

# Enrolled Senate Bill 63

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CHAPTER .....

AN ACT

Relating to release from imprisonment; amending ORS 144.102, 144.270, 144.642 and 144.644; and declaring an emergency.

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

**SECTION 1.** ORS 144.102 is amended to read:

144.102. (1) The State Board of Parole and Post-Prison Supervision or local supervisory authority responsible for correctional services for a person shall specify in writing the conditions of post-prison supervision imposed under ORS 144.096. A copy of the conditions *[shall]* **must** be given to the person upon release from prison or jail.

(2) The board or the supervisory authority shall determine, and may at any time modify, the conditions of post-prison supervision, which may include, among other conditions, that the person shall:

- (a) Comply with the conditions of post-prison supervision as specified by the board or supervisory authority.
- (b) Be under the supervision of the Department of Corrections and its representatives or other supervisory authority and abide by their direction and counsel.
- (c) Answer all reasonable inquiries of the board, the department or the supervisory authority.
- (d) Report to the parole officer as directed by the board, the department or the supervisory authority.
- (e) Not own, possess or be in control of any weapon.
- (f) Respect and obey all municipal, county, state and federal laws.
- (g) Understand that the board or supervisory authority may, at its discretion, punish violations of post-prison supervision.

(h) Attend a victim impact treatment session in a county that has a victim impact program. If the board or supervisory authority requires attendance under this paragraph, the board or supervisory authority may require the person, as an additional condition of post-prison supervision, to pay a reasonable fee to the victim impact program to offset the cost of the person's participation. The board or supervisory authority may not order a person to pay a fee in excess of \$5 under this paragraph.

*[(i)]* **(3) If the person is required to report as a sex offender under ORS 181.595, the board or supervisory authority shall include as a condition of post-prison supervision that the person**

report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:

[A] (a) When supervision begins;

[B] (b) Within 10 days of a change in residence;

[C] (c) Once each year within 10 days of the person's date of birth;

[D] (d) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

[E] (e) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

[3)(a)] (4)(a) The board or supervisory authority may establish special conditions [as] **that** the board or supervisory authority [determines] **considers** necessary because of the individual circumstances of the person on post-prison supervision.

(b) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, the board or supervisory authority shall include all of the following as special conditions of the person's post-prison supervision:

(A) Agreement to comply with [any] a curfew set by the board, the supervisory authority or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board, supervisory authority or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board, supervisory authority or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board, supervisory authority or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board, supervisory authority or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against [any] **direct or indirect** contact with the victim, [directly or indirectly,] unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing [any] sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board or supervisory authority if the representative has reasonable grounds to believe that evidence of a violation of a condition of post-prison supervision will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of post-prison supervision.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board, supervisory authority or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board, supervisory authority or supervising officer.

(M) A prohibition against residing in [any] a dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board, supervisory au-

thority or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or the director of the supervisory authority, or a designee of the board or director. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. [As used in this subparagraph:]

[(i) "Dwelling" has the meaning given that term in ORS 469.160.]

[(ii) "Dwelling" does not include a residential treatment facility or a halfway house.]

[(iii) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.]

(c)(A) If the person is on post-prison supervision following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board or supervisory authority, if requested by the victim, shall include as a special condition of the person's post-prison supervision that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection [(6)] (7) of this section;

(ii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board or supervisory authority by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the post-prison supervision; or

(iv) The person resides in a halfway house. [As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.]

(B) A victim may request imposition of the special condition of post-prison supervision described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board or supervisory authority imposes the special condition of post-prison supervision described in this paragraph and if at any time during the period of post-prison supervision the victim moves to within three miles of the person's residence, the board or supervisory authority may not require the person to change the person's residence in order to comply with the special condition of post-prison supervision.

[(4)(a)] (5)(a) The board or supervisory authority may require the person to pay, as a condition of post-prison supervision, [any] compensatory fines, restitution or attorney fees:

(A) As determined, imposed or required by the sentencing court; or

(B) When previously required as a condition of any type of supervision that is later revoked.

(b) The board may require a person to pay restitution as a condition of post-prison supervision imposed for an offense other than the offense for which the restitution was ordered if the person:

(A) Was ordered to pay restitution as a result of another conviction; and

(B) Has not fully paid the restitution by the time the person has completed the period of post-prison supervision imposed for the offense for which the restitution was ordered.

[(5)] (6) A person's failure to apply for or accept employment at [any] a workplace where there is a labor dispute in progress does not constitute a violation of the conditions of post-prison supervision. [As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.]

[(6)(a)] (7)(a) When a person is released from imprisonment on post-prison supervision, the board shall order[,] as a condition of post-prison supervision[,] that the person reside for the first six months after release in the county [where the person resided] **that last supervised the person, if the person was on active supervision as an adult for a felony** at the time of the offense that resulted in the imprisonment.

*[(b) Upon motion of the board, the person, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:]*

*[(A) The person provides proof of employment with no set ending date in a county other than the established county of residence;]*

*[(B) The person is found to pose a significant danger to a victim of the person's crime, or a victim or victim's family is found to pose a significant danger to the person residing in the established county of residence;]*

*[(C) The person has a spouse or biological or adoptive family residing in a county other than the established county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the post-prison supervision;]*

*[(D) As another condition of post-prison supervision, the person is required to participate in a treatment program that is not available in the established county of residence;]*

*[(E) The person desires to be released to another state; or]*

*[(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.]*

**(b) If the person was not on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment, the board shall order as a condition of post-prison supervision that the person reside for the first six months after release in the county where the person resided at the time of the offense that resulted in the imprisonment.**

**(c) For purposes of paragraph (b) of this subsection:**

(A) The board shall determine the county where the person resided at the time of the offense by *[establishing the person's last address at the time of the offense. In making its determination, the board shall examine all of the following]* **examining records such as:**

- (i) An Oregon driver license, regardless of its validity;
- (ii) Records maintained by the Department of Revenue;
- (iii) Records maintained by the Department of State Police *[bureau of criminal identification]*;
- (iv) Records maintained by the Department of Human Services;
- (v) Records maintained by the Department of Corrections; and
- (vi) Records maintained by the Oregon Health Authority.

(B) *[When]* **If** the person did not have an identifiable address *[of record]* at the time of the offense, **or the address cannot be determined**, the person is considered to have resided in the county where the offense occurred.

(C) If the person is serving multiple sentences, the county of residence *[shall be]* **is** determined according to the date of the last arrest resulting in a conviction.

(D) In determining the person's county of residence *[for purposes of this subsection]*, the board may not consider offenses committed by the person while the person was incarcerated in a Department of Corrections facility.

**(d) Upon motion of the board, the supervisory authority, the person, a victim or a district attorney, the board may waive the residency condition under paragraph (b) of this subsection only after making a finding that one of the following conditions has been met:**

**(A) The person provides proof of employment with no set ending date in a county other than the county of residence determined under subsection (c) of this section;**

**(B) The person is found to pose a significant danger to a victim of the person's crime residing in the county of residence, or a victim or victim's family residing in the county of residence is found to pose a significant danger to the person;**

**(C) The person has a spouse or biological or adoptive family residing in a county other than the county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the post-prison supervision;**

**(D) As another condition of post-prison supervision, the person is required to participate in a treatment program that is not available in the county of residence;**

**(E) The person requests release to another state; or**

**(F) The board finds other good cause for the waiver.**

[7] (8) As used in this section[,]:

(a) “Attends,” **“carries on a vocation,”** “institution of higher education[,]” and “works” [*and “carries on a vocation”*] have the meanings given those terms in ORS 181.594.

(b)(A) **“Dwelling” has the meaning given that term in ORS 469.160.**

(B) **“Dwelling” does not mean a residential treatment facility or a halfway house.**

(c) **“Halfway house” means a residential facility that provides rehabilitative care and treatment for sex offenders.**

(d) **“Labor dispute” has the meaning given that term in ORS 662.010.**

**SECTION 2.** ORS 144.270 is amended to read:

144.270. (1) The State Board of Parole and Post-Prison Supervision, in releasing a person on parole, shall specify in writing the conditions of the parole [*and*]. A copy of [*such*] **the** conditions [*shall*] **must** be given to the person paroled.

(2) The board shall determine, and may at any time modify, the conditions of parole, which may include, among other conditions, that the [*parolee shall*] **person paroled must:**

(a) Accept the parole granted subject to all terms and conditions specified by the board.

(b) Be under the supervision of the Department of Corrections and its representatives and abide by their direction and counsel.

(c) Answer all reasonable inquiries of the board or the parole officer.

(d) Report to the parole officer as directed by the board or parole officer.

(e) Not own, possess or be in control of [*any*] **a** weapon.

(f) Respect and obey all municipal, county, state and federal laws.

(g) Understand that the board may, in its discretion, suspend or revoke parole if it determines that the parole is not in the best interest of the [*parolee, or in the best interest*] **person paroled or** of society.

(3) **If the person paroled is required to report as a sex offender under ORS 181.595, the board shall include as a condition of parole that the person report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:**

(a) **When supervision begins;**

(b) **Within 10 days of a change in residence;**

(c) **Once each year within 10 days of the person's date of birth;**

(d) **Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and**

(e) **Within 10 days of a change in work, vocation or attendance status at an institution of higher education.**

[3(a)] (4)(a) The board may establish [*such*] special conditions [*as it determines are*] **that it considers** necessary because of the individual circumstances of the [*parolee*] **person paroled.**

(b) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, the board shall include all of the following as special conditions of the person's parole:

(A) Agreement to comply with [*any*] **a** curfew set by the board or the supervising officer.

(B) A prohibition against contacting a person under 18 years of age without the prior written approval of the board or supervising officer.

(C) A prohibition against being present more than one time, without the prior written approval of the board or supervising officer, at a place where persons under 18 years of age regularly congregate.

(D) In addition to the prohibition under subparagraph (C) of this paragraph, a prohibition against being present, without the prior written approval of the board or supervising officer, at, or on property adjacent to, a school, child care center, playground or other place intended for use primarily by persons under 18 years of age.

(E) A prohibition against working or volunteering at a school, child care center, park, playground or other place where persons under 18 years of age regularly congregate.

(F) Entry into and completion of or successful discharge from a sex offender treatment program approved by the board or supervising officer. The program may include polygraph and plethysmograph testing. The person is responsible for paying for the treatment program.

(G) A prohibition against [any] **direct or indirect** contact with the victim, [*directly or indirectly,*] unless approved by the victim, the person's treatment provider and the board or supervising officer.

(H) Unless otherwise indicated for the treatment required under subparagraph (F) of this paragraph, a prohibition against viewing, listening to, owning or possessing [any] sexually stimulating visual or auditory materials that are relevant to the person's deviant behavior.

(I) Agreement to consent to a search of the person or the vehicle or residence of the person upon the request of a representative of the board if the representative has reasonable grounds to believe that evidence of a violation of a condition of parole will be found.

(J) Participation in random polygraph examinations to obtain information for risk management and treatment. The person is responsible for paying the expenses of the examinations. The results of a polygraph examination under this subparagraph may not be used in evidence in a hearing to prove a violation of parole.

(K) Maintenance of a driving log and a prohibition against driving a motor vehicle alone unless approved by the board or supervising officer.

(L) A prohibition against using a post-office box unless approved by the board or supervising officer.

(M) A prohibition against residing in [any] a dwelling in which another sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or supervising officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides unless approved by the board or a designee of the board. As soon as practicable, the supervising officer of a person subject to the requirements of this subparagraph shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. [*As used in this subparagraph:*]

(i) "*Dwelling*" has the meaning given that term in ORS 469.160.]

(ii) "*Dwelling*" does not include a residential treatment facility or a halfway house.]

(iii) "*Halfway house*" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.]

(c)(A) If the person is on parole following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the board, if requested by the victim, shall include as a special condition of the person's parole that the person not reside within three miles of the victim unless:

(i) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county under subsection [(5)] (6) of this section;

(ii) The person demonstrates to the board by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(iii) The person demonstrates to the board by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the parole; or

(iv) The person resides in a halfway house. [*As used in this sub-subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.*]

(B) A victim may request imposition of the special condition of parole described in this paragraph at the time of sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document.

(C) If the board imposes the special condition of parole described in this paragraph and if at any time during the period of parole the victim moves to within three miles of the parolee's residence,

the board may not require the parolee to change the parolee's residence in order to comply with the special condition of parole.

[(4)] **(5)** It is not a cause for revocation of parole that the [parolee] **person paroled** failed to apply for or accept employment at [any] a workplace where there is a labor dispute in progress. [As used in this subsection, "labor dispute" has the meaning given that term in ORS 662.010.]

[(5)(a)] **(6)(a)** When the board grants [an inmate] a **person** parole from the custody of the Department of Corrections, the board shall order, as a condition of parole, that the [inmate] **person** reside for the first six months in the county [where the inmate resided] **that last supervised the person, if the person was on active supervision as an adult for a felony** at the time of the offense that resulted in the imprisonment.

[(b) Upon motion of the board, an inmate, a victim or a district attorney, the board may waive the residency requirement only after making a finding that one of the following conditions has been met:]

[(A) The inmate provides proof of a job with no set ending date in a county other than the established county of residence;]

[(B) The inmate is found to pose a significant danger to the victim of the offender's crime, or the victim or victim's family is found to pose a significant danger to the inmate residing in the county of residence;]

[(C) The inmate has a spouse or biological or adoptive family residing in other than the county of residence who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole;]

[(D) As another condition of parole, the inmate is required to participate in a treatment program that is not available or located in the county of residence;]

[(E) The inmate desires to be paroled to another state; or]

[(F) The board finds other good cause, of a nature similar to the other conditions listed in this paragraph, for the waiver.]

**(b) If the person paroled was not on active supervision as an adult for a felony at the time of the offense that resulted in the imprisonment, the board shall order as a condition of parole that the person reside for the first six months in the county where the person resided at the time of the offense that resulted in the imprisonment.**

(c)[(A)] For purposes of **paragraph (b)** of this subsection[, "residency" means the last address at the time of the offense, as established by an examination of all of the following]:

**(A) The board shall determine the county where the person resided at the time of the offense by examining records such as:**

- (i) An Oregon driver license, regardless of its validity;
- (ii) Records maintained by the Department of Revenue;
- (iii) Records maintained by the Department of State Police [bureau of criminal identification];
- (iv) Records maintained by the Department of Human Services;
- (v) Records maintained by the Department of Corrections; and
- (vi) Records maintained by the Oregon Health Authority.

(B) [When an inmate] **If the person** did not have [one] **an** identifiable address [of record] at the time of the offense, **or the address cannot be determined**, the [inmate shall be] **person is** considered to have resided in the county where the offense occurred.

(C) If the [inmate] **person** is serving multiple sentences, the county of residence [shall be] **is** determined according to the date of the last arrest resulting in a conviction.

(D) If the [inmate] **person** is being rereleased after revocation of parole, the county of residence shall be determined according to the date of the arrest resulting in a conviction of the underlying offense.

(E) In determining the [inmate's] **person's** county of residence, a conviction for an offense that the inmate committed while incarcerated in a state corrections institution may not be considered.

**(d) Upon motion of the board, the supervisory authority, the person paroled, a victim or a district attorney, the board may waive the residency condition under paragraph (b) of this subsection only after making a finding that one of the following conditions has been met:**

(A) The person provides proof of employment with no set ending date in a county other than the county of residence determined under subsection (c) of this section;

(B) The person is found to pose a significant danger to a victim of the person's crime residing in the county of residence, or a victim or victim's family residing in the county of residence is found to pose a significant danger to the person;

(C) The person has a spouse or biological or adoptive family residing in a county other than the county of residence who will be materially significant in aiding in the rehabilitation of the person and in the success of the parole;

(D) As another condition of parole, the person is required to participate in a treatment program that is not available or located in the county of residence;

(E) The person requests to be paroled to another state; or

(F) The board finds other good cause for the waiver.

*[(6) When the board grants an inmate parole from the custody of the Department of Corrections and if the inmate is required to report as a sex offender under ORS 181.595, the board, as a condition of parole, shall order the inmate to report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:]*

*[(a) When supervision begins;]*

*[(b) Within 10 days of a change in residence;]*

*[(c) Once each year within 10 days of the inmate's date of birth;]*

*[(d) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and]*

*[(e) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.]*

(7) As used in this section[,]:

(a) "Attends," "**carries on a vocation**," "institution of higher education[,]" and "works" [*and "carries on a vocation"*] have the meanings given those terms in ORS 181.594.

(b)(A) "**Dwelling**" has the meaning given that term in ORS 469.160.

(B) "**Dwelling**" does not mean a residential treatment facility or a halfway house.

(c) "**Halfway house**" means a residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "**Labor dispute**" has the meaning given that term in ORS 662.010.

**SECTION 3.** ORS 144.642 is amended to read:

144.642. (1) The Department of Corrections, in consultation with the State Board of Parole and Post-Prison Supervision and community corrections agencies, shall adopt rules establishing criteria to be considered in determining the permanent residence requirements for a sex offender released on post-prison supervision or parole. Transitional housing is not subject to permanent residence requirements. The department shall include in the rules:

(a) A general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users;

(b) The bases upon which exceptions to the general prohibition required by paragraph (a) of this subsection are authorized;

(c) A prohibition against allowing a sex offender to reside in any dwelling in which another sex offender on probation, parole or post-prison supervision resides unless authorized as provided in ORS 144.102 [(3)(b)(M)] (4)(b)(M); and

(d) A process that allows communities and community corrections agencies that would be affected by a decision about the location of a sex offender's residence to be informed of the decision making process before the offender is released.

(2) Based upon the rules adopted under subsection (1) of this section, the department shall develop a decision matrix to be used in determining the permanent residence requirements for a sex offender.

**SECTION 4.** ORS 144.644 is amended to read:



144.644. (1) The State Board of Parole and Post-Prison Supervision, in consultation with the Department of Corrections and community corrections agencies, shall adopt rules establishing criteria to be considered:

(a) In reviewing the proposed residence of a sex offender in a release plan under ORS 144.096 or a parole plan under ORS 144.125; and

(b) In determining the residence of a sex offender in a release plan under ORS 144.096, as a condition of post-prison supervision under ORS 144.102 or as a condition of parole under ORS 144.270.

(2) The board shall include in the rules:

(a) A general prohibition against allowing a sex offender to reside near locations where children are the primary occupants or users;

(b) The bases upon which exceptions to the general prohibition required by paragraph (a) of this subsection are authorized;

(c) A prohibition against allowing a sex offender to reside in any dwelling in which another sex offender on probation, parole or post-prison supervision resides unless authorized as provided in ORS 144.102 [(3)(b)(M)] (4)(b)(M); and

(d) A process that allows communities and community corrections agencies that would be affected by a decision about the location of a sex offender's residence to be informed of the decision making process before the offender is released.

(3) Based upon the rules adopted under subsections (1) and (2) of this section, the board shall develop a decision matrix to be used in determining the specific residence for a sex offender.

**SECTION 5. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.**

**Passed by Senate March 24, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 25, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M.,....., 2011

**Approved:**

.....M.,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2011

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Kate Brown, Secretary of State