the notes or audio records into longhand, the official reporter shall cause full and accurate typewritten transcripts to be made of the testimony or other proceedings, which shall, when certified to as provided in ORS 8.360, be filed with the clerk of the court where [such] **the** cause was tried or heard, for the use of the court or parties.

NOTE: Corrects and updates word choice.

SECTION 4. ORCP 7 D, as amended by the Council on Court Procedures on December 13, 2008, is amended to read:

D Manner of service.

D(1) Notice required. Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of true copies of the summons and the complaint upon defendant or an agent of defendant authorized to receive process; substituted service by leaving true copies of the summons and the complaint at a person's dwelling house or usual place of abode; office service by leaving true copies of the summons and the complaint with a person who is apparently in charge of an office; service by mail; or, service by publication.

D(2) Service methods.

D(2)(a) Personal service. Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

D(2)(b) Substituted service. Substituted service may be made by delivering true copies of the summons and the complaint at the dwelling house or usual place of abode of the person to be served, to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service shall be complete upon such mailing.

D(2)(c) Office service. If the person to be served maintains an office for the conduct of business, office service may be made by leaving true copies of the summons and the complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, true copies of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode or defendant's place of business or such other place under the circumstances that is

most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service shall be complete upon such mailing.

D(2)(d) Service by mail.

D(2)(d)(i) Generally. When required or allowed by this rule or by statute, except as otherwise permitted, service by mail shall be made by mailing true copies of the summons and the complaint to the defendant by first class mail and by any of the following: certified, registered, or express mail with return receipt requested. For purposes of this section, “first class mail” does not include certified, registered, or express mail, return receipt requested, or any other form of mail which may delay or hinder actual delivery of mail to the addressee.

D(2)(d)(ii) Calculation of time. For the purpose of computing any period of time provided by these rules or by statute, service by mail, except as otherwise provided, shall be complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

D(3) Particular defendants. Service may be made upon specified defendants as follows:

D(3)(a) Individuals.

D(3)(a)(i) Generally. Upon an individual defendant, by personal delivery of true copies of the summons and the complaint to such defendant or other person authorized by appointment or law to receive service of summons on behalf of such defendant, by substituted service, or by office service. Service may also be made upon an individual defendant to whom neither subparagraph (ii) nor (iii) of this paragraph applies by a mailing made in accordance with paragraph (2)(d) of this section provided the defendant signs a receipt for the certified, registered, or express mailing, in which case service shall be complete on the date on which the defendant signs a receipt for the mailing.

D(3)(a)(ii) Minors. Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor and, also, upon such minor’s father, mother, conservator of the minor’s estate, or guardian, or, if there be none, then upon any person having the care or control of the minor, or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A(2).

D(3)(a)(iii) Incapacitated persons. Upon a person who is incapacitated or financially incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of this paragraph upon such person and, also, upon the conservator of such person’s estate or guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B(2).

D(3)(a)(iv) Tenant of a mail agent. Upon an individual defendant who is a “tenant” of a “mail agent” within the meaning of ORS [646.221] **646A.340** by delivering true copies of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

(B) the plaintiff, as soon as reasonably possible after delivery, causes true copies of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copies of the summons and the complaint.

Service shall be complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) Corporations including, but not limited to, professional corporations and cooperatives.
Upon a domestic or foreign corporation:

D(3)(b)(i) Primary service method. By personal service or office service upon a registered agent, officer, or director of the corporation; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(b)(ii) Alternatives. If a registered agent, officer, or director cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent, officer, or director;

(B) by personal service on any clerk or agent of the corporation who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the corporation, if any, as shown by the records on file in the office of the Secretary of State; or, if the corporation is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 60.121 or 60.731.

D(3)(c) Limited liability companies. Upon a limited liability company:

D(3)(c)(i) Primary service method. By personal service or office service upon a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(c)(ii) Alternatives. If a registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent, manager, or (for a member-managed limited liability company) member of a limited liability company;

(B) by personal service on any clerk or agent of the limited liability company who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited liability company, as shown by the records on file in the office of the Secretary of State or, if the limited liability company is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited liability company, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 63.121.

D(3)(d) Limited partnerships. Upon a domestic or foreign limited partnership:

D(3)(d)(i) Primary service method. By personal service or office service upon a registered agent or a general partner of a limited partnership; or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(d)(ii) Alternatives. If a registered agent or a general partner of a limited partnership cannot be found in the county where the action is filed, true copies of the summons and the complaint may be served:

(A) by substituted service upon such registered agent or general partner of a limited partnership;

(B) by personal service on any clerk or agent of the limited partnership who may be found in the county where the action is filed;

(C) by mailing in the manner specified in paragraph (2)(d) of this section true copies of the summons and the complaint to the office of the registered agent or to the last registered office of the limited partnership, as shown by the records on file in the office of the Secretary of State or, if the limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the limited partnership, and in any case to any address the use of which the plaintiff knows or has reason to believe is most likely to result in actual notice; or

(D) upon the Secretary of State in the manner provided in ORS 70.040 or 70.045.

D(3)(e) General partnerships and limited liability partnerships. Upon any general partnership or limited liability partnership by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership or limited liability partnership.

D(3)(f) Other unincorporated association subject to suit under a common name. Upon any other unincorporated association subject to suit under a common name by personal service upon an officer, managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D(3)(g) State. Upon the state, by personal service upon the Attorney General or by leaving true copies of the summons and the complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(h) Public bodies. Upon any county; incorporated city; school district; or other public corporation, commission, board, or agency by personal service or office service upon an officer, director, managing agent, or attorney thereof.

D(3)(i) Vessel owners and charterers. Upon any foreign steamship owner or steamship charterer by personal service upon a vessel master in such owner's or charterer's employment or any agent authorized by such owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D(4) Particular actions involving motor vehicles.

D(4)(a) Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated upon the roads, highways, streets, or premises open to the public as defined by law of this state if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection (3) of this section except service by mail pursuant to subparagraph (3)(a)(i) of this section and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph (2)(d) of this section addressed to that defendant at:

(A) any residence address provided by that defendant at the scene of the accident;

(B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by (A) and (B) that reasonably might result in actual notice to that defendant.

Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered, or express mailings required by (A), (B), and (C) above was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph shall be complete on the latest date on which any of the mailings required by (A), (B), and (C) above is made. If the mailing required by (C) is omitted because the plaintiff did not know of any address other than those specified in (A) and (B) above, the proof of service shall so certify.

D(4)(a)(ii) Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph (i) of this paragraph may be recovered as provided in Rule 68.

D(4)(a)(iii) The requirements for obtaining an order of default against a defendant served pursuant to subparagraph (i) of this paragraph are as provided in Rule 69.

D(4)(b) Notification of change of address. Any person who; while operating a motor vehicle upon the roads, highways, streets, or premises open to the public as defined by law of this state; is involved in any accident, collision, or other event giving rise to liability shall forthwith notify the Department of Transportation of any change of such defendant's address occurring within three years after such accident, collision, or event.

D(5) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of true copies of the summons and the complaint is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases such service shall be reasonably calculated to give actual notice.

D(6) Court order for service; service by publication.

D(6)(a) Court order for service by other method. On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and any of the following: certified, registered, or express mail, return receipt requested; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D(6)(b) Contents of published summons. In addition to the contents of a summons as described in section C of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C(3) shall state: "The 'motion' or 'answer' (or 'reply') must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D(6)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph (a) of this subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

D(6)(d) Mailing summons and complaint. If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff shall mail true copies of the summons and the complaint to the defendant at such address by first class mail and any of the following: certified, registered, or express mail, return receipt requested. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, true copies of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known addresses, a mailing of copies of the summons and the complaint is not required.

D(6)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I and J of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D(6)(f) Defending before or after judgment. A defendant against whom publication is ordered or such defendant's representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be

proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D(6)(g) Defendant who cannot be served. Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection (3) of this section if: (i) service pursuant to subparagraph (4)(a)(i) of this section is not authorized, and the plaintiff attempted service of summons by all of the methods authorized by subsection (3) of this section and was unable to complete service, or (ii) if the plaintiff knew that service by such methods could not be accomplished.

NOTE: Corrects ORS citation in 7 D(3)(a)(iv) to reflect editorial renumbering of statute.

SECTION 5. ORS 30.868 is amended to read:

30.868. (1) Any of the following persons may bring a civil action to secure damages against any and all persons whose actions are unlawful under ORS 163.257 (1)(a):

(a) A person who is 18 years of age or older and who has been taken, enticed or kept in violation of ORS 163.257 (1)(a); or

(b) A person whose custodial rights have been interfered with if, by reason of the interference:

(A) The person has reasonably and in good faith reported a person missing to any city, county or state police agency; or

(B) A defendant in the action has been charged with a violation of ORS 163.257 (1)(a).

(2) An entry of judgment or a certified copy of a judgment against the defendant for a violation of ORS 163.257 (1)(a) is prima facie evidence of liability if the plaintiff was injured by the defendant's unlawful action under the conviction.

(3)(a) For purposes of this section, a public or private entity that provides counseling and shelter services to victims of domestic violence is not considered to have violated ORS 163.257 (1)(a) if the entity provides counseling or shelter services to a person who violates ORS 163.257 (1)(a).

(b) As used in this subsection, "victim of domestic violence" means an individual against whom domestic violence, as defined in ORS 135.230, 181.610[,] or 411.117 [or 657.176], has been committed.

(4) Bringing an action under this section does not prevent the prosecution of any criminal action under ORS 163.257.

(5) A person bringing an action under this section must establish by a preponderance of the evidence that a violation of ORS 163.257 (1)(a) has occurred.

(6) It is an affirmative defense to civil liability for an action under this section that the defendant reasonably and in good faith believed that the defendant's violation of ORS 163.257 (1)(a) was necessary to preserve the physical safety of:

(a) The defendant;

(b) The person who was taken, enticed or kept in violation of ORS 163.257 (1)(a); or

(c) The parent or guardian of the person who was taken, enticed or kept in violation of ORS 163.257 (1)(a).

(7)(a) If the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is under 18 years of age at the time an action is brought under this section, the court may:

(A) Appoint an attorney who is licensed to practice law in Oregon to act as guardian ad litem for the person; and

(B) Appoint one of the following persons to provide counseling services to the person:

(i) A psychiatrist.

(ii) A psychologist licensed under ORS 675.010 to 675.150.

(iii) A clinical social worker licensed under ORS 675.510 to 675.600.

(iv) A professional counselor or marriage and family therapist licensed under ORS 675.715.

(b) The court may assess against the parties all costs of the attorney or person providing counseling services appointed under this subsection.

(8) If an action is brought under this section by a person described under subsection (1)(b) of this section and a party shows good cause that it is appropriate to do so, the court may order the

parties to obtain counseling directed toward educating the parties on the impact that the parties' conflict has on the person taken, enticed or kept in violation of ORS 163.257 (1)(a). The court may assess against the parties all costs of obtaining counseling ordered under this subsection.

(9) Upon prevailing in an action under this section, the plaintiff may recover:

- (a) Special and general damages, including damages for emotional distress; and
- (b) Punitive damages.

(10) The court may award reasonable attorney fees to the prevailing party in an action under this section.

(11)(a) Notwithstanding ORS 12.110, 12.115, 12.117 or 12.160, an action under this section must be commenced within six years after the violation of ORS 163.257 (1)(a). An action under this section accruing while the person who is entitled to bring the action is under 18 years of age must be commenced not more than six years after that person attains 18 years of age.

(b) The period of limitation does not run during any time when the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is removed from this state as a result of the defendant's actions in violation of ORS 163.257 (1)(a).

NOTE: Removes reference in (3)(b) to deleted definition.

SECTION 6. ORS 35.015 is amended to read:

35.015. (1) Except as otherwise provided in this section, a public body as defined in ORS 174.109 may not condemn private real property used as a residence, business establishment, farm[,] or forest operation if at the time of the condemnation the public body intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party.

(2) Subsection (1) of this section does not apply to condemnation of:

(a) Improved or unimproved real property that constitutes a danger to the health or safety of the community by reason of contamination, dilapidated structures, improper or insufficient water or sanitary facilities, or any combination of these factors;

(b) Any timber, crops, [*top soil*] **topsoil**, gravel or fixtures to be removed from the real property being condemned; **or**

(c) Real property condemned for maintenance, improvement, or construction of transportation facilities, transportation systems, utility facilities or utility transmission systems.[;]

(3) Subsection (1) of this section does not prohibit a public body from leasing a portion of a public facility to a privately owned business for the provision of retail services designed primarily to serve the patrons of the public facility.

(4) A public body as defined in ORS 174.109 may at any time publish notice that the public body intends to consider condemnation of a lot or parcel. If the public body publishes notice under this subsection, subsection (1) of this section does not apply for such time necessary to provide the public body reasonable opportunity to condemn the property, if the lot or parcel is conveyed by the owner of the lot or parcel to another private party after the notice is published, but prior to the time the property is condemned.

(5) Subsection (1) of this section does not affect the ability of a public body as defined in ORS 174.109 to make a conveyance of a [*non-possessory*] **nonpossessory** interest in condemned property for the purpose of financing acquisition of the property.

(6) A court shall independently determine whether a taking of property complies with the requirements of this section, without deference to any determination made by the public body. If a court determines that a taking of property does not comply with the requirements of this section, the owner of the lot or parcel that is the subject of the condemnation proceeding shall be entitled to reasonable attorney fees, expenses, costs[,] and other disbursements reasonably incurred to defend against the proposed condemnation.

NOTE: Removes serial commas in (1) and (6); corrects spelling in (2)(b) and (5); corrects paragraph structure in (2).

SECTION 7. ORS 105.560 is amended to read:

105.560. (1) An action to restrain or enjoin a nuisance described in ORS 105.555 may be brought by the Attorney General, district attorney, county attorney, city attorney or a person residing or

doing business in the county where the property is located. The action shall be brought in the circuit court in the county where the property is located. Except as provided in subsection (5) of this section, the action may be commenced in the small claims department of the circuit court for the county where the property is located.

(2) In addition to any other remedy that may be available under ORS 105.550 to 105.600, a plaintiff in an action brought to restrain or enjoin a nuisance described in ORS 105.555 may seek damages for mental suffering, emotional distress, inconvenience and interference with the use of property suffered by the plaintiff by reason of the activities constituting a nuisance.

(3) The court may award reasonable attorney fees to the prevailing party in an action under ORS 105.550 to 105.600 unless the action is commenced and tried in the small claims department of a circuit court. Attorney fees may not be awarded to any party in an action under ORS 105.550 to 105.600 that is commenced and tried in the small claims department of a circuit court.

(4) The court may consolidate all actions that relate to the same property and that are brought to restrain or enjoin a nuisance described in ORS 105.555. Consolidation in the small claims department of a circuit court shall be for purposes of trial only. A separate judgment shall be entered for each action in the small claims department of a circuit court.

(5) An action may not be brought in the small claims department of a circuit court to restrain or enjoin a nuisance described in ORS 105.555 if the property alleged to be a nuisance is licensed under ORS chapter 471 [or 472].

NOTE: Adds indefinite articles in (3) and (4); deletes reference to repealed ORS chapter in (5).

SECTION 8. ORS 133.005 is amended to read:

133.005. As used in ORS [131.655 and] 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Federal officer" means a special agent or law enforcement officer employed by a federal agency [and] who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(3) "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon.

NOTE: Removes erroneous reference in lead-in; corrects syntax in (2).

SECTION 9. ORS 135.037 is amended to read:

135.037. (1) At any time after the filing of the accusatory instrument in circuit court and before the commencement of trial thereon, the court upon motion of any party shall, and upon its own motion may, order an omnibus hearing.

(2) The purpose of an omnibus hearing shall be to rule on all pretrial motions and requests, including but not limited to the following issues:

- (a) Suppression of evidence.[;]
- (b) Challenges to identification procedures used by the prosecution.[;]
- (c) Challenges to voluntariness of admissions or confession.[;]
- (d) Challenges to the accusatory instrument.

(3) The court, at the time of the omnibus hearing, may also consider any matters [which] **that** will facilitate trial by avoiding unnecessary proof or by simplifying the issues to be tried, or [which] **that** are otherwise appropriate under the circumstances to facilitate disposition of the proceeding.

(4) At the conclusion of the hearing and prior to trial the court shall prepare and file an order setting forth all rulings of the court on issues raised under subsection (2) of this section. The court shall further prepare and file a memorandum of other matters agreed upon at the hearing. Except in a prosecution of the defendant for perjury or false swearing, or impeachment of the defendant,

[no] admissions made by the defendant or the attorney of the defendant at the hearing [shall] **may not** be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the attorney.

(5) This section [shall] **may** not be applied in any proceeding or at any stage of any proceeding where the defendant is not represented by counsel.

NOTE: Modifies punctuation in (2); updates word choice in (3); conforms syntax in (4) and (5) to legislative style.

SECTION 10. ORS 138.071 is amended to read:

138.071. (1) Except as provided in this section, a notice of appeal must be served and filed not later than 30 days after the judgment or order appealed from was entered in the register.

(2) If a motion for new trial or motion in arrest of judgment is served and filed, a notice of appeal must be served and filed within 30 days from the earlier of the following dates:

- (a) The date of entry of the order disposing of the motion; or
- (b) The date on which the motion is deemed denied.

(3) A defendant cross-appealing must serve and file the notice of cross-appeal within 10 days of the expiration of the time allowed in subsection (1) of this section.

(4) If the trial court enters a corrected or a supplemental judgment under ORS 138.083, a notice of appeal from the corrected or supplemental judgment must be filed not later than 30 days after the defendant receives notice that the judgment has been entered.

(5)(a) Upon motion of a defendant, the Court of Appeals shall grant the defendant leave to file a notice of appeal after the time limits described in subsections (1) to (4) of this section if:

(A) The defendant, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the defendant personally; and

(B) The defendant shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) A defendant is not entitled to relief under this subsection for failure to file timely notice of cross-appeal when the state appeals pursuant to ORS 138.060 (1)(c) or (2)(a).

(c) The request for leave to file a notice of appeal after the time limits prescribed in subsections (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment being appealed. The request for leave to file a notice of appeal after the time limit prescribed in subsection (4) of this section must be filed no later than 90 days after the defendant receives notice that the judgment has been entered. A request for leave under this subsection must be accompanied by the notice of appeal, may be filed by mail and is deemed filed on the date of mailing if the request is mailed as provided in ORS 19.260.

(d) The court [shall] **may** not grant relief under this subsection unless the state has notice and opportunity to respond to the defendant's request for relief.

(e) The denial of a motion under paragraph (a) of this subsection is a bar to post-conviction relief under ORS 138.510 to 138.680 on the same ground, unless the court provides otherwise.

NOTE: Inserts comma after introductory clause in (2); improves syntax in (5)(d).

SECTION 11. ORS 164.043 is amended to read:

164.043. (1) A person commits the crime of theft in the third degree if[, *by means other than extortion, the person*]:

- (a) **By means other than extortion, the person** commits theft as defined in ORS 164.015; and
 - (b) The total value of the property in a single or an aggregate transaction is under \$50.
- (2) Theft in the third degree is a Class C misdemeanor.

NOTE: Corrects read-in in (1).

SECTION 12. ORS 164.045 is amended to read:

164.045. (1) A person commits the crime of theft in the second degree if[, *by other than extortion, the person*]:

- (a) **By other than extortion, the person** commits theft as defined in ORS 164.015; and
- (b) The total value of the property in a single or aggregate transaction is \$50 or more but is under \$200 in a case of theft by receiving and under \$750 in any other case.

(2) Theft in the second degree is a Class A misdemeanor.

NOTE: Corrects read-in in (1).

SECTION 13. ORS 165.495 is amended to read:

165.495. (1) Except as provided in subsection (2) of this section, [no] **an** agent, operator or employee in any telegraph office[, shall] **may not** unreasonably and willfully:

(a) Refuse or neglect to send any message received at [such] **the** office for transmission;

(b) Postpone any message out of its order; or

(c) Refuse or neglect to deliver any message received by telegraph.

(2) This section does not require:

(a) Any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered; **or**

(b) The sending, receiving or delivery of any message counseling, aiding, abetting or encouraging treason against the Government of the United States or of this state, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

NOTE: Updates syntax in (1) lead-in and (1)(a); supplies missing connector in (2).

SECTION 14. ORS 171.559 is amended to read:

171.559. The Joint [Legislative] Committee on Ways and Means shall examine budgets based upon policy where budget policies affect more than one agency pursuant to the policies stated in ORS 171.557.

NOTE: Conforms title of committee with majority of references to committee.

SECTION 15. ORS 174.106 is repealed.

NOTE: Repeals definition of term no longer used in statutes.

SECTION 16. ORS 181.030 is amended to read:

181.030. (1) The Department of State Police and each member of the Oregon State Police shall be charged with the enforcement of all criminal laws.

(2) Each member of the state police is authorized and empowered to:

(a) Prevent crime.

(b) Pursue and apprehend offenders and obtain legal evidence necessary to [insure] **ensure** the conviction in the courts of [such] **the** offenders.

(c) Institute criminal proceedings.

(d) Execute any lawful warrant or order of arrest issued against any person or persons for any violation of the law.

(e) Make arrests without warrant for violations of law in the manner provided in ORS 133.310.

(f) Give first aid to the injured.

(g) Succor the helpless.

(3) Each member of the state police shall have in general the same powers and authority as those conferred by law upon sheriffs, police officers, constables[,] **and** peace officers. [and] **A member of the state police** may be appointed as a deputy medical [examiners] **examiner**.

(4) The members of the state police [shall be] **are** subject to the call of the Governor, and are empowered to cooperate with any other instrumentality or authority of the state, or any political subdivision in detecting crime, apprehending criminals and preserving law and order throughout the state,[:] but the state police [shall] **may** not be used as a posse except when ordered by the Governor.

NOTE: Updates word choice in (2)(b); corrects syntax in (3) and (4).

SECTION 17. ORS 182.415 is amended to read:

182.415. As used in ORS 182.415 to 182.435 [and 240.086] unless the context requires otherwise:

(1) "Furnishings" includes furniture usually used in connection with occupancy of a household but does not include rugs, draperies, [range, refrigerator, washer, dryer] **ranges, refrigerators, washers, dryers** or any item of furnishings received by the state or one of its agencies as a gift, nor does it include any furniture purchased for the state-owned residence required in relation to the

official duties of an institutional executive or the Chancellor of the Department of Higher Education prior to September 9, 1971.

(2) "Housing" includes single and multiple family dwellings, apartments, and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy but does not include guard stations maintained by the State Forestry Department or dormitory facilities at any state institution or at any state institution of higher education.

(3) "Dormitory" includes any facility [which] **that** houses students and those facilities used primarily for sleeping purposes by the employees of the Department of Human Services.

(4) "State agency" has the [same] meaning [as] **given that term** in ORS 291.002.

NOTE: Removes erroneous reference in lead-in; corrects syntax in (1); updates word choice in (3) and (4).

SECTION 18. ORS 192.820 is amended to read:

192.820. As used in ORS 192.820 to 192.868:

(1) "Actual address" means:

(a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or

(b) The name of the county in which the program participant resides or the name or number of the election precinct in which the program participant is registered to vote.

(2) "Address Confidentiality Program" means the program established under ORS 192.822.

(3) "Application assistant" means an employee of or a volunteer serving a public or private entity designated by the Attorney General under ORS 192.854 to assist individuals with applications to participate in the Address Confidentiality Program.

(4) "Program participant" means an individual accepted into the Address Confidentiality Program under ORS 192.820 to 192.868.

(5) "Public body" has the meaning given that term in ORS 174.109.

(6) "Public record" has the meaning given that term in ORS 192.410.

(7) "Substitute address" means an address designated by the Attorney General under the Address Confidentiality Program.

(8) "Victim of domestic violence" means:

(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181.610[,] **or** 411.117 [or 657.176];

(b) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(c) Any other individual designated a victim of domestic violence by the Attorney General by rule.

(9) "Victim of a sexual offense" means:

(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or

(b) Any other individual designated by the Attorney General by rule.

(10) "Victim of stalking" means:

(a) An individual against whom stalking has been committed, as described in ORS 163.732; or

(b) Any other individual designated by the Attorney General by rule.

NOTE: Removes reference in (8)(a) to deleted definition.

SECTION 19. Section 11, chapter 516, Oregon Laws 2001, is amended to read:

Sec. 11. The amendments to ORS 196.800, 196.810, [196.825,] 196.850, 196.895, 196.905, 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10, **chapter 516, Oregon Laws 2001**, [of this 2001 Act] and the repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, **chapter 516, Oregon Laws 2001**, [of this 2001 Act] become operative on January 2 of the even-numbered year following the date the United States Environmental Protection Agency grants authority by letter to the Department of State Lands to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended) and the Legislative Assembly approves the grant of authority.

NOTE: Eliminates reference to statute no longer affected by conditional operative date (see amendments to 196.825 by sections 4 and 5, chapter 849, Oregon Laws 2007, incorporating amendments subject to conditional operative date).

SECTION 20. ORS 238.690 is amended to read:

238.690. (1) A retirement plan [which] **that** has been adopted by a mass transit district organized under ORS 267.010 to 267.390 situated in a [standard] metropolitan statistical area with a population exceeding 400,000[,] may be integrated with, or the district may become a participant in, the Public Employees Retirement System in the manner prescribed in subsection (2) of this section.

(2)(a) A proposed form of contract setting forth all the terms, conditions and provisions of the integration or participation shall be a mandatory subject of bargaining subject to the provisions of ORS 243.650 to 243.782.

(b) The proposed contract shall be submitted to a vote of the employees of the mass transit district, or the members of the affected bargaining unit of the applicable labor organization, and the board of directors of the mass transit district. In submitting a proposed contract to its members, the labor organization shall follow the procedure provided in its bylaws for the promulgation and adoption of bylaws.

(c) Adoption by the employees or members of the affected bargaining unit of the applicable labor organization of the proposed contract of integration or participation shall be by an affirmative vote of not less than two-thirds of the affected employees or active members of the affected bargaining unit of the applicable labor organization at the time of the election.

(d) The proposed contract so formulated, approved and adopted shall be submitted to the Public Employees Retirement Board. The board may exercise its authority to negotiate and enter into a contract with the mass transit district that would accomplish the integration or participation without adversely affecting the current operational and capital requirements of the mass transit district. The board [shall] **may** not enter into any contract that prevents those adverse effects by adjusting the level of benefits received by any of the employees of the mass transit district.

(e) [No] **A** contract of prospective participation [shall] **does not** in any way alter, impair or adversely affect any rights, benefits or privileges [which] **that** have vested under the provisions of law or collective bargaining agreement in an employee of a mass transit district by virtue of retirement, either on account of disability or on account of having attained the retirement age, prior to the effective date of the contract of integration or participation.

(f) When a public employer enters into a contract with the board under this section, the public employer shall agree to eventually extend coverage under this chapter to all eligible employees of the employer through subsequent contracts with the board.

(3) For the purposes of this section, “[standard] metropolitan statistical area” has that meaning given **that term** in ORS 267.010.

NOTE: Updates syntax in (1), (2)(d) and (e) and (3); conforms census terminology in (1) and (3) to current federal usage.

SECTION 21. ORS 249.031 is amended to read:

249.031. (1) Except as provided in subsection (2) of this section, a nominating petition or declaration of candidacy shall contain:

(a) The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in connection with the candidate’s full name.

(b) Address information as required by the Secretary of State by rule.

(c) The office and department or position number, if any, for which the candidate seeks nomination.

(d) If the candidate is seeking the nomination of a major political party, the name of the major political party of which the candidate will have been a member, subject to the exceptions stated in ORS 249.046, during at least 180 days before the deadline for filing a nominating petition or declaration of candidacy.

(e) A statement that the candidate is willing to accept the nomination or election or, regarding a candidate for precinct committeeperson, that the candidate accepts the office if elected.

(f) A statement that the candidate will qualify if elected.

(g) If the candidate is seeking the nomination of a major political party, a statement that the candidate, if not nominated, will not accept the nomination or [*indorsement*] **endorsement** of any political party other than the one of which the candidate is a member on the date the petition or declaration is filed.

(h) The signature of the candidate.

(i) A statement of the candidate's occupation, educational and occupational background and prior governmental experience.

(2) Subsection (1)(i) of this section does not apply to a candidate for election as a precinct committeeperson.

(3) A declaration of candidacy shall include a statement that the required fee is included with the declaration.

(4) If required by the national rules of the major political party, the declaration of a candidate for election as a precinct committeeperson shall include the name of the individual the candidate supports for President of the United States or "uncommitted" or "no preference."

NOTE: Standardizes word choice in elections law in (1)(g).

SECTION 22. ORS 251.049 is amended to read:

251.049. (1) Except as provided in subsection (2) of this section, the Secretary of State may not print the name or title of a person or the name of an organization in an argument supporting or opposing any measure or a statement of any candidate, political party or assembly of electors filed for inclusion in the voters' pamphlet, if the name or title of the person or the name of the organization is cited as supporting or [*indorsing*] **endorsing** the argument or statement.

(2) The Secretary of State may print the name or title of a person or the name of an organization in an argument or statement submitted for inclusion in the voters' pamphlet as supporting or [*indorsing*] **endorsing** the argument or statement if:

(a) Not later than the deadline for filing an argument or statement with the Secretary of State, the secretary receives a statement signed by the person, or by an authorized person on behalf of an organization, stating that the person consents to the use of the name or title of the person or the name of the organization; or

(b) The name or title of a person or the name of an organization is used with a quotation made by the person or by an authorized person on behalf of an organization, the quotation was disseminated to the public prior to its inclusion in the argument or statement and the quotation is identified by its source and date.

(3) A person may not:

(a) Submit a false signature under subsection (2) of this section; or

(b) Alter the manner in which a person signing a statement of consent described in subsection (2) of this section designates the person's name or title or the name of the organization the person represents to appear in the argument or statement. This paragraph does not prohibit revisions allowed or required under ORS 251.055 or 251.087.

NOTE: Standardizes word choice in elections law in (1) and (2).

SECTION 23. ORS 251.355 is amended to read:

251.355. (1) Not later than the date specified by the Secretary of State by rule, in a county that prepares a county voters' pamphlet, any person may file with the county clerk a typewritten argument supporting or opposing any measure to be submitted to the voters on the ballot. The county clerk [*shall*] **may** not accept any arguments [*which*] **that** are not accompanied by the fee established by the Secretary of State or a petition in a form prescribed by the Secretary of State. A petition shall contain the signatures of at least four percent of the electors in the county eligible to vote on the measure to which the argument refers, or the signatures of 1,000 electors in the county eligible to vote on the measure to which the argument refers, whichever is less. The number of registered electors in an electoral district, for the purposes of this section, shall be calculated on January 1 of each year. Each person signing the petition shall subscribe to a statement that the person has read and agrees with the argument. The signatures on each petition shall be certified

by the county clerk in the manner provided in ORS 249.008. The petition shall be filed with the county clerk.

(2) The county clerk shall include in the county voters' pamphlet, on the page of the printed argument, the name of the person who submitted the argument, the name of the organization the person represents, if any, whether the argument supports or opposes the measure and a disclaimer that the argument does not constitute an [indorsement] **endorsement** by the county and that the county does not warrant the accuracy or truth of any statement made in the argument.

NOTE: Updates word choice in (1); standardizes word choice in elections law in (2).

SECTION 24. ORS 255.165 is amended to read:

255.165. (1) Except for a district measure of the Port of Portland, a metropolitan service district organized under ORS chapter 268, a school district with an enrollment exceeding 40,000 pupils or a mass transit district situated in a [standard] metropolitan statistical area with a population exceeding 400,000, other than a mass transit district measure relating to a route, schedule or fare change, a petition to refer or initiate a district measure must be signed by a number of electors registered in the district that:

(a) For an initiative petition, is not less than 15 percent of the total number of votes cast in the district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term; and

(b) For a referendum petition, is not less than 10 percent of the total number of votes cast in the district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term.

(2) A petition to refer or initiate a district measure of the Port of Portland, a metropolitan service district organized under ORS chapter 268, a school district with an enrollment exceeding 40,000 pupils or a mass transit district situated in a [standard] metropolitan statistical area with a population exceeding 400,000, other than a mass transit district measure relating to a route, schedule or fare change, must be signed by a number of electors registered in the district that:

(a) For an initiative petition, is not less than six percent of the total number of votes cast in the district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term; and

(b) For a referendum petition, is not less than four percent of the total number of votes cast in the district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term.

(3) Except for a district measure of the Port of Portland, a metropolitan service district organized under ORS chapter 268, a school district with an enrollment exceeding 40,000 pupils or a mass transit district situated in a [standard] metropolitan statistical area with a population exceeding 400,000, other than a mass transit district measure relating to a route, schedule or fare change, a petition to refer a district measure must be filed with the elections officer not later than the 30th day after adoption of the district ordinance sought to be referred.

(4) A petition to refer a district measure of the Port of Portland, a metropolitan service district organized under ORS chapter 268, a school district with an enrollment exceeding 40,000 pupils or a mass transit district situated in a [standard] metropolitan statistical area with a population exceeding 400,000, other than a mass transit district measure relating to a route, schedule or fare change, must be filed with the elections officer not later than the 90th day after adoption of the district ordinance sought to be referred.

NOTE: Conforms census terminology to current federal usage.

SECTION 25. ORS 264.335 is amended to read:

264.335. In addition to the other powers granted to districts under this chapter, a district may exercise the powers granted to sanitary districts under ORS 450.005 to 450.245 when:

(1) The district obtains all or part of its supply of water from a watershed;

(2) The watershed is located in a sole-source aquifer designated prior to September 29, 1991, by the United States Environmental Protection Agency under the Safe Drinking Water Act (42 U.S.C. [300h] **300f** et seq.);

(3) The watershed is recognized under rules of the Environmental Quality Commission as a watershed requiring protection from contamination in order to maintain high water quality; and

(4) The district adopts a resolution declaring that the health of the residents of the district and the general public interest requires the district to protect the water quality of the watershed.

NOTE: Corrects federal citation in (2).

SECTION 26. ORS 267.010 is amended to read:

267.010. As used in ORS 267.010 to 267.390, unless the context requires otherwise:

(1) "District" means a mass transit district established under ORS 267.010 to 267.390.

(2) "District board" or "board" means the board of directors of a district.

(3) "Mass transit system" or "transit system" means the property, equipment and improvements of whatever nature owned, used, constructed, maintained, controlled or operated to provide mass transportation for passengers or to provide for the movement of people, including park-and-ride stations, transfer stations, parking lots, malls[,] and skyways, provided that nothing contained herein shall limit the power of a city to exercise its general powers over or provide such stations, lots, malls[,] or skyways.

(4) "[*Standard*] Metropolitan statistical area" means an area designated [*and published*] by the United States [*Bureau of the Budget*] **Office of Management and Budget** as a [*standard*] metropolitan statistical area.

NOTE: Strikes serial commas in (3); conforms census terminology to current federal usage, eliminates redundancy and updates title of federal agency in (4).

SECTION 27. ORS 267.080 is amended to read:

267.080. As provided by ORS 267.010 to 267.390, a mass transit district may be created in any [*standard*] metropolitan statistical area for the purpose of providing a mass transit system for the people of the district. Except as otherwise provided in ORS 267.107 (2)(c), the territorial jurisdiction of the district may include all territory within the geographic boundaries of every Oregon county in that [*standard*] metropolitan statistical area.

NOTE: Conforms census terminology to current federal usage.

SECTION 28. ORS 267.085 is amended to read:

267.085. (1) In addition to and not in lieu of other actions authorized for the initiation of proceedings to form a mass transit district, the governing body of the most populous city in a [*standard*] metropolitan statistical area may by resolution propose formation of a mass transit district, if that city has a local transit system and if the governing body finds that area-wide mass transit needs cannot be met by local transit operation. The resolution of the governing body shall be addressed to and filed with the county board of the principal county and proceedings conducted as provided by ORS 198.705 to 198.955.

(2) A certified copy of the order forming a mass transit district shall be filed with the Governor.

NOTE: Conforms census terminology in (1) to current federal usage.

SECTION 29. ORS 267.097 is amended to read:

267.097. Before appointing a director to the board of a district situated in a [*standard*] metropolitan statistical area with a population exceeding 400,000, the Governor shall solicit from each city and county located wholly or partly within the subdistrict for which the appointment will be made recommendations of qualified individuals for the position.

NOTE: Conforms census terminology to current federal usage.

SECTION 30. ORS 267.107 is amended to read:

267.107. Notwithstanding ORS 267.085:

(1) The governing body of the most populous city in a [*standard*] metropolitan statistical area may by resolution propose creation of a mass transit district if the governing body finds that area-wide mass transit needs cannot be met by local transit operation.

(2) The resolution of the governing body shall:

(a) Be considered at a public hearing only after notice as required for regular consideration of other resolutions by city charter or ordinance;

(b) Include findings of the need for creation of a mass transit district in the affected area;

(c) Describe the boundaries of the proposed district, which may be limited to a proposed service area but which may not extend beyond the limits of the city's urban growth boundary; and

(d) If approved, be addressed to and filed with the governing body of the county in which the proposed district is principally situated.

(3) Upon receipt of the resolution under subsection (2) of this section, the county governing body shall commence district formation proceedings as provided in ORS 198.705 to 198.955 and 267.108.

NOTE: Conforms census terminology in (1) to current federal usage; inserts comma after introductory clause in (3).

SECTION 31. ORS 267.410 is amended to read:

267.410. ORS 267.300, 267.380 and 267.410 to 267.430 apply only to a mass transit district situated in a [*standard*] metropolitan statistical area with a population exceeding 400,000.

NOTE: Conforms census terminology to current federal usage.

SECTION 32. ORS 284.142 is amended to read:

284.142. (1) The Oregon Tourism Commission shall appoint an executive director. The appointment shall be subject to the approval of the Governor. The executive director shall serve at the pleasure of the members of the commission.

(2) The commission shall set the compensation of the executive director.

(3) The executive director shall direct all administrative functions of the commission. The executive director may appoint all subordinate officers and employees of the commission and may prescribe their duties and set their compensation.

(4) Except as provided in subsection (5) of this section, the commission may delegate to the executive director any duty, function or power conferred or imposed on the commission and the executive director may delegate to any subordinate officer or employee of the commission any duty, function or power conferred, imposed on or delegated to the executive director.

(5) The commission may not delegate to the executive director the power to:

(a) Approve the comprehensive marketing plan described in ORS 284.111;

(b) Approve the biennial budget required under ORS 284.126; or

(c) Appoint and set the compensation of the executive director [*under ORS 284.142*].

NOTE: Strikes unnecessary reference in (5)(c); see subsection (1).

SECTION 33. ORS 285B.422 is amended to read:

285B.422. (1) The Economic and Community Development Department may provide financial or other assistance to a municipality for a development project [*as defined in ORS 285B.410*].

(2) The project must be municipally owned and operated either by the municipality or under a management contract or an operating agreement with the municipality. If the project consists:

(a) Solely of the purchase or acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use.

(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(3) If the project is an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system. This subsection does not apply when the energy system will be located within the recognized service territory of the municipality.

(4) The department may not use funds to provide assistance for:

(a) Projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; or

(b) Ongoing operations or maintenance expenses.

NOTE: Strikes redundant reference to definition section in (1); see 285B.410.

SECTION 34. ORS 285B.460 is amended to read:

285B.460. (1) The Economic and Community Development Department may provide financial or other assistance to a municipality for a planning project [as defined in ORS 285B.410].

(2) The planning project may be a stand-alone project.

(3) The planning project may include an environmental action on a brownfield. For purposes of this subsection:

(a) "Brownfield" has the meaning given that term in ORS 285A.185.

(b) "Environmental action" has the meaning given that term in ORS 285A.188.

NOTE: Strikes redundant reference to definition section in (1); see 285B.410.

SECTION 35. ORS 285B.462 is amended to read:

285B.462. (1) The Economic and Community Development Department may provide financial or other assistance to a municipality for an emergency project [as defined in ORS 285B.410].

(2) The department may award grant funding to an emergency project only if federal disaster relief assistance has been committed for the emergency project.

(3) Assistance from the Special Public Works Fund for an emergency project may not exceed the total local matching funds requirement for the federal disaster relief assistance committed to the project.

NOTE: Strikes redundant reference to definition section in (1); see 285B.410.

SECTION 36. ORS 291.445 is amended to read:

291.445. (1) Before July 1 of each fiscal year, the Oregon Department of Administrative Services shall request from the appropriate state agency a certificate as prescribed in this section. The request shall be made by letter to the agency.

(2) Each state agency authorized to issue general obligation bonds that are ordinarily to be repaid from other than General Fund appropriations shall, on or before August 15 of each fiscal year:

(a) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year to the bond program debt service fund to pay bond principal and interest that has accrued or will accrue during the current year are sufficient and will be sufficient to pay bond program principal and interest scheduled for payment during the current year; or

(b) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year to the bond program debt service fund will not be sufficient to pay bond program principal and interest scheduled for payment during the current year. A certificate issued under this paragraph shall specify the amount of the anticipated current year deficit. The Director of the Oregon Department of Administrative Services shall review and confirm the correctness of each certification made under this paragraph.

(3) On or before August 15 of each fiscal year, the administrative division of the Oregon Department of Administrative Services that has primary responsibility for accounting for each general obligation bond program in which the bond principal and interest is ordinarily to be repaid from General Fund appropriations shall:

(a) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year from General Fund appropriations to defray program bond principal and interest that has accrued or will accrue during the current year are sufficient and will be sufficient to pay program bond principal and interest scheduled for payment during the current year; or

(b) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year from General Fund appropriations will not be sufficient to pay program bond principal and interest scheduled for payment during the current year. A certificate issued under this paragraph shall specify the amount of the anticipated current year deficit.

(4)(a) If a deficit in funds available to pay principal and interest in any general obligation bond program is certified and confirmed under subsection (2) or certified under subsection (3) of this

section, the amount of the deficit, together with any deficit that is certified for any other general obligation bond program shall upon certification constitute a state tax levy on property that shall be apportioned among and charged to the several counties in that proportion which the total assessed value of all the taxable property in each county bears to the total assessed value of all the taxable property of the state as equalized.

(b) If any agency fails to make the certification under subsection (2) or (3) of this section with respect to any general obligation bond fund program, the Oregon Department of Administrative Services shall determine the amount of revenue and other funds that are available and the amount of taxes, if any, that should be levied in addition to the revenues and funds, to pay bond principal and interest under the program for the fiscal year in question. The additional amount so determined shall thereupon constitute a state tax levy on property that shall be apportioned, certified, collected and distributed as if determined and certified as a deficit by the agency. The Oregon Department of Administrative Services shall charge the agency for cost recovery for time spent on that agency's behalf.

(5) Immediately after the department has determined the amount of a state tax levy on property in accordance with subsection (4) of this section, a certificate of levy, signed by the director of the department, shall be filed in the office of the department. If no state levy is required for the fiscal or tax year, a certificate so stating and signed by the director shall be filed in the office of the department.

(6) If, for any reason, after the close of any regular biennial session of the Legislative Assembly, it becomes necessary to reduce General Fund appropriations, General Fund appropriations for a debt service fund of a general obligation bond program described under subsection (3) of this section may not be reduced.

(7) For purposes of this section:

(a) State agencies that are authorized to issue general obligation bonds ordinarily to be repaid from other than General Fund appropriations include but are not limited to:

(A) The Director of Veterans' Affairs, as authorized by Article XI-A of the Oregon Constitution and ORS chapter 407 (veterans loans).

(B) The State Board of Higher Education, as authorized by Article XI-F(1) of the Oregon Constitution and ORS 351.350 (building projects).

(C) The Department of Environmental Quality, as authorized by Article XI-H of the Oregon Constitution and ORS 468.195 to 468.260 (pollution control).

(D) The Water Resources Commission and the Water Resources Director, as authorized by Article XI-I(1) of the Oregon Constitution and ORS 541.700 to 541.855 (water development).

(E) The [*Housing Agency*] **Housing and Community Services Department**, as authorized by Article XI-I(2) of the Oregon Constitution and ORS 456.515 to 456.725 and 458.505 to 458.515 (housing).

(F) The Director of the State Department of Energy, as authorized by Article XI-J of the Oregon Constitution and ORS 470.220 to 470.290 (small scale energy projects).

(G) Other agencies as required by the Oregon Department of Administrative Services by rule adopted using the criterion of this subsection.

(b) Each agency authorized to issue general obligation bonds that are ordinarily to be repaid from other than General Fund appropriations shall determine the amount of revenues or other funds that are available and the amount of taxes, if any, that should be levied for the ensuing year in the manner required under rules adopted by the Oregon Department of Administrative Services and make the certification required under subsection (2) of this section.

(8)(a) State agencies that are authorized to issue general obligation bonds that are ordinarily to be repaid from General Fund appropriations include but are not limited to:

(A) The State Board of Forestry and the State Forester, as authorized by Article XI-E of the Oregon Constitution and ORS 530.210 to 530.280 (state reforestation).

(B) The State Board of Higher Education, as authorized by Article XI-G of the Oregon Constitution and ORS 351.345 (higher education and community colleges).

(C) Other agencies as required by the Oregon Department of Administrative Services by rule adopted using the criterion of this subsection.

(b) Each agency authorized to issue general obligation bonds ordinarily to be repaid from General Fund appropriations shall furnish any data required by the Oregon Department of Administrative Services to determine the amount of revenues or other funds that are available and the amount of taxes, if any, that should be levied for the ensuing year and the administrative division of the Oregon Department of Administrative Services that has primary responsibility for accounting shall make the determination for purposes of the making of the certification required under subsection (3) of this section.

NOTE: Corrects name of agency in (7)(a)(E).

SECTION 37. ORS 292.500 is amended to read:

292.500. (1) As used in this section, "council" means the Oregon **Council on** Developmental Disabilities [*Council*] that receives federal financial support under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.).

(2) Each member of the Oregon **Council on** Developmental Disabilities [*Council*] is entitled to compensation as provided in ORS 292.495 (1).

(3) Subject to limits provided by law or by the Oregon Department of Administrative Services under ORS 292.210 to 292.250, each member of the council may receive actual and necessary travel or other expenses incurred in the performance of the member's official duties and not reimbursed from other sources.

(4) As used in subsection (3) of this section, "other expenses" means:

(a) Expenses not exceeding \$25 for each day that are incurred by a member of the council in employing another person to perform duties, including personal duties, normally performed by the member that the member is unable to perform because of other official duties that cannot be delayed without risk to health or safety.

(b) Notwithstanding paragraph (a) of this subsection, the actual cost of personal assistant services necessary for a member of the council to perform official duties of the member.

(c) Notwithstanding paragraph (a) of this subsection, the actual cost of care for children or family members with disabilities that is required to allow a parent or caregiver to perform the duties of a member of the council.

NOTE: Updates name of council to reflect Executive Order No. 02-24.

SECTION 38. ORS 294.810 is amended to read:

294.810. (1) With the consent of the governing body, a local government official may place in the aggregate up to \$30 million of its funds in the investment pool, or, if the assets of the investment pool have been transferred pursuant to ORS 294.882, in the state investment fund established pursuant to ORS 293.721, for investment and reinvestment by the investment officer as provided under ORS 293.701 to 293.820 or 294.805 to 294.895, as the case may be. The \$30 million limitation stated in this section [*shall*] **does** not apply either to funds of a governing body [*which*] **that** are placed in the investment pool on a pass-through basis or to funds invested on behalf of another government unit. Local governments must remove pass-through funds [*which*] **that** result in an account balance in the pool in excess of \$30 million within 10 business days. County governments must remove such excess funds within 20 business days. The investment officer shall promptly report each instance of noncompliance with, or apparent abuse of, the limitations of this section to the Secretary of State and to the governing body of the local government involved.

(2) The \$30 million limitation contained in subsection (1) of this section shall increase in proportion to the increase occurring after September 9, 1995, in the Consumer Price Index for All Urban Consumers of the Portland, Oregon, [*Standard*] Metropolitan Statistical Area, as compiled by the United States Department of Labor, Bureau of Labor Statistics.

NOTE: Updates syntax in (1); conforms census terminology in (2) to current federal usage.

SECTION 39. ORS 297.070, as amended by section 8, chapter 7, Oregon Laws 2008, is amended to read:

297.070. (1) Performance and program audits of all state departments, boards, commissions, institutions and state-aided institutions and agencies shall be conducted on the basis of risk assessment and on standards established by national recognized entities including, but not limited to, the United States [*General Accounting*] **Government Accountability** Office and the National Association of State Auditors. The Secretary of State shall adopt and the Joint Legislative Audit Committee shall approve rules specifying all criteria to be considered for conducting a performance or program audit under this section. The Secretary of State shall schedule the performance and program audits as directed by the Joint Legislative Audit Committee.

(2) The Secretary of State may subpoena witnesses, may require the production of books and papers and rendering of reports in [*such*] **the** manner and form [*as*] **that** the Secretary of State requires and may do all things necessary to secure a full and thorough audit. The Secretary of State shall report, in writing, to the Legislative Assembly as provided in ORS 192.245 and to the Committee on Performance Excellence established in section 1, chapter 7, Oregon Laws 2008. The report shall include a copy of the report on each performance and program audit.

(3) The Secretary of State, as State Auditor, shall contract with qualified private sector auditors to conduct audits required by this section, unless the Secretary of State determines that it is not practical or in the public interest to do so. If the Secretary of State determines that it is not practical or in the public interest to contract with qualified private sector auditors, after notifying the Joint Legislative Audit Committee, the Secretary of State shall employ auditors for [*such*] **that** purpose and shall include in the written audit report the circumstances that rendered it impractical or not in the public interest to contract with qualified private sector auditors. All contracts for conducting performance and program audits under this section shall be in a form prescribed or approved by the Secretary of State. A copy of each completed contract shall be furnished to the Secretary of State and the Joint Legislative Audit Committee. The Secretary of State shall employ or contract with auditors upon terms and for compensation as the Secretary of State determines are advantageous and advisable.

(4) An audit conducted under contract as provided in subsection (3) of this section shall be considered to be conducted by the Division of Audits for purposes of ORS 297.020, 297.050 and 297.535.

(5) If a person fails to comply with any subpoena issued under subsection (2) of this section, a judge of the circuit court of any county, on application of the Secretary of State, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the circuit court.

(6) The Secretary of State may enter into an agreement with the department, board, commission, institution, state-aided institution or agency that is the subject of a performance or program audit for payment of the expenses incurred by the Secretary of State in conducting the audit. The Emergency Board may also make funds available to the Division of Audits to reimburse it for expenses incurred under this section.

(7) As used in this section:

(a) "Performance audit" includes determining:

(A) Whether an entity described in subsection (1) of this section that is the subject of the audit is acquiring, protecting and using its resources economically and efficiently;

(B) The causes of inefficiencies or uneconomical practices; and

(C) Whether the entity has complied with laws and regulations concerning matters of economy and efficiency.

(b) "Program audit" includes determining:

(A) The extent to which the desired results or benefits of a program established by the Legislative Assembly or other authorizing body are being achieved;

(B) The extent to which the need for or objectives of an ongoing program are necessary or relevant;

(C) Whether the program complements, duplicates, overlaps or conflicts with other related programs;

(D) The effectiveness of organizations, programs, activities or functions; and
(E) Whether the entity described in subsection (1) of this section that is the subject of the audit has complied with laws and regulations applicable to the program.

NOTE: Updates title of federal agency in (1); updates word choice in (2) and (3).

SECTION 40. ORS 327.006 is amended to read:

327.006. As used in ORS 327.006 to 327.133, 327.348, 327.355, 327.357, 327.360 and 327.731:

(1) "Aggregate days membership" means the sum of days present and absent, according to the rules of the State Board of Education, of all resident pupils when school is actually in session during a certain period. The aggregate days membership of kindergarten pupils shall be calculated on the basis of a half-day program.

(2)(a) "Approved transportation costs" means those costs as defined by rule of the State Board of Education and is limited to those costs attributable to transporting or room and board provided in lieu of transporting:

(A) Elementary school students who live at least one mile from school;

(B) Secondary school students who live at least 1.5 miles from school;

(C) Any student required to be transported for health or safety reasons, according to supplemental plans from districts that have been approved by the state board identifying students who are required to be transported for health or safety reasons, including special education;

(D) Preschool children with disabilities requiring transportation for early intervention services provided pursuant to ORS 343.224 and 343.533;

(E) Students who require payment of room and board in lieu of transportation;

(F) A student transported from one school or facility to another school or facility when the student attends both schools or facilities during the day or week; and

(G) Students participating in school-sponsored field trips that are extensions of classroom learning experiences.

(b) "Approved transportation costs" does not include the cost of constructing boarding school facilities.

(3) "Average daily membership" or "ADM" means the aggregate days membership of a school during a certain period divided by the number of days the school was actually in session during the same period. However, if a district school board adopts a class schedule that operates throughout the year for all or any schools in the district, average daily membership shall be computed by the Department of Education so that the resulting average daily membership will not be higher or lower than if the board had not adopted such schedule.

(4) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers of the Portland, Oregon, [Standard] Metropolitan Statistical Area, as compiled by the United States Department of Labor, Bureau of Labor Statistics.

(5) "Kindergarten" means a kindergarten program that conforms to the standards and rules adopted by the State Board of Education.

(6) "Net operating expenditures" means the sum of expenditures of a school district in kindergarten through grade 12 for administration, instruction, attendance and health services, operation of plant, maintenance of plant, fixed charges and tuition for resident students attending in another district, as determined in accordance with the rules of the State Board of Education, but net operating expenditures does not include transportation, food service, student body activities, community services, capital outlay, debt service or expenses incurred for nonresident students.

(7)(a) "Resident pupil" means any pupil:

(A) Whose legal school residence is within the boundaries of a school district reporting the pupil, if the district is legally responsible for the education of the pupil, except that "resident pupil" does not include a pupil who pays tuition or for whom the parent pays tuition or for whom the district does not pay tuition for placement outside the district; or

(B) Whose legal residence is not within the boundaries of the district reporting the pupil but attends school in the district with the written consent of the affected school district boards.

(b) A pupil [*shall not be*] **is not** considered to be a resident pupil under paragraph (a)(A) of this subsection if the pupil is attending school in another school district pursuant to a contract under ORS 339.125 and in the prior year was considered to be a resident pupil in another school district under paragraph (a)(B) of this subsection. The pupil shall continue to be considered a resident of another school district under paragraph (a)(B) of this subsection.

(c) A pupil [*shall not be*] **is not** considered to be a resident pupil under paragraph (a)(B) of this subsection if the pupil is attending school in a school district pursuant to an agreement with another school district under ORS 339.133 and in the prior year was considered to be a resident pupil under paragraph (a)(A) of this subsection because the pupil was attending school in another school district pursuant to a contract under ORS 339.125. The pupil shall continue to be considered a resident pupil under paragraph (a)(A) of this subsection.

(d) "Resident pupil" includes a pupil admitted to a school district under ORS 339.115 (7).

(8) "Standard school" means a school meeting the standards set by the rules of the State Board of Education.

(9) "Tax" and "taxes" includes all taxes on property, excluding exempt bonded indebtedness, as those terms are defined in ORS 310.140.

NOTE: Conforms census terminology in (4) to current federal usage; updates syntax in (7)(b) and (c).

SECTION 41. ORS 327.006, as amended by section 11, chapter 846, Oregon Laws 2007, is amended to read:

327.006. As used in ORS 327.006 to 327.133, 327.348 and 327.731:

(1) "Aggregate days membership" means the sum of days present and absent, according to the rules of the State Board of Education, of all resident pupils when school is actually in session during a certain period. The aggregate days membership of kindergarten pupils shall be calculated on the basis of a half-day program.

(2)(a) "Approved transportation costs" means those costs as defined by rule of the State Board of Education and is limited to those costs attributable to transporting or room and board provided in lieu of transporting:

(A) Elementary school students who live at least one mile from school;

(B) Secondary school students who live at least 1.5 miles from school;

(C) Any student required to be transported for health or safety reasons, according to supplemental plans from districts that have been approved by the state board identifying students who are required to be transported for health or safety reasons, including special education;

(D) Preschool children with disabilities requiring transportation for early intervention services provided pursuant to ORS 343.224 and 343.533;

(E) Students who require payment of room and board in lieu of transportation;

(F) A student transported from one school or facility to another school or facility when the student attends both schools or facilities during the day or week; and

(G) Students participating in school-sponsored field trips that are extensions of classroom learning experiences.

(b) "Approved transportation costs" does not include the cost of constructing boarding school facilities.

(3) "Average daily membership" or "ADM" means the aggregate days membership of a school during a certain period divided by the number of days the school was actually in session during the same period. However, if a district school board adopts a class schedule that operates throughout the year for all or any schools in the district, average daily membership shall be computed by the Department of Education so that the resulting average daily membership will not be higher or lower than if the board had not adopted such schedule.

(4) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers of the Portland, Oregon, [*Standard*] Metropolitan Statistical Area, as compiled by the United States Department of Labor, Bureau of Labor Statistics.

(5) "Kindergarten" means a kindergarten program that conforms to the standards and rules adopted by the State Board of Education.

(6) "Net operating expenditures" means the sum of expenditures of a school district in kindergarten through grade 12 for administration, instruction, attendance and health services, operation of plant, maintenance of plant, fixed charges and tuition for resident students attending in another district, as determined in accordance with the rules of the State Board of Education, but net operating expenditures does not include transportation, food service, student body activities, community services, capital outlay, debt service or expenses incurred for nonresident students.

(7)(a) "Resident pupil" means any pupil:

(A) Whose legal school residence is within the boundaries of a school district reporting the pupil, if the district is legally responsible for the education of the pupil, except that "resident pupil" does not include a pupil who pays tuition or for whom the parent pays tuition or for whom the district does not pay tuition for placement outside the district; or

(B) Whose legal residence is not within the boundaries of the district reporting the pupil but attends school in the district with the written consent of the affected school district boards.

(b) A pupil [*shall not be*] **is not** considered to be a resident pupil under paragraph (a)(A) of this subsection if the pupil is attending school in another school district pursuant to a contract under ORS 339.125 and in the prior year was considered to be a resident pupil in another school district under paragraph (a)(B) of this subsection. The pupil shall continue to be considered a resident of another school district under paragraph (a)(B) of this subsection.

(c) A pupil [*shall not be*] **is not** considered to be a resident pupil under paragraph (a)(B) of this subsection if the pupil is attending school in a school district pursuant to an agreement with another school district under ORS 339.133 and in the prior year was considered to be a resident pupil under paragraph (a)(A) of this subsection because the pupil was attending school in another school district pursuant to a contract under ORS 339.125. The pupil shall continue to be considered a resident pupil under paragraph (a)(A) of this subsection.

(d) "Resident pupil" includes a pupil admitted to a school district under ORS 339.115 (7).

(8) "Standard school" means a school meeting the standards set by the rules of the State Board of Education.

(9) "Tax" and "taxes" includes all taxes on property, excluding exempt bonded indebtedness, as those terms are defined in ORS 310.140.

NOTE: Conforms census terminology in (4) to current federal usage; updates syntax in (7)(b) and (c).

SECTION 42. ORS 339.133 is amended to read:

339.133. (1) Except as provided in subsection (3), (4), (5) or (7) of this section, children between the ages of 4 and 18 shall be considered resident for school purposes in the school district in which their parents, **their** guardians or persons in parental relationship to them reside.

(2) Nonemancipated individuals between the ages of 4 and 18 living outside the geographic area of the school district for such reasons as attending college, military service, hospital confinement or employment away from home shall be considered resident in the district in which their parents, **their** guardians or persons in parental relationship to them reside.

(3) Individuals considered legally emancipated from their parents shall be considered resident in the district in which they actually reside, irrespective of the residence of their parents, **their** guardians or persons in parental relationship.

(4) Children placed by public or private agencies who are living in **licensed, certified or approved** substitute care programs [*licensed, certified or approved*] shall be considered resident in the school district in which they reside [*by placement of the*] **because of placement by a public or private agency.**

(5)(a) Notwithstanding subsection (4) of this section, when a juvenile court determines that it is in a child's best interest to continue to attend the school that the child attended prior to placement by a public agency, the child:

(A) Shall be considered resident for school purposes in the school district in which the child resided prior to the placement; and

(B) May continue to attend the school the child attended prior to the placement through the highest grade level of the school.

(b) The public agency that has placed the child shall be responsible for providing the child with transportation to and from school when the need for transportation is due to the placement by the public agency.

(c) Paragraph (b) of this subsection applies only to a public agency for which funds have been designated for the specific purpose of providing a child with transportation to and from school under this subsection.

(6) Persons living temporarily in a school district for the primary purpose of attending a district school may not be considered [*legally*] resident [*of*] **in** the district in which they are living temporarily, but shall be considered resident in the district in which they, their parents, **their** guardians or persons in parental relationship to them maintain residency.

(7) Except as provided in ORS 327.006 (7) and 335.090, persons whose legal residence is not within the district but who attend school in the district with the written consent of the affected district school boards shall be considered to be residents [*of*] **in** the district in which the [*person attends*] **persons attend** school for purposes of the receipt by that district of State School Fund moneys for [*the person*] **those persons**.

(8) For the purposes of this section:

(a) "Person in parental relationship" means an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessities and provides the child with necessary care, education and discipline. "Person in parental relationship" does not mean a person with a power of attorney or other written delegation of parental responsibilities if the person does not have other evidence of a parental relationship.

(b) "Substitute care program" means family foster care, family group home care, parole foster care, family shelter care, adolescent shelter care and professional group care.

NOTE: Corrects syntax in (1), (2), (3), (4), (6) and (7); corrects terminology in (6).

SECTION 43. ORS 344.555 is amended to read:

344.555. (1) When an individual with an occupational handicap is to be trained as an apprentice as defined in ORS [*660.002 to 660.210*] **660.010**, or in a trade or craft for which training standards are established under ORS 660.002 to 660.210, the training [*shall be*] **is** subject to the provisions of ORS 660.002 to 660.210, and shall be under the jurisdiction of the State Apprenticeship **and Training** Council in cooperation with the Department of Human Services.

(2) This section is not intended to limit any necessary financial assistance to which or for which an individual with an occupational handicap would otherwise be entitled under ORS 344.550.

NOTE: Refines citation, updates syntax and corrects title of state agency in (1).

SECTION 44. ORS 346.640 is amended to read:

346.640. As used in ORS 346.640 to 346.660:

[(1) "*Person who is deaf*" means a person whose hearing disability precludes successful processing of linguistic information through audition with or without a hearing aid.]

[(2)] (1) "Hearing ear dog" means a dog that is on an orange leash and that is trained to assist a person who is deaf.

[(3)] (2) "Hearing ear dog trainee" means a dog undergoing training to assist a person who is deaf.

[(4)] (3) "Mode of transportation" means any mode of public transportation operating within this state except for a parlor, lounge[,] or club car of a common carrier by railroad.

(4) "**Person who is deaf**" means a person whose hearing disability precludes successful processing of linguistic information through audition with or without a hearing aid.

(5) "Public accommodation" means a place of public accommodation as defined in ORS 659A.400.

NOTE: Alphabetizes definitions and corrects syntax in (3).

SECTION 45. ORS 352.390 is amended to read:

352.390. (1) The State Board of Higher Education shall cause to have prepared and submitted to the Legislative Assembly a program and time schedule for the establishment of regional services institutes at appropriate state institutions of higher education. The program shall include academic curriculum and practical training appropriate to train students in various aspects of economic and community services planning, with particular emphasis on economic services planning for areas of the state that have common geographic, economic and social characteristics but *[which]* **that** do not have sufficient population to qualify as *[standard]* metropolitan statistical areas.

(2) In carrying out its duties under subsection (1) of this section, the board shall consult with the Economic and Community Development Department and shall rely on the department for technical advice and, as necessary, technical services. The board shall also consult with community colleges, **the** Oregon State University Extension Service, economic development districts and special districts providing community and economic development services in the region in order to prepare curriculum and programs with particular emphasis *[to]* **on** streamlining existing programs, avoiding duplication and overlap of programs, better *[utilization of]* **utilizing** students and resources[,] and *[identification of]* **identifying** needs in the region *[which]* **that** are currently unaddressed.

(3) In preparing programs for establishing regional services institutes, the board shall give priority to establishing *[such]* institutes at Eastern Oregon University and Southern Oregon University. The board may also direct the hiring of an institute director and other staff as may be from time to time required.

NOTE: Corrects syntax in (1), (2) and (3); conforms census terminology in (1) to current federal usage.

SECTION 46. ORS 390.134 is amended to read:

390.134. (1) As used in this section:

(a) "Camper" has the meaning given that term in ORS 801.180.

(b) "County" includes a metropolitan service district organized under ORS chapter 268, but only to the extent that the district has acquired, through title transfer, and is operating a park or recreation site of a county pursuant to an intergovernmental agreement.

(c) "Motor home" has the meaning given that term in ORS 801.350.

(d) "Travel trailer" has the meaning given that term in ORS 801.565.

(2) The State Parks and Recreation Department Fund is established separate and distinct from the General Fund. Moneys in the fund are continuously appropriated to the State Parks and Recreation Department for the purposes provided by law. The fund shall consist of the following:

(a) All moneys placed in the fund as provided by law. Any interest or other income derived from the depositing or other investing of the fund must be credited to the fund.

(b) All registration fees received by the Department of Transportation for campers, motor homes and travel trailers that are transferred to the fund under ORS 366.512. The funds must be deposited in a separate subaccount established under subsection (3) of this section.

(c) Revenue from fees and charges pursuant to ORS 390.124.

(3) Any moneys placed in the fund for a particular purpose may be placed in a separate subaccount within the fund. Each separate subaccount established under this subsection must be separately accounted for. Moneys placed in a subaccount must be used for the purposes for which they are deposited.

(4) All of the moneys in the fund except those moneys described in subsection (3), (5), (6) or (7) of this section must be deposited in a separate subaccount within the fund and used by the State Parks and Recreation Department for the acquisition, development, maintenance, care and use of park and recreation sites and for the maintenance and operation of the Oregon State Fair. The moneys in the subaccount under this subsection must be accounted for separately and stated separately in the State Parks and Recreation Department's biennial budget.

(5)(a) Thirty-five percent of the amount transferred to the State Parks and Recreation Department under ORS 366.512 from the registration of travel trailers, campers and motor homes and under ORS 803.601 from recreational vehicle trip permits must be deposited in a separate subaccount

within the fund to be distributed for the acquisition, development, maintenance, care and use of county park and recreation sites. The moneys in the subaccount under this [subsection] **paragraph** must be accounted for separately. The following apply to the distribution of moneys under this [subsection] **paragraph**:

[(a)] **(A)** The moneys must be distributed among the several counties for the purposes described in this [subsection] **paragraph**. The distribution shall be made at times determined by the State Parks and Recreation Department but must be made not less than once a year.

[(b)] **(B)** The sums designated under this [subsection] **paragraph** must be remitted to the county treasurers of the several counties by warrant.

[(c)] **(b)** The department shall establish an advisory committee to advise the department in the performance of its duties under this subsection. The composition of the advisory committee under this subsection is as determined by the department by rule. In determining the composition of the advisory committee, the department shall attempt to provide reasonable representation for county officials or employees with responsibilities relating to county parks and recreation sites.

[(d)] **(c)** The department, by rule, shall establish a program to provide moneys to counties for the acquisition, development, maintenance, care and use of county park and recreation sites. The rules under this paragraph shall provide for distribution of moneys based on use and need and, as the department determines necessary, on the need for the development and maintenance of facilities to provide camping sites for campers, motor homes and travel trailers.

(6) The department shall create a separate City and County Subaccount within the fund to be used to reimburse cities and counties as provided in ORS 390.290.

(7) The department shall create a separate rural Fire Protection District Subaccount to be used to provide funds for the fire protection districts as provided in ORS 390.290.

(8) On or before January 15 of each odd-numbered year, the State Parks and Recreation Director shall report to the Joint [Legislative] Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to ORS 805.256 in the fund. The director shall make the report in a form and manner as the committee may prescribe.

NOTE: Corrects read-in woes in (5); aligns title of committee in (8) to title in statute creating committee.

SECTION 47. ORS 390.134, as amended by section 2, chapter 792, Oregon Laws 2007, is amended to read:

390.134. (1) As used in this section:

(a) "Camper" has the meaning given that term in ORS 801.180.

(b) "County" includes a metropolitan service district organized under ORS chapter 268, but only to the extent that the district has acquired, through title transfer, and is operating a park or recreation site of a county pursuant to an intergovernmental agreement.

(c) "Motor home" has the meaning given that term in ORS 801.350.

(d) "Travel trailer" has the meaning given that term in ORS 801.565.

(2) The State Parks and Recreation Department Fund is established separate and distinct from the General Fund. Moneys in the fund are continuously appropriated to the State Parks and Recreation Department for the purposes provided by law. The fund shall consist of the following:

(a) All moneys placed in the fund as provided by law. Any interest or other income derived from the depositing or other investing of the fund must be credited to the fund.

(b) All registration fees received by the Department of Transportation for campers, motor homes and travel trailers that are transferred to the fund under ORS 366.512. The funds must be deposited in a separate subaccount established under subsection (3) of this section.

(c) Revenue from fees and charges pursuant to ORS 390.124.

(3) Any moneys placed in the fund for a particular purpose may be placed in a separate subaccount within the fund. Each separate subaccount established under this subsection must be separately accounted for. Moneys placed in a subaccount must be used for the purposes for which they are deposited.

(4) All of the moneys in the fund except those moneys described in subsection (3), (5), (6) or (7) of this section must be deposited in a separate subaccount within the fund and used by the State Parks and Recreation Department for the acquisition, development, maintenance, care and use of park and recreation sites and for the maintenance and operation of the Oregon State Fair. The moneys in the subaccount under this subsection must be accounted for separately and stated separately in the State Parks and Recreation Department's biennial budget.

(5)(a) Thirty percent of the amount transferred to the State Parks and Recreation Department under ORS 366.512 from the registration of travel trailers, campers and motor homes and under ORS 803.601 from recreational vehicle trip permits must be deposited in a separate subaccount within the fund to be distributed for the acquisition, development, maintenance, care and use of county park and recreation sites. The moneys in the subaccount under this [subsection] **paragraph** must be accounted for separately. The following apply to the distribution of moneys under this [subsection] **paragraph**:

[(a)] (A) The moneys must be distributed among the several counties for the purposes described in this [subsection] **paragraph**. The distribution shall be made at times determined by the State Parks and Recreation Department but must be made not less than once a year.

[(b)] (B) The sums designated under this [subsection] **paragraph** must be remitted to the county treasurers of the several counties by warrant.

[(c)] (b) The department shall establish an advisory committee to advise the department in the performance of its duties under this subsection. The composition of the advisory committee under this subsection is as determined by the department by rule. In determining the composition of the advisory committee, the department shall attempt to provide reasonable representation for county officials or employees with responsibilities relating to county parks and recreation sites.

[(d)] (c) The department, by rule, shall establish a program to provide moneys to counties for the acquisition, development, maintenance, care and use of county park and recreation sites. The rules under this paragraph shall provide for distribution of moneys based on use and need and, as the department determines necessary, on the need for the development and maintenance of facilities to provide camping sites for campers, motor homes and travel trailers.

(6) The department shall create a separate City and County Subaccount within the fund to be used to reimburse cities and counties as provided in ORS 390.290.

(7) The department shall create a separate rural Fire Protection District Subaccount to be used to provide funds for the fire protection districts as provided in ORS 390.290.

(8) On or before January 15 of each odd-numbered year, the State Parks and Recreation Director shall report to the Joint [Legislative] Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to ORS 805.256 in the fund. The director shall make the report in a form and manner as the committee may prescribe.

NOTE: Corrects read-in woes in (5); aligns title of committee in (8) to title in statute creating committee.

SECTION 48. ORS 409.510 is amended to read:

409.510. (1) The Pain Management Commission shall:

[(1)] (a) Develop a pain management education program curriculum and update it biennially.[:]

[(2)] (b) Provide health professional regulatory boards and other health boards, committees or task forces with the curriculum.[:]

[(3)] (c) Work with health professional regulatory boards and other health boards, committees or task forces to develop approved pain management education programs as required.[: and]

[(4)(a)] (d) Review the pain management curricula of educational institutions in this state that provide post-secondary education or training for persons required by ORS 409.560 to complete a pain management education program. The commission shall make recommendations about legislation needed to ensure that adequate information about pain management is included in the curricula reviewed and shall report its findings to the Legislative Assembly in the manner required by ORS 192.245 by January 1 of each odd-numbered year.

[*b*] (2) As used in this [*subsection*] **section**, “[*post-secondary*] educational institution” has the meaning given that term in ORS 348.105.

NOTE: Conforms format to legislative style; adjusts punctuation; corrects definition to term used in text.

SECTION 49. Section 31, chapter 736, Oregon Laws 2003, as amended by section 9, chapter 757, Oregon Laws 2005, and section 14, chapter 780, Oregon Laws 2007, is amended to read:

Sec. 31. Sections 15 to 22, [*and*] 24 **and 29**, chapter 736, Oregon Laws 2003, are repealed on January 2, 2015.

NOTE: Sets forth additional section subject to sunset provision by virtue of adding clause in section 21, chapter 780, Oregon Laws 2007.

SECTION 50. (1) **Section 62, chapter 736, Oregon Laws 2003, as amended by section 15, chapter 757, Oregon Laws 2005, is repealed.**

(2) **Any moneys remaining in the PACE Quality Assurance Fund on the effective date of this 2009 Act are transferred to the General Fund.**

NOTE: Eliminates fund established for PACE program repealed by section 30, chapter 780, Oregon Laws 2007.

SECTION 51. ORS 410.625 is amended to read:

410.625. (1) In carrying out its duties under ORS 410.600 to 410.625, the Home Care Commission may:

(a) Enter into an interagency agreement or a contract with any state agency for the performance of the commission’s duties or the leasing of office space;

(b) Provide nonemployee compensation to home care workers or prospective home care workers who attend training sessions approved or sponsored by the commission;

(c) On behalf of an elderly person or a [*disabled*] person **with a disability** who hires a home care worker through the Home Care Commission registry, elect workers’ compensation coverage or arrange for health insurance coverage, including group coverage, for the person’s home care workers; and

(d) As prescribed by rule, charge fees to and collect fees from persons who attend training sessions sponsored by the commission and who currently are not home care workers.

(2) The commission and the Department of Human Services shall confer as to the amount of funds necessary to carry out the duties and activities of the commission, and the department shall include the agreed upon amount in the Governor’s budget request to the Legislative Assembly.

(3) The commission may apply for and receive gifts and grants from any public or private source.

(4) The commission may award grants from funds appropriated by the Legislative Assembly to the department for allocation to the commission or from funds otherwise available from any other source for the purpose of carrying out the duties of the commission under ORS 410.600 to 410.625.

NOTE: Conforms terminology in (1)(c) with legislative directive; see section 1, chapter 411, Oregon Laws 2005, and chapter 70, Oregon Laws 2007.

SECTION 52. **ORS 411.818 (3) is added to and made a part of ORS 411.806 to 411.845.**

NOTE: Adds subsection to appropriate series.

SECTION 53. ORS 412.006 is amended to read:

412.006. (1) Aid pursuant to the temporary assistance for needy families program shall be granted under this section to any dependent child who is living in a home meeting the standards of care and health fixed by the rules of the Department of Human Services and who is a resident of the State of Oregon, if a parent or caretaker relative with whom the child is living is a resident of the State of Oregon.

(2) Except as provided in subsections (7) and (8) of this section, a needy caretaker relative may be required to participate in the job opportunity and basic skills program that is described in subsections (3) to (6) of this section.

(3) The department shall use a basic assessment tool to determine if a needy caretaker relative applying for or receiving aid under this section has or may have a barrier to employment or to family stability. If the basic assessment tool indicates that there is or may be a barrier, the needy

caretaker relative shall be referred for an in-depth assessment by a person with relevant expertise or specialized training.

(4) Based upon the assessment described in subsection (3) of this section, the department, in cooperation with appropriate partner agencies or professionals, shall work with the participant to create an effective individualized case plan that establishes goals and identifies suitable activities that promote family stability and financial independence.

(5) Suitable activities may include:

- (a) Job readiness activities or employment;
- (b) Vocational rehabilitation or training;
- (c) Remedial, secondary or post-secondary education;
- (d) Community service; or
- (e) Other activities that reduce or eliminate barriers to full participation in the program or to employment.

(6) For individuals with disabilities, the goal of the individualized case plan must be to promote greater independence and may include physical or mental health evaluation or treatment.

(7) A needy caretaker relative receiving aid under ORS 412.001 to 412.069 [and 418.647] may volunteer for but may not be required to participate in the job opportunity and basic skills program:

(a) More than 10 hours per week during the first two months of the third trimester of the parent's pregnancy;

(b) During the last month of the parent's pregnancy;

(c) If the needy caretaker relative is experiencing medical complications due to pregnancy that prohibit participation in activities in the program;

(d) For one parent per family, during the first six months after the birth of a child, up to a total of 12 months per family except that:

(A) The department may require a parent to participate in suitable activities, with a preference for educational activities, 16 weeks after the birth of a child if the parent is under 20 years of age; and

(B) The department may require a parent of a child under 12 months of age to participate in evidence-based parenting classes or family stability activities; or

(e) If participation is likely to cause undue hardship or is contrary to the best interests of the child or needy caretaker relative.

(8) The department shall adopt rules to carry out the provisions of this section.

NOTE: Removes inappropriate reference to statute in (7).

SECTION 54. ORS 412.014 is amended to read:

412.014. (1) There is created in the Department of Human Services the State Family Pre-SSI/SSDI program. The department shall provide aid under this section to families that are eligible for temporary assistance for needy families under ORS 412.001 to 412.069 [and 418.647] and that include a needy caretaker relative who is unable to maintain substantial gainful activity due to a disability or combination of disabilities that meet the criteria of section 216 of the Social Security Act.

(2) The department shall assist families receiving aid under this section in qualifying for federal Supplemental Security Income and Social Security disability benefits, including obtaining necessary medical records and evaluations. The department shall contract with nonprofit legal services organizations, or lawyers lawfully admitted to the bar of any state, to represent recipients in any administrative appeal.

(3) The department shall adopt rules for determining the amount of aid granted under this section that is not less than the combined total of 43 percent of the Supplemental Security Income payment in effect at that time and the amount of aid the child would receive under ORS 412.006 if the caretaker relative did not receive aid.

(4) Participation in the State Family Pre-SSI/SSDI program shall be voluntary. The department shall provide information to potential participants in the State Family Pre-SSI/SSDI program about the opportunities for employment while receiving Supplemental Security Income benefits and about

employment resources available to State Family Pre-SSI/SSDI program participants. The information must be in a format accessible to the potential participant.

(5) Participants in the State Family Pre-SSI/SSDI program must cooperate with the department in establishing eligibility for Supplemental Security Income or Social Security disability benefits. The department by rule may establish policies for monitoring and encouraging full engagement in the State Family Pre-SSI/SSDI program, including activities that promote family stability. The department shall offer participants the opportunity to participate in any suitable activity in the job opportunity and basic skills program under ORS 412.009.

NOTE: Removes inappropriate reference to statute in (1).

SECTION 55. ORS 412.016 is amended to read:

412.016. (1) Subject to the limitation in ORS 412.017, a parent who applies for or receives temporary assistance for needy families under ORS 412.001 to 412.069 [and 418.647] and who meets the criteria described in subsection (2) of this section may enroll in and attend a two-year or four-year program at an educational institution as an allowable work activity for purposes of ORS 412.001 to 412.069 [and 418.647].

(2) To enroll in and attend an educational institution as an allowable work activity, a parent must:

(a) Be accepted for full-time attendance into or be enrolled full-time at an educational institution;

(b) Demonstrate that completion of the educational program is likely to result in employment that provides the wages and benefits necessary for the parent to support the parent's family without temporary assistance for needy families; and

(c) Make satisfactory academic progress, as defined by the educational institution, toward a degree or certificate.

(3) A parent who is enrolled at an educational institution under this section shall receive temporary assistance for needy families under ORS 412.001 to 412.069 [and 418.647] as well as be eligible for all other support services under the temporary assistance for needy families program. Assistance under this section does not include tuition and fees associated with enrollment at an educational institution.

(4) The Department of Human Services shall inform all parents applying for or participating in the temporary assistance for needy families program of the option to enroll in an educational institution and the requirements under subsection (2) of this section.

(5) The department shall adopt rules to implement and administer this section.

(6) As used in this section, "educational institution" has the meaning given that term in ORS 348.105.

NOTE: Removes inappropriate references to statute in (1) and (3); corrects syntax in (1).

SECTION 56. ORS 412.079 is amended to read:

412.079. (1) Except as provided in subsections (2) and (3) of this section, a needy caretaker relative may not receive aid under ORS 412.006 for more than a total of 60 months.

(2) The Department of Human Services may not count toward the 60-month limit on receipt of aid described in subsection (1) of this section any month in which a needy caretaker relative:

(a) Receives a grant of temporary assistance to needy families under ORS 412.001 to 412.069 [and 418.647], or assistance funded under Title IV-A of the Social Security Act in this or another state, prior to July 1, 2003;

(b) Resides in an area described in 18 U.S.C. 1151, and 50 percent or more of the adult residents in the area are unemployed;

(c) Is, in that month, a minor child and neither the head of the household nor married to the head of the household;

(d) Receives aid under ORS 412.001 to 412.155 [and 418.647] that is not funded with grants under Title IV-A of the Social Security Act;

(e) Is enrolled at an educational institution under ORS 412.016;

(f) Is exempt from time limits pursuant to rules adopted by the department in accordance with section 408(a)(7)(C) of the Social Security Act; or

(g) Is unable to obtain or maintain employment for a sufficient number of hours in a month to satisfy the federally required participation rates because the needy caretaker relative:

(A) Is a victim of domestic violence as defined in ORS 411.117;

(B) Has a certified learning disability;

(C) Has a mental health condition or an alcohol or drug abuse problem;

(D) Has a disability as defined by the department by rule in a manner consistent with the definition of disability in the Americans with Disabilities Act;

(E) Has a child with a disability;

(F) Is deprived of needed medical care; or

(G) Is subjected to battery or extreme cruelty as defined by the department by rule.

(3) A needy caretaker relative may not be denied aid on the basis of the 60-month limitation described in subsection (1) of this section if the individual is experiencing a situation described in subsection (2) of this section.

(4)(a) The Department of Human Services shall monitor the average period of time a person receives aid and shall record such information by family size. The department shall monitor the wages and benefits received by an individual who becomes employed while receiving aid, including medical and child care benefits. The department shall monitor and record the rate at which persons who cease receiving aid for employment subsequently apply for and receive aid.

(b) The department shall report the results of the monitoring required under paragraph (a) of this subsection to the Legislative Assembly not later than the 15th day of each legislative session.

NOTE: Removes inappropriate references to statute in (2)(a) and (d).

SECTION 57. ORS 414.660 is amended to read:

414.660. The Department of Human Services shall pursue demonstration projects for medical service contracts in at least the four [*standard*] metropolitan statistical areas in this state and is authorized to seek the necessary federal waivers in order to accomplish [*such*] **the** contracts, including but not limited to:

(1) Limiting the scope of the system to selected geographic areas;

(2) Allowing participating health plans to offer benefit enhancements;

(3) Limiting the choice of eligible persons to those providers affiliated with a participating health plan;

(4) Allowing primary care providers access to data concerning clients' utilization of service from other providers; and

(5) Allowing the department the reimbursement flexibility necessary to implement a prospective reimbursement system for hospital care.

NOTE: Updates syntax and conforms census terminology to current federal usage in lead-in.

SECTION 58. ORS 416.810 is amended to read:

416.810. All sums of money recovered by or paid to the Department of Human Services as reimbursement for funds granted for public assistance shall be paid into the State Treasury and credited to the Public Welfare Account and may be expended for public assistance purposes in accordance with ORS 411.060 to 411.111[, 411.250] and 411.710 to 411.730. However, the United States Government is entitled to a share of any amount received as its interest may appear, which shall be promptly paid to the United States Government.

NOTE: Deletes reference to repealed statute.

SECTION 59. ORS 416.820 is amended to read:

416.820. The Department of Human Services may accept funds, money or other valuable things from relatives, corporations or interested persons or organizations for the care and support of needy persons and may expend the same for the care and support of the individual or individuals for whom the money was paid. Funds accruing thereunder shall be deposited with the State Treasurer in a special account and shall be disbursed in accordance with ORS 411.060 to 411.111[, 411.250] and 411.710 to 411.730.

NOTE: Deletes reference to repealed statute.

SECTION 60. ORS 417.345 is amended to read:

417.345. (1) The Medically Involved Home-Care Program is created in the Department of Human Services. The department shall provide all State Plan Medicaid and waived services available under state and federal law that are necessary to enable a medically involved child to be cared for in the child's home. The waived services that must be available include but are not limited to home nursing care, durable medical equipment and respite care.

(2) The department [*of Human Services*] shall adopt by rule criteria for determining the need for and extent of assistance to be provided to a medically involved child enrolled in the Medically Involved Home-Care Program created by subsection (1) of this section. The criteria shall include, but are not limited to, consideration of:

(a) The medical needs of the child;

(b) The needs of any other family member with a disability or chronic illness in the child's home;

(c) Family and community support available to the child and family caregivers; and

(d) The assistance necessary for the family to care for the child in the child's home, disregarding parental or legal guardian income.

(3) Subject to limits on enrollment required by state or federal law, services offered through the Medically Involved Home-Care Program shall be made available to children meeting the criteria established by the department by rule. Priority for enrollment shall be given to:

(a) A child transferring to the child's home from nursing home placement, foster care placement or other out-of-home placement;

(b) A child living at home who is at risk of nursing home placement, foster care placement or other out-of-home placement;

(c) A child who does not otherwise qualify for medical assistance under ORS chapter 414 and for whom the department pays family support payments pursuant to ORS 430.215 that exceed \$10,000 per year; and

(d) A child who is at risk of losing eligibility for medical assistance under ORS chapter 414 due to a caregiver's employment or an increase in a caregiver's earnings.

[*(4) As used in this section, "child" means a person under 18 years of age.*]

[*(5) (4) The department [*of Human Services*] shall enroll no fewer than 125 medically involved children in the Medically Involved Home-Care Program beginning January 1, 2008. The department shall enroll an additional 25 medically involved children each calendar year thereafter, to the maximum number allowed by federal law or under the terms of the federal approval.*]

[*(6) (5) Moneys appropriated to the department for the Medically Involved Home-Care Program may not be used to supplant moneys appropriated to the department for the Children's Intensive In-Home Services program.*]

(6) As used in this section, "child" means a person under 18 years of age.

NOTE: Conforms terminology to legislative style in (2) and (4); restructures section to conform with legislative style.

SECTION 61. ORS 427.205 is amended to read:

427.205. (1) The Director of Human Services shall appoint a State Training Center Review Board composed of three members. The [*Oregon Association for Retarded Citizens*] **Arc of Oregon**, the Fairview Parents Association and the Oregon **Council on Developmental Disabilities** [*Council*] or their successor organizations may each recommend three persons to the director. The director may select one person from each list to serve as a member of the board. Each board member shall have had at least five years of involvement and active interest in programs for persons with mental retardation. A board member may not be an employee of the Department of Human Services.

(2) The term of office of each member is two years. The director may remove any member for misconduct or neglect of duty. Replacement of board members shall be accomplished by the same procedure as that used in subsection (1) of this section for selection. The director shall request a new list of three persons from the organization whose nominee for board member is to be replaced.

(3) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole and Post-Prison Supervision for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred by the member in the performance of official duties.

(4) The board shall perform the following duties:

(a) Review decisions of the Developmental Disability Diagnosis and Evaluation Service regarding admissions to training centers that have been appealed by the applicant or, if a minor or incapacitated person, by the person applying on the behalf of the minor or incapacitated person and advise the director regarding the appropriateness for the admission.

(b) Review decisions of the department pursuant to ORS 427.300 (2) when the resident, parent of the resident, guardian or person entitled to custody has appealed the decision and advised the director regarding the appropriateness of the decision.

(c) Annually review state training center plans for continuing residential care and training of residents pursuant to ORS 427.020.

(5) The board shall operate pursuant to rules adopted by the department.

NOTE: Updates names of association and council in (1).

SECTION 62. ORS 455.044, 455.046 and 455.048 are added to and made a part of ORS chapter 455.

NOTE: Adds statutes to appropriate chapter.

SECTION 63. ORS 456.270 is amended to read:

456.270. As used in ORS 456.270 to 456.295:

(1) "Affordable housing covenant" means a nonpossessory interest in real property imposing limitations, restrictions or affirmative obligations that encourage development or that ensure continued availability of affordable rental and owner-occupied housing for low or moderate income individuals.

(2) "Area median income" means the median income for the [*standard*] metropolitan statistical area in which the affordable housing is located, as determined by the Housing and Community Services Department, adjusted for household size.

(3) "Eligible covenant holder" means:

(a) A public body, as defined in ORS 174.109;

(b) An agency of the United States government;

(c) A public benefit corporation or religious corporation, as those terms are defined in ORS 65.001, one purpose of which is to provide affordable housing for low or moderate income households;

(d) A consumer housing cooperative, as defined in ORS 456.548;

(e) A manufactured dwelling park nonprofit cooperative corporation; or

(f) A federally recognized Indian tribe.

(4) "Low income household" means a household with income less than or equal to 80 percent of the area median income.

(5) "Moderate income household" means a household with income less than or equal to 120 percent and greater than 80 percent of the area median income.

(6) "Subsidy" includes, but is not limited to:

(a) A grant, loan or contract made by a federal agency, a federally recognized Indian tribe or a public body, as defined in ORS 174.109;

(b) A grant, loan or contract made by a nonprofit corporation or a limited liability company the sole member of which is a nonprofit corporation;

(c) A subsidized loan from a lending institution that makes loans for residential housing; or

(d) A subsidized private transaction.

(7) “Third-party right of enforcement” means a right provided in an affordable housing covenant to a third party to enforce the terms of the covenant.

NOTE: Conforms census terminology in (2) to current federal usage.

SECTION 64. ORS 458.310 is amended to read:

458.310. (1) The State Housing Council shall adopt rules to develop and administer a housing revitalization program for low and moderate income housing.

[(a)] (2) Applicants for revitalization program funds shall be:

[(A)] (a) A unit of local government;

[(B)] (b) A housing authority;

[(C)] (c) A nonprofit corporation; or

[(D)] (d) An applicant eligible under [subparagraph (A), (B) or (C) of this paragraph,] **paragraph (a), (b) or (c) of this subsection** who contracts with another entity, including a private for-profit corporation.

[(b)] (3) Housing revitalization projects shall bring into use vacant and abandoned property or rehabilitate substandard property, or both. Eligible project activities include, but are not limited to:

[(A)] (a) Purchase of property;

[(B)] (b) Rehabilitation of housing units;

[(C)] (c) New construction to replace units for which rehabilitation is infeasible;

[(D)] (d) Mortgage interest subsidies or reduction of principal loan amounts; or

[(E)] (e) Other activities that have the effect of making properties available to and occupied by persons of lower income, such as loan guarantees.

[(c)] (4) Projects funded by the housing revitalization program shall be rental or owner-occupied single or multifamily housing.

[(d)] (5) The housing rehabilitation program shall create affordable housing in which rent levels are no higher than 30 percent of 80 percent of median income levels.

[(2)] (6) Priority shall be given to projects applied for under [subsection (1)] **subsections (1) to (5)** of this section that provide opportunities for low and moderate income persons to own their housing units.

[(3)] (7) Priority among rental housing projects shall be given to projects applied for under [subsection (1)] **subsections (1) to (5)** of this section that:

(a) Have rent levels no higher than 30 percent of 50 percent of the median income level, or less;

(b) Are owned and operated by a nonprofit or a governmental unit; and

(c) Demonstrate a coordinated local effort to integrate housing, job placement and social services.

[(4)] (8) In implementing this section and ORS 458.305, the State Housing Council shall work to [assure] **ensure** a reasonable geographic distribution of funds among different regions of the state and shall place special emphasis on [assuring] **ensuring** that funds are available to projects in rural areas.

NOTE: Reformats section to conform to legislative style; updates internal references; corrects punctuation in (2)(d); improves word choice in (8).

SECTION 65. ORS 468.501 is amended to read:

468.501. As used in ORS 468.501 to 468.521:

(1) “Agency” means either the Department of Environmental Quality or the Lane Regional Air [Pollution Authority] **Protection Agency** created pursuant to ORS 468A.010 to 468A.180, or both, as the context requires.

(2) “Commission” means the Environmental Quality Commission.

(3) “Environmental laws” means ORS 454.605 to 454.755, 459.005 to 459.153, 459.705 to 459.790, 459.992, 459.995, 465.003 to 465.034 and 466.005 to 466.385 and ORS chapters 468, 468A and 468B and rules adopted thereunder. “Environmental laws” does not include any provision of Oregon Revised Statutes or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.

(4) "Facility" means any site or contiguous sites, any manufacturing operation or contiguous operations, or any business or municipal activity regulated under any provision of the environmental laws.

(5) "Green Permit" means a permit that provides administrative benefits or reduces regulatory requirements to facilities that meet criteria established by the Environmental Quality Commission.

(6) "Sponsor" means a person, group or association that submits a proposal under the Green Permit program.

NOTE: Corrects name of agency in (1).

SECTION 66. ORS 468.521 is amended to read:

468.521. The agency shall recover the full cost of the agency in developing, negotiating and publicizing a Green Permit in the following manner:

(1) The sponsor shall fully reimburse the agency for the agency's full direct, indirect and all associated costs of conducting the review, negotiating the relevant permit revisions, responding to public comment, monitoring the provisions in the Green Permit and environmental outcomes resulting from the Green Permit and publicizing and conducting the public hearings.

(2) The agency shall appropriately document the full direct, indirect and all associated costs of the agency and collect payment for such costs from the sponsor. The agency shall collect a deposit from the sponsor, against which the agency shall bill until the deposit is depleted. When the deposit is depleted, the agency shall collect an additional deposit. The initial deposit shall accompany the sponsor's initial Green Permit proposal and shall be in an amount not to exceed \$25,000. The agency shall deliver to the sponsor an accounting of all charges and the amount of the deposit remaining at the closure of each month's accounting records.

(3) All moneys collected by the Department of Environmental Quality pursuant to this section shall be deposited into the General Fund of the State Treasury to an account of the Department of Environmental Quality. [Such] **The** moneys are continuously appropriated to the Department of Environmental Quality for the payment of expenses of the Department of Environmental Quality in carrying out the provisions of ORS 468.501 to 468.521. The Director of the Department of Environmental Quality shall keep a record of all moneys deposited into the State Treasury pursuant to this section and shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. The fees collected under this section by the Lane Regional Air [Pollution Authority] **Protection Agency** shall be retained by and shall be income to the regional [authority] **agency**. [Such] **The** fees shall be accounted for and expended in the same manner as are the funds collected by the Department of Environmental Quality under this section.

NOTE: Updates word choice and corrects name of agency in (3).

SECTION 67. ORS 469.421 is amended to read:

469.421. (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate.

(2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall submit the fee required under the fee schedule established under ORS 469.441 to the State Department of Energy when the notice or request is submitted to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person

submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.

(3) Before submitting a site certificate application, the applicant shall request from the State Department of Energy an estimate of the costs expected to be incurred in processing the application. The department shall inform the applicant of that amount and require the applicant to make periodic payments of *[such]* the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.

(4) Any person who is delinquent in the payment of fees under subsections (1) to (3) of this section shall be subject to the provisions of subsection (11) of this section.

(5) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the State Department of Energy's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall include both the actual direct cost to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.

(6) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

(7) When the actual costs of regulation incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When the actual regulation costs incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the Director of the State Department of Energy may issue an order revising the annual fee.

(8) In addition to any other fees required by law, each energy resource supplier shall pay to the State Department of Energy annually its share of an assessment to fund the activities of the Energy

Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, determined by the Director of the State Department of Energy in the following manner:

(a) Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy by a regular session of the Legislative Assembly, the Director of the State Department of Energy shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the Director of the State Department of Energy shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium [*which*]. **The** order shall take into account any revisions to the biennial budget of the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

(c) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.

(d) The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the State Department of Energy as follows:

(A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days following the close of the regular session of the Legislative Assembly; and

(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year.

(f) An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the director and is subject to audit by the director. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section [3] **3a**, Article IX of the Oregon Constitution, **and** ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon Department of Administrative Services or the State Department of Energy from fulfilling their statutory responsibilities.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section [3] 3a, Article IX of the Oregon Constitution, or ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

(h) In determining the amount of revenues that must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(9)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the State Department of Energy annually on July 1, an assessment in an amount determined by the director to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys collected as assessments under this subsection are continuously appropriated to the State Department of Energy for this purpose.

(b) The State Department of Energy shall maintain and shall cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(10) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (5), (8) and (9) of this section.

(11)(a) All fees assessed by the director against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the director and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the director if the director prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

NOTE: Updates word choice in (3); truncates run-on sentence in (8)(a); corrects citation and citation style in (8)(f) and (g)(B).

SECTION 68. ORS 469.681 is amended to read:

469.681. (1) Each petroleum supplier shall pay to the State Department of Energy annually its share of an assessment to fund:

(a) Information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the Director of the State Department of Energy contracts under ORS 469.677; and

(b) Cash payments to a dwelling owner or contractor for energy conservation measures.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the director in a manner consistent with the method prescribed in ORS 469.421. The aggregate amount of the assessment shall not exceed \$400,000. In making this assessment, the director shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section [3] **3a**, Article IX of the Oregon Constitution, or ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the State Department of Energy, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.421 (8), and any other fee or assessment required by law.

(6) As used in this section, "petroleum supplier" means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon.

NOTE: Corrects citation in (2).

SECTION 69. ORS 469.805 is amended to read:

469.805. (1) The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the Pacific Northwest Electric Power and Conservation Planning Council for terms of three years.

(2) In making the appointments under subsection (1) of this section, the Governor shall consider but is not limited to:

(a) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(b) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(c) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501.

(3) Of the persons appointed under subsection (1) of this section, not more than one member of the Oregon delegation to the council shall reside within the boundary of an area that includes the First and Third Congressional Districts as described in ORS 188.135 and the Portland, Oregon, [Standard] Metropolitan Statistical Area.

NOTE: Conforms census terminology in (3) to current federal usage.

SECTION 70. ORS 475.902 is amended to read:

475.902. (1) The Oregon Criminal Justice Commission shall classify causing another person to ingest a controlled substance as a person felony and crime category 8 of the sentencing guidelines grid of the commission.

(2) The Oregon Criminal Justice Commission shall classify causing another person to ingest a controlled substance with the intent of committing or facilitating a crime of violence against the other person as a person felony and crime category 9 of the sentencing guidelines grid of the commission.

(3) The Oregon Criminal Justice Commission shall amend its rules and appendices to prohibit persons convicted of manufacturing substantial quantities of methamphetamine, its salts, isomers or salts of its isomers from being eligible for an optional probation sentence.

(4) As used in [subsections (3) and (4)] **subsection (3)** of this section, "substantial quantities" means that quantity of methamphetamine, its salts, isomers or salts of its isomers described in ORS 475.900 (1)(a).

NOTE: Corrects internal reference in (4).

SECTION 71. ORS 507.040 is amended to read:

507.040. A compact, in form as in this section fully set forth, shall be in effect when one or both of the States of California and Washington become parties thereto, and the consent of Congress has been granted as required by section 10, Article I, of the Constitution of the United States.

The contracting states do hereby agree as follows:

ARTICLE I

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it in the form that is in accordance with the laws of the executing states and the Congress has given its consent.

ARTICLE III

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as the Pacific **States** Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be invested with the powers and duties set forth herein.

The term of each commissioner of the Pacific **States** Marine Fisheries Commission shall be four years. A commissioner shall hold office until a successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of the predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time, to a deputy, the power to be present and participate, including voting as the representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous, in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against over-fishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the Governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell, and anadromous fisheries in all of those areas of the Pacific Ocean over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto,

present to the Governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of the Pacific **States** Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the Governor thereof.

ARTICLE X

The States agree to make available annual funds for the support of the Commission on the following basis:

Eighty percent (80%) of the annual budget shall be shared equally by those member States having as a boundary the Pacific Ocean; and five percent (5%) of the annual budget shall be contributed by each other member State; the balance of the annual budget shall be shared by those member States, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member State shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the States of Alaska, California, Idaho, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States.

ARTICLE XI

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII

The States of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of the Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the States of California, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States.

NOTE: Updates name of commission in Articles III and VII.

SECTION 72. ORS 507.050 is amended to read:

507.050. The State Fish and Wildlife Director, one legislator appointed as provided in this section and one public member appointed by the Governor shall act as representatives of the State of Oregon on the Pacific **States** Marine Fisheries Commission in accordance with the provisions of and with the powers and duties in the compact set forth in ORS 507.040. The legislative member shall be appointed by the President of the Senate or the Speaker of the House of Representatives from among those legislators who, at the time of appointment, are serving on the Pacific Fisheries Legislative Task Force. The legislative member shall serve for a term of four years. The Speaker of the House of Representatives and the President of the Senate shall alternate in making the appointment of the legislative member.

NOTE: Updates name of commission.

SECTION 73. ORS 508.485 is amended to read:

508.485. Except for vessel licenses prescribed in ORS 508.285, 508.470, [508.755,] 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, the State Fish and Wildlife Commission may, in its discretion, revoke for the remainder of the license year any license issued to [such] a person under the authority of the commission or the State Fish and Wildlife Director, and in its discretion may refuse the issuance of any license issued under the authority of the commission or director during any period not to exceed one year from the date of the license revocation order:

(1) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules;

(2) Upon receiving notice from the agency that regulates commercial fishing in the State of Washington of the conviction of any person in that state of an offense [which] **that** was a violation of Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and [which] **that** if committed in this state would be grounds for license revocation pursuant to subsection (1) of this section;

(3) Upon conviction within this state of any person for violation of ORS 498.022, or any rule promulgated pursuant thereto, involving game fish, through the use of a license issued pursuant to the commercial fishing laws; or

(4) Upon conviction within this state of a person for violation of ORS 164.043 to 164.065 when the subject of the theft is commercial fishing crab rings or crab pots, or the crabs taken therefrom.

NOTE: Deletes inappropriate citation and updates word choice in lead-in; updates syntax in (2).

SECTION 74. ORS 508.490 is amended to read:

508.490. Except for vessel licenses prescribed in ORS 508.260 and vessel permits prescribed in ORS 508.285, 508.470, [508.755,] 508.775 to 508.796, 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, the State Fish and Wildlife Commission may, in its discretion, refuse the issuance of any

license issued under the authority of the commission or the State Fish and Wildlife Director during any period not to exceed two years from the date of the license revocation order:

(1) Upon conviction within this state of any person of violation of any of the commercial fishing laws or rules after [*such*] **the** person has once been convicted and penalized under ORS 508.485; or

(2) Upon receiving notice from the agency that regulates commercial fishing in the State of Washington of the conviction of any person in that state of an offense [*which*] **that** was a violation of Columbia River commercial fishing rules adopted pursuant to the Columbia River Compact and [*which*] **that** if committed in this state would be grounds for refusal to issue a license pursuant to subsection (1) of this section.

NOTE: Deletes inappropriate citation in lead-in; updates word choice in (1) and (2).

SECTION 75. ORS 508.801 is amended to read:

508.801. (1) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for an individual to operate a vessel in the ocean troll salmon fishery without first obtaining a vessel permit issued pursuant to ORS [*508.755 and*] 508.801 to 508.825.

(2) Notwithstanding any other provision of the commercial fishing laws, it is unlawful for a wholesaler, canner or buyer to buy or receive salmon taken in the ocean troll fishery from a vessel for which the permit required by subsection (1) of this section has not been issued.

(3) The permit required by subsection (1) of this section is in addition to and not in lieu of the boat license required by ORS 508.260.

NOTE: Deletes inappropriate citation in (1).

SECTION 76. ORS 508.828 is amended to read:

508.828. Notwithstanding ORS [*508.755,*] 508.801 to 508.825, 508.880, 508.883 and 508.889 to 508.910, subject to ORS 508.316, a vessel not having a permit may in an emergency and with the approval of the State Department of Fish and Wildlife land salmon by purchase of a single delivery license.

NOTE: Deletes inappropriate citation.

SECTION 77. ORS 564.105 is amended to read:

564.105. The Director of Agriculture has the responsibility to protect and conserve the native plants of this state that are threatened species or endangered species. In carrying out that responsibility, the director:

(1) Shall conduct investigations of plant species native to this state and determine whether any such species is a threatened species or an endangered species.

(2) By rule, shall establish and publish, and from time to time may revise, a list of plant species that are threatened species or endangered species.

(3) By rule, shall establish programs for the protection and conservation of plant species that are threatened species or endangered species. As used in this [*section*] **subsection**, “conservation” means the use of methods and procedures necessary to bring a species to the point at which the measures provided under ORS 564.105 to 564.120 are no longer necessary. [*Such*] **The** methods and procedures include, but are not limited to, activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation and transplantation.

(4) By rule, shall establish a system of permits for scientific taking of threatened species and endangered species under [*such*] terms and conditions [*as*] **that** the director determines will minimize the impact on the species taken.

(5) Shall cooperate with the State Fish and Wildlife Commission in carrying out the provisions of ORS 496.172.

(6) Shall adopt administrative rules to carry out the provisions of ORS 564.105 to 564.120.

(7) Shall set priorities for establishing programs under this section after consideration of available funds and the immediacy and seriousness of the threat to any listed species.

NOTE: Corrects internal reference and updates word choice in (3); modernizes syntax in (4).

SECTION 78. ORS 568.900 is amended to read:

568.900. As used in ORS 568.900 to 568.933:

- (1) "Board" means the State Board of Agriculture.
- (2) "Operator" means any person, including a landowner or land occupier engaged in any commercial activity relating to the growing or harvesting of agricultural crops or the production of agricultural commodities.
- (3) "Water" or "the waters of the state" has the meaning given in ORS 468B.005.
- (4) "Water pollution" has the meaning given in ORS 468B.005.
- (5) "Water quality management plan" or "plan" means a plan developed under ORS 568.909. [*The plan shall be based upon scientific information.*]

NOTE: Deletes redundant provision from definition in (5). See ORS 568.909 (2).

SECTION 79. ORS 616.992 is amended to read:

616.992. The [*first*] violation of any provisions of this chapter[,] or ORS 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985 or of any rule promulgated pursuant thereto is a Class B misdemeanor **for a first offense**, and a Class A misdemeanor for a second or subsequent offense.

NOTE: Improves syntax.

SECTION 80. ORS 625.220 is amended to read:

625.220. Bread sold or offered for sale in the form of loaves shall be conspicuously labeled as required by the rules promulgated by the State Department of Agriculture under the authority of ORS 625.160. The provisions of this section do not apply to:

(1) A bakery where unwrapped bread is displayed and can be inspected by prospective purchasers and where, after purchase, the loaf of bread is immediately placed in a bag by the bakery personnel[; or].

(2) A bakery [*which*] **that** is a wholesale establishment [*which*] **that** sells bread to a restaurant in which the bread is consumed on the premises.

(3) Bread sold at an occasional temporary bake sale held by a fraternal, religious, social or service organization.

NOTE: Adjusts formatting in (1); improves syntax in (2); adds relevant provision removed from ORS 625.270 as (3). See section 81 (amending ORS 625.270).

SECTION 81. ORS 625.270 is amended to read:

625.270. [*(1) Except as provided in subsection (2) of this section, no person shall*] **A person may not** sell, offer for sale, hold for sale[,] or bake a loaf of bread in violation of the provisions of ORS 625.010 to 625.270 or orders thereunder.

[*(2) The provisions of ORS 625.220 do not apply to bread sold at an occasional temporary bake sale held by a fraternal, religious, social or service organization.*]

NOTE: Deletes internal reference and provision moved to ORS 625.220; updates syntax and corrects punctuation. See section 80 (amending ORS 625.220).

SECTION 82. ORS 646A.316 is amended to read:

646A.316. Unless otherwise agreed:

(1) On a warranty claim, a supplier shall provide reasonable compensation for the retailer's costs, including but not limited to:

- (a) Diagnostic services;
- (b) Repair services;
- (c) Repair parts; and
- (d) Labor.

(2) For labor on warranty service, a supplier may not pay a retailer an hourly rate that is less than **the** rate that the retailer charges for nonwarranty service.

(3) For repair parts on warranty service, a supplier may not pay a retailer less than the amount that the retailer paid for the parts plus a reasonable allowance for the shipping and handling of the parts.

(4) A supplier must allow a reasonable time for a retailer to complete warranty service.

NOTE: Supplies missing article in (2).

SECTION 83. ORS 657.222 is repealed.

NOTE: Repeals obsolete provision.

SECTION 84. ORS 671.595 is amended to read:

671.595. (1) As used in this section:

(a) "Managing employee" means a person who, at the time of an application for the issuance or renewal of a [*landscaping*] **landscape contracting** business license:

(A) Is employed in landscaping work only by the applicant; and

(B) Manages or shares in the management of the applicant, as defined by the State Landscape Contractors Board by rule.

(b) "Owner" means a person who at the time of an application for the issuance or renewal of a [*landscaping*] **landscape contracting** business license:

(A) Has an ownership interest in the applicant; and

(B) Manages or shares in the management of the applicant, as defined by the board by rule.

(2) If an applicant for a [*landscaping*] **landscape contracting** business license does not have at least one owner or managing employee who is licensed as a landscape [*contractor*] **construction professional** under ORS 671.560, the applicant shall provide the board with proof that an owner or managing employee has completed required courses described in subsection (4) of this section and passed an examination on the subject of those courses.

(3) The board may adopt rules to require a [*landscaping*] **landscape contracting** business and any owner or managing employee to provide the board with notice of any change in the employment or duties of the owner or managing employee.

(4) The board shall adopt rules establishing required courses for an owner or managing employee who seeks to qualify the business for a [*landscaping*] **landscape contracting** business license, but who is not licensed as a landscape [*contractor*] **construction professional**. The courses required by the board shall be designed to educate the owner or managing employee regarding business practices and Oregon laws affecting [*landscaping*] **landscape contracting** businesses. The board may not require an owner or managing employee to take a total of more than 16 hours of instruction.

(5) When adopting rules to carry out subsection (4) of this section, the board shall consider the availability of courses in the regions of this state. The board shall encourage course providers to use the most up-to-date technology to make courses widely available.

(6) A course provider may submit information regarding course materials, examinations and instructor qualifications to the board for approval. The board shall approve courses if the course materials, examinations and instructors meet board requirements. The board shall periodically review approved courses to ensure continuing compliance with board requirements. The board shall develop and make available a list of providers that offer courses that will enable an owner or managing employee to comply with the requirements of subsection (2) of this section.

NOTE: Corrects terminology in (1) to (4).

SECTION 85. Section 3, chapter 249, Oregon Laws 2007, is amended to read:

Sec. 3. (1) The State Landscape Contractors Board shall make an initial list of courses approved under [*section 2 of this 2007 Act*] **ORS 671.595** available to the public on or before March 1, 2008.

(2) [*Section 2 of this 2007 Act*] **ORS 671.595** applies to [*landscaping*] **landscape contracting** business licenses that are initially issued on or after January 1, 2009.

NOTE: Corrects terminology in (2).

SECTION 86. Section 4, chapter 249, Oregon Laws 2007, is amended to read:

Sec. 4. If a licensed [*landscaping*] **landscape contracting** business does not have at least one owner or managing employee, both as defined in [*section 2 of this 2007 Act*] **ORS 671.595**, who is licensed as a landscape [*contractor*] **construction professional** under ORS 671.560, and the [*landscaping*] **landscape contracting** business license was initially issued by the State Landscape Contractors Board on or after January 1, 2008, and before January 1, 2009, upon applying to renew that license the applicant shall provide the board with proof that an owner or managing employee has completed required courses described in [*section 2 of this 2007 Act*] **ORS 671.595** and passed an examination on the subject of those courses.

NOTE: Corrects terminology.

SECTION 87. ORS 671.610 is amended to read:

671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material misrepresentation.

(b) Makes a material misrepresentation about the quality of any material or service the person provides.

(c) Performs defective work.

(d) Furnishes defective materials.

(e) Makes misleading statements when advertising services or materials.

(f) Violates a provision of ORS 671.510 to 671.760.

(g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termination, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS 671.690.

(h) Fails to maintain public liability, personal injury and property damage insurance as required by ORS 671.565 throughout a licensing period.

(i) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

(j) Performs work for which a permit is required under the state building code without obtaining the required permit, if the work results in the filing of a claim with the board.

(k) Violates a rule or order of the board.

(L) Refuses to comply with a subpoena issued by the board.

(m) Fails to pay in full any amount owed to a claimant under a final order of the board or an arbitration award, or under a judgment rendered in this or any other state.

(n) Does not make payment, including any interest due, for labor or materials contracted for by the person pursuant to a contract for a public improvement within 90 days after the date the person receives payment from a public contracting agency or, if the person is a subcontractor, from the contractor.

(o) Engages in conduct as a landscape construction professional or landscape contracting business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

(p) Fails to comply with the requirements of ORS 652.120.

(q) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts supporting the conviction and all intervening circumstances make the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS 670.280.

(2) The board may suspend or refuse to renew the license of a landscape construction professional or landscape contracting business without prior hearing if, after investigating and setting forth in writing the facts supporting the action, the board determines that continued activity by the landscape construction professional or landscape contracting business poses an imminent threat of serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew under this subsection include, but are not limited to:

(a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

(b) The lack of public liability, personal injury or property damage insurance required under ORS 671.565;

(c) The hiring of employees while licensed as exempt under ORS 671.525;

(d) Conduct as a landscape construction professional or a landscape contracting business that is dishonest;

(e) Operation of a landscape contracting business that does not employ at least one licensed landscape construction professional; or

(f) The failure to notify the board of any unpaid court judgment, arbitration award or administrative agency final order as required by ORS 671.563.

(3) A person whose license is suspended or refused renewal under subsection (2) of this section may request a hearing within 90 days after receiving the notice of the suspension or refusal to renew. Except as provided in this subsection, the board shall give a contested case hearing requested under this subsection priority over other hearings and schedule the hearing for the earliest practicable date. If a citation is issued to the person and the order of suspension or refusal to renew will terminate by its terms if a court renders a final judgment regarding the citation in favor of the person, the person may request that the board hold the requested contested case hearing in abeyance until after the court has rendered a final judgment.

(4) A person whose license is revoked under this section is not eligible to apply for a license under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

(5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board determines, after notice and opportunity for a hearing, that the landscape contracting business was working with other landscape contracting businesses on the same task and work site where one of the landscape contracting businesses is licensed as an exempt independent contractor under ORS 671.525 (2)(b) and the total number of landscape contracting businesses working on the task exceeded:

- (a) Two sole proprietors;
- (b) One partnership;
- (c) One corporation; or
- (d) One limited liability company.

(6) The board shall provide by rule a process and criteria that must be met for restoration of a license that has not been permanently revoked.

NOTE: Moves rulemaking provision into appropriate statute as (6). See section 89 (amending ORS 671.997).

SECTION 88. ORS 671.614 is amended to read:

671.614. (1) The State Landscape Contractors Board may issue an order placing a landscape contracting business, or any landscape construction professional that is employed by the landscape contracting business or is a landscape contracting business owner or officer as defined in ORS 671.607, on probation if three or more claims are filed against the landscape contracting business's bond, letter of credit or deposit within a 12-month period.

(2) The board may place a landscape contracting business or landscape construction professional on probation under this section only if the board determines after investigation of the complaints that a significant likelihood exists that continued activity by the landscape contracting business or landscape construction professional without board supervision will result in additional claims against the landscape contracting business.

(3) The board may require as a condition of probation imposed under this section that the landscape construction professional take a board-approved education course in one or more subjects relating to landscape operations.

(4) The board may require as a condition of probation imposed under this section that the owner or officer of the landscape contracting business take a board-approved education course in one or more subjects relating to landscape contracting business or general business practices.

(5) The board may take action to suspend, revoke or refuse to renew the license of the landscape contracting business or landscape construction professional if the business or professional fails to fulfill the *[terms]* **conditions** of the probation.

NOTE: Applies consistent terminology in (5).

SECTION 89. ORS 671.997 is amended to read:

671.997. (1) Except as provided in subsection (4) of this section, a person who violates any provision of ORS 671.510 to 671.760 or a rule adopted pursuant to *[subsection (5) of this section or]* ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board a civil penalty in an amount determined by the board of not more than \$2,000 for each offense.

(2) The board shall impose civil penalties under this section as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) If a landscape contracting business commits an act described under ORS 671.610 (5), the board shall impose penalties and sanctions on both the landscape contracting business to which the contract is awarded and the landscape contracting business that awards the contract as follows:

- (a) A civil penalty of not less than \$500 nor more than \$1,000 for a first offense;
- (b) A civil penalty of not less than \$1,000 nor more than \$2,000 for a second offense;
- (c) Suspension of license or refusal to reissue license for six months for a third offense;
- (d) Revocation of license for three years for a fourth offense; and
- (e) Permanent revocation of the landscape contracting business's license for a fifth offense.

[(5) The board shall provide by rule a process and criteria that must be met for restoration of a license that has not been permanently revoked.]

NOTE: Deletes internal reference in (1); moves rulemaking provision to appropriate section. See section 87 (amending ORS 671.610).

SECTION 90. ORS 701.046 is amended to read:

701.046. (1) An applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application shall include, but not be limited to, the following information:

- (a) The endorsement being sought.
- (b) A list of construction debts involving the applicant, or an owner or officer of the applicant, if the order, award, penalty or judgment that establishes the debt was issued within the preceding five years.
- (c) For each person described in paragraphs (h) and (i) of this subsection, a Social Security number.
- (d) Workers' compensation insurance account number, if the applicant is required to have workers' compensation insurance.
- (e) Unemployment insurance account number, if the applicant is required to have unemployment insurance.
- (f) State withholding tax account number, if the applicant is required to withhold state income tax.
- (g) Federal employer identification number, if the applicant is required to have a federal employer identification number.
- (h) The name and address of:
 - (A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.
 - (B) The general partner, if the applicant is a limited partnership.
 - (C) Each joint venturer, if the applicant is a joint venture.
 - (D) The owner, if the applicant is a sole proprietorship.
 - (E) The officers, if the applicant is a corporation.
 - (F) The manager and each member, if the applicant is a manager-managed limited liability company.
 - (G) Each member, if the applicant is a member-managed limited liability company.
 - (H) The responsible managing individual designated by the applicant.
 - (I) Each trustee, if the applicant is a trust.
- (i) The name and address of the following if the applicant is a partnership, limited liability partnership, foreign limited liability partnership, joint venture, manager-managed limited liability company or member-managed limited liability company:
 - (A) Each partner in a partnership, limited liability partnership or foreign limited liability partnership that is a partner, joint venturer or member of the applicant.
 - (B) Each general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the applicant.

(D) The manager and each member of a manager-managed limited liability company that is a partner, joint venturer or member of the applicant.

(E) Each member of a member-managed limited liability company that is a partner, joint venturer or member of the applicant.

(F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

(G) The general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(H) Each individual who has a controlling ownership interest in, or management authority over, the applicant and who meets criteria adopted by the board by rule.

(j) For each person described in paragraphs (h) and (i) of this subsection, information as required by board rule regarding the following if related to construction activities:

(A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.

(B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.

(C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.

(D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.098 [(1)(i)] **(1)(h)** entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.098 [(1)(i)] **(1)(h)** filed within five years preceding the application date.

(k) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

(2) The application described in subsection (1) of this section must be accompanied by proof satisfactory to the board that the applicant:

(a) Is in compliance with ORS 701.091.

(b) Has the legal capacity to enter into contracts.

(3) Subsection (2)(a) of this section does not apply to an applicant for licensing with endorsement solely as a residential or commercial developer.

(4) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

NOTE: Corrects citations in (1)(j)(E) and (F).

SECTION 91. ORS 701.046, as amended by section 90 of this 2009 Act, is amended to read:

701.046. (1) An applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application shall include, but not be limited to, the following information:

(a) The endorsement being sought.

(b) A list of construction debts involving the applicant, or an owner or officer of the applicant, if the order, award, penalty or judgment that establishes the debt was issued within the preceding five years.

(c) For each person described in paragraphs (h) and (i) of this subsection, a Social Security number.

(d) Workers' compensation insurance account number, if the applicant is required to have workers' compensation insurance.

(e) Unemployment insurance account number, if the applicant is required to have unemployment insurance.

(f) State withholding tax account number, if the applicant is required to withhold state income tax.

(g) Federal employer identification number, if the applicant is required to have a federal employer identification number.

(h) The name and address of:

(A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.

(B) The general partner, if the applicant is a limited partnership.

(C) Each joint venturer, if the applicant is a joint venture.

(D) The owner, if the applicant is a sole proprietorship.

(E) The officers, if the applicant is a corporation.

(F) The manager and each member, if the applicant is a manager-managed limited liability company.

(G) Each member, if the applicant is a member-managed limited liability company.

(H) The responsible managing individual designated by the applicant.

(I) Each trustee, if the applicant is a trust.

(i) The name and address of the following if the applicant is a partnership, limited liability partnership, foreign limited liability partnership, joint venture, manager-managed limited liability company or member-managed limited liability company:

(A) Each partner in a partnership, limited liability partnership or foreign limited liability partnership that is a partner, joint venturer or member of the applicant.

(B) Each general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the applicant.

(D) The manager and each member of a manager-managed limited liability company that is a partner, joint venturer or member of the applicant.

(E) Each member of a member-managed limited liability company that is a partner, joint venturer or member of the applicant.

(F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

(G) The general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(H) Each individual who has a controlling ownership interest in, or management authority over, the applicant and who meets criteria adopted by the board by rule.

(j) For each person described in paragraphs (h) and (i) of this subsection, information as required by board rule regarding the following if related to construction activities:

(A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.

(B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.

(C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.

(D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.098 [(1)(h)] (1)(i) entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.098 [(1)(h)] (1)(i) filed within five years preceding the application date.

(k) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

(2) The application described in subsection (1) of this section must be accompanied by proof satisfactory to the board that the applicant:

- (a) Is in compliance with ORS 701.091.
- (b) Has the legal capacity to enter into contracts.

(3) Subsection (2)(a) of this section does not apply to an applicant for licensing with endorsement solely as a residential or commercial developer.

(4) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

NOTE: Updates citations in (1)(j)(E) and (F) to synchronize with amendments to ORS 701.098 that become operative 7/1/2010. See section 92 and ORS 701.098, as amended by section 63, chapter 836, Oregon Laws 2007.

SECTION 92. The amendments to ORS 701.046 by section 91 of this 2009 Act become operative on July 1, 2010.

NOTE: Provides appropriate operative date for updated citations in section 91 (amending ORS 701.046).

SECTION 93. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the member;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the member when there is a preferred claim arising under ORS 411.708, 411.795 or 414.105;

(c) If there is no surviving spouse and no department claim, to the member's surviving children 18 years of age or older;

(d) If there is no surviving spouse, department claim or surviving child 18 years of age or older, to the member's surviving parents; or

(e) If there is no surviving spouse, department claim, surviving child 18 years of age or older or surviving parent, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased member out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the member died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of the moneys in good faith to the affiant discharges and releases the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the deceased member.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, Department of Human Services, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of de-

posits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

NOTE: Clarifies agency referred to in (5).

SECTION 94. ORS 743.405 is amended to read:

743.405. An individual health insurance policy must meet the following requirements:

(1) The entire money and other considerations therefor shall be expressed therein.

(2) The time at which the insurance takes effect and terminates shall be expressed therein.

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age, which shall not exceed 19 years, and any other person dependent upon the policyholder.

(4) The policy may not be issued individually to an individual in a group of persons as described in ORS 743.522 for the purpose of separating the individual from health insurance benefits offered or provided in connection with a group health benefit plan.

(5) Except as provided in ORS 743.498, the style, arrangement and overall appearance of the policy may not give undue prominence to any portion of the text, and every printed portion of the text of the policy and of any indorsements or attached papers shall be plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than 10 point with a lower case unspaced alphabet length not less than 120 point. Captions shall be printed in not less than 12-point type. As used in this subsection, "text" includes all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity must be set forth in the policy. Except those required by ORS 743.411 to 743.477[,] **and** 743A.160 [*and 743A.164*], exceptions and reductions shall be printed at the insurer's option either included with the applicable benefit provision or under an appropriate caption such as EXCEPTIONS, or EXCEPTIONS AND REDUCTIONS. However, if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the applicable benefit provision.

(7) Each form constituting the policy, including riders and indorsements, must be identified by a form number in the lower left-hand corner of the first page of the policy.

(8) The policy may not contain provisions purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of or reference to a statement of rates or classification of risks, or short rate table filed with the Director of the Department of Consumer and Business Services.

NOTE: Corrects punctuation in (3); eliminates nonsensical citation in (6).

SECTION 95. ORS 743.483 is amended to read:

743.483. The provisions of a health insurance policy [*which*] **that** are the subject of ORS 743.408 to 743.477[,] **and** 743A.160 [*and 743A.164*], or any corresponding provisions [*which*] **that** are used in lieu thereof in accordance with the Insurance Code, shall be printed in the consecutive order of such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse[,] or likely to mislead a person to whom the policy is offered, delivered or issued.

NOTE: Improves word choice; eliminates nonsensical citation; corrects punctuation.

SECTION 96. ORS 757.822 is amended to read:

757.822. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35 (other than ORS 35.550 to 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696), 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, [236.380,] 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, 287.006, 287A.472, 288.150 to 288.165, 288.600, 288.815 and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.001.

NOTE: Eliminates reference to repealed statute in (2).

SECTION 97. ORS 759.385 is amended to read:

759.385. (1) When any telecommunications utility doing business in this state, except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410, enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of the telecommunications utility in Oregon, or the use of the property of the other contracting party, or any part of the property, or for service, advice, engineering, financing, rentals, leasing or for any construction or management charges with respect to any of the property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for [the] investigation and approval when the telecommunications utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any proposed contract described in subsection (1) of this section shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 (4) and (7).

(3) In making an investigation of the contract, the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility, as well as of the corporation with which it is proposing to contract, that the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that the contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect. A determination and finding by the commission under this subsection has the same force and effect as any other determination or order of the commission.

(4) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000.

NOTE: Deletes superfluous article in (1).

SECTION 98. ORS 778.005 is amended to read:

778.005. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the board of commissioners of the Port of Portland.

(2) "Port" means The Port of Portland.

(3) "Elector" means an elector residing in the port.

(4) "Portland metropolitan area" means the Oregon portion of a [standard] metropolitan statistical area as designated [and published] by the United States [Bureau of the Budget] **Office of Management and Budget** with an Oregon population of more than 750,000.

NOTE: Conforms census terminology to current federal usage, eliminates redundancy and updates title of federal agency in (4).

SECTION 99. ORS 819.160 is amended to read:

819.160. (1) Except as otherwise provided by this section, a person shall have a lien on the vehicle and its contents if the person, at the request of an authority described under ORS 819.140, tows any of the following vehicles:

(a) An abandoned vehicle appraised at a value of more than \$500 by a person who holds a certificate issued under ORS 819.480.

(b) A vehicle taken into custody under ORS 819.110 or 819.120, unless it is an abandoned vehicle appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.480.

(c) A vehicle left parked or standing in violation of ORS 811.555 or 811.570.

(2) A lien established under this section shall be on the vehicle and its contents for the just and reasonable charges for the towing service performed and any storage provided. However, if the person who tows the vehicle fails to comply with the notice requirements of subsection (3) of this section, the amount of any lien claimed under this *[paragraph shall be]* **section is** limited to an amount equal to the just and reasonable charges for the towing service performed and storage provided for a period not exceeding 20 days from the date the vehicle and its contents were placed in storage. The lien *[shall be]* **is** subject to the provisions for liens under ORS 98.812. The person holding the lien may retain possession of the vehicle and contents until the charges on which the lien is based are paid. A lien described under this section does not attach:

(a) To the contents of any vehicle taken from public property until 15 days after taking the vehicle into custody.

(b) To the contents of any vehicle that is taken into custody for violation of ORS 811.555 or 811.570.

(3) A person who tows any vehicle at the request of an authority under ORS 819.110 or 819.120 shall transmit by first class mail with a certificate of mailing, within 20 days after the vehicle and its contents are placed in storage, written notice, approved by the authority, containing information on the procedures necessary to obtain a hearing under ORS 819.190. The notice shall be provided to the owner, a person entitled to possession or any person with an interest recorded on the title to the vehicle. This subsection does not apply to a person who tows an abandoned vehicle that is appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.480.

NOTE: Corrects internal reference and updates syntax in (2).

SECTION 100. ORS 836.640 is amended to read:

836.640. As used in this section and ORS 836.642:

(1) "Customary and usual aviation-related activity" includes activities described in ORS 836.616 (2) and includes activities that a local government may authorize pursuant to ORS 836.616 (3).

(2) "Pilot site" means a rural airport identified to participate in the pilot program pursuant to ORS 836.642.

(3) "Rural airport" means an airport described in ORS 836.610 (1) that principally serves a city or *[standard]* metropolitan statistical area with a population of 75,000 or fewer.

(4) "Through the fence operation" means a customary and usual aviation-related activity that:

(a) Is conducted by a commercial or industrial user of property within an airport boundary; and

(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

NOTE: Conforms census terminology in (3) to current federal usage.

Passed by House February 3, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate February 25, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

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Secretary of State