

This is the cover page for documents which I would like to submit as part of my testimony on HB 3009 and 3114.

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OUS, Policy on Firearms and Revision of the Language of OAR 580-022-0045(3)

Since 1978, the Oregon State Board of Higher Education has proscribed the possession or use of weapons, including firearms, on Board-owned or controlled property. This prohibition was memorialized by Oregon Administrative Rule 580-022-0045(3). The administrative rule, at relevant part, states:

“Procedures to impose applicable sanctions may be instituted against any person engaging in any of the following proscribed conduct...

“Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules (for purposes of this section, absence of criminal penalties shall not be considered express authorization)...”

On August 7, 2009, the Oregon Firearms Education Foundation petitioned the Oregon Court of Appeals under ORS 183.400 to declare that the Board’s administrative rule regarding firearms was unconstitutional and pre-empted by the Oregon Legislature. Oregon Revised Statute 183.400 is a narrow provision that allows “any person” to challenge an agency’s administrative rule on three bases: the rule is unconstitutional, the rule exceeds the agency’s statutory authority, or the agency did not comply with the requirements of rulemaking.

As OUS was considering its reply to the petition, on November 18, 2009, the Oregon Court of Appeals decided Doe v. Medford School District 549C. In that case, the Oregon Court of Appeals held that an internal employment policy prohibiting the possession of a firearm on school grounds was not preempted by the Oregon Legislature, even if the employee possessed a concealed weapons permit. In Medford, the Oregon Court of Appeals distinguished between attempts to “regulate” firearms—which would likely be preempted by the Oregon Legislature—and internal policies regarding employment or property. The *internal* policy in Medford was valid.

On September 28, 2011, the Oregon Court of Appeals invalidated the Board’s above-stated rule on firearms, holding that it was preempted by the Oregon Legislature as a “regulation”. While the Court of Appeals observed that this Board possessed broad authority to control its property, it held that an administrative rule—which carries the ‘force of law’—attempted to “regulate” firearms in a way that the Legislature intended to preempt.

As such, this staff recommendation proposes (1) to revise the language of the administrative rule in question to comply with the Oregon Court of Appeals decision by removing reference to firearms and (2) to implement an internal policy on firearms that recognizes the contours and requirements of the Oregon Court of Appeals decision regarding “regulation,” is cognizant of recent Second Amendment jurisprudence that clearly permits reasonable regulation of firearms

in “sensitive places” such as schools, while upholding the Board’s commitment to safety for students, employees and visitors.

First, staff proposes that the language of the former OAR 580-022-0045(3) be revised. The new rule, in relevant part, would read:

“Possession or use of ~~firearms~~, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules or policies ~~(for purposes of this section, absence of criminal penalties shall not be considered express authorization)...~~”

This revision retains the prohibition of weapons and explosives on one hand, while removing reference to firearms that the Oregon Court of Appeals found to be a preempted regulation.

Second, staff proposes the Board approve the attached Policy on Firearms. Advanced as an internal policy focused on the control of the Board’s property—and not an impermissible regulation via administrative rule—the draft has three major sections. First, it offers that five populations—students, employees, vendors, ticketholders, and those that reserve, lease or use Board property—may not possess a firearms on Board-owned or controlled property. Second, the policy identifies three specific, sensitive places on its property—buildings, sporting and performance venues, and workplaces—where firearms are not permitted. And, third, the policy includes several reasonable exceptions to the policy, including on-duty law enforcement, institutional policies governing the storage of unloaded weapons for hunting or target shooting, family housing, and ROTC.

STAFF RECOMMENDATION TO THE BOARD

Staff recommends that the Board approve the above-stated revision to the language of the former OAR 580-022-0045(3) and to file with the Secretary of State as a temporary rule, with permanent rulemaking to follow. Staff also recommends that the Board approve the Policy on Firearms included in the docket materials.

(Board action required.)

OREGON UNIVERSITY SYSTEM

SECTION: Governance and Policy
TITLE: Policy on Firearms
NUMBER: XX.XX
EFFECTIVE DATE: March 2, 2012

POLICY/PURPOSE

Oregon Revised Statutes 351.060(1) and (2) grant the State Board of Higher Education broad authority over its property. It states: "The State Board of Higher Education may [c]ontrol and provide for, subject to the conditions of this section, the custody and occupation of the grounds, buildings, books, papers and documents belonging to each and all the institutions, departments or activities under the control of the State Board of Higher Education [and may] [m]anage, control and apply all property of whatever nature given to or appropriated for the use, support or benefit of any or all of the institutions, departments or activities under the control of the State Board of Higher Education..." Additionally, Senate Bill 242 grants the State Board of Higher Education the "sole authority to govern, set policy, and otherwise manage the affairs of the public universities listed at ORS 352.002" and states the Board "shall exercise and carry out all of the powers, rights and duties that are expressly conferred upon the board or that are implied by law or incident to such powers, rights and duties."

Pursuant to this authority to manage its affairs and control its property—and in recognition of its obligation to provide a safe environment to its students, employees, visitors, vendors, and patrons—the State Board of Higher Education promulgates the following internal policy governing firearms for the Oregon University System, including the Chancellor's Office and the OUS institutions.

AUTHORITY/CROSS-REFERENCES

Oregon Revised Statutes Chapter 351, with specific reference to ORS 351.060 and SB 242 (2011).

PRINCIPLES/GUIDELINES/PROCEDURES

(A) *Control by OUS of its Premises Regarding Students, Employees, Contractors, Event Attendees, and Users of Board-Owned or Controlled Property*

Subject to the exceptions stated in paragraph (C) below, the following persons are prohibited, at all times, from possessing a firearm on Board-owned or controlled property, whether or not that person possesses a concealed handgun license:

- (1) Any person with student status, including, but not limited to full-time, part-time, non-admitted, or any person auditing a course at an OUS institution;

DOCUMENT HISTORY

- Approved by the State Board of Higher Education, March 2, 2012