



MEMORANDUM

Prepared for: Senator Jeff Golden
Date: October 16, 2020
By: Laura Kentnesse, LPRO Analyst
Re: Legal Structures for the Establishment of
a Wildfire Workforce Foundation/Fund

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

You requested research to identify potential legal structures for a proposed wildfire workforce foundation, to evaluate the findings and suggest a recommended structure, and to deliver an action plan with recommended next steps for implementation.

SUMMARY

The establishment of the Oregon Wildfire Workforce Foundation was proposed in [Senate Bill 1515-A](#) during the Oregon Legislative Assembly's 2020 legislative session.¹ The bill stated that its purpose should be to support youth development programs for forest restoration and wildfire reduction activities, and that the foundation should be able to receive both private and public funds to achieve its mission. Public testimony on the bill emphasized the urgency of the need for hazardous fuel reduction on Oregon's forested landscapes, and the value of a wildfire workforce foundation as a vehicle for soliciting additional creative funding sources given the enormity of the landscape work to be done.²

The requested research outlined in this memorandum investigated five different structural models and found that use of an existing public community foundation would likely be the best vehicle to meet the goals and needs envisioned for the wildfire workforce effort. The core rationale was the optimal division of responsibilities between the foundation, which is composed of experts at providing a neutral and unbiased legal, financial, and administrative infrastructure to new funds, and a fund advisory committee, which could be a thoughtfully constructed group that ensures the fund's success through wildfire- and workforce-specific marketing, donor solicitation, and grant awards. In addition, it was found that any legal structure building upon existing organizations was preferable for time and monetary investment over constructing a new entity from scratch.

OVERVIEW OF POTENTIAL LEGAL STRUCTURES FOR THE FOUNDATION

In order to identify practical options for an administrative home for the wildfire workforce foundation concept, five different models were investigated for the structure of the foundation: a new private foundation, a new public foundation, utilization of an existing public community foundation, utilization of an existing nonprofit organization, and utilization of an existing state grant-making agency. These five models encapsulate the major, likely legal structures for consideration.

The structural components that differentiate these five models from one another include source of funding, funding limitations, fundraising practices, use of funds, minimum annual disbursements, tax exemption, tax incentives for donors, governance requirements, oversight scrutiny, staff expertise,

¹ [Senate Bill 1515-A \(2020\)](#)

² Oregon State Legislature, Oregon Legislative Information System, *Senate Interim Committee on Wildfire Reduction and Recovery 1/14/2020 meeting* <https://olis.oregonlegislature.gov/liz/201911/Committees/SWRR/2020-01-14-08-00/Agenda> (last visited September 2, 2020).

establishment time and steps, minimum start-up costs, and ongoing costs. The following table (Table 1) provides a description of each model, organized by those structural components, to allow for subsequent evaluation of which model(s) most closely align with the stated goals of the wildfire workforce foundation concept.

Table 1: Matrix of legal structures for foundation establishment

	NEW PRIVATE FOUNDATION	NEW PUBLIC FOUNDATION	EXISTING PUBLIC COMMUNITY FOUNDATION	EXISTING NONPROFIT ORGANIZATION	EXISTING STATE AGENCY
FUNDING SOURCES	Typically derives all financial support from a single source, such as an individual, family, or corporation.	Receives donations from individuals, corporations, public or private foundations, and/or government.	Receives donations from individuals, corporations, public or private foundations, and/or government.	Receives donations from individuals, corporations, public or private foundations, and/or government.	Primarily receives state, federal, other, and state lottery funds, depending on the agency. May receive moneys from individuals, corporations, or public or private foundations.
FUNDING LIMITATIONS	No limitation on amount of funds that may be given by the donor individual, family, or corporation.	No one donor can give more than 50% of total assets.	No one donor can give more than 50% of total assets.	No one donor can give more than 50% of total assets.	No general limitations; specific limitations may be prescribed via legislation.
FUNDRAISING	Does not fundraise and does not solicit funds from the public.	Fundraising is common. Must demonstrate that it receives at least one-third of its contributions from small donors.	Fundraising is common. Must demonstrate that it receives at least one-third of its contributions from small donors.	Fundraising is common. Must demonstrate that it receives at least one-third of its contributions from small donors.	Typically does not engage in traditional fundraising, though an agency may fundraise from the public.
USE OF FUNDS	Typically makes grants to other nonprofit organizations.	May either make grants to other nonprofit organizations or provide direct service activities that are consistent with tax-exemption requirements.	May either make grants to other nonprofit organizations or provide direct service activities that are consistent with tax-exemption requirements.	May either make grants to other nonprofit organizations or provide direct service activities that are consistent with tax-exemption requirements.	May either make grants to other nonprofit organizations or provide direct service activities, depending on the agency's articulated authority.
MINIMUM ANNUAL DISBURSEMENT	Minimum annual disbursement is 5% of its prior year's average net investment assets.	None.	None.	None.	Variable based on statutory requirements.
TAX EXEMPTION	May qualify for tax-exempt status from IRS; application required. Must pay an excise tax of 1.39% on their net investment income.	May qualify for tax-exempt status from IRS; application required.	May qualify for tax-exempt status from IRS; application required.	May qualify for tax-exempt status from IRS; application required.	May qualify for tax-exempt status from IRS; application required.
TAX INCENTIVES FOR DONORS	Donors may receive up to 30% adjusted gross income for a tax deduction on their annual charitable contributions.	Donors may receive up to 60% adjusted gross income for a tax deduction on their annual charitable contributions.	Donors may receive up to 60% adjusted gross income for a tax deduction on their annual charitable contributions.	Donors may receive up to 60% adjusted gross income for a tax deduction on their annual charitable contributions.	If an agency has 501(c)(3) status (some do), donors may receive up to 60% adjusted gross income for a tax deduction.

GOVERNANCE	Board of Directors or Board of Trustees. May consist of family and/or other individuals chosen by the donor(s).	Board of Directors or Board of Trustees. Majority cannot be related by blood, marriage, or business co-ownership.	Board of Directors or Board of Trustees. Majority cannot be related by blood, marriage, or business co-ownership. Fund Advisory Committee would play central role in messaging, marketing, donor solicitation, and grant award decision-making.	Board of Directors or Board of Trustees. Majority cannot be related by blood, marriage, or business co-ownership. Collaborating partners would likely set up an Advisory Board for messaging, marketing, donor solicitation, and grant award decision-making.	Typically a Board or Commission appointed by the Governor. Variety of options for decision-making, including the agency Board or Commission, delegation to agency Director, or a stakeholder Advisory Committee.
OVERSIGHT & SCRUTINY	Must disclose all grantees and grant amounts on IRS Form 990-PF.	Must disclose grantees and grant amounts that are larger than \$5,000 on IRS Form 990. May post data for smaller grants on website, press releases, etc. To maintain status, IRS requires passage of public support test.	Must disclose grantees and grant amounts that are larger than \$5,000 on IRS Form 990. May post data for smaller grants on website, press releases, etc. To maintain status, IRS requires passage of public support test.	Must disclose grantees and grant amounts that are larger than \$5,000 on IRS Form 990. May post data for smaller grants on website, press releases, etc. To maintain status, IRS requires passage of public support test.	Must disclose grantees and grant amounts that are larger than \$5,000 on IRS Form 990, if 501(c)(3) status. Statutorily required reports to Legislative Assembly and Governor.
STAFFING	Would need to hire at least one staff person, ideally an individual who brought some relevant knowledge and expertise.	Would need to hire at least one staff person, ideally an individual who brought some relevant knowledge and expertise.	High level of existing, sophisticated staff knowledge. No need to hire additional staff.	May have existing staff expertise, depending on whether the nonprofit has administered other funds and grants. May need some additional capacity support.	May have existing staff expertise, depending on whether the agency has administered other funds and grants. May need some additional capacity support.
SET-UP PROCESS & TIMELINES	Multi-month administratively and relationally intensive process to develop organizational and legal infrastructure.	Multi-month administratively and relationally intensive process to develop organizational and legal infrastructure.	Minimal administrative process since public community foundations already have an established organizational and legal infrastructure. Some relational work to establish the fund advisory committee.	Likely minimal administrative process since nonprofit serving as administrative backbone would already have an organizational and legal infrastructure. Multi-month relationally intensive process to establish nonprofit coalition.	Likely minimal administrative process since selected agency would likely already be a grantmaking agency with grantmaking infrastructure. Multi-month to multi-year process to pass legislation and secure state funding.
START-UP COSTS	Many online sources suggest \$250,000 is the practical floor for the establishment of a private foundation, and \$1-2 million is a more comfortable floor.	Many online sources suggest a low end of \$20,000-\$30,000 to establish a foundation with no office and a paid part-time staff person for a few months. If initial grants are included, \$40,000-\$50,000 minimum.	\$25,000 minimum to open a fund, which sources initial grants and pays 0.95% annual fee.	May or may not be an established minimum depending on the nonprofit. Most start-up costs would pay for staff time to organize coalition and source initial grants.	May or may not be an established minimum depending on the agency. Most start-up costs would pay for staff time and source initial grants.
ONGOING COSTS	Significant staffing and administrative costs. Significant funding for grants.	Significant staffing and administrative costs. Significant funding for grants.	Annual fee of 0.95% of fund assets paid to community foundation for staff time and fund administration. Significant funding for grants.	May require the cost of a part- to full-time staff for ongoing program coordination. Significant funding for grants.	May require the cost of a part- to full-time staff for ongoing program coordination. Significant funding for grants.

EVALUATION OF FINDINGS

The following five subsections provide an analysis of the benefits and drawbacks of each model for the legal structure of the wildfire workforce foundation. These analyses are based on cited interviews, literature reviews, online research, and an evaluation of how well models match the stated goals of the wildfire workforce foundation concept.

I. New Private Foundation

The New Private Foundation Model. Private foundations are typically funded from a single source, such as an individual, family, or corporation, and the private foundation model is attractive to that source entity because it allows for a higher degree of control when compared to a public foundation. Private foundations can be controlled by related parties, and their boards can be populated by family members or other individuals of the funder's choosing. This control over the operations and investments of the foundation frequently offsets the somewhat disadvantaged deductibility limits to donors, mandatory extensive Form 990-PF federal tax filings, and minimum annual asset distribution requirements of five percent each year.^{3,4} Private foundations do not solicit funds from the public. Instead, many of them invest their principal funding, and then distribute the income from investments for charitable purposes. They often choose to apply for tax-exempt 501(c)(3) status, which exempts them from the requirement to pay federal and state income taxes on revenues, maximizing funding for mission delivery and allowing the donor(s) to deduct donations of up to 30 percent of their adjusted gross income on their taxes. Private foundations generally use their funds to make grants or gifts to other nonprofit organizations (Figure 1: Private Foundation Examples).^{5,6}

Model Analysis. The wildfire workforce foundation would likely not be well-suited to a private foundation model since there is no known single donor that is driven to both give significant money and manage the foundation, ensuring delivery on its mission. Moreover, the wildfire workforce foundation was envisioned as a vehicle for maximizing as much funding as possible, from as many companies, individuals, and entities as possible, for hazardous fuel reduction work. Given that private foundations do not solicit additional funds from the public, it seems a noteworthy mismatch for the objectives of this effort. Lastly, it takes considerable time and effort to establish a foundation from scratch. Several of the individuals interviewed for this research strongly cautioned against creating a brand-new entity due to the myriad of existing foundations, nonprofits, or agencies that could subsume this work, avoiding the need to spend time and resources on legal establishment, paperwork, infrastructure, and significant staffing.^{7,8,9} Legislators considering the wildfire workforce foundation during the 2020 legislative session commented on the urgency of delivering funding to targeted geographic areas to begin work as soon as possible. To start up a new foundation would be the longest timeline before program implementation could begin as well as the highest cost option of the available models. Again, notable mismatches for the wildfire workforce foundation.

³ Internal Revenue Service, *IRC Section 4942, Taxes on Failure to Distribute Income*, <https://www.irs.gov/government-entities/irc-section-4942-taxes-on-failure-to-distribute-income-carryover-of-excess-distributions-or-undistributed-income> (last visited July 30, 2020).

⁴ Carol M. Kurzig, *Foundation Fundamentals: A Guide for Grantseekers* 160 (1980).

⁵ [26 U.S.C. 501](#)

⁶ Internal Revenue Service, *Charities and Nonprofits*, <https://www.irs.gov/charities-and-nonprofits> (last visited July 28, 2020).

⁷ Telephone interview with Carlos Garcia, Environmental Resource Officer, Oregon Community Foundation (July 14, 2020).

⁸ Telephone interview with Meta Loftsgaarden, Executive Director, Oregon Watershed Enhancement Board (August 26, 2020).

⁹ Telephone interview with Shannon Hurn, Deputy Director of Fish and Wildfire Programs, Oregon Department of Fish and Wildlife (August 28, 2020).

Figure 1: Private Foundation Examples

Two private foundations providing grants to Oregon communities that exemplify the private foundation structure are the Annenberg Foundation and the Ford Family Foundation.

[The Annenberg Foundation](#) is a family foundation that was established in 1989 with \$1.2 billion. Today, the foundation is governed by a Board of Directors comprised exclusively of Annenberg family members, and the foundation's 34 staff operate from offices in California and Pennsylvania to support nonprofits through grantmaking, capacity-building, and leadership training worldwide.¹⁰

[The Ford Family Foundation](#) is a foundation established in 1957 by Kenneth and Hallie Ford with its headquarters in Roseburg, Oregon and a scholarship office located in Eugene. It is governed by a board that is a mixture of Ford family members and non-family members. The foundation makes grants to nonprofit organizations and agencies and provides education scholarships to individuals to support vital rural communities in Oregon and Siskiyou County, California. Forty-four staff support the foundation's grantmaking, scholarships, fellowships, and information-sharing activities.¹¹

II. New Public Foundation

The New Public Foundation Model. Public foundations, unlike private foundations, are primarily supported by the public, which includes individuals, corporations, public or private foundations, and/or government. To qualify for and keep public foundation (charity) status, a foundation must be organized for exclusively 501(c)(3) charity, educational, or other purposes stated in the U.S. code, and the Internal Revenue Service requires certain language to be inserted into the foundation's articles of incorporation explicitly restricting its activities to such. A public support test must also be met, which requires that a significant amount of the foundation's revenue, at least 33 percent, must come from relatively small donors, other public charities, the government, and/or the foundation must function to support other public charities. Public foundations and other types of nonprofit organizations must represent the public interest by having a diversified board of directors; more than 50 percent of the board must be unrelated by blood, marriage, or outside business co-ownership, and not be compensated as employees of the organization. Some of the benefits of meeting the public charity status requirements are higher donor tax-deductibility giving limits (50-60 percent of adjusted gross income compared to 30 percent for private foundations), the ability to attract support from other nonprofits or foundations, and less complex tax return paperwork if the public foundation has annual revenues below a certain threshold. The benefits of securing tax-exempt 501(c)(3) status are the same for public and private foundations; the foundation is exempt from the requirement to pay federal and state income taxes and donors can deduct charitable donations on their itemized taxes. In terms of operating structures, public foundations can give grants to other nonprofit organizations to carry out the work, or they can provide direct services themselves (Figure 2: Public Foundation Examples).^{12,13,14}

¹⁰ Annenburg Foundation, <https://annenberg.org/> (last visited July 16, 2020).

¹¹ Ford Family Foundation, <https://www.tfff.org/> (last visited July 16, 2020).

¹² [26 U.S.C. 501](#)

¹³ Internal Revenue Service, *Charities and Nonprofits*, <https://www.irs.gov/charities-and-nonprofits> (last visited July 28, 2020).

¹⁴ The Foundation Group, *Public Charity vs. Private Foundation*, <https://www.501c3.org/public-charity-vs-private-foundation/> (last visited July 28, 2020)

Model Analysis. While the wildfire workforce foundation could be established as a public foundation given its clear charitable mission and interest in garnering public and private support, the primary and very significant drawback is the considerable time, effort, and cost required to establish a foundation from scratch. As stated above in the private foundation analysis, several of the individuals interviewed for this research strongly cautioned against creating a brand-new entity. Their rationale was that many existing foundations, nonprofits, or agencies in Oregon already have the legal, financial, and administrative infrastructure to market to networks of potential donors, facilitate the receipt of donations, and manage a grant program with low to moderate additional resource capacity. The Oregon Secretary of State, responsible for the registry and certification of new nonprofit organizations and foundations, states that new applicants must: draft articles of incorporation and register with the Oregon Secretary of State, Oregon Department of Justice, and relevant cities and/or counties in some cases; establish by-laws; draft a conflict of interest policy; establish funding guidelines; apply to the Internal Revenue Service for a federal tax employer identification number and for 501(c)(3) tax-exempt status; and acquire minimum start-up moneys.¹⁵ Following these legal steps, organizational development, staffing, marketing, website development, partner collaborations, and establishment of a grantmaking structure are among the next set of needed tasks. During the 2020 legislative session, legislators urged speedy funding delivery to high-risk geographic areas with the greatest need for fuel reduction. To set up a new foundation would be a costly, multi-month, administratively and relationally intensive process to develop organizational and legal infrastructure and would provide for the longest implementation timeline and highest cost of the models considered for the wildfire workforce foundation.

Figure 2: Public Foundation Examples

Two public foundations operating in western U.S. states that showcase common public foundation structures are the American Forest Foundation and the Wildland Firefighter Foundation.

[The American Forest Foundation](#) is a public foundation with a mission to ensure the sustainability of America's family forests for present and future generations. With public and private donors, 54 total staff located in 12 northern California counties, and hundreds of on-the-ground agency, nonprofit, and corporate partners, the foundation engages tens of thousands of private landowners to promote and support sustainable forest management, protect clean water supplies, reduce wildfire risks, conserve at-risk species, address carbon pollution, and increase sustainable wood supplies.¹⁶

[The Wildland Firefighter Foundation](#) is a Boise, Idaho-based public foundation with a mission to provide support to fallen and injured firefighters and their families and to provide education to the public about wildland fire and firefighters. The foundation has both corporate and individual donors, and it is governed by a board with diverse skillsets and diverse wildfire-related work backgrounds. In addition to administrative functions, grant programs, and scholarship disbursement, its five operations staff directly deliver programs such as grief recovery for families of fallen firefighters, tragedy assistance, suicide prevention, legacy preservation, and monument maintenance.¹⁷

¹⁵ Oregon Secretary of State, Nonprofit Services, <https://sos.oregon.gov/business/Pages/nonprofit.aspx> (last visited August 3, 2020).

¹⁶ American Forest Foundation, <https://www.forestfoundation.org/> (last visited August 5, 2020).

¹⁷ Wildland Firefighter Foundation, <https://wffoundation.org/> (last visited August 5, 2020).

III. Utilization of an Existing Public Community Foundation

The Public Community Foundation Model. A public community foundation is a tax-exempt, nonprofit, publicly supported philanthropic organization. It supports a geographic area by facilitating and pooling donations into named funds that are used to support nonprofit organizations and address community needs. One of the primary advantages of public community foundations is that they provide legal, financial, and administrative infrastructure for each group that requests that a fund be established, and they are experts at providing those functions. The legal structure is already established by the existing foundation, which has its own articles of incorporation, bylaws, required registration with federal and state agencies, 501(c)(3) tax-exempt status, and public charity status. The public support test is already met for the foundation, so individual funds have a little more leeway in their percentages of sources of support provided that the overall foundation meets the test.^{18,19}

The role of the public community foundation is to legally establish each new fund, provide donation mechanisms (e.g., a website donation link), and to manage the financial and accounting transactions of receiving donations, issuing receipts for tax exemption, distributing grants to designated awardees, and preparing and filing necessary financial reports. They provide these services for a small fee, typically an annual percentage of the total fund assets. The role of the group that has requested a fund is to: file a formal fund declaration form, provide the minimum moneys for fund establishment, establish and maintain an advisory committee to oversee marketing and fundraising, and determine the grant strategy and advise the community foundation on grantmaking decisions. A public community foundation has the flexibility to accept money from any entity, including both private and public funds.^{20,21,22} If state dollars are appropriated to support a fund, the typical process is for legislation to direct the appropriation to the Oregon Department of Administrative Services or another pass-through state agency for the purpose of transfer to the designated foundation for a stated purpose (Figure 3: Existing Community Foundation Examples).²³

Model Analysis. This structure appears to be the best fit for the wildfire workforce foundation concept. It provides all the advantages of being a public charity, and allows for a diverse net of financial contributors who receive optimal tax-deductible incentives. It allows for matches by state or federal dollars, though it doesn't require government contributions to function. Perhaps most noteworthy, this model offers a division of responsibilities that maximizes the strengths of each partner and that aligns well with the stated concept goals.

The structure capitalizes on the advantages of using an existing, incorporated, registered, tax-exempt nonprofit organization and its staff, who have expertise at providing a neutral and unbiased legal, financial, and administrative infrastructure to new funds. The organization would have significant total assets and manage the money to maximize interest and returns on investments to the advantage of participating funds. This model is cost-effective, minimizing the financial overhead for staffing, office space, furnishings, utilities, office supplies, insurance, and other start-up

¹⁸ Carol M. Kurzig, *Foundation Fundamentals: A Guide for Grantseekers* 160 (1980).

¹⁹ National Standards for U.S. Community Foundations, *Frequently Asked Questions on Community Foundations* <https://www.cfstandards.org/faq> (last visited September 3, 2020).

²⁰ *Id.*

²¹ Community Foundation Public Awareness Initiative, *Mission: Community* <https://www.commfoundations.com/communityfoundations> (last visited September 3, 2020).

²² Telephone interview with Rebecca Bibleheimer, Senior Complex Gifts Officer, Oregon Community Foundation (July 22, 2020).

²³ Microsoft Teams interview with Cora Parker, Director of Finance, and Ryan Mann, Legislative Director, Oregon State Treasury (August 28, 2020).

expenses. It offers a quick, flexible process. With minimal time and effort, a fund can be established, and donations can begin to be collected (see “Action Plan for Implementation” section below). There would not be an additional time lag to wait for a legislative appropriation, which is a factor in other models.

The control of the fund’s purpose, messaging, grant criteria, and grant award decisions rests squarely with a fund advisory committee that is established by those requesting the fund. This seems a desirable placement for these substantive wildfire- and workforce-specific marketing, donor solicitation, and grant conversations. Legislators interested in this concept envisioned a well-selected and well-balanced group collaboratively carrying out the leadership of this work. The advisory committee membership would be critical to the fund’s success, and thoughtful consideration should be given to its composition (see “Action Plan for Implementation” section below for recommendations related to advisory committee formation).

The one notable limitation to this model is that a public community foundation cannot make grants to non-501(c)(3)s, so if there was a desire to give grants to for-profit entities or to individuals, that would not be possible under the public community foundation structure.^{24,25}

Figure 3: Existing Community Foundation Examples

Two regional public community foundations that administer a wide variety of funds to provide grants to address community needs are the Oregon Community Foundation and the Community Foundation for Southwest Washington.

[The Oregon Community Foundation](#) is the largest community foundation in Oregon and the eighth largest in the country, holding \$1.5 billion in assets and disbursing an average of \$136.8 million in grants and scholarships annually. The foundation plays the traditional community foundation role of facilitating donations for named funds, and has statewide reach for grant awardees. Some current fund examples include the Healthy Environment Fund, Pacific Northwest Resilient Landscapes Initiative, the Ending Homelessness in Oregon Fund, and the 2020 Community Rebuilding Fund. Many advised funds are a partnership of other foundations and nonprofits seeking to collaborate on a common goal. Some advised funds support both legislators and stakeholders participating on the advisory committee together.²⁶

[The Community Foundation for Southwest Washington](#) is a place-based grantmaking public community foundation. In 2019, the foundation distributed \$13.8 million primarily to organizations based in southwest Washington, but it also supports some organizations in Multnomah County, Oregon. Like all public community foundations, awardees support a variety of local issues such as basic needs, healthy living, communities and neighborhoods, arts and culture, education, scholarships, and conservation and the environment.²⁷

²⁴ Telephone interview with Carlos Garcia, Environmental Resource Officer, Oregon Community Foundation (July 14, 2020).

²⁵ Telephone interview with Rebecca Bibleheimer, Senior Complex Gifts Officer, Oregon Community Foundation (July 22, 2020).

²⁶ Oregon Community Foundation, <https://oregoncf.org/> (last visited September 11, 2020).

²⁷ The Community Foundation for Southwest Washington, <https://www.cfsww.org/> (last visited September 11, 2020).

IV. Utilization of an Existing Nonprofit Organization

The Nonprofit Model. A nonprofit organization is a group organized for a purpose specified in statute, such as public charities, research institutes, professional associations, and volunteer service organizations. As a broad structural term that also encompasses new public foundations and public community foundations, many of the characteristics of this model are shared with several of the previously reviewed models. Nonprofits are typically 501(c)(3) tax-exempt organizations provided that they are organized and operated exclusively for charitable, scientific, educational, or other specified purposes.²⁸ They must meet the public support test, demonstrating a funding diversity threshold where at least one-third of their revenue comes from donors who give less than two percent of the nonprofit's total revenues. As public tax-exempt organizations, they can offer the maximum tax-deductibility limits for donors (50-60 percent of adjusted gross income) and file less extensive tax return paperwork. They are also expected to have diverse governance, with a majority of the board of directors unrelated by blood, marriage, or business co-ownership, and with restrictions placed on compensation. Nonprofit organizations almost always deliver their own charitable and educational programming and may partner with other entities in collaborative efforts that serve their missions.^{29,30,31}

In the context of a wildfire workforce foundation concept, a nonprofit model would be a collaborative partnership of several nonprofit organizations working toward a shared goal of donor engagement and solicitation and grantmaking for hazardous fuel reduction jobs. One of those nonprofits would need to be selected to function as the administrative backbone organization for the provision of staffing, legal, financial, and administrative functions.^{32,33} Similar to the public community foundation model above, the legal structure is established by the backbone nonprofit organization, which has its own articles of incorporation, bylaws, required registration with federal and state agencies, 501(c)(3) tax-exempt status, and public charity status (Figure 4: Existing Nonprofit Examples).

Model Analysis. The establishment of a wildfire workforce fund within an existing Oregon nonprofit organization has some benefits, but also some significant disadvantages. Like a public community foundation, a nonprofit organization possesses the advantages of its public charity status, including tax exemption on revenues, diversity of donors who receive optimal tax deductions on donations, and fewer reporting requirements. Other advantages of this structure include leveraging an existing organization's structure, expertise, networks, and relationships, which would likely result in a relatively efficient, cost-effective process.

The primary challenge of this model is the selection of a nonprofit that is perceived as sufficiently unbiased, neutral, and nonpartisan to serve as that administrative backbone to the effort. The success of the wildfire workforce concept hinges on the ability to raise as much money from as many businesses, groups, and individuals as possible, and the organization to which a check is made out can make a difference in giving behavior. The lead organization would also need to function as the convener of a robust, diverse coalition of organizations, and it may be challenging to

²⁸ [26 U.S.C. 501](#)

²⁹ Carol M. Kurzig, *Foundation Fundamentals: A Guide for Grantseekers* 160 (1980).

³⁰ Internal Revenue Service, *Charities and Nonprofits*, <https://www.irs.gov/charities-and-nonprofits> (last visited July 28, 2020).

³¹ The Foundation Group, *Public Charity vs. Private Foundation*, <https://www.501c3.org/public-charity-vs-private-foundation/> (last visited July 28, 2020)

³² Telephone interview with Carlos Garcia, Environmental Resource Officer, Oregon Community Foundation (July 14, 2020).

³³ Telephone interview Meta Loftsgaarden, Executive Director, Oregon Watershed Enhancement Board (August 26, 2020).

build a diverse group under the auspices of a known entity that is perceived as having either a narrow mission and/or a political one. In addition, there may not be an organization in Oregon with sufficient grantmaking experience whose mission adequately aligns with the scope of this effort and who is also interested in taking on this project. It would also take some time to identify collaborative partners, secure participation commitments, get buy-in on which organization would manage the funding administration, and to collectively determine the project coalition's governance structure and grantmaking criteria.

Figure 4: Existing Nonprofit Examples

Two nonprofit organizations in Oregon that work collaboratively with other nonprofit organizations to provide grants and implement programs are the Lomakatsi Restoration Project and Rural Development Initiatives.

[The Lomakatsi Restoration Project](#) is an Ashland, Oregon-based nonprofit organization that works at the intersection of community-based ecological restoration and vocational on-the-job training and employment. The organization works with many regional partners including federal agencies, cities, watershed councils, school districts, tribes, and other nonprofits, to implement on-the-ground projects and educational activities. Their funding comes from a wide array of sources including federal and state agency programs, private foundations, private donors, and membership donations.³⁴

[Rural Development Initiatives](#) is a nonprofit organization operating in rural Oregon, Washington, and Idaho, that works with communities to build networks of rural leaders, revitalize rural economies, and elevate rural voices to create community vitality. They train rural leaders through workshops, and other rural nonprofits in grant writing skills.³⁵

V. Utilization of an Existing State Grantmaking Agency

The State Agency Model. State agencies can and do administratively manage funds and grants that are designated for specific purposes. They are often chosen by the legislature as a logical and appealing administrative structure for managing, monitoring, and reporting on the use of state-appropriated funding in partnership with the Oregon State Treasury, which functions as the agencies' banking service.³⁶ When the only funding source for a concept is public money, a state agency is widely regarded as a practical choice. On the other hand, when the only funding source is private money (e.g., foundations, individual donors, and/or corporations), the state agency model is widely regarded as impractical and inappropriate. It is the combination of public and private funding that opens the door to a wide array of structural options.^{37,38,39} For example, some state agencies have fund management and grantmaking expertise and know how to efficiently start and operate a

³⁴ Lomakatsi Restoration Project, <https://lomakatsi.org/> (last visited September 25, 2020).

³⁵ Rural Development Initiatives, <https://rdiinc.org/> (last visited September 25, 2020).

³⁶ Oregon State Treasury, *About Treasury*, <https://www.oregon.gov/treasury/about-treasury/pages/default.aspx> (last visited August 15, 2020).

³⁷ Telephone interview Meta Loftsgaarden, Executive Director, Oregon Watershed Enhancement Board (August 26, 2020).

³⁸ Telephone interview with Shannon Hurn, Deputy Director of Fish and Wildfire Programs, Oregon Department of Fish and Wildlife (August 28, 2020).

³⁹ Microsoft Teams interview with Cora Parker, Director of Finance, and Ryan Mann, Legislative Director, Oregon State Treasury (August 28, 2020).

grant program. These agencies may choose to run programs and grant processes themselves, staffing them internally. However, not all state agencies have that experience. As an alternative, agencies can run a request-for-proposal (RFP) or public procurement process, or partner with foundations and other entities to collaborate on some of the financial or administrative components. Several other structural options related to managing both public and private funds exist.⁴⁰ Agencies can apply for and secure tax-exempt 501(c)(3) status from the Internal Revenue Service so that tax incentives are available for private donors. There may or may not be prescriptive restrictions on the use of private funds received. Advisory committees and other governance structures may comprise public and private members in varying ratios from a diversity of backgrounds and/or geographic regions.⁴¹ The above decision points are often articulated in a legislative bill that establishes the new fund for a designated purpose. To utilize an existing state agency is the one of the five structural models that typically requires legislation, particularly if state appropriations are desired.

It is important to note that public funding does not require that a state agency function as the institutional home for an effort. General Fund dollars can be appropriated to any foundation or nonprofit. In this scenario, legislation would be written to appropriate moneys to the Oregon Department of Administrative Services or another specified state agency for the purpose of transferring it to a named entity; no fund would be established in the State Treasury. Agency directors or designees may be asked to participate on a board, and agency staff may be asked to support the fund governance in some way, though neither are necessary.⁴²

Model Analysis. This structure is another possible candidate for the wildfire workforce foundation concept, though it has some significant disadvantages. On the positive side, utilizing an existing agency that already has grant programs – such as the Oregon Department of Forestry, Oregon Watershed Enhancement Board, Higher Education Coordinating Commission, or Business Oregon – capitalizes on existing expertise with grant agreements, contracts, and online management systems. These agencies would have the ability to be fairly efficient with the start-up, especially compared to the much lengthier and more costly process of establishing a new foundation. Administrative start-up costs might require funding a full- or part-time staff person at the agency.

The most obvious drawback to this model is its challenges with securing either public or private funding. Acquiring public funding would require the successful passage of legislation appropriating public moneys. This is a challenging endeavor at any time, but perhaps particularly in the near-term with the recession likely to impact the next few budget cycles.⁴³ Even in times of economic growth and prosperity, the recent passage of the Oregon Conservation Recreation Fund (OCRF)⁴⁴ and the Oregon Agricultural Heritage Fund (OAHF)⁴⁵ (both highlighted below) offer some precautionary lessons. The OCRF demonstrated that legislative budget committees are unwilling to give state moneys in some cases unless they see matching private investment. The OAHF was structured in such a way that it required a state General Fund infusion to access a federal match. Both funds offer examples of programmatic and governance shells established in legislation, but with minimal or no grantmaking and operations due to lack of state funding. With regards to private funding

⁴⁰ *Id.*

⁴¹ Telephone interview with Shannon Hurn, Deputy Director of Fish and Wildfire Programs, Oregon Department of Fish and Wildlife (August 28, 2020).

⁴² Microsoft Teams interview with Cora Parker, Director of Finance, and Ryan Mann, Legislative Director, Oregon State Treasury (August 28, 2020).

⁴³ Josh Lehner, Oregon Office of Economic Analysis, *Oregon Economic and Revenue Forecast, September 2020*, <https://oregoneconomicanalysis.com/2020/09/23/oregon-economic-and-revenue-forecast-september-2020/> (last visited September 23, 2020).

⁴⁴ [House Bill 2829 \(2019\)](#)

⁴⁵ [House Bill 3249 \(2017\)](#)

opportunities, there are many examples in Oregon and elsewhere of the challenge of getting private entities to donate money directly to government. Moreover, even if the wildfire workforce foundation successfully secured private donations, it would be directly competing for some of the same donors as other state agency funds such as the Oregon Conservation and Recreation Fund.

A final notable drawback to adopting this structure as the vehicle for wildfire workforce efforts is that it is not clear which state agency would be the best fit for carrying out this work as it resides at the intersection of workforce development and natural resources, and no agency has yet indicated a strong interest and willingness to take on this project.⁴⁶

Figure 5: Existing State Agency Examples

Two funds for state agency grantmaking were recently established in statute by the Oregon Legislative Assembly. They provide examples of two different structures and motivations for engaging a state agency as the administrative backbone of a fund.

[The Oregon Conservation and Recreation Fund](#) was established by [House Bill 2829 \(2019\)](#) to provide a new way for Oregonians to directly financially support projects that protect and enhance the species and habitats identified in the Oregon Conservation Strategy, and to create new opportunities for wildlife watching, urban conservation, community science, and other wildlife-associated recreation. The legislation also established an advisory committee to make recommendations on the use of fund moneys. The statute is uniquely structured with a \$1 million General Fund appropriation to the Oregon Department of Fish and Wildlife that cannot be accessed until \$1 million matching funds are raised from non-state government donors. The department was given two years to raise the additional moneys before the fund and state funding is abolished. Fundraising has only resulted in approximately \$80,000 private funds to date, in part due to the challenges of fundraising during a pandemic.⁴⁷

[The Oregon Agricultural Heritage Fund](#) was established by [House Bill 3249 \(2017\)](#) to provide voluntary incentives to farmers and ranchers to support practices that maintain or enhance both agriculture and fish and wildlife. Limited General Fund moneys were appropriated to the Oregon Watershed Enhancement Board to establish a commission to determine grant awards, to conduct rulemaking, and to initiate program development. Once those tasks were executed in 2019, [House Bill 2729 \(2019\)](#) was introduced with a substantial \$10 million funding request to hire program personnel, contract for services, and provide grants to farmers and ranchers. The state money was intended to leverage millions of federal Farm Bill dollars. However, the appropriation did not pass during the legislative session, so the program is currently unfunded.⁴⁸

⁴⁶ Telephone interview Meta Loftsgaarden, Executive Director, Oregon Watershed Enhancement Board (August 26, 2020).

⁴⁷ [House Bill 2829 \(2019\)](#)

⁴⁸ [House Bill 3249 \(2017\)](#)

ACTION PLAN FOR IMPLEMENTATION

If the decision were made to proceed with establishing a charitable Wildfire Workforce Fund with the Oregon Community Foundation, the following action steps are recommended, and in some cases required (see Appendix A for Oregon Community Foundation Required Forms).

I. Confirm Intention to Establish “Wildfire Workforce Fund”

- Connect with the Oregon Community Foundation and confirm intention to establish a Wildfire Workforce Fund.

II. Advisory Committee Formation

1. Brainstorm Advisory Committee membership
 - Consider committee size, categories of member types, and balance of member types to achieve optimal results.
 - Consider specific people critical to serve on the committee.
2. Phone calls to potential Advisory Committee members
 - Establish relationship and explain Wildfire Workforce Fund concept.
 - Explore and potentially ask for their participation on the Advisory Committee.
 - Ask for their feedback on committee composition and explore whether they have additional thoughts or recommendations.
 - Ask for their input on the best way to secure the \$25,000 minimum start-up moneys for the Fund.
3. Firm up Advisory Committee membership

III. Formal Fund Establishment

- Fill out the required Oregon Community Foundation “Fund Declaration Form” (see *Appendix A*).
- Submit the \$25,000 minimum to establish the Fund.

IV. Advisory Committee Action

1. Determine Advisory Committee governance and organizational structure
 - Hold a first meeting of the Advisory Committee.
 - Fill out the required Oregon Community Foundation “Fund Advisory Committee Form” (see *Appendix A*), which includes committee decisions related to membership, term length, member replacement, chair selection and responsibilities, meeting frequency and record, decision-making process, meeting schedule, and review of committee roles and responsibilities.

2. Initial Advisory Committee planning responsibilities

- Create a Marketing & Fundraising Plan.
- Create a website (Oregon Community Foundation can provide a link to allow for streamlined online donations).
- Establish grant program structure and criteria.

3. Ongoing Advisory Committee responsibilities

- Market and fundraise.
- Recommend grant strategy, awards, and direction for use of the Fund.
- Monitor performance; work with the Oregon Community Foundation to establish a set of indices to evaluate and measure the effectiveness of the Fund in meeting its goals.

APPENDIX A: OREGON COMMUNITY FOUNDATION FORMS



FUND DECLARATION

[Name of Fund] Fund

THE OREGON COMMUNITY FOUNDATION, an Oregon nonprofit corporation ("OCF"), hereby creates a charitable fund subject to the following conditions:

1. Any and all assets transferred to OCF under this declaration shall be designated by OCF as the *[Name of Fund]* Fund of The Oregon Community Foundation (the "Fund").
2. The assets of the Fund may be commingled with other OCF property for investment purposes.
3. The Fund is intended to be and shall be administered as a component fund of OCF and shall be subject to OCF's articles of incorporation and bylaws, as amended from time to time (including without limitation the provisions thereof authorizing OCF to vary or modify restrictions or conditions that it believes are unnecessary, incapable of fulfillment, or inconsistent with the charitable, educational, and scientific needs of the state of Oregon), and the terms of this declaration shall be construed and applied in all respects in a manner not inconsistent with OCF's articles of incorporation and bylaws. The assets of the Fund shall be held and owned by OCF in its corporate capacity and shall not be deemed to be held by OCF as trustee of a separate trust for any beneficiary.
4. OCF shall distribute the income and principal of the Fund for general charitable purposes principally in the state of Oregon.
5. Before making any charitable distribution from the Fund, OCF shall consult with and seek the advice of an advisory committee consisting of persons selected by OCF, the initial members of which shall be *[Name]*, *[Name]*, and *[Name]*. Prior to each of OCF's funding cycles, OCF shall ask the advisory committee for recommendations regarding distributions pursuant to paragraph 4. Suggested recipients shall be tax-exempt charitable organizations described in Internal Revenue Code Section 501(c)(3) or governmental units described in section 170(c)(1). Recommendations shall not include any pledge, obligation, or membership subscribed to by an advisor, or any purpose for which an advisor receives benefit. Recommendations shall be acted upon after the OCF staff has determined that the recommended organizations so qualify and are serving their stated purposes and that the recommendations are consistent with the purposes of OCF and with the needs deserving of support by OCF as determined by its board and enumerated in its distribution guidelines. If OCF questions the tax exempt status of a recommended organization, its ability to perform its stated purposes, or the consistency of a recommendation with the purposes of OCF or the needs deserving of support by OCF, the advisory committee shall be so informed and given the opportunity to correct any misunderstanding or recommend an alternate distribution.

6. OCF shall appropriately memorialize the Fund for as long as the Fund remains in existence.

7. All charitable distributions from the Fund shall be identified to the beneficiaries as coming from the Fund and OCF.

DATED the *[Day]* of *[Month]*, 20*[Year]*.

THE OREGON COMMUNITY FOUNDATION

By: _____
Max Williams, President and CEO

Fund Advisory Committee

Roles and responsibilities of committee members:

- Represent the foundation and the fund in a conscientious manner
- Ensure that donor's intent is honored
- Attend scheduled committee meetings
- Recommend grants to OCF
- Maintain confidentiality with respect to the committee, the fund, and the foundation
- Declare conflicts of interest
- Monitor and discuss issues related to the project
- Recommend to OCF strategy and direction for the use of the Fund
- With OCF staff, establish a set of indices to evaluate and measure the effectiveness of the Fund in meeting its goals
- Review grant results and periodically make a written report to OCF's Board regarding results and recommending program refinements or adjustments

Committee member terms:

- Terms?
- Renewable?
- Nomination process for new members?

Committee chair:

- Election or appointment or designated position?
- Same status in decision making as other committee members
- Responsibilities:
 - Act as the liaison between OCF and the rest of the committee
 - Set advisory committee meeting agenda in consultation with OCF staff
 - Run advisory committee meetings

Committee Meetings:

- Set schedule or called as needed?
- Frequency?
- Minutes? If so, whose responsibility?

Decision making:

- Unanimous/consensus or majority rules?
- Absenteeism – can the majority of members make a grant recommendation in the absence of another member or members?

2020 meeting dates and times:

- TBD