

HB 2080  
Statement of Opposition  
Genoa Ingram  
Special Districts Association of Oregon  
House Rules Committee

The Special Districts Association of Oregon was formed in 1979 and represents nearly 900 local government entities, all special districts as defined in ORS Chapter 198 including water, utility, fire, mass transit, parks and recreation, and ports, to name but a few.

The Special Districts Association of Oregon (SDAO) opposes HB 2080. The Oregon Government Ethics Commission (OGEC) has stated in previous years in testimony before the Oregon Legislature that most of the ethics cases generated within the state are related to those public officials affiliated with local government entities. It is on behalf of a large segment of those local entities that I speak.

As you are probably already aware, public officials are held personally liable for any civil penalties assessed by the Commission. Current statute provides for an **automatic** hearing before the Commission before such penalties are assessed. HB 2080 would remove that provision.

ORS 183.745 requires that civil penalties be paid within ten days following the order and allows the individual against whom the penalty is imposed to **make application** for a hearing within 20 days from the date of service. However, we believe that that the automatic hearing currently provided by statute should stand, allowing the law to accommodate the individual, rather than the agency.

However, should the Committee vote in favor of passage of HB 2080, the opponents would ask that the OGEC be given authority to enter into a "no fault" Stipulated Agreement with the individual, similar to Conciliation Agreements currently employed by the Bureau of Labor and Industries.

Currently, a significant amount of time and money is expended defending what an individual will agree to in the Stipulated Agreement or negotiated findings. Public officials often pay a significant amount in attorney fees rather stipulate to a set of "facts" with which they do not agree. SDAO Attorney Ron Downs and I approached the Commission with this option last summer but the OGEC did not believe it currently has the authority to do so.

Our legal counsel would argue that ORS 244.260 (12) allows the parties to enter into a negotiated settlement at any time during the proceeds and that statute does not dictate the form or substance of that agreement. Should it be your intent for this bill to move forward, we are prepared to submit language modifying ORS 244.160 to clarify that the Commission does, indeed, have the authority to enter into a "no fault" negotiated agreement.

We thank for you the opportunity to testify on this bill and for your consideration of our position.

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July 27, 2012

Larry Campbell  
Chair, Oregon Government Ethics Commission  
Salem, Oregon 98301

Re: Settlement Agreements with OGEC

Dear Mr. Campbell:

Thank you for meeting with Genoa Ingram and myself. As you requested, this letter will hopefully share my concern and proposal for addressing future settlement agreements.

I have been defending Special District Board members and employees before the Commission for approximately 15 years. During this time, I have noticed that a significant amount of time and expense is spent arguing over the findings within a Stipulated Agreement. I no longer feel this is a productive use of our time and expense. Attorneys and staff spend a lot of time drafting and arguing the findings on behalf of their clients. Often, the clients do not even agree with the language proposed and ultimately give in to avoid either additional costs and/or the threat of a greater penalty. Often, the monetary penalty becomes secondary to the stipulated findings.

As I shared with you, I defend a number of discrimination cases before the Bureau of Labor and Industries. The Bureau also enters into Settlement Agreements and in doing so, uses a Conciliation Agreement that I believe can be used before the Ethics Commission. (See attached) ORS 244.260 (12) allows the parties to enter into a negotiated settlement at any time during the proceedings and nowhere does it dictate what the form of agreement has to be. Subsection (11) does allow for the parties to agree on stipulated findings of fact concerning the violation. In my reading however, it does not control the form of a negotiated agreement within subsection (12). Nor does it require detailed recitations of the factual investigation surrounding the alleged violation.

I have shared my thoughts regarding this process with other attorneys who represent clients before you. All agree that a lot of time and expense could be saved by all parties if the Ethics staff and Commission, would entertain and start using a Conciliation Agreement similar in form to the one used by the Bureau.

I would be happy to meet with you and staff to discuss further.

Sincerely,

Ronald W. Downs  
Attorney at Law  
General Counsel Special Districts Association of Oregon

**Before the Commissioner of the  
Bureau of Labor and Industries of the  
State of Oregon**

|  |   |                            |
|--|---|----------------------------|
| In the Matter of the Alleged Unlawful                      | ) |                            |
| OSHA Practice Based upon                                   | ) | <b>Conciliation</b>        |
| ORS 654.062  | ) | <b>Agreement</b>           |
|  | ) |                            |
| <del>Thomas A. Williams</del>                              | ) |                            |
| Complainant  | ) | Case Number                |
| v.   | ) | <del>SEMO110928-4141</del> |
| <del>Hend Park and Recreation District Park Services</del> | ) |                            |
| Respondent   | ) |                            |

In accordance with the provisions of Chapter 659A, Oregon Revised Statutes and Oregon Administrative Rules 839-003-0000, et seq.; the Oregon Bureau of Labor and Industries, Civil Rights Division, ~~Thomas A. Williams~~ and ~~Hend Park and Recreation District Park Services~~ agree to enter into this Conciliation Agreement in full settlement of the complaint filed with the Oregon Bureau of Labor and Industries, Civil Rights Division, dated ~~September 28~~, 2011, case number ~~SEMO110928-4141~~ wherein ~~Thomas A. Williams~~ appears as the Complainant and ~~Hend Park and Recreation District Park Services~~ appears as the Respondent. **It is understood and agreed that this agreement is not construed as an admission of liability on the part of Respondent but is a compromise of a disputed claim. It is hereby agreed:**

I.

1. Respondent agrees not to retaliate or discriminate against Complainant in any manner for instituting or causing to be instituted the subject complaint.
2. Respondent agrees to pay Complainant a lump sum of \$5,000.

II.

By approval of this agreement and upon compliance with the terms of this agreement, Complainant declares and represents full understanding of the terms of this Conciliation Agreement and voluntarily accepts the aforesaid terms for the purpose of making a full compromise and settlement of the complaint named above.

III.

The Oregon Bureau of Labor and Industries, Civil Rights Division, declares and represents that it will accept this settlement for the purpose of making a full compromise, adjustment, and settlement of any and all claims of, or in any way arising out of, the filing of the above-named complaint. The Division may, however, investigate any alleged breach of this agreement.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas A. Williams  
Complainant

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bend Park and Recreation District Park Services  
Respondent

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Redacted Name], Administrator  
Civil Rights Division

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Redacted Name], Senior Investigator  
Civil Rights Division