PUBLIC MEETINGS

II. PUBLIC MEETINGS

SPECIAL NOTE: ROLE OF THE ATTORNEY GENERAL

At the outset of this discussion of the Public Meetings Law, we note an important distinction between the Public Meetings Law and the Public Records Law. The Attorney General and district attorneys have a special statutory role to enforce the Public Records Law's requirements. In contrast, neither the Attorney General nor district attorneys have such a role under the Public Meetings Law.

The Attorney General's only role under the Public Meetings Law is to provide legal advice to the state agencies, boards, and commissions that are subject to the law, and to the Oregon Government Ethics Commission in its role under ORS 244.260. Most district attorneys do not have a role in interpreting the Public Meetings Law. The exception is where a district attorney also serves as legal counsel to a county governing body. If a citizen wishes to compel compliance with the meetings law, or believes that a governing body has violated the law, the citizen may file a private civil lawsuit against the governing body. A citizen who believes that a governing body has violated the provisions permitting an executive session may file a complaint with the Oregon Government Ethics Commission. Neither the Attorney General nor any district attorney may assist a citizen in such a suit or complaint.

Nevertheless, as a public service, the Attorney General's office frequently responds to questions from citizens or the news media about the Public Meetings Law. *These responses do not constitute formal or informal legal opinions of the Attorney General*. This office may issue legal opinions or give legal advice only to state agencies and officers, including members of the legislature. We *can* point out what the law says, and inform interested persons of the construction of the law adopted in the many published opinions we have written on the subject. We are committed to providing this informational assistance to promote better public understanding of the Public Meetings Law.

A. POLICY OF THE PUBLIC MEETINGS LAW

"The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information

upon which such decisions were made. It is the intent of [the Public Meetings Law] that decisions of governing bodies be arrived at openly."[568]

This policy statement is given effect by the law's substantive provisions, which, among other things, provide that a governing body's meetings and deliberations are open to the public,[569] that the public has notice of the time and place of these meetings,[570] and that the meetings are accessible to persons wishing to attend.[571]

All substantive provisions of the Public Meetings Law should be read in light of this policy statement. When applying the law to particular circumstances, that policy ordinarily will require an interpretation favoring openness.[572]

We have acknowledged that strict compliance with the substantive requirements of the Public Meetings Law frequently may "sacrifice[] speed and spontaneity for more process and formality."[573] Nonetheless, we believe that the law's requirements generally will not interfere with a public body's administration.

B. BODIES SUBJECT TO THE LAW

1. Governing Bodies of Public Bodies

The Public Meetings Law applies to any governing body of a public body. A "public body" is the state, any regional council, county, city or district, or any municipal or public corporation; or any agency of those entities, such as a board, department, commission, council, bureau, committee, subcommittee, or advisory group.[574] A key indicator of whether

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[568] ORS 192.620.

[569] ORS 192.630(1)–(2).

[570] ORS 192.640.

[571] ORS 192.630(4)–(5).

[572] *E.g.*, ***TriMet v. Amalgamated Transit Union Local 757***, 362 Or 484, 497 (2018) (rejecting interpretation that would "severely undermine" the policy that decisions of governing bodies be arrived at openly); ***Oregonian Publ'g Co. v. Board of Parole***, 95 Or App 501, 506 (1989) (this policy requires courts to "analyze coverage of the act broadly and its exemptions narrowly").

[573] Letter of Advice to Ron Eachus, at 7, 1988 WL 416300 (OP-6292) (Sept 12, 1988).

[574] ORS 192.610(4).

an entity is a public body is whether it was created by or pursuant to the state constitution, a statute, administrative rule, order, intergovernmental agreement, bylaw, or other official act.[575] However, a single official, such as the governor, is *not* a public body for purposes of meetings law.[576]

If two or more members of any public body have "the authority to make decisions for or recommendations to a public body on policy or administration," they are a "governing body."[577] For example, a five-member city council and a seven-member licensing board are both governing bodies. In addition, a three-member committee of a seven-member board is itself a "governing body" if it is authorized to make decisions for or to advise the full board or another public body. Conversely, a department headed by an individual public officer, such as the office of the State Treasurer, is not a "governing body."

a. Authority to Make Decisions for a Public Body

A body that has authority to make decisions for a public body on "policy or administration" is a governing body.[578] A body meets this standard if its decision-making authority is equivalent to the authority to exercise governmental power, that is, is integral to the movement of the government in an area where it has the power and authority to act. Thus, a three-member subcommittee that has authority only to gather information for the full committee is not a governing body.[579] Even though the subcommittee decides when to meet and determines what procedures it will use to gather and report information, it is not vested with the authority to

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[575] Letter of Advice to Rep. Larry Hill and William L. Miles, at 11, 1986 WL 228236 (OP-5885, OP-5986) (May 28, 1986) (private, nonprofit corporation whose board included public officials serving in their individual capacities was not a public body).

[576] 42 Op Atty Gen 187, 189, 1981 WL 152293 (1981) (governor was not a public body under meetings law); *see* ***Indep. Contractors Research Inst. v. DAS***, 207 Or App 78, 92–94 (2006) (no violation of meetings law for advisory committee reporting to DAS's Chief Procurement Officer).

[577] ORS 192.610(3).

[578] *Id.*

[579] 42 Op Atty Gen at 188 (multi-state panel formed to assess the economic consequences of the construction of nuclear power plants was not a governing body where it did not have the power to decide policy or make recommendations).

decide the direction in which the government will move on an issue of policy or administration. In contrast, if the subcommittee possesses the authority to make policy or hiring decisions for a public body, then it is a governing body.

b. Authority to Make Recommendations to a Public Body

A body that has authority to make recommendations to a public body on policy or administration is a governing body. [580] However, because "public body" does not include an individual official, an advisory body that makes recommendations to an individual official, and does not exercise other governmental powers, is not subject to Public Meetings Law.

For example, an advisory committee appointed by an individual official, such as the governor,[581] individual head of a department,[582] or a school principal, is *not* ordinarily a governing body if it reports only to the individual appointing official.[583] If, however, that single official lacks authority to act on the advisory group's recommendations, and must pass those recommendations on unchanged to a public body, the Public Meetings Law applies to the advisory group's meetings.[584]

As long as the advisory body is itself a governing body of a public body, the fact that its members may all be private citizens is irrelevant. Thus, the scope of the Public Meetings Law extends even to private citizens, employees, and others without any decision-making authority, when they serve on a group that is authorized to furnish advice to a public

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[580] ORS 192.610(3).

[581] 42 Op Atty Gen at 189.

[582] *See* ***Indep. Contractors Research Inst.***, 207 Or App at 92–94 (DAS's Chief Procurement Officer).

[583] Meetings of an advisory committee addressing administration and policy issues related to the Oregon Health Plan must comply with the Public Meetings Law when two or more committee members in attendance are not employed by a public body. ORS 414.227. This requirement applies even if the committee makes recommendations only to an individual official, e.g., the Administrator of the Office for Oregon Health Plan Policy and Research.

[584] Letter of Advice to W.T. Lemman, at 3–5, 1988 WL 416293 (OP-6248) (Oct 13, 1988) (search committee for university president that reported to chancellor was a governing body where the chancellor had limited role other than forwarding the committee's recommendations to the State Board of Higher Education).

body. For example, a school board advisory committee consisting of private citizens who meet with and make recommendations to the board on school matters is a governing body.

2. Private Bodies

Private bodies are not covered by the Public Meetings Law.[585] Whether a private body becomes subject to the meetings law by virtue of assuming public functions is an unsettled area of the law. A private body does not become subject to the meetings law merely because it receives public funds, contracts with governmental bodies, or performs public services.

State agencies periodically contract with privately established bodies, such as nonprofit corporations, to carry out public purposes. For example, the Oregon Health Authority and counties are encouraged by statute to contract with private bodies to furnish community mental health services.[586] Typically, the private body's entire budget consists of public money. Other groups, such as the Oregon Parks Foundation, may have public officers on their boards, receive public funds, and carry out public purposes to such an extent that their records are subject to state audit.[587] Such bodies are not subject to the Public Meetings Law.

As discussed in Part I of this manual, the Oregon Supreme Court has developed a test for determining whether an entity is the "functional equivalent" of a public body for purposes of the Public Records Law.[588]

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[585] *See* 46 Op Atty Gen 155, 166–67, 1989 WL 439806 (1989) (Oregon Medical Insurance Pool was, at the time of this opinion, essentially a private entity and, therefore, not a "public body" subject to the Public Meetings Law).

[586] ORS 430.610–430.695.

[587] *See* 38 Op Atty Gen 2105, 1978 WL 29512 (1978).

[588] The six factors are: 1) The entity's origin—Was it created by government or was it created independently? 2) The nature of the function(s) assigned and performed by the entity—Are the functions traditionally performed by government or are they commonly performed by a private entity? 3) The scope of authority granted to and exercised by the entity—Does it have authority to make binding decisions for the government? 4) The nature and level of governmental financial and nonfinancial support. 5) The scope of governmental control over the entity. 6) The status of the entity's officers and employees—Are they public employees? ***Marks v. McKenzie High School Fact-Finding Team***, 319 Or 451, 464–65 (1994).

Although the definition of "public body" in the Public Meetings Law is similar to the definition in the Public Records Law, they are sufficiently different that the applicability of that test to the Public Meetings Law is questionable. Nevertheless, the court's test may have implications for the meetings of private entities that contract with, or perform services at the request of, public bodies if the private entity has been given authority to make decisions for or recommendations to a public body. A public body or private entity in this situation may wish to consult its legal counsel concerning possible application of the Public Meetings Law to the private entity and the relevance of the six factors identified by the Supreme Court.

One example where a private body's assumption of public functions results in the body being subject to the Public Meetings Law is county alcohol and drug prevention and treatment programs. County governing bodies can designate already existing bodies to act as the local planning committee in identifying needs and establishing priorities for prevention and treatment services.[589] A private body performing advisory functions for a governing body would be subject to the Public Meetings Law.

In addition, the legislature may expressly subject a private entity to Public Meetings Law. For example, the governing body of a recipient of grant funds from the Oregon prekindergarten program must comply with the law.[590]

3. Federal and Multi-Jurisdictional Bodies

Federal agencies are not subject to the Oregon Public Meetings Law. By its terms, the law covers only Oregon state and local governing bodies.

Multi-jurisdictional commissions, whose members are appointed by several different governments (such as federal agencies, the governors of Oregon and Washington, and county governing bodies) and whose Oregon members do not constitute a majority, are not subject to the Public Meetings Law. However, if such a multi-jurisdictional commission has committees consisting of solely, or a majority of, Oregon appointees that are authorized

[589] ORS 430.342.

[590] ORS 329.175(6). In addition, records created or presented at a meeting of such a governing body, as well as the meeting minutes, are subject to Public Records Law. ORS 329.175(6)(a).

to make decisions for the commission, or that are authorized to deliberate and make recommendations to the state or any other public body within the state, the meetings of those committees may be subject to the Public Meetings Law. In some cases, the federal enabling legislation may provide that the multi-jurisdictional commission and its committees must comply with state public records and meetings laws.

C. MEETINGS AND DELIBERATIONS SUBJECT TO THE LAW

1. Public Meetings

All meetings of a governing body must be open to the public, unless Public Meetings Law permits the body to meet in executive session or otherwise provides an exception.[591] A "meeting" is the convening of any governing body "for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter."[592]

In addition, a quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter, unless an exception applies.[593]

While at first blush these restrictions may seem complementary, in fact the prohibition on a quorum meeting in private "reach[es] some decision-making of a governing body that does not occur in a meeting."[594] That is, "Public Meetings Law applies not only to formal 'meetings' of governing bodies * * * but also to circumstances in which a quorum * * * 'meets' to deliberate toward or make a decision outside of the context of a 'meeting.'"[595]

a. Quorum Requirements

Every governing body has a quorum.[596] That is, "there is some minimum number of members that must participate in order for the

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[591] ORS 192.630(1).

[592] ORS 192.610(5).

[593] ORS 192.630(2).

[594] ***TriMet v. Amalgamated Transit Union Local 757***, 362 Or 484, 497 (2018).

[595] ***TriMet v. Amalgamted Transit Union Local 757***, 276 Or App 513, 525 (2016), *aff'd*, 362 Or 484 (2018).

[596] ***TriMet***, 362 Or at 500.

[governing] body to be competent to transact business."[597]

While "quorum" is not defined in the Public Meetings Law, the default quorum appears to be a majority of the governing body, unless otherwise expressly provided by law.[598] In addition, special statutes often define "quorum" for state governing bodies. Local city and county governing bodies may have "quorum" defined by charter, bylaws, or rules of order.

A governing body may only make a decision at a meeting at which a quorum is present, unless a vote by proxy or by mail is specifically authorized under Oregon law. See Appendix K for further discussion of quorum.

A gathering of less than a quorum of a governing body is not a "meeting."[599] However, members of a governing body should not gather as a group or groups composed of less than a quorum for the purpose of conducting business outside the Public Meetings Law. Such a gathering creates the appearance of impropriety, and runs contrary to the policy of the Public Meetings Law, which supports keeping the public informed of the deliberations of governing bodies. In addition, such a gathering creates a risk of violating ORS 192.630(2) through serial communications, as discussed below.

If each member of a governing body is charged to form recommendations individually rather than deliberatively through a quorum requirement, the Public Meetings Law does not apply. Because this is unquestionably a difficult area of interpretation, governing bodies are cautioned not to misuse the committee appointment process to subvert the policy of the law.

Ordinarily, staff meetings are not covered by the Public Meetings Law because no quorum is required. A staff meeting called by a single official is not covered by the Public Meetings Law because the staff do not make decisions for or recommendations to a "public body." If, however, a quorum of a governing body, such as a three-member commission, meets with the

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[597] *Id.*

[598] *Id.* at 500–01 (citing ORS 174.130).

[599] ***Handy v. Lane County***, 274 Or App 644, 658 (2015) (ORS 192.630(1) applies to "contemporaneous gatherings of a quorum"), *rev'd on other grounds*, 360 Or 605 (2016).

body's staff to deliberate on matters of "policy or administration," or to clarify collegially a decision for staff, the meeting is within the scope of the law; this includes "receiv[ing] information from staff on topics related to particular substantive or administrative matters that a quorum of the governing body will or may be called upon to decide."[600]

Many governing bodies have authority to conduct some official business through means other than decision-making by quorum and thus may have latitude to conduct business outside of the Public Meetings Law's requirements by not convening a quorum of the governing body. For example, the Public Utility Commission has authority to delegate some duties to a single commissioner or to staff.[601] Therefore, "a process of decision-making on day-to-day matters of agency administration legally may be conducted in private by a single commissioner or agency staffer to whom the commission properly has delegated administrative responsibility."[602] However, even in these situations, the governing body should consult its legal counsel before a quorum of the governing body meets to discuss the delegated subject matter.

b. Subject of Meetings and Social Gatherings

The Public Meetings Law applies to all meetings of a quorum of a governing body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.[603] The law also applies to a quorum's private decision-making or deliberations on any matter on which a vote of a governing body is required.[604]

Even if a meeting is for the sole purpose of gathering information to serve as the basis for a subsequent decision or recommendation by the

[600] Letter of Advice to Ron Eachus, at 6, 1988 WL 416300 (OP-6292) (Sept 12, 1988).

[601] ORS 756.055.

[602] Letter of Advice to Ron Eachus, at 7–8.

[603] *See* ORS 192.630(1) (referring to "meetings," which are defined in ORS 192.610(5)).

[604] *See* ORS 192.630(2) (referring to "decision," which is defined in ORS 192.610(1)).

governing body, the meetings law will apply.[605] This requirement serves the legislative policy that an informed public must be aware not only of the decisions of government, but also of "the information upon which such decisions were made."[606] Hence, except for on-site inspections, which are discussed below, information gathering and investigative activities of a governing body are subject to the law. If the requirements of the law would unduly hamper an investigation, the body could direct members to make individual reports to the governing body as discussed above in the section on quorums.

If a quorum of a governing body gathers to discuss matters outside its jurisdiction, it is not "meeting" within the purview of the Public Meetings Law.[607] In making this determination, the focus typically will be on the authority granted to the particular governing body and any written policies or directives governing that authority.

Purely social gatherings of the members of a governing body are not covered by the law. For example, the Court of Appeals held that social gatherings of a school board, at which members sometimes discussed "what's going on at the schools," did not constitute a violation.[608] The *purpose* of the meeting triggers the requirements of the law. However, a purpose to deliberate on any matter of official policy or administration may arise *during* a social gathering and lead to a violation. Members constituting a quorum must avoid any discussions of official business during such a gathering.[609] And they should be aware that some citizens may perceive social gatherings as merely a subterfuge for avoiding the Public Meetings Law.

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[605] 38 Op Atty Gen 1471, 1977 WL 31327 (1977); *see* ***Oregonian Publ'g Co. v. Bd. of Parole***, 95 Or App 501, 505–06 (1989) (Board of Parole had to open the information-gathering portions of its meetings to the public); Letter of Advice to Ron Eachus, at 6 (a quorum of the Public Utility Commission could not meet with staff in private to receive informational briefings on public utility regulation and agency administration).

[606] *See* ORS 192.620.

[607] 38 Op Atty Gen at 1474.

[608] ***Harris v. Nordquist***, 96 Or App 19, 24–25 (1989).

[609] Letter of Advice to Ron Eachus, at 7.

Governing bodies sometimes want to have retreats or goal-setting sessions. These types of meetings are nearly always subject to the Public Meetings Law because the governing body is deliberating toward a decision on official business or gathering information for making a decision. For example, members of a commission may wish to have an informal, long-range planning session to help guide (in general terms) the future priorities of the commission. Because the discussion at such a session is very likely to lay the foundation for subsequent decisions, whether a decision on which general issues to pursue over the next year or a decision on how to approach a particular issue, it would be subject to the meetings law. Even an informal "get together" between a state commission and state legislators or the governor would be subject to all of the requirements of the meetings law (notice, minutes, etc.), if a quorum of the commission discusses matters that are within the authority granted to that body. It does not matter that the discussion is "informal" or that no decisions are made.

Whether a governing body's training sessions are subject to the Public Meetings Law will depend on whether any substantive issues are discussed. For example, a governing body may receive training on improving personal interaction among its members. If that training is carefully structured to avoid any discussion of official business, and no such discussion occurs, the training would not be subject to the meetings law. This is a very sensitive area, however, and public bodies should contact their legal counsel for advice.

c. Serial Communications

A governing body risks violating meetings law through a series of private communications, even if a quorum isn't involved in any single communication. For example, the Court of Appeals held that a county administrator's e-mails and phone calls with various board members deliberating towards the resolution of a public records request could be a violation, even though no single e-mail or phone call involved a quorum.[610] The court explained that "the determinative factors are whether a sufficient number of officials are involved, what they discuss, and the purpose for

[610] ***Handy v. Lane County***, 274 Or App 644, 666–67 (2015), *rev'd on other grounds*, 360 Or 605 (2016). A dissenting opinion concluded to the contrary. *Id.* at 683–84 (Devore, J., concurring in part and dissenting in part).

which they discuss it—not the time, place, or manner of their communications."[611]

While the Supreme Court reversed the Court of Appeals decision,[612] it did not resolve the issue of whether serial communications can violate the law.[613] As noted above, we recommend that members of a governing body should not meet in private to discuss business, or exchange private communications about business, even if those involved constitute less than a quorum.

d. Electronic Communications

The Public Meetings Law expressly recognizes that meetings may be conducted by telephonic conference calls or "other electronic communication."[614] Such meetings are subject to the Public Meetings Law.

Notice and opportunity for public access must be provided when meetings are conducted by electronic means. For nonexecutive session meetings held by telephone or other electronic means of communication, the public must be provided at least one place where its members may listen to the meeting by speakers or other devices.[615] In the alternative, the public may be provided with the access code or other means to attend the meeting using electronic means. If electronic access is provided, the technology used must be sufficient to accommodate all attendees, and any costs associated with providing access may not be passed on to the public.

As discussed in more detail below, special accommodations may be necessary to ensure accessibility for persons with disabilities. And even if the meeting occurs in executive session, the media must be provided access, unless the executive sessions are held under ORS 192.660(2)(d) (to deliberate with persons designated by the governing body to carry on labor

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[611] *Id.* at 664–65.

[612] ***Handy v. Lane County***, 360 Or 605, 623–26 (2016).

[613] *Id.* at 616–17 (noting that both the Court of Appeals majority and dissent "offered persuasive * * * interpretations"). The court based its reversal on the lack of evidence that all three board members deliberated towards a decision, explaining that one member's passive receipt of a communication could not by itself rise to the level of a deliberation. *Id.* at 624.

[614] ORS 192.670(1).

[615] ORS 192.670(2).

negotiations) or ORS 332.061 (hearings concerning the expulsion of a minor student from a public elementary or secondary school, or pertaining to examination of a student's confidential medical records).

A state board or commission is not required to compensate or reimburse a member for expenses when that member attends a meeting electronically.[616] However, if a member is not also a member of the Legislative Assembly, the state board or commission, at its discretion, may choose to provide compensation or reimbursement.[617]

2. Statutorily Exempt Public Meetings

A "meeting" does not include an on-site inspection of any project or program or a gathering of any national, regional, or state association to which the public body or its members belong.[618]

In addition, the following meetings are exempt from the requirements of the Public Meetings Law:

- meetings of the state lawyers assistance committee or personal and practice management assistance committees operating under ORS 9.568;
- meetings of medical peer review committees under ORS 441.055;
- meetings of county multidisciplinary child abuse teams that review child abuse cases under ORS 418.747;
- meetings of child fatality review teams that review child fatality cases under ORS 418.785;
- any judicial proceedings;[619]

[616] ORS 192.672(2)(a).

[617] ORS 192.672(2)(b).

[618] ORS 192.610(5).

- deliberations of the Board of Parole or the Psychiatric Security Review Board;
- deliberations of state agencies in contested case hearings under ORS chapter 183, or review by the Workers' Compensation Board or Employment Appeals Board of similar hearings on contested cases;
- meetings of the Oregon Health and Science University Board of Directors or subcommittee regarding:
  - candidates for president of the university, or
  - sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies;
- meetings of Oregon Health and Science University faculty or staff committees;
- mediation conducted pursuant to the agricultural mediation service program; and
- meetings of the Energy Facility Siting Council to review and approve security programs.[620]

The exemption for "deliberations" of certain agencies does not remove the entire meeting from the law's coverage. For instance, when the Board of Parole gathers information in order to deliberate and then deliberates at the

[619] This exemption applies to proceedings that are initiated in the judicial branch, are part of an adjudicative process, and potentially culminate in a judicial decision. Letter of Advice to David F. White, at 5, 2014 WL 7150430 (OP-2014-2) (Dec 10, 2014). We have concluded that meetings of the Board of Bar Examiners regarding whether an applicant has sufficient moral character or fitness to practice law are exempt, but not the board's meetings to discuss the bar examination, *id.* at 5–7; and that meetings of the Bar's State Professional Review Board are exempt, Letter of Advice to L. Patrick Hearn, 1997 WL 469004 (OP-1997-4) (Aug 13, 1997).

[620] ORS 192.690.

same meeting, the information-gathering portion of the meeting is subject to the law's requirements.[621]

The exemption covering "deliberations" of state agencies in contested case hearings under the Administrative Procedures Act encompasses deliberations following the information-gathering portion of the contested case hearing and prior to a decision in the case. It does not encompass deliberations by a governing body about whether to initiate a contested case. Although state board or commission "deliberations" in contested case hearings are exempt from the meetings law, any information gathering by the governing body and the final decision of the governing body must be conducted in compliance with the meetings law, unless otherwise exempted by statute.

Note that a state agency contested case proceeding conducted by a single hearings officer is *not* subject to the Public Meetings Law, because a single hearings officer is not a "governing body." The right of the public to attend such contested case proceedings depends on provisions of law outside the Public Meetings Law.

Local government officials should note, however, that the Public Meetings Law exemption provided in ORS 192.690(1) for *state* agency contested case hearings does *not* apply to hearings conducted by local governing bodies, even though those local government hearings may be remarkably similar to state agency contested case proceedings.[622]

D. REQUIREMENTS OF THE LAW

1. Notice

The Public Meetings Law requires that public notice be given of the time and place of meetings.[623] The public notice requirements apply to *any* "meeting" of a governing body subject to the law, including committees, subcommittees, and advisory groups. A governing body's public notice must also be reasonably calculated to provide actual notice to the persons

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[621] ***Oregonian Publ'g Co. v. Bd. of Parole***, 95 Or App 501, 506 (1989).

[622] 40 Op Atty Gen 388, 389–90, 1980 WL 112751 (1980).

[623] ORS 192.640(1).

and the news media that have stated in writing that they wish to be notified of every meeting.[624]

If a meeting will consist only of an executive session, notice must be given to the members of the governing body, to the general public, and to news media that have requested notice.[625] The notice also must state the specific legal provision authorizing the executive session.[626]

Notices for meetings that will include both an executive session and a nonexecutive session should give notice of both and state the statutory authority for the executive session.

Special meetings require at least 24 hours' notice to the general public, any news media who have requested notice, and the members of the governing body.[627] An "emergency meeting" is a type of special meeting called on less than 24 hours' notice. The governing body must be able to point to some reason why the meeting could not be delayed to allow at least 24 hours' notice. An "actual emergency" must exist, and the minutes of the meeting must describe the emergency justifying less than 24 hours' notice.[628] "Such notice as is appropriate to the circumstances" must be given for emergency meetings.[629] The governing body must attempt to contact the media and other interested persons to inform them of the meeting. Generally, such contacts would be by telephone or e-mail.

The Oregon Court of Appeals has indicated that it will scrutinize closely any claim of an actual emergency. Any claimed actual emergency must relate to the matter to be discussed at the emergency meeting. An actual emergency on one matter does not "justify a public body's emergency treatment of all business coming before it at approximately the

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[624] *Id.* Members of the governing body, of course, should also receive actual notice. *Cf.* ORS 182.020(1) (state boards and commissions shall give members ten days' notice, in writing).

[625] ORS 192.640(2).

[626] *Id.*

[627] ORS 192.640(3).

[628] *Id.*

[629] *Id.*

same time."[630] Nor do the work schedules of board members provide justification for an emergency meeting.[631]

a. Contents of Notice

In addition to providing the date, time, and place of the meeting, the notice should provide the name and telephone number (including TTY number if the public body has such equipment in service) of a person at the public body to contact to request an interpreter for the hearing impaired or for other communication aids.[632] As an alternative, governing bodies that know their audience is likely to require a sign language interpreter or other communication aids and services should simply make those services available and so state in their notice.

The notice must also "include a list of the principal subjects anticipated to be considered at the meeting."[633] This list should be specific enough to permit members of the public to recognize the matters in which they are interested. For example, "public works contract" probably is not a sufficient description when the governing body intends to let a contract for demolition of a landmark building.

A governing body may take up additional subjects arising too late to be mentioned in the notice.[634] But, if an executive session is being held, the discussion must be limited to the topic(s) listed in the statutory provision(s) identified as authority for the executive session.[635] Of course, if the subject matter is governed by the rulemaking requirements of the Administrative

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[630] ***Or. Ass'n of Classified Employees v. Salem-Keizer Sch. Dist. 24J***, 95 Or App 28, 32 (1989) (actual emergency concerning budget and levy problems did not "convert the contract approval deliberations into an emergency").

[631] *Id.* at 33–34 ("An actual emergency, within the contemplation of the statute, must be dictated by events and cannot be predicated solely on the convenience or inconvenience of members of the governing body.").

[632] *See* ORS 192.630(5)(a) ("It is discrimination[,] * * * upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter * * * provided at a regularly scheduled meeting.").

[633] ORS 192.640(1). This requirement ordinarily would be met by disseminating an agenda.

[634] *Id.*

[635] *See* ORS 192.640(2).

Procedures Act (ORS chapter 183), the notice requirements of that statute must be met.

b. Methods of Notice

The goal of notice for any meeting is two-fold: to provide general notice to the public at large and to provide *actual* notice to specifically interested persons. The following are suggested methods of meeting the notice requirements:

Oregon Transparency Website—State agencies must post notices to the Oregon transparency website, maintained at https://www.oregon.gov/transparency/Pages/Index.aspx.[636] Local or special government bodies can also post notices to this site.[637]

Press Releases—Press releases should be given to the appropriate publications and news services. The following list of publications and news services is commonly used.

- Wire Service—Associated Press. Notices can be directed to this service at its main offices at the Press Room, State Capitol Bldg., Salem, Oregon 97301 (Phone (503) 363-5358; Fax (503) 363-9502) or 121 S.W. Salmon Street, Suite 1450, Portland, Oregon 97204-2924 (Phone (503) 228-2169; Fax (503) 228-5514). In other areas of the state, notices directed to subscribing news media should reach the service.
- Local Media Representatives—If a meeting involves matters that affect a particular geographic area, press releases should be sent to the local media.
- Trade Papers, Special Interest Publications and Professional Journals—Agencies regulating matters affecting trades, occupations, professions, and special interest groups that have regularly scheduled publications directed to affected persons should provide these publications with notices of the agencies' public meetings.

Paid display advertising is not required. A governing body is not

[636] ORS 276A.253(4)(a).

[637] ORS 276A.253(7)(c).

required to ensure that the release is published. News media requesting notice of meetings *must* be given notice.

Mailing Lists—Agencies maintaining mailing lists of licensees or other persons or groups for notice purposes, either as a regular practice or under the requirements of ORS 183.335(8), should mail, e-mail, or fax notices of regular meetings to persons on those lists.

Interested Persons—If a governing body is aware of persons having a special interest in a particular action, those persons generally should be notified, unless doing so would be unduly burdensome or expensive.

Notice Boards—Some smaller communities have a designated area or bulletin board for posting notices. Governing bodies may want to post notices of meetings in such areas.

2. Space and Location

For any meeting, the governing body should consider the probable public attendance and should meet where there is sufficient room for that expected attendance. If the regular meeting room is adequate for the usual attendance, a governing body probably is not required to seek larger quarters for a meeting that unexpectedly attracts an overflow crowd; but the governing body may take reasonable steps to accommodate the unexpected attendance.

a. Geographic Location

Meetings of the governing body of a public body must be held within the geographic boundaries of the area over which the public body has jurisdiction; at the public body's administrative headquarters; or at "the other nearest practical location."[638] State, county, or city entities can also hold the meeting within Indian country of a federally recognized Oregon Indian Tribe that is within Oregon's geographic boundaries.[639]

A joint meeting of two or more governing bodies must be held within the geographic boundaries of the area over which one of the public bodies

[638] ORS 192.630(4)(a)(A)–(C). These alternatives are available because some small districts may maintain administrative offices outside the boundaries of the district, or have offices that lack meeting space.

[639] ORS 192.630(4)(D).

has jurisdiction, or at the nearest practical location.[640] If the meeting is with the elected officials of one or more federally recognized Oregon Indian tribes, the meeting can also be held within the tribe's geographic boundaries.[641]

There are exceptions to these requirements for meetings held "in the event of an actual emergency necessitating immediate action,"[642] and for training sessions that do not involve deliberations towards a decision.[643]

b. Nondiscriminatory Site

A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability is practiced.[644] However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominant use.[645]

3. Accessibility to Persons with Disabilities

Meetings must be held in places accessible to individuals with disabilities, and a governing body must make a good faith effort to have an interpreter for persons who are deaf or hard of hearing (upon request by such a person).[646] A "good faith effort" includes contacting any state or

[640] ORS 192.630(4)(c).

[641] *Id.*

[642] ORS 192.630(4)(d).

[643] ORS 192.630(4)(b).

[644] ORS 192.630(3).

[645] *Id.*; *see also* Americans with Disabilities Act, 42 USC § 12131 *et seq*. (prohibiting discrimination against persons with disabilities by public entities and by places of public accommodation, applicable to meeting sites owned by private entities).

[646] ORS 192.630(5)(a). The interpreter requirement applies only to a regularly scheduled meeting. *Id.* If a meeting is held upon less than 48 hours' notice, the governing body must make a "reasonable effort" to have an interpreter present upon request; and the requirement does not apply to emergency meetings. ORS 192.630(5)(c).

local agency that maintains a list of qualified interpreters,[647] and arranging for the referral of one or more such persons to provide interpreter services.[648] An individual's request for an interpreter must be made with at least 48 hours' notice, and include the requester's name, sign language preference, and any other relevant information the governing body may request.[649]

The sole remedy under state law for violating the interpreter requirement is found in Public Meetings Law.[650] However, the Americans with Disabilities Act (ADA) may impose requirements and remedies beyond state law. The ADA requires public bodies to ensure that their communications with persons with disabilities are as effective as communications with others.[651] For deaf or hard-of-hearing individuals who do not use sign language, other means of communication, such as assistive listening devices, may be necessary. If the meeting is held by electronic means, the needs of persons with vision or hearing impairments may need to be considered. Also, if written materials will be used during the public meeting, the governing body must make the material available, when requested by individuals with vision impairments, in a form usable to them, such as large print, Braille, or audiotapes. A public body cannot charge a person with a disability to cover the cost of providing such additional aids and services.

4. Public Attendance

The right of public attendance guaranteed by the Public Meetings Law does not include the right to participate by public testimony or comment.

Other statutes, rules, charters, ordinances, and bylaws outside the Public Meetings Law may require governing bodies to hear public testimony or

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[647] Requests for interpreters can be made through the Department of Human Services at http://www.oregon.gov/dhs/business-services/odhhs/pages/index.aspx.

[648] ORS 192.630(5)(e).

[649] ORS 192.630(5)(b).

[650] *See* ORS 192.630(5)(a) (the sole remedy for a violation is provided by ORS 192.680).

[651] 42 USC §§ 12131(2), 12132; 28 CFR § 35.160.

comment on certain matters.[652] But in the absence of such a requirement, a governing body may conduct a meeting without any public participation. Governing bodies voluntarily may allow limited public participation at their meetings.

In addition, some permissions to meet in executive session apply only if the governing body has offered an opportunity for public comment: the authority to consider in private the employment of a public officer exists only if the public has had the opportunity to comment on that officer's employment;[653] and the authority to consider in private the employment of a chief executive officer exists only if the public has had the opportunity to comment on the hiring standards, criteria, and policy directives that were adopted in open meetings.[654]

5. Control of Meetings

The presiding officer has inherent authority to keep order and to impose any reasonable restrictions necessary for the efficient and orderly conduct of a meeting. If public participation is to be a part of the meeting, the presiding officer may regulate the order and length of appearances and limit appearances to presentations of relevant points. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave, and upon failure to do so becomes a trespasser.[655] The law's requirement that "all persons be permitted to attend

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[652] *See, e.g.*, ORS 215.060 (requiring public hearings on actions regarding a county comprehensive plan).

[653] ORS 192.660(7)(d)(C).

[654] ORS 192.660(7)(d)(D).

[655] Letter of Advice to Sen. Margie Hendricksen, at 7 (OP-5468) (July 13, 1983) (violating commission's rules on order, decorum, and time allowed for presentations, and disturbing a lawful assembly would provide grounds for ejection); *see* ***State v. Marbet***, 32 Or App 67, 73–76 (1978) (affirming criminal conviction for trespass for refusing to leave a hearing after being ordered by the hearings officer); OAR 137-004-0010 (model rule stating that "[a] presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding").

any meeting" does not prevent governing bodies from maintaining order at meetings.[656]

The authority to keep order extends to control over equipment such as cameras, tape recorders, and microphones, but only to the extent of reasonable regulation. We have concluded that members of the public cannot be prohibited from unobtrusively recording the proceedings of a public meeting.[657] We believe the logic supporting the public's right to make an audio record of a meeting also extends to video recording, subject to reasonable regulation to the extent necessary to prevent disruption of the meeting. Some concern has been expressed that criminal law might prohibit the recording of public meetings. But the criminal law prohibition on electronically recording conversations without the consent of participants expressly does not apply to the unconcealed recording of "[p]ublic or semipublic meetings such as hearings before governmental or quasi-governmental bodies."[658]

It is questionable whether a governing body may exclude a member of the public because the person engaged in misconduct at a *previous* public meeting. It may be possible to obtain an injunction against a person who habitually has been disruptive, but an arrest and prosecution for trespass or disorderly conduct on the occasion of the subsequent disruption would be a simpler and probably more effective procedure. In case of an announced threat to disrupt a controversial meeting, it would be permissible to exclude the public from the meeting room if the public were allowed to view and hear the meeting by television in another room.

Smoking at Meetings - Smoking is prohibited in any public place.[659] Because "public place" means "an enclosed area open to the public" or a "place of employment," this prohibition generally applies to public

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[656] ***State v. Seidel***, 294 Or App 389, 394 (2018) (affirming conviction for disruptive citizen who failed to obey police officer's order to leave a city council meeting).

[657] 38 Op Atty Gen 50, 1976 WL 451475 (1976).

[658] ORS 165.540(6)(a).

[659] ORS 433.845(1). The exceptions to this prohibition generally aren't relevant to public meetings. *See* ORS 433.850.

meetings and executive sessions.[660] The prohibition extends to smoking, vaping, or aerosolizing any nicotine or cannabinoid product,[661] or to even carrying a lit cigar, cigarette, pipe, or other smoking instrument.[662] And smoking is prohibited not just inside the enclosed area, but also within 10 feet of any entrances, exits, windows that open, or ventilation intakes that serve an enclosed area.[663]

The person presiding at a meeting will avoid embarrassment to members of the public and the governing body by reminding them of the no-smoking rule at the beginning of the meeting.

6. Voting

All official actions by governing bodies must be taken by public vote.[664] Results of all votes must be recorded.[665] In addition, the vote of each member must be recorded, although individual votes for governing bodies with more than 25 members do not need to be recorded unless a member makes a request.[666] While written ballots are not prohibited, the ballot must identify the member voting and the vote must be announced. *Secret ballots are prohibited*.[667] This prohibition supersedes and nullifies any local government charter that authorizes a secret ballot.[668]

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[660] A place of employment is "an enclosed area under the control of a public or private employer, including * * * conference rooms [and] meeting rooms." ORS 433.835(4)(a).

[661] *See* ORS 433.845(1) (referring to an "inhalant," defined at ORS 433.835(3)).

[662] *See id.* (referring to a "smoking instrument," defined at ORS 433.835(7)).

[663] ORS 433.845(2).

[664] 37 Op Atty Gen 183, 1974 WL 187704 (1974); *see* ORS 192.660(6) ("No executive session may be held for the purpose of taking any final action or making any final decision.").

[665] ORS 192.650(1)(c).

[666] *Id.*

[667] 39 Op Atty Gen 525, 526, 1979 WL 35618 (1979).

[668] *Id.* at 526–28 (Springfield City Charter's requirement of a secret vote to choose the presiding member was preempted by Public Meetings Law).

A governing body's failure to record a vote is not, in and of itself, grounds for reversing a decision.[669] Without a showing that the failure to record a vote was related to a manipulation of the vote, a court will presume that public officials lawfully performed their duties.[670]

7. Minutes and Recordkeeping

A governing body must provide for written minutes of its meetings and executive sessions, or sound, video, or digital recording.[671] The written minutes or recording must include at least the following information:

- members present;
- motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;
- results of all votes; and, the vote of each member by name, except for public bodies consisting of more than 25 members unless recording by name is requested by a member of that body;
- the substance of any discussion on any matter; and
- a reference to any document discussed at the meeting, unless even a reference to the document is exempt under Public Records Law.[672]

Written minutes need not be a verbatim transcript, and a sound, video, or digital recording is not required to contain a full recording of the meeting, except as otherwise provided by law.[673] However, the minutes or recording must contain the above information and must give "a true reflection of the matters discussed at the meeting and the views of the

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[669] ***Gilmore v. Bd. of Psychologist Examiners***, 81 Or App 321, 324 (1986) ("The absence of a recorded vote alone is not reversible error.").

[670] *Id.*

[671] ORS 192.650(1)–(2) Some governing bodies may be subject to additional requirements: for example, the Oregon Investment Council must make "full sound recordings" of its meetings and maintain a written log of each recording. ORS 293.714.

[672] ORS 192.650(1)(a)–(e). A reference to an exempt document does not affect the public body's ability to assert the exemption, ORS 192.650(3), but open discussion of the document's contents might result in a waiver.

[673] ORS 192.650(1).

participants."[674] See Appendix J-9 for sample minutes.

a. Public Availability of Minutes

Any minutes or recording of a public meeting that does not take place in executive session must be made available to the public "within a reasonable time after the meeting."[675] Draft written minutes cannot be withheld from the public merely because they have not yet been approved; however, the governing body can identify the minutes as being in draft form when producing them to the requester. Any completed minutes or sound, video, or digital recordings are public records subject to disclosure under the Public Records Law.[676]

We assume that a governing body generally should be able to make a sound, video, or digital recording of a meeting available to the public within a few days following the meeting. However, we are told that the preparation of written minutes takes up to three weeks in the usual course of business: small bodies may not have the staff to prepare the minutes in just a few days, and larger bodies that do have substantial staff typically meet more often or for longer amounts of time. Three weeks arguably is within the "reasonable time" allowed by the statute, but a reviewing court may reach a different conclusion.

The minutes or recording of an executive session may be withheld from public disclosure if disclosing the information would be "inconsistent with the purpose" of the executive session.[677] Depending on the circumstances, this may mean that only a portion of the minutes or recording is exempt,

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[674] *Id.*

[675] *Id.*

[676] A governing body is generally not required to transcribe a recording, but may choose to do so and may charge a requester a fee for that work, ORS 192.650(4).

[677] ORS 192.650(2). Disclosing minutes or recordings that relate to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board or by the State Landscape Architect Board is governed instead by ORS 676.175 and ORS 671.338, respectively. ORS 192.660(9).

Also, the written minutes of an executive session held by a district school board regarding expulsion of a minor student from a public school or a student's confidential medical records should not contain any information excluded under ORS 332.061(2). ORS 192.650(2).

and that the remainder must be produced.[678] Even though the news media has the right to attend executive sessions, they have no statutory right of access to any minutes or records that are exempt from disclosure.

Minutes and records available to the public must be made available to persons with disabilities in a form usable by them, such as large print, Braille, or audiotape. However, the public body is entitled to consider the resources available for use in the funding and operation of the program from which the records are sought in responding to a request for alternative format, and may conclude that compliance with the request would result in a fundamental alteration of the nature of the program or in undue financial or administrative burdens.[679] Public bodies should consult with legal counsel if they are uncertain of their obligation to honor the requester's choice.

A public body may not charge a person with a disability to cover the costs of providing records in an alternative print form, although the public body may charge a fee for all other "actual costs" that may be recovered under the Public Records Law just as it would for any other requester.

b. Retaining Minutes

A governing body's obligation to preserve minutes or a recording can come from multiple sources. Currently, the State Archivist's rules generally provide that public meeting minutes must be retained permanently.[680] Audio or video recordings must generally be retained until one year after minutes have been prepared and approved.[681] However, a public body should consult the rules in Chapter 166 of the Oregon Administrative Rules that are specific to it, as well any special retention schedule approved by the

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[678] *See* Public Records Order, Nov 17, 2014, Budnick, at 4 (granting petition for only portions of an audio recording of an executive session).

[679] 28 CFR § 35.164; ***Nelson v. Thornburgh***, 567 F Supp 369 (ED Pa 1983), *aff'd*, 732 F2d 146 (3rd Cir 1984).

[680] *E.g.*, OAR 166-150-0005(17) (county and special district governing bodies). Most public bodies are subject to retention schedules approved by the Archivist. *See* ORS 192.005(4), (6) (defining the state and local entities that are subject to ORS 192.108).

[681] *E.g.*, OAR 166-150-0005(17). This suggests that if a county or special district governing body (or other governing bodies with similar schedules) keeps only a video or audio recording, it must retain that recording on a permanent basis.

Archivist.

In addition to the obligations imposed by retention laws, the Court of Appeals has construed Public Meetings Law to require minutes to be preserved for a reasonable time, and has held that a one-year retention met that standard for a school board in a particular instance.[682]

We recommend that, to comply with the Public Meetings Law and the retention laws, public bodies follow the relevant Archivist approved schedule, which generally calls for permanent retention.

E. Executive (Closed) Sessions

The Public Meetings Law authorizes governing bodies to meet in executive session in certain limited situations.[683] An "executive session" is defined as "any meeting or part of a meeting of a governing body which is *closed* to certain persons for deliberation on certain matters."[684]

Executive sessions should not be confused with meetings that are exempt from the Public Meetings Law altogether. An executive session is a type of public meeting and must conform to all applicable provisions of the Public Meetings Law (e.g., providing public notice and keeping minutes or recordings). Conversely, exempt meetings need not.

1. Permissible Purposes of Executive Sessions

A governing body may hold an open session even when the law permits it to hold an executive session. However, the governing body has the authority to hold closed sessions regarding the following topics.

a. Employment of Public Officers, Employees, and Agents

A governing body may hold an executive session to consider the employment of a public officer, employee, staff member, or individual agent, if the body has satisfied certain prerequisites.[685]

This provision applies for a chief executive officer, public officer, employee, or staff member only if the vacancy for the position has been

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[682] ***Harris v. Nordquist***, 96 Or App 19, 25–26 (1989).

[683] ORS 192.660(1).

[684] ORS 192.610(2) (emphasis added).

[685] ORS 192.660(2)(a).

advertised; if regular procedures for hiring have been adopted; and, for a public officer, if the public has had opportunity to comment on the employment.[686] For a chief executive officer, the governing body must have adopted hiring standards, criteria, and policy directives at meetings open to the public in which the public had the opportunity to comment.[687]

This authority to hold an executive session does not apply to consideration of general employment policies,[688] or to discussions of an officer's salary in connection with the hiring of that officer.[689] This authority also does not apply to filling a vacancy in an elective office,[690] public committee, commission, or other advisory group.[691]

b. Discipline of Public Officers and Employees

A governing body may hold an executive session to consider the dismissal or disciplining of a public officer, employee, staff member, or individual agent, or hear complaints or charges brought against such a person, if that person does not request an open hearing.[692]

In order to permit the affected person to request an open hearing, that person must have sufficient advance notice of the purpose of the meeting and the right to choose between an executive session and an open session. Although the provision requires an "open hearing" if the person involved so requests, we do not construe this provision to require an adversarial hearing, but only an open session. The affected person need not be present and has no right to postpone the hearing to permit an attorney to attend or to have a formal hearing unless another law, a contract, or a collective bargaining agreement provides those rights.

Regarding discipline of public officers and employees, we note the partial symmetry between the Public Meetings Law and the Public Records

[686] ORS 192.660(7)(d)(A)-(C).

[687] ORS 192.660(7)(d)(D).

[688] ORS 192.660(7)(c).

[689] 42 Op Atty Gen 362, 1982 WL 183044 (1982).

[690] ORS 192.660(7)(a).

[691] ORS 192.660(7)(b).

[692] ORS 192.660(2)(b).

Law. Under the Public Meetings Law, a governing body may discuss discipline of an employee in executive session. Under the Public Records Law, records of a personnel discipline action and supporting materials and documents are conditionally exempt from disclosure if a disciplinary sanction has been imposed.[693]

c. Public Hospital Medical Staff

Executive sessions are authorized for considering matters pertaining to the function of the medical staff of a public hospital licensed under ORS chapter 441.[694] This authorization includes consideration of all matters relating to medical competency in the hospital.[695] In addition, meetings of medical peer review committees held under ORS 441.055 are exempt from the requirements of the Public Meetings Law.[696]

d. Labor Negotiator Consultations

A governing body may hold an executive session "[t]o conduct deliberations with persons designated by the governing body to carry on labor negotiations."[697] This subsection allows a governing body to confer in executive session with its labor negotiator(s).[698] Unlike most other executive sessions, the media may be excluded from these deliberations.[699]

The authority of a governing body to conduct labor negotiations with the employees' negotiator in executive session is found in ORS 192.660(3), discussed below.

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[693] ORS 192.345(12); ***City of Portland v. Rice***, 308 Or 118, 124 (1989) (this exemption does not apply to records of an investigation that does not result in any disciplinary sanction).

[694] ORS 192.660(2)(c).

[695] *Id.*

[696] ORS 192.690(1). Because the exemption of these meetings was enacted after the executive session provision, we conclude that these meetings are entirely exempt from the Public Meetings Law.

[697] ORS 192.660(2)(d).

[698] 42 Op Atty Gen 362, 363–64, 1982 WL 183044 (1982).

[699] ORS 192.660(4).

e. Real Property Transactions

A governing body may go into executive session to deliberate with persons designated by the governing body to negotiate real property transactions.[700] Real property transactions are not limited to the purchase or sale of real property. For example, negotiations for a long-term lease transaction undoubtedly would be included within this provision.

The executive session must be limited to discussions of negotiations regarding specific real property and may not include discussion of a public body's long-term space needs or general policies concerning lease sites.[701]

f. Exempt Public Records

A governing body may go into executive session to consider "information or records that are exempt by law from public inspection."[702] Thus, information or records that are exempt from public inspection under the Public Records Law may be considered in private.

Whether a particular record is exempt from public disclosure, and may therefore be considered in executive session, may depend not just on the exemptions listed in ORS 192.345 and ORS 192.355, but also on other federal and state statutes on confidentiality.[703]

However, a governing body has the cart before the horse if it attempts to withhold disclosure of a public record merely because the record was discussed, or might be discussed, in an executive session. The body's authority to refuse to disclose a record depends on provisions of the Public Records Law, not of the Public Meetings Law.[704]

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[700] ORS 192.660(2)(e).

[701] Letter of Advice to Rep. Carl Hosticka, 1990 WL 519211 (OP-6376) (May 18, 1990).

[702] ORS 192.660(2)(f).

[703] *See* ORS 192.355(8) (public records are exempt if federal law or regulation prohibits disclosure); ORS 192.355(9)(a) (public records are exempt if disclosure "is prohibited or restricted or otherwise made confidential or privileged under Oregon Law").

[704] However, the Public Meetings Law provision permitting the withholding of the minutes or recordings of an executive session if disclosure would be "inconsistent with the purpose" of the session, ORS 192.650(2), is incorporated as a public records exemption by ORS 192.355(9).

g. Trade Negotiations

Preliminary negotiations involving matters of trade or commerce in which the governing body is competing with governing bodies in other states or nations may be conducted in executive session.[705] Use of this provision is permissible when the governing body knows or has good reason to believe it is competing with other governing bodies or nations regarding the matter to be discussed.[706]

h. Legal Counsel

Executive sessions are appropriate for consulting with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.[707] This authorization parallels the Public Records Law exemption for records pertaining to ongoing or anticipated litigation.[708] Any member of the news media that is a party to the litigation or is an employee, agent, or contractor of a news media organization that is a party, should be barred from attending.[709]

We believe that this provision is intended to put public bodies on an equal footing with private litigants. This means that the governing body should be able to engage in a private and candid discussion with counsel about the legal issues raised by the litigation. Such discussion may include not only procedural options, but also substantive analysis of the legal merits, risks, and ramifications of the litigation.

Our interpretation is consistent with the provision's use of the fairly broad phrase "legal rights and duties," and with the sensible public policies that we believe were part of the legislature's intent. First, if a governing body and its counsel were compelled to discuss their litigation position in public, it could result in denying the public body its fair day in court. Any weaknesses in the public body's position would undoubtedly be brought to the court's attention and could affect the court's objectivity. Second, our

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[705] ORS 192.660(2)(g).

[706] 42 Op Atty Gen 392, 397, 1982 WL 183052 (1982).

[707] ORS 192.660(2)(h).

[708] *See* ORS 192.345(1).

[709] ORS 192.660(5).

experience suggests that private and candid consultation with a governing body promotes quick resolution of inadvisable litigation. In executive session, counsel is in a better position to provide the frank advice that the governing body's case is weak and that the litigation should be dismissed or settled.

The discussion in executive session may proceed even to the point at which the governing body has reached an informal consensus as to its course of action. However, any final decision must be made in open session.[710]

Attorney-Client Privilege

A governing body also has the authority to meet in executive session to obtain other professional legal services from its legal counsel. For example, confidential written legal advice from counsel is a privileged record that is typically exempt from disclosure under Public Records Law.[711] Considering records that are so exempt provides authority to meet in executive session.[712] Accordingly, if a governing body takes appropriate steps, it may use an executive session to discuss any legal matter of a confidential nature absent the existence or likelihood of litigation. The governing body should return to public session for any discussion of policy.

Some might argue that allowing executive session to discuss privileged matters is an open invitation to evade the purposes of the Public Meetings Law. But when a need for confidential discussion of legal issues arises, even in the absence of a threat of litigation, we see no reason why a governing body should not take advantage of the attorney-client privilege. Because it is unclear whether the ability to meet in executive discussion to discuss exempt records or information applies absent the existence of an exempt physical record, a governing body should not cite the privilege as a basis for executive session unless there is a written record of a privileged

[710] ORS 192.660(6).

[711] *See* ORS 192.355(9)(a) (incorporating as exemptions any Oregon laws that make records privileged).

[712] ORS 192.660(2)(f). *But see* ORS 192.355(9)(b) (noting a specific set of circumstances in which the attorney-client privilege does not exempt factual information from disclosure).

attorney-client communication, or the body's legal counsel has advised that the executive session is appropriate.

A governing body does not waive the privilege by discussing the privileged information at executive session, even if the news media is present; and the privilege is not waived if the news media publicly discloses the information discussed in executive session, as long as the governing body made clear that the privileged information should not be re-disclosed.[713]

i. Performance Evaluations of Public Officers and Employees

A governing body may hold an executive session "[t]o review and evaluate" the job performance of a chief executive officer, other officers, employees, and staff, if the person whose performance is being reviewed and evaluated does not request an open hearing.[714] This does not allow discussion of an officer's salary to be conducted in executive session in connection with the job performance evaluation of that officer.[715]

In order to permit the affected person to request an open hearing, the governing body must give sufficient advance notice to the person of the right to decide whether the performance evaluation will be conducted in open session. Despite the use of the term "hearing," the affected person need not be present and has no right to postpone the hearing in order to attend or to permit an attorney to attend. Nor does the affected person have a right, under the Public Meetings Law, to have an attorney present evidence or to have a formal adversarial hearing. Other law, a contract, or a collective bargaining agreement, however, may provide such rights.

Disclosure of a public officer's or employee's performance evaluation generally is not an unreasonable invasion of privacy for purposes of exemption from the Public Records Law.[716] This is in contrast to a record of the disciplining of a public officer or employee, which is conditionally

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[713] ORS 40.280.

[714] ORS 192.660(2)(i).

[715] 42 Op Atty Gen 362, 1982 WL 183044 (1982).

[716] 41 Op Atty Gen 437 (1981).

exempt from disclosure under another provision of the records law.[717] Notwithstanding Public Records Law requirements, under the Public Meetings Law a governing body may go into executive session to discuss an officer's or employee's performance. Also, the minutes of such an executive session may be withheld from disclosure as long as disclosure would be inconsistent with the session's purpose,[718] even though some of the underlying personnel records may not be exempt from disclosure.

A governing body may not use an executive session held for purposes of evaluating a chief executive officer or other officer, employee, or staff member "to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs."[719]

j. Public Investments

An executive session may be called "[t]o carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments."[720] This is the counterpart to the exemption from disclosure of public records relating to proposed investments of state funds.[721] The authority to negotiate with private parties in executive session does not permit the governing body to take final action or to make a final decision in executive session.[722]

k. School Safety Threats

A public body may go into executive session to consider matters relating to school safety or to a plan that responds to safety threats being made towards a school.[723]

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[717] *See* ORS 192.345(12).

[718] *See* ORS 192.650(2).

[719] ORS 192.660(8).

[720] ORS 192.660(2)(j).

[721] *See* ORS 192.355(13).

[722] ORS 192.660(6).

[723] ORS 192.660(2)(k).

L. Health Professional Licensee Investigation

A health professional regulatory board may go into executive session to consider information obtained as part of an investigation of licensee or applicant conduct.[724] These boards generally must keep confidential and not disclose any information obtained as part of an investigation into a licensee or applicant.[725] This prohibition extends to the disclosure of executive session minutes or other recordings.[726] However, these boards must disclose a notice of intent to impose a disciplinary sanction that has been issued by vote of the board, a final order that results from such a notice, and any consent order or stipulated agreement.[727]

Confidential information must be protected even when the board convenes in public session for purposes of deciding whether or not to issue a notice of intent to impose a disciplinary sanction on a licensee or to deny or to approve an application for licensure.[728] As a matter of general practice, boards should refer to the case by number and not disclose the name of the licensee or applicant or any other information that would permit the licensee or applicant to be identified.[729]

While the news media are permitted to attend these executive sessions, they are prohibited from re-disclosing any confidential information to any other member of the public.[730]

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[724] ORS 192.660(2)(L).

[725] ORS 676.175(1).

[726] *See* ORS 192.660(9)(a) (noting that ORS 676.175 governs the disclosure of these minutes and recordings); 49 Op Atty Gen 32, 75–76, 1998 WL 223374 (1998).

[727] ORS 676.175(5)(a). And when the board votes not to issue a notice of intent to impose a disciplinary action, it shall disclose investigatory information if the requester demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure. ORS 676.175(2)(a). See ORS 676.175 for more exceptions to the general prohibition.

[728] 49 Op Atty Gen at 74.

[729] *Id.*

[730] ORS 676.175(8)(a).

m. Landscape Architect Registrant Investigation

The State Landscape Architect Board, or an advisory committee to the board, may go into executive session to consider information obtained as part of an investigation of registrant or applicant conduct.[731] Investigatory information is generally confidential unless a notice is issued for a contested case hearing or the matter is finally resolved by board action or a consent order.[732] This confidentiality extends to the disclosure of meeting minutes and recordings.[733] However, the public may obtain information confirming that an investigation is being conducted and describing the general nature of the matter.[734]

If any news media attend these executive sessions, they are prohibited from re-disclosing any confidential information to any other member of the public, until the information ceases to be confidential.[735]

n. Security Programs

A governing body may go into executive session to "discuss information about review or approval of programs relating to the security" of a number of specified structures, activities, and materials relevant to the operation of the state's infrastructure:

- A nuclear-powered thermal power plant or nuclear installation;
- Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation;
- Generation, storage or conveyance of electricity; gas in liquefied or gaseous form; hazardous substances as defined in ORS 453.005(7)(a), (b), and (d); petroleum products; sewage; or water;
- Telecommunication systems, including cellular, wireless, or radio

[731] ORS 192.660(2)(m).

[732] ORS 671.338(1)(b).

[733] *See* ORS 192.660(9)(b) (noting that ORS 671.338 governs the disclosure of these minutes and recordings).

[734] ORS 671.338(1)(b).

[735] ORS 671.338(3).

systems; or

- Data transmissions by whatever means provided.[736]

o. Labor Negotiations

A governing body can conduct labor negotiations in executive session if negotiators for both sides request that negotiations be conducted in private.[737] If an executive session is held, the governing body does not need to provide the typical notice to the general public and to news media that have requested notice.[738]

However, this permission to meet in executive session does not mean that all labor negotiations are necessarily subject to Public Meetings Law.[739] For example, if an individual negotiator were retained by the governing body, the resulting negotiations would not be subject to the meetings law because the individual would not be a governing body.[740] Even negotiations conducted by multiple retained labor negotiators are not subject to meetings law because those negotiators do not qualify as members of a public body, and therefore do not constitute a governing body.[741]

q. Other Executive Session Statutes

The Public Meetings Law list of matters appropriate for executive session is not exclusive. Statutes outside the meetings law authorize governing bodies to hold executive or closed sessions, sometimes without cross-referencing the Public Meetings Law. For example, district school boards are authorized to meet in executive session to hold a hearing regarding expulsion of a student from a public school or a student's confidential medical records.[742] The Teacher Standards and Practices

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[736] ORS 192.660(2)(n).

[737] ORS 192.660(3).

[738] *Id.*

[739] ***TriMet v. Amalgamated Transit Union Local 757***, 362 Or 484, 503 (2018).

[740] ***SW Or. Publ'g Co. v. SW Or. Comm. Coll. Dist.***, 28 Or App 383, 386 (1977).

[741] *See id.*

[742] ORS 332.061(1). The hearing should be conducted in executive session unless the student, student's parent, or student's guardian requests a public hearing. *Id.*

Commission may meet in executive session to receive the executive director's findings and recommendations on the investigation of a licensee,[743] and to make its own findings.[744] And the Commission on Judicial Fitness and Disability may hold closed hearings to inquire into allegations of a judge's temporary disability.[745]

2. Final Decision Prohibition

"No executive session may be held for the purpose of taking any final action or making any final decision."[746] It is quite likely that the governing body may reach a consensus in executive session, and its members of course will know of that consensus. The purpose of the "final decision" requirement is to allow the public to know the *result* of the discussions. Taking a formal vote in open session satisfies that requirement, even if the public vote merely confirms a tentative decision reached in an executive session.

The statute does not define "final action" or "final decision." We recommend that the governing body choose a public decision unless a final public decision clearly is not required. The relevant criteria are the nature of the decision or action, and whether publicly announcing the decision would frustrate the purpose behind the statutory authorization for the particular executive session.

For example, the nature of decisions authorizing expenditure of funds makes it highly unlikely that these decisions could be made in executive session. But the decision to reduce a slate of 30 candidates for chief executive officer to 10 candidates or to three finalists is likely not a final decision or action. The legislative policy behind the executive session for such discussions would be undermined by disclosing the names of candidates who might not have applied if their candidacy would

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[743] ORS 342.176(3)(a).

[744] ORS 342.176(7).

[745] ORS 1.425(2). However, the subject judge has the right to request a public hearing. *Id.*

[746] ORS 192.660(6). At least one public body has a specific statute requiring a final decision to be made in executive session: the Government Ethics Commission must make its decision at the conclusion of the Preliminary Review Phase in executive session. ORS 244.260(4)(d)(C).

immediately become known. However, a decision to spend $2,500 to bring the finalists in for interviews would be a final decision. A decision to *negotiate* with a "first choice" candidate, with salary and other conditions of employment remaining unsettled, is not a final decision. A decision to formally *offer* the position to one candidate is a final decision, even before acceptance.

A governing body cannot evade the "final action" requirement by using coded terms. For example, a formal public vote to extend an offer of appointment to "Ms. A" would be a clear violation of the law's requirements, unless a statute outside of the Public Meetings Law *prohibits* disclosure of the individual's name.

A governing body meeting in executive session must return to *public* session before taking final action. This requirement cannot be circumvented by simply announcing, in executive session, that the meeting is now open, and then proceeding without affording interested persons a chance to attend. If a public meeting will be held again after the executive session, the desirable practice would be to announce, before the executive session, a specific time for returning to open session. Otherwise, reasonable means must be used to give actual notice to interested persons that the meeting is again a public meeting. If the executive session has been short, it may be sufficient to open the door and announce to persons in the hall that the meeting is open to the public. But clearly, returning to an unscheduled and unannounced "open session," for which those attending the previous session have no notice and no opportunity to attend, does not comply with the law.

The formal decision, of course, can be postponed to the next regular or duly announced public meeting. In fact, this procedure is necessary for any executive session that is not held in conjunction with a public session, unless the notice of executive session also informs the public and interested persons of the time and place at which the session will be opened to make the formal decision.

Finally, statutes outside the Public Meetings Law effectively may modify the requirement that no final action be taken in executive session. For example, in labor negotiations covered by the Public Employees Collective Bargaining Act, an offer made by the governing body's

negotiator, if accepted by the employees' bargaining representative, is binding and effective, and an agreement must be signed even if the governing body has not formally approved the offer in open session.[747] The governing body may then appropriately ratify the agreement at a subsequent public meeting.[748]

3. Method of Convening Executive Session

A governing body may hold a meeting consisting of only an executive session. The notice requirements are the same as those for any other meeting.[749] In addition, the notice must cite to the statutory authority for the executive session.[750] An example of this type of notice is found at Appendix J-5.

An executive session may also be called during a regular, special, or emergency meeting for which notice has already been given. The person presiding over the meeting must announce the statutory authority for the executive session before going into executive session.[751] A sample script for use in calling an executive session during a public meeting is found at Appendix J-8.

4. Media Representation at Executive Session

Representatives of the news media are expressly allowed to attend executive sessions, with some exceptions.[752] However, the governing body may require that these attendees not disclose specific information discussed at the sessions.[753]

Legislative history reveals that allowing media attendance was intended to foster good relations with news media organizations; provide a mechanism to ensure that governing bodies limited executive sessions to

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[747] ***S. Benton Educ. Ass'n v. Monroe Union High Sch. Dist. #1***, 83 Or App 425, 431–32 (1987).

[748] *Id.*

[749] *See* ORS 192.640(2).

[750] *Id.*

[751] ORS 192.660(1).

[752] ORS 192.660(4).

[753] *Id.*

permissible purposes; and permit the media to gain valuable background information for future reporting.[754]

a. Who is a representative of the news media?

A representative of the news media is a news gatherer[755] who has a formal affiliation with an institutional news medium, that is, with an entity formally organized for the purpose of gathering and disseminating news.[756] The news media includes specialty publications, which cover specific subject areas for a special audience, regardless of whether the publication's specific area relates to the subject matter of a particular executive session.[757]

The news media is not limited to traditional print and broadcast media, but can include internet media.[758] For example, while a blogger keeping an online personal journal with reflections and comments would likely not qualify as a representative of the news media, an individual who regularly posts for a website maintained a by traditional media company (e.g., cnn.com) likely would qualify.[759] Relevant factors typically include whether the entity has staff and a formal business structure and regularly disseminates news to the public.[760] Because no bright-line definition exists, we encourage governing bodies to consult with their legal counsel when receiving a request from a blogger or other non-traditional journalist to attend an executive session.

While governing bodies can adopt comprehensive policies regarding access to executive sessions, those policies are unenforceable to the extent

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[754] Op Atty Gen No 8291, at 12, 2016 WL 2905510 (Apr 18, 2016), *available at* https://www.doj.state.or.us/wp-content/uploads/2017/06/op8291.pdf.

[755] A reporter would typically qualify as a news gatherer, while, for example, a newspaper's advertising manager is not a news gatherer and therefore would not qualify as a representative of the news media. 39 Op Atty Gen 600, 602, 1979 WL 35636 (1979).

[756] Op Atty Gen No 8291, at 13–14. Note that portions of our earlier opinions interpreting this phrase may no longer be valid in light of this recent 2016 opinion.

[757] *Id.* at 14.

[758] *Id.* at 15–16.

[759] *Id.*

[760] *Id.* at 16.

they conflict with the statutory requirements permitting representatives of the news media to attend.[761] For example, a governing body cannot limit attendance to one representative of each type of news medium;[762] exclude a representative with a personal interest in the executive session's subject matter;[763] exclude a representative for failing to provide media credentials within certain deadlines;[764] or require representatives to provide advance notice of their intent to attend an executive session.[765] However, governing bodies are not required to accept a mere assertion that a person qualifies as a news representative.[766]

b. Re-disclosing Information

A governing body may require that media representatives not disclose specific information.[767] The presiding officer should make the specification, or the governing body could do so (or overrule the presiding officer) by motion. *Absent any such specification, the entire proceeding may be reported and the purpose for having an executive session may be frustrated.* Except in the rarest instances, the governing body at least should allow the general subject of the discussion to be disclosed, and it cannot prevent discussion of the statutory grounds justifying the session. The nondisclosure requirement should be no broader than the public interest requires.

However, the Public Meetings Law provides no sanction to enforce this requirement that a news representative not disclose specified information.[768] The experience of more than three decades has been that the media, by and large, honor the nondisclosure requirement. Ultimately,

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[761] *Id.* at 20.

[762] *Id.* at 17.

[763] *Id.* at 17–18. However, as discussed below, certain representatives connected to current or anticipated litigation involving the governing body can be excluded from an executive session discussing that litigation. ORS 192.660(5).

[764] Op Atty Gen No 8291, at 21.

[765] *Id.*

[766] *Id.* at 20.

[767] ORS 192.660(4). See a sample script at Appendix J-8.

[768] Op Atty Gen No 8291, at 18–19; 42 Op Atty Gen 392, 397–98, 1982 WL 183052 (1982).

"enforcement" of the nondisclosure requirement depends upon cooperation between public officials and the media. This cooperation advances the purposes of both government and the news media.

A media representative has no obligation to refrain from disclosing information gathered at an executive session if the governing body fails to specify that certain information is not for publication. But media representatives may wish, in a spirit of cooperation, to inquire whether a governing body's failure to specify was an oversight. And a representative is under no obligation to keep confidential any information the reporter independently gathers as the result of leads obtained in an executive session. A representative also has the clear right to disclose any matter covered in an executive session that is not properly within the scope of the announced statutory authorization. Indeed, the presence of media representatives at executive sessions probably encourages compliance with statutory restrictions on holding closed sessions.

Although members of the public typically may tape record or video record public meetings with an unconcealed device,[769] we do not believe this is the case with respect to members of the media who attend executive sessions. We believe the presiding officer may require that members of the media not tape or video record executive sessions, in order to decrease the likelihood that information discussed in the executive session will be inadvertently disclosed.

c. Exceptions

Several exceptions exist to the general rule permitting representatives of the news media to attend executive sessions. The media can be excluded from an executive session held to conduct deliberations with the governing body's labor negotiator(s),[770] or a hearing held by a district school board to

[769] *See* ORS 165.540(6)(a) (providing exception to crime of recording communications without notice).

[770] *See* ORS 192.660(4) (referring to ORS 192.660(2)(d)); ***Barker v. City of Portland***, 67 Or App 23 (1984) (city council did not violate meetings law by selectively excluding editor-in-chief of union's newspaper from an executive session with city's labor negotiators).

consider expulsion of a student from a public school or a student's confidential medical records.[771]

When an executive session is held for the purpose of conferring with legal counsel about current litigation or litigation likely to be filed, the governing body must exclude any member of the news media who is a party to the litigation to be discussed, or who is an employee, agent, or contractor of a news media organization that is a party to the litigation.[772]

5. Other Persons Permitted to Attend Executive Sessions

An executive session is by definition a meeting "which is closed to *certain* persons."[773] It follows that the governing body may permit other persons to attend. Generally, an executive session is closed to all except members of the governing body, persons reporting to it on the subject of the executive session or who are otherwise involved, and news media representatives. However, nothing prohibits the governing body from permitting other specified persons to attend.[774] And statutes outside of the Public Meetings Law specifically allow health professional regulatory boards to permit public officials and members of the press to attend executive sessions in which the board considers information it has obtained in the course of an investigation of a licensee or applicant.[775] The attending individuals should be reminded, however, that they may not disclose such

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[771] *See* ORS 192.660(4) (referring to ORS 332.061(2)). However, this exception applies only if the student or the student's parent or guardian does not request a public hearing.

[772] ORS 192.660(5). We have concluded that a "member" of the news media is synonymous with a "representative" of the news media. Op Atty Gen No 8291, at 16. For further analysis on who is an employee, agent, or contractor of a news media organization, see *id*. at 16–17.

[773] ORS 192.610(2) (emphasis added).

[774] *Cf.* ***Barker***, 67 Or App at 24 (noting that a city council allowed certain news media representatives to attend an executive session with the city's labor negotiators even though the media could have been excluded).

[775] ORS 676.175(8)(a). In this context, "public official" means a member, member-elect, staff member, or employee of a state agency or board, a district attorney's office, the Department of Justice, a state or local public body that licenses, franchises or provides emergency medical services, or a law enforcement agency, as long as the executive session reasonably relates to the entity's regulatory or enforcement function. *See* ORS 676.175(8)(b) (referring to ORS 676.177).

information to any other members of the public. The fact that certain persons have been allowed to attend is not grounds for the general public to attend the executive session.

F. Enforcement of the Law

As noted above, the Attorney General and district attorneys have no enforcement role under the Public Meetings Law. Education and persuasion are by far the best tools available to obtain compliance. Most violations of the Public Meetings Law occur because the governing body is not familiar with the requirements of the law. Quoting the provisions of the law to the governing body often results in future compliance. Most governing bodies that are aware of the law make a good faith effort to comply.

There are, however, cases in which governing bodies continue to violate the law and can be neither persuaded nor educated. Even in such a case, quoting the legal provisions that create potential personal liability of governing body members for attorney fees, ORS 192.680(3) and (4), or that authorize the imposition of civil penalties for violation of the executive session provisions of the law, ORS 192.685, is worth trying before suit is filed. But in some cases only litigation will suffice.

1. Injunctive or Declaratory Actions

Anyone affected by a decision of a governing body may file a lawsuit to require compliance with, or prevent violations of, the Public Meetings Law by members of the governing body, or to determine whether the Public Meetings Law applies to meetings or decisions of the governing body.[776] The Court of Appeals has held that residents of a school district, and a labor organization whose members included district employees and taxpayers, were affected by the district's decisions where they were "vitally interested in all manner of [the district's] decisions."[777] And the court held that organizations that educated the public about animal exploitation would have

[776] ORS 192.680(2). Such a lawsuit is the exclusive remedy for a violation of Public Meetings Law, ORS 192.680(6), except for the Oregon Government Ethic Commission's imposition of civil penalties for violating the executive session provisions, ORS 192.685.

[777] ***Harris v. Nordquist***, 96 Or App 19, 22–23 (1989).

their interests impacted by a university committee charged with ensuring the proper treatment of animals used in research.[778]

A suit must be brought in the circuit court of the county in which the governing body ordinarily meets,[779] and must be commenced within 60 days following the date that the decision becomes public record.[780] The plaintiff must engage a private attorney, or appear *pro se* (for oneself). An action may be brought even before any decision affecting the plaintiff has been made,[781] and is not moot solely because a governing body has ceased its improper meeting practices.[782]

If a court determines that a governing body made a decision in violation of Public Meetings Law, the decision may be voided,[783] or the court may order appropriate equitable relief.[784] The court may also order payment of the plaintiff's reasonable attorney fees.[785] The governing body can avoid the voiding of its decision by reinstating the decision while in compliance with the law.[786] We construe this to require the governing body to substantially reconsider the issues, and not to merely conduct a perfunctory rerun.

Similarly, if a subcommittee decides on a recommendation to a public body in violation of the law, the public body can avoid the voiding of its subsequent decision by making the decision in full compliance with the law.

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[778] ***SETA v. Inst. Animal Care & Use Comm.***, 113 Or App 523, 527 (1992).

[779] ORS 192.680(2).

[780] ORS 192.680(5).

[781] ***Harris***, 96 Or App at 22–23 (1989) (plaintiff seeking to enjoin future violations).

[782] ***Barker v. City of Portland***, 94 Or App 762, 765 (1989) (explaining that the governing body's past illegal actions remained in violation of the law).

[783] ORS 192.680(1).

[784] ORS 192.680(3). An example of equitable relief is ordering the governing body to avoid future violations of Public Meetings Law. Future violations of such an order could lead to penalties for contempt of court.

[785] *Id.*

[786] ORS 192.680(1).

However, if a governing body's violation was the result of intentional disregard of the law or willful misconduct by a quorum, then the court will void the decision (despite any attempt to reinstate the decision), unless other equitable relief is available.[787] In addition, any members of the body who engaged in the willful misconduct will be *personally* liable to the governing body for any attorney fees it has to pay to the plaintiff.[788]

We think that voiding a governing body's decision is typically a remedy of last resort. That remedy often may be viewed as contrary to the public interest by undermining the stability of governmental decision-making and harming innocent persons who have acted in reliance on that decision. However, a violation involving an aggravating factor, such as a conflict-of-interest violation, may lead to the decision being voided.

2. Civil Penalties

Complaints that public officials have violated the executive session provisions may be made to the Oregon Government Ethics Commission for review and investigation.[789] Violations can result in civil penalties up to $1,000, unless the governing body was acting under the advice of its legal counsel.[790]

In reviewing and investigating a complaint, the commission may interview witnesses, review minutes and other records, and obtain any other information pertaining to the governing body's executive sessions.[791]

If the commission chooses not to pursue a complaint at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees. The reimbursement would be made by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority

[787] ORS 192.680(3).

[788] ORS 192.680(4).

[789] ORS 192.685(1). The commission has adopted rules to carry out this function at chapter 199, division 40, of the Oregon Administrative Rules.

[790] ORS 244.350(2).

[791] ORS 192.685(2).

to make decisions.[792] A public official who prevails following a contested case hearing shall, upon petition to Marion County Circuit Court, be awarded reasonable attorney fees to be paid by the commission.[793]

[792] ORS 192.685(3).

[793] ORS 244.400.

APPENDIX I – FREQUENTLY ASKED QUESTIONS

Q. May a three-member governing body meet with staff in carrying out its administrative functions, without complying with all the notice and other requirements of the Public Meetings Law?

A. If the governing body is meeting in order to obtain information on which it later will deliberate, or to deliberate or decide on substantive matters, it must comply with the notice, public attendance, and recordkeeping requirements of the Public Meetings Law.

Q. As a member of a three-member governing body, must I notify the press and public and arrange for their attendance every time I drop into a colleague's office or make a telephone call to another member?

A. Yes, if you discuss the business of the governing body. The law requires that the public have access to any meeting of a quorum of a governing body of a public body when the governing body meets to gather information on which it will later deliberate, or to deliberate or make a decision on any matter of policy or administration.

Q. Is a "retreat" of a governing body subject to the Public Meetings Law?

A. The answer depends on the matters discussed at the retreat. If the retreat is confined, for instance, to general principles of decision-making or personal interaction, the Public Meetings Law would not apply. However, if at the retreat the governing body deliberates toward or makes a decision on official business, or gathers information on which it later will deliberate, the meetings law applies. In addition, any retreat or training session that includes deliberations must be held inside the governing body's jurisdiction.

Q. What about a "retreat" for other employees and administrators of the public body attended by members of the governing body?

A. Such a "retreat" can be organized to avoid the meeting of a quorum of the governing body for the purpose of gathering information or deliberating toward decisions on matters within their responsibility, in which case the meetings law would not apply. However, it also is very easy for information gathering or policy deliberations by members of the governing body to occur, in violation of the Public Meetings Law.

Q. May a quorum of members of a governing body participate in a "community retreat" sponsored by a chamber of commerce?

A. Yes, so long as they avoid getting together as a group for any deliberations.

Q. What is a quorum?

A. The Public Meetings Law does not define quorum. It may be defined by city charter, rules of order, or some other source. Absent other controlling authority, a quorum is a majority of a governing body's members. Even if a group decides to operate by consensus, the meetings law will apply if a quorum of the group's members are needed for the body to make a decision or recommendation. See also discussion of Quorum in Appendix K.

Q. Is an on-site inspection subject to the Public Meetings Law?

A. No. On-site inspections are not "meetings" subject to the meetings law. However, a quorum of the governing body should be careful not to decide on or deliberate towards any decision while attending an inspection.

Q. Does the Public Meetings Law apply to a chamber of commerce?

A. No.

Q. Is a people's utility district board subject to the Public Meetings Law?

A. Yes.

Q. How about an electric cooperative?

A. No. That is a private body.

Q. How about a nonprofit corporation that receives all of its funds from the state or local government?

A. No, unless it is formally acting as an advisory body to a public body or is required by contract to open its meetings. If the corporation is the "functional equivalent" of a public body, it may also be subject to the Public Meetings Law.

Q. Are homeowners associations and rental associations subject to the Public Meetings Law?

A. No.

Q. Are neighborhood associations subject to the Public Meetings Law?

A. It depends on whether the particular neighborhood association is a "governing body of a public body." Determining whether a neighborhood association is subject to the Public Meetings Law requires an analysis of several factors, including the specific responsibilities and authority of that particular neighborhood association.

Notwithstanding the analysis under the Public Meetings Law, some cities require, as a condition of their recognition of a neighborhood association, that neighborhood association meetings be open to the public.

Q. Is an administrative hearing subject to the Public Meetings Law?

A. The deliberations of state agencies conducting contested cases in accordance with the Administrative Procedures Act, and of several specifically named agencies, are exempt from the meetings law. However, the information-gathering portions of the contested cases are subject to the meetings law if conducted by a governing body. Proceedings in the nature of contested cases conducted by local governing bodies are subject to the meetings law. Contested cases conducted by an individual hearings officer are not subject to the law, because a single hearings officer is not a governing body.

Q. Does the Public Meetings Law apply to the Oregon legislature?

A. The application of the Public Meetings Law to the Legislative Assembly has not been directly addressed in an opinion by the courts or the Attorney General. However, the Oregon Constitution and rules of both chambers require that deliberations of floor sessions and committee meetings, but not caucus sessions, be open to the public and members of the media.

Q. How far in advance must a public body give notice of its regular meetings?

A. Far enough in advance to reasonably give interested persons actual notice and an opportunity to attend. Because the notice must specify the principal subjects to be covered, it must be given separately for each meeting even though the public and news media know that the body meets, for example, every Wednesday evening.

Q. Is a notice posted solely on a bulletin board sufficient?

A. It is not. However, such a notice may be used with news releases and mailing lists to meet the notice requirements.

Q. Must meeting notices be published as legal notices?

A. No.

Q. Does the Public Meetings Law notice requirement require the purchase of advertising?

A. No, it requires only appropriate notice.

Q. May a governing body issue a single notice for a "continuous session" that may last for several days?

A. Probably yes, if the body can identify the approximate times that principal subjects will be discussed.

Q. Must a notice be provided for a meeting that is exclusively an executive session?

A. Yes. The notice requirements are the same and must cite the statutory authority for the executive session.

Q. Is a media request to receive notice of any meetings sufficient to require notice of special and emergency meetings?

A. Yes.

Q. If a news organization requests notice of meetings, is it sufficient for that notice to be mailed "general delivery" to that news organization?

A. Probably yes, if mailed far enough in advance. It is up to the news organization to establish procedures to ensure that the proper person receives the notice. For a special or emergency meeting, a telephone call or a fax to a responsible person is advisable.

Q. Is a meeting without proper notice an illegal meeting?

A. A meeting without notice violates the Public Meetings Law.

Q. Must a governing body notify the public when a meeting has been cancelled, for example, when bad weather requires a last-minute cancellation?

A. The Public Meetings Law does not require a governing body to notify the public when a meeting has been cancelled. Although not required,

it is certainly appropriate for a governing body to notify the public that a meeting has been cancelled when it is feasible to do so.

Q. May governing bodies hold public meetings at a location outside of the geographic boundaries of their jurisdiction if there is no appropriate meeting site within their geographic boundaries?

A. In addition to holding a meeting within the geographic boundaries of its jurisdiction, a governing body can hold a meeting at the public body's administrative headquarters, the nearest practical location, or—for county, city, or state public bodies—within Indian country of a federally recognized Oregon Indian tribe that is within the geographic boundaries of Oregon. In certain circumstances, it is possible that the nearest practical location might be outside the governing body's geographic boundaries. In addition, a meeting may be held in other locations in the event of an actual emergency necessitating immediate action.

A joint meeting of two or more governing bodies or a joint meeting with a federally recognized Oregon Indian tribe must be held within the geographic boundaries of one of the bodies or of a tribe, or at the nearest practical location.

Q. If during an executive session, the members of the governing body discuss matters outside its proper scope, what is the proper role of media representatives present? May they begin taking notes?

A. The Public Meetings Law does not prohibit media representatives from taking notes of executive sessions they attend, whether or not the discussion includes matters outside the lawful scope of the executive session. The law merely permits the governing body to require that specified information discussed during executive session not be disclosed. Media representatives may freely disclose matters outside the session's proper scope. Nonetheless, it always is proper for those representatives politely to call the governing body's attention to the fact that it has strayed from the specified subject or subjects to be discussed in executive session.

Q. May a governing body restrict the number of media representatives attending an executive session?

A. No.

Q. May a reporter who has a personal stake in a matter be excluded from an executive session?

A. No, except that a reporter who is a party to litigation or who is an employee, agent, or contractor of a news media organization that is a party to litigation, should be excluded from an executive session held to discuss that litigation.

Q. May a governing body reviewing or evaluating a public employee's performance in executive session exclude the employee from attending?

A. If the public employee requests a public session, the meeting must be held in public, and the employee may not be excluded. If the employee makes no such request, then the employee may be excluded. Sufficient advance notice must be given to the employee to allow the employee to choose whether to request a public meeting.

Q. Must reporters be permitted access to executive sessions conducted by electronic conference?

A. Yes.

Q. May a governing body reach a decision in an executive session?

A. It may not reach a final decision, but it may informally decide or reach consensus. This is proper so long as the body goes into public session to act formally on the matter.

Q. What if the decision is to take no action? For example, a complaint with respect to a public official, informally concluded to be without sufficient merit to warrant discipline?

A. It is appropriate, but probably not required, to announce in public session that the matter was not resolved, that no decision was reached or that in the absence of a motion for action, no action will be taken. If, however, a final "no action" decision is made by vote of a quorum of a governing body, the decision must be made and announced in public session.

Q. If a city council meets in executive session to discuss litigation, must the council meet in public session to vote to file a lawsuit or appeal?

A. Yes. Final decisions must be made in public.

Q. Is smoking prohibited at an executive sessions?

A. Most likely yes. Whether smoking is prohibited depends on whether the location of the executive session is covered by the Oregon Indoor Clean Air Act.

Q. May I tape record a public meeting?

A. Yes. You may also videotape a meeting, subject to reasonable rules of the public body to avoid disruption.

Q. Must I inform the governing body before I tape record?

A. No. The criminal prohibition on recording a conversation without notification does not apply to the use of an unconcealed recording device at a public or semipublic meeting.

Q. May a public body refuse to use a microphone during its public meetings?

A. The meetings law does not specifically address what steps public bodies must take to ensure that the general public can sufficiently monitor public meetings. However, ORS 192.630(5)(a) and the Americans with Disabilities Act impose certain requirements on public bodies to ensure that their communications at public meetings with persons with disabilities are as effective as communications with others.

Q. Does the Public Meetings Law grant me the right to testify before a public body?

A No, the Public Meetings Law only guarantees the public a right to monitor the meetings of public bodies; it does not grant members of the public the right to interact with public bodies during those meetings.

Q. May a person who has disrupted prior meetings, assaulted board members, etc., be excluded from a public meeting?

A. It is doubtful that a person may be excluded for prior conduct. The person who causes the disruption may be arrested for trespass.

Q. Are written minutes required?

A. Written minutes or a sound, video, or digital recording is required for any meeting, including an executive session.

Q. What do I do when a public body's minutes are inconsistent with the notes I took during a meeting?

A. You should work directly with the public body to correct discrepancies that you believe exist in the minutes. In so doing, it may be useful to speak with other attendees to determine if your recollection is accurate. In addition, other attendees may be able to lend support if you have difficulty convincing the public body that the minutes are inaccurate.

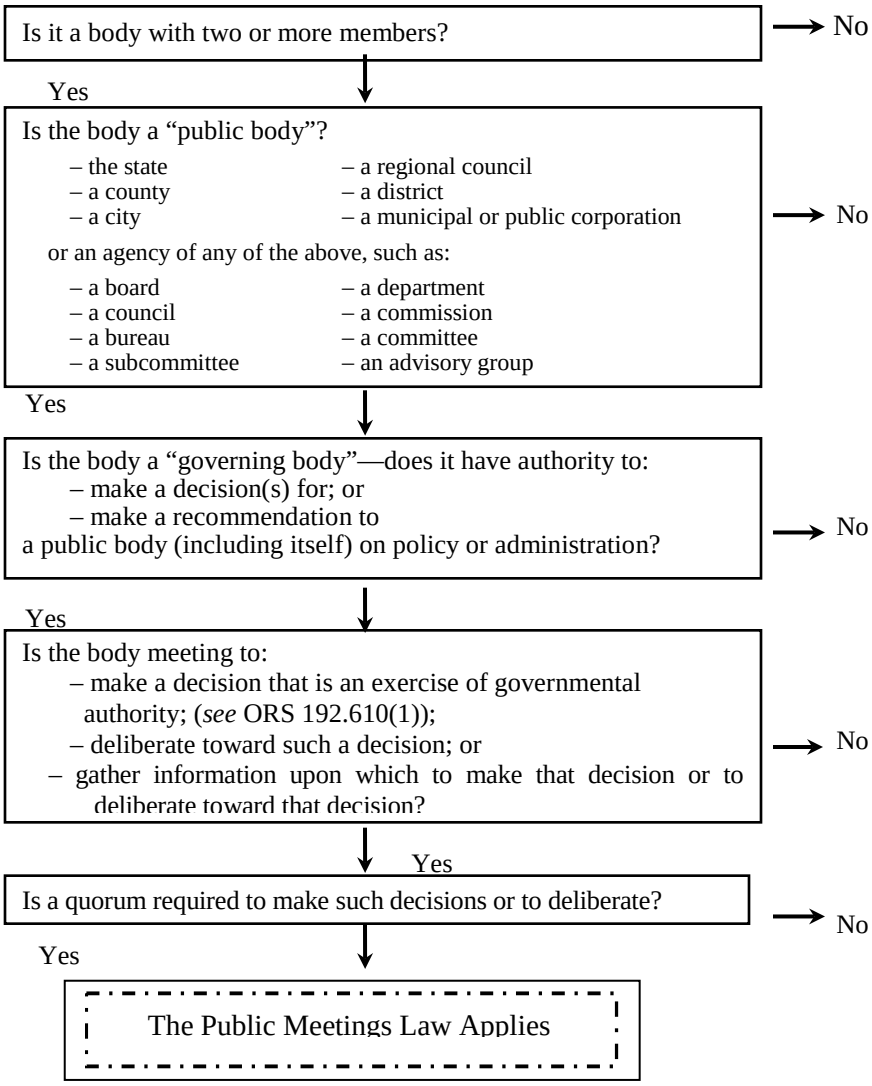
Q. How can a suit be filed for a meetings violation?

A. A suit should be filed in circuit court. The timing of the suit depends on the relief sought, but no action under the meetings law may be commenced more than 60 days after the decision challenged became public record. A complaint for violation of the executive session provisions of the Public Meetings Law may be filed with the Oregon Government Ethics Commission.

APPENDIX J – SAMPLES, FORMS

GUIDE TO BODIES SUBJECT TO PUBLIC MEETINGS LAW

This is a simplified guide to understanding when the meetings of a particular body are subject to the Public Meetings Law. For a discussion of the various elements, refer to the text of this manual.



PUBLIC MEETINGS CHECKLIST

The Public Meetings Law applies to all meetings of a quorum of a governing body of a public body for which a quorum is required to make a decision or to deliberate toward a decision on any matter, and to any deliberations between a quorum of the governing body. This checklist is intended to assist governing bodies in complying with the provisions of the law; however, you should consult the appropriate section(s) of this manual for a complete description of the law's requirements.

- □ OPEN TO THE PUBLIC. Unless an executive session is authorized by statute, the meeting must be open to the public.
- □ NOTICE. The governing body must notify the public of the time and place of the meeting, as well as the principal subject to be discussed. Notice should be sent to:
- □ News media;
- □ Mailing lists; and
- □ Other interested persons.

The notice for a regular meeting must be reasonably calculated to give "actual" notice of the meeting's time and place. Special meetings require at least 24-hours' notice. Emergency meetings may be called on less than 24-hours' notice, but the minutes must describe the emergency justifying less than 24-hours' notice.

- □ SPACE AND LOCATION
- □ Space. The governing body should consider the probable public attendance and should meet where there is sufficient room for that expected attendance.
- □ Geographic location. Meetings must be held within the geographic boundaries over which the public body has jurisdiction, at its administrative headquarters, at the nearest practical location, or—for state, county, or city entities—within Indian county of a federally recognized Oregon Indian tribe that is within the boundaries of the state.
- □ Nondiscriminatory site. The governing body may not meet at a place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age, or disability is practiced.
- □ Smoking is prohibited.

□ ACCESSIBILITY TO PERSONS WITH DISABILITIES

□ Accessibility. Meetings must be held in places accessible to individuals with mobility and other impairments.

□ Interpreters. The governing body must make a good faith effort to provide an interpreter for hearing-impaired persons.

□ Americans with Disabilities Act (ADA). The governing body should familiarize itself with the ADA, which may impose requirements beyond state law.

□ VOTING. All official actions by governing bodies must be taken by public vote. Secret ballots are prohibited.

□ MINUTES and RECORDKEEPING. Written minutes or a sound, video, or digital recording must be taken at all meetings, including at executive sessions. The minutes or recording must include at least the following:

□ Members present;

□ Motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition;

□ Results of all votes and, except for bodies with more than 25 members unless requested by a member, the vote of each member by name;

□ The substance of any discussion on any matter; and

□ A reference to any document discussed at the meeting. (Reference to a document exempt from disclosure under the Public Records Law does not affect its exempt status.)

The minutes or recording must be available to the public within a "reasonable time after the meeting."

SAMPLE MEETING NOTICES

Notice of [Regular, Special or Emergency] Meeting

The Oregon Dungeness Crab Commission will hold a (regular/special/emergency) meeting at 9:00 a.m. at the Netarts Community Hall, 10 Ocean Avenue, Netarts, Oregon, on October 4, 1987.

[A copy of the agenda of the meeting is attached.]

— or —

[The meeting will cover extension of commercial takes of Dungeness crabs, and a proposed limitation on sports crabbing in Neahkahnie Bay.]

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to (name and telephone/TTY number) .

Notice of Executive Session

The Oregon Dungeness Crab Commission will hold an executive session at 9:00 a.m. at the Netarts Community Hall, 10 Ocean Avenue, Netarts, Oregon, on October 4, 1987. The session will consider an applicant for the position of Assistant Marine Biologist. The executive session is being held pursuant to ORS 192.660(2)(a).

NOTE: Meeting notices are not required to be signed by an officer or employee. A notice mailed or delivered will be sufficient. It must be mailed or delivered to any news medium that has requested notice and, so far as possible, to any other persons who have requested notice or who are known to be interested. Notification of the general public is also necessary, and a notice merely posted on a bulletin board is ordinarily not sufficient. Such posting and notification to appropriate newspapers, radio stations, and wire services is appropriate. It is not necessary to use paid notices. Notice by telephone or fax is advisable for emergency meetings.

CHECKLIST FOR EXECUTIVE SESSION

This checklist is intended to assist governing bodies in complying with the executive session provisions of the Public Meetings Law; however, you should consult the appropriate section(s) of this manual for a complete description of the requirements.

- ☐ Provide notice of an executive session in the same manner you give notice of a public meeting. The notice must cite to the specific statutory provision(s) authorizing the executive session.
- ☐ Announce that you are going into executive session pursuant to ORS 192.660 and cite the specific reason(s) and statute(s) that authorize the executive session for *each* subject to be discussed. See sample script at K-9. (You may hold a public session even if an executive session is authorized.)
- ☐ If you intend to come out of executive session to take final action, announce when the open session will begin again.
- ☐ Specify if any individuals other than the news media may remain.
- ☐ Tell the media what may *not* be disclosed from the executive session. If you fail to do this, the media may report everything. If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters.
- ☐ A member of the news media must be excluded from executive sessions held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent, or contractor of a news media organization that is a party.
- ☐ Come back into open session to take final action. If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.

- ☐ Keep minutes or a sound, video, or digital recording of executive sessions.

NOTE: If a governing body violates any provision applicable to the executive session provisions in the Public Meetings Law, a complaint against individual members of the governing body can be filed with the Oregon Government Ethics Commission (OGEC). The OGEC may impose a $1,000 civil penalty, unless the governing body went into executive session on the advice of its attorney.

SAMPLE SCRIPT TO ANNOUNCE START OF EXECUTIVE SESSION

The [governing body] will now meet in executive session pursuant to ORS 192.660(__) [choose appropriate section(s) for *this* session], which allows the Commission to meet in executive session to __[list activity(ies)]_____.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.

Note: The governing body may choose to allow other specified persons to attend the executive session. *See* ***Barker v. City of Portland***, 67 Or App 23 (1984).

SAMPLE PUBLIC MEETINGS MINUTES

Oregon State Dungeness Crab Commission

Minutes

Regular (Special or Emergency) Meeting October 4, 1987

Netarts, Oregon

Pursuant to notice made by press release to newspapers of general and local circulation throughout the state and mailed to persons on the mailing list of the Commission and the members of the Commission, a (regular /special/emergency) meeting of the Dungeness Crab Commission was held at the community hall in Netarts, Oregon.

Present were Chairman Abel Adams, and Commissioners Bertha Bales, Charles Carter and Donald David, the entire membership of the Commission. The executive secretary of the Commission, Elmer Eaton, presented the Commission's agenda as follows:

(1) Request to amend commercial limits of daily take of Dungeness crab from the estuaries and ocean waters of the State of Oregon.

(2) Report of marine biologist Franklin on the effect of recent micro-organic growths in Siletz Bay on crab population.

(3) Request to consider portions of Neahkahnie Bay off limits for sports crabbing.

Testimony on the commercial limits was received from George Grant representing commercial crabbing industry for an increase and Howard Hawes representing sportsmen.

After discussion, Commissioner David moved that the Commission give notice that it intended to amend the commercial daily limits by a 10 percent increase and that a public hearing be held to receive information, data, and views of interested persons. Voting for the motion: Commissioners Bales, David and Chairman Adams; against: Commissioner Carter. The motion having carried, the executive secretary was directed to prepare a notice of intention to amend a rule and have it published in the Secretary of State's Administrative Bulletin and to notify the press and the Commission's mailing list.

Marine Biologist Franklin reported that micro-organic growths have caused a 20 percent decrease in the crab population of Siletz Bay. Research at the Oregon State University Marine Biology Center indicates that it may

be possible to develop an ecologically sound strain of micro-organism to combat the harmful growth. Commissioner Bales questioned Franklin as to the effects on the balance of life in the Siletz estuary. Franklin indicated that no sure prediction could be given at this time. Commissioner Bales moved that Franklin consult with the Department of Environmental Quality and report back at the next regular meeting of the Commission. The motion was carried unanimously.

A request to declare portions of Neahkahnie Bay off limits for sports crabbing was presented to the Commission. Supporting the request was George Grant representing the commercial crabbing industry. Mr. Grant testified that the extended take of sportsmen was decreasing the potential take of the commercial take. He indicated that the area was an excellent breeding ground and sportsmen were disturbing the young crabs, thereby endangering the population.

Opposing the request were Irving Instant, a marina operator on Neahkahnie Bay, and a representative of the Tillamook Chamber of Commerce, John Jackson, who disputed Mr. Grant's testimony. The Commission considered a written report prepared by the Department of Environmental Quality titled "The Effect of Sports Crabbing on Crab Populations," and dated June 15, 1987. Commissioner David moved that Mr. Franklin investigate the claim and report back to the Commission at its next regular session. The motion was carried unanimously.

The agenda matters having been dealt with, the Chairman stated that an application for the available position of Assistant Marine Biologist to the Commission had been received. The Chairman then directed that the Commission go into executive session to consider the employment application. The Chairman identified ORS 192.660(2)(a) as authority for the executive session. Kenneth King, reporter for the Associated Press, requested to be present at the executive session.

At the conclusion of the executive session, there being no further business, the meeting was adjourned.

s/ Elmer Eaton

Executive Secretary

Oregon Dungeness Crab Commission

October 4, 1987

APPENDIX K – PARLIAMENTARY PROCEDURE, QUORUMS, AND VOTING

A. PARLIAMENTARY PROCEDURE GENERALLY

Rules of parliamentary procedure provide the means for orderly and expeditious disposition of matters before a board, commission, or council. They govern the way members of a multi-member body interact with each other. As a general proposition, those procedural guides only affect substantive policy development or third-party interests indirectly and do not have the force of law. They may be waived, modified, or disregarded without affecting the validity of the agency's decisions.

Public bodies, therefore, have great flexibility to determine their own rules of parliamentary procedure without fear that irregularities or errors will lead to judicial invalidation of their actions. When making or applying rules of parliamentary procedure, a board, commission, or council is limited only by (i) any constitutional or statutory requirements, (ii) rights of third parties which may be affected, and (iii) judicial interpretations of constitutional and statutory rights.

Parliamentary procedure for a multi-member body guides all agency decision-making processes, including deliberations following a contested case or rulemaking hearing and deliberations leading to an advisory recommendation on a matter of public policy to another public body.

To facilitate decision-making, a simplified and flexible approach to parliamentary procedure is helpful. The author of one text on parliamentary procedures believes that "stressing a more straightforward and open procedure for meetings eliminates the parliamentary impasses that appear to follow when too much attention is given to parliamentary intrigue and manipulation."[794] He has, for example, eliminated the "seconding" of motions because it is "largely a waste of time."[795] This warning against blind adherence to parliamentary rules is echoed by the author of another text who admonishes that "[t]echnical rules should be used only to the

[794] R. Keesey, Modern Parliamentary Procedure XV–XVI (1994).

[795] *Id*. at 21.

extent necessary to observe the law, to expedite business, to avoid confusion, and to protect the rights of members."[796]

The most commonly known and used parliamentary authority is perhaps Henry Robert's *Rules of Order Newly Revised*. However, a more readable authority is Alice Sturgis's *Standard Code of Parliamentary Procedure* (2d ed 1966). The Oregon House and Senate rely on Paul Mason's *Manual of Legislative Procedure* (1989). Any of these texts could be adopted by reference to guide board, commission, or council deliberations. A simple motion such as the following is sufficient for this purpose:

> Except as otherwise provided by law and except where the (insert title of board or commission) directs or acts to the contrary, (insert title and edition of a parliamentary reference book) shall govern parliamentary processes of this public body.

Alternatively, a board, commission, or council might adapt some of the rules to suit its particular needs and convenience, and adopt a standard text as a "back-up" resource.

B. QUORUMS AND VOTES

Statutes, not parliamentary procedure, specify quorums and voting requirements. The quorums and voting requirements of Oregon state boards, commissions, or councils are governed by general law, ORS 174.130, or by special statutes. General authority to adopt rules to govern their proceedings is not sufficient authority for boards, commissions, or councils to write a rule contrary to ORS 174.130 or special statutes of similar import. However, a state agency with authority to create a board, commission, or council, establish its duties, its structure, and, in short, determine its very existence, may provide by administrative rule what constitutes a quorum and thus release its board, commission, or council from the rigors of ORS 174.130.[797]

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[796] A. Sturgis, Standard Code of Parliamentary Procedure 8 (2d ed 1966).

[797] Letter of Advice to Jeffrey Milligan, at 4–5, 1985 WL 199935 (OP-5763) (Jan 16, 1985).

1. General Law

ORS 174.130 provides that "Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law."

Attorneys General have consistently advised that this statute requires a majority of all members of a board, commission, or council to concur in order to make a decision.[798] When ORS 174.130 applies, a majority of those present and voting in favor of a particular action is not sufficient to authorize that action unless that majority is more than one-half of the total members of the board, commission, or council. For example, in the case of a 13-member board, if only 11 persons were present, six votes for a proposition would be insufficient to authorize any action because six votes would not constitute a majority of the members of that board even though it would constitute a majority of those present.

2. When Other Statute Designates Quorum

Many boards and commissions have specific statutes designating the number of members that form a quorum. Most of these statutes, but not all, fix the quorum at a majority of the members of the body.[799]

Some of the statutes regarding particular bodies also fix the number of votes required for different types of decisions by the body. For example, the statute concerning the nine-member Oregon Government Ethics Commission provides that "[a] quorum consists of five members but a final decision may not be made without an affirmative vote of a majority of the members appointed to the commission."[800]

When the statute does not specify the number of votes necessary for a decision, a decision may be made by a majority of the quorum. This was the common law rule, and is also the rule derived from the application of ORS 174.130 to the quorum that is given authority by the special statute. Different jurisdictions interpret the meaning of "majority of the quorum"

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[798] *See, e.g.*, 36 Op Atty Gen 960, 985, 1974 WL 187642 (1974); 38 Op Atty Gen 1935, 1978 WL 29489 (1978).

[799] *See, e.g.*, ORS 670.300(2) (concerning professional licensing and advisory boards).

[800] ORS 244.250(5).

differently. The interpretation most consistent with Oregon case law and with ORS 174.130 is that a "majority of the quorum" means at least a majority of the minimum number required for a quorum.

When a quorum is present, and all members present cast votes, the "majority of the quorum" is the same as a majority of those voting. A tie, of course, does not constitute a decision.

C. VACANCIES

The fact that one or more vacancies exist on a board, commission, or council has no bearing on the quorum requirements. Since the law establishes the number of members required for a quorum, the fact that a position is unfilled does not alter this requirement.[801]

D. ABSTENTIONS

When one or more members present do not vote, the abstention does not count as a vote in favor of the majority position, at least when action requires the concurrence of a majority of the board.[802] No case has yet been decided directly concerning the effect of an abstention when a majority of a quorum may take action. However, based on analogous Oregon precedents and cases from other states, we believe that an abstention does not count as either an affirmative or a negative vote. A member who is present but abstains may, however, be counted toward making up a quorum. An abstention therefore cannot be used to make up the minimum number of votes required to pass or reject a motion.

An example may make this clearer: Board "X" is a seven-member board. A statute provides that four members constitute a quorum. The statute does not specify the number of votes required for action. Therefore, at least three concurring votes are needed (majority of the four required for a quorum) to take action. At a meeting, six of the seven members are present. On a motion, three vote in favor, two vote against, and one abstains. The chairman would correctly declare that the motion passed: the motion only needed three votes in favor, and the abstention counted neither as a vote in favor or as a vote against.

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[801] Letter of Advice to John F. Hoppe, at 3–4, 1989 WL 439831 (OP-6322) (June 8, 1989).

[802] ***State ex rel Roberts v. Gruber***, 231 Or 494 (1962).

Members of boards, commissions, or councils are obviously appointed to make decisions. Absent compelling circumstances, for example, pecuniary conflict of interest problems, board members should not abstain from voting.[803]

E. PROXY VOTE, ABSENTEE VOTE, VOTES BY MAIL, AND SECRET BALLOTS PROHIBITED

A vote by proxy is a vote cast by a substitute on behalf of a member who is not present at the meeting. Absent a specific statutory provision authorizing a proxy, proxy voting is not authorized and is improper since no member of a board, commission, or council is empowered to delegate his or her vote to others.[804]

An absentee vote is a vote purportedly cast by a member who is not present at the meeting. This procedure is not authorized by Oregon law and is also improper since the absent member may not be counted toward the quorum requirement and may not vote. This is not to suggest, however, that personal presence at the meeting is required. A member may, for example, be present, participate, and vote by telephone.

A vote by mail is a vote purportedly cast by a member without the necessity of a meeting of the board, commission, or council. Absent specific statutory authorization, this procedure could not be used. It would also be improper because a decision by the board, commission, or council may only be made at a meeting at which a quorum is present.

A secret ballot is a vote of the members in private after which only the result is announced to the public. Absent specific statutory authorization, such a procedure would violate the Oregon Public Meetings Law.[805]

If improper procedures in voting such as the use of a proxy, an absentee ballot, a vote by mail, or a secret ballot are used, it will cast grave doubts on the validity of any decision arrived at as a result of using these procedures.

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[803] *See* ***Eastgate Theatre, Inc. v. Bd. of County Comm'rs***, 37 Or App 745 (1978) (two commissioners incorrectly abstained from vote).

[804] 16 Op Atty Gen 77, 1932 WL 32868 (1932); Letter of Advice to Fred Segrest (OP-3206) (Feb 21, 1975).

[805] 37 Op Atty Gen 183, 1974 WL 187704 (1974); 39 Op Atty Gen 525, 1979 WL 35618 (1979).

If such procedures are used, an agency should consult its assigned attorney about the possibility of ratifying its prior invalid action.

F. VOTE TABLES

Two tables follow which show the minimum number of concurring votes necessary to pass or reject a motion. Table I illustrates the application of ORS 174.130, i.e., when no quorum is otherwise specified for a board or commission. By intersecting the number of members on a board with the number of members voting on an issue, the table shows how many concurring votes are needed to pass or reject a motion.

Table II applies to boards and commissions with special statutes that designate a quorum but do not specify the number of votes required for action. It assumes that the quorum is set at majority of the members. It may, however, be used for boards with a different number required for a quorum: simply ignore the far left-hand column and find the number that the applicable statute designates for a quorum in the column named "Minimum Number Present to Form Quorum."

TABLE I

Boards and Commissions Covered by ORS 174.130

Number of Members on Board	NUMBER OF MEMBERS VOTING																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
3	X	2	2																	
4	X	X	3	3																
5	X	X	3	3	3															
6	X	X	X	4	4	4														
7	X	X	X	4	4	4	4													
8	X	X	X	X	5	5	5	5												
9	X	X	X	X	5	5	5	5	5											
10	X	X	X	X	X	6	6	6	6	6										
11	X	X	X	X	X	6	6	6	6	6	6									
12	X	X	X	X	X	X	7	7	7	7	7	7								
13	X	X	X	X	X	X	7	7	7	7	7	7	7							
14	X	X	X	X	X	X	X	8	8	8	8	8	8	8						
15	X	X	X	X	X	X	X	8	8	8	8	8	8	8	8					
16	X	X	X	X	X	X	X	X	9	9	9	9	9	9	9	9				
17	X	X	X	X	X	X	X	X	9	9	9	9	9	9	9	9	9			
18	X	X	X	X	X	X	X	X	X	10	10	10	10	10	10	10	10	10		
19	X	X	X	X	X	X	X	X	X	10	10	10	10	10	10	10	10	10	10	
20	X	X	X	X	X	X	X	X	X	X	11	11	11	11	11	11	11	11	11	11

Key to Table I

1. The column on the left shows the number of members on the board or commission.

2. The numbers across the top indicate the number of members voting at a meeting. These include affirmative and negatives votes but do not include abstentions.

3 The number found by intersecting 1 and 2 is the *minimum* number of concurring votes (affirmative *or* negative) that must be cast in order to pass or reject a motion.

4. An abstention is *not* counted as an affirmative or negative vote to make up the minimum number of concurring votes required to pass or reject a motion. If a member abstains, but is present, he or she is still counted for quorum purposes.

5. An "X" indicates that no action should be taken because the number voting is below the minimum number of concurring votes required to pass or reject a motion.

TABLE II

Boards and Commissions Covered by Statutes Specifying Quorum Requirements

Number of Members on Board	Minimum Number Present to Form Quorum	NUMBER OF MEMBERS VOTING																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
3	2	X	2	2																	
4	3	X	2	2	3																
5	3	X	2	2	3	3															
6	4	X	X	3	3	3	4														
7	4	X	X	3	3	3	4	4													
8	5	X	X	3	3	3	4	4	5												
9	5	X	X	3	3	3	4	4	5	5											
10	6	X	X	X	4	4	4	4	5	5	6										
11	6	X	X	X	4	4	4	4	5	5	6	6									
12	7	X	X	X	4	4	4	4	5	5	6	6	7								
13	7	X	X	X	4	4	4	4	5	5	6	6	7	7							
14	8	X	X	X	X	5	5	5	5	5	6	6	7	7	8						
15	8	X	X	X	X	5	5	5	5	5	6	6	7	7	8	8					
16	9	X	X	X	X	5	5	5	5	5	6	6	7	7	8	8	9				
17	9	X	X	X	X	5	5	5	5	5	6	6	7	7	8	8	9	9			
18	10	X	X	X	X	X	6	6	6	6	6	6	7	7	8	8	9	9	10		
19	10	X	X	X	X	X	6	6	6	6	6	6	7	7	8	8	9	9	10	10	
20	11	X	X	X	X	X	6	6	6	6	6	6	7	7	8	8	9	9	10	10	11

Key to Table II

1. The far left column shows the number of members on the board or commission.

2. The second column from the left shows the minimum number of members required to be present to form a quorum, assuming a statute fixes a quorum as a majority of the members of the board.

3. The numbers across the top represent the number of members voting at a meeting. These include affirmative and negative votes but do not include abstentions.

4. The number found by intersecting 1 and 2 with 3 is the minimum number of concurring votes (affirmative or negative) that must be cast in order to pass or reject a motion.

5. An abstention is not counted as an affirmative or negative vote to make up the minimum number of concurring votes required to pass or reject a motion. If a member abstains, but is present, he or she is still counted for quorum purposes.

6. An "X" indicates that no action may be taken because the number voting represents less than the minimum number of concurring votes required to effect action.

7. Assuming a quorum is present, the minimum number of concurring votes required to pass or reject a motion varies according to the number of members voting.

APPENDIX L – SUMMARIES OF OREGON APPELLATE COURT DECISIONS

1974–1990

Crowfoot Elementary School District v. PERB, 19 Or App 638, 529 P2d 405 (1974).

The court held that a prohibition on public employees from communicating with public officials during labor negotiations did not prevent teachers from appearing at school board budget meetings.

Egge v. Lane County, 21 Or App 520, 535 P2d 773 (1975).

Plaintiff alleged that a board of commissioners had violated the Public Meetings Law when it met and denied plaintiff's request for a zoning variance. The court refused to reverse the board's action because ORS 192.680 then provided that "[n]o decision shall be voided" solely for noncompliance with Public Meetings Law.

Southwestern Oregon Publishing Co. v. Southwestern Oregon Community College, 28 Or App 383, 559 P2d 1289 (1977).

The court held that a retained labor negotiator was neither a public body nor a governing body; because the collective bargaining sessions were therefore not subject to meetings law, the media could be excluded.

Smith v. School Dist. No. 45, 63 Or App 685, 666 P2d 1345 (1983).

The court held that the trial court had not abused its discretion in denying plaintiff's claim for attorney fees where the meeting at issue did not involve a decision that was adverse to plaintiff.

Barker v. City of Portland, 67 Or App 23, 676 P2d 1391 (1984).

The court held that the Portland City Council did not violate meetings law by selectively excluding some members of the news media from an executive session held to discuss labor negotiations: news media did not have the statutory right to attend such executive sessions, and the council's decision was "purely a matter of discretion."

Gilmore v. Board of Psychologist Examiners, 81 Or App 321, 725 P2d 400 (1986).

The court held that the absence in the meeting minutes of a record of a vote did not alone constitute reversible error. The court explained that absent a showing of prejudice, the petitioner had not "rebutted the presumption that public officers perform their duties lawfully."

South Benton Educational Ass'n v. Monroe Union High School District #1, 83 Or App 425, 732 P2d 58 (1987).

The court held that meetings law did not prevent enforcement of a collective bargaining agreement reached in executive session, despite the agreement seemingly constituting a final action. The court explained that it was an unfair labor practice to refuse to sign an agreement reached through collective bargaining, and that the school district could comply with meetings law by ratifying the agreement at a public meeting.

Barker v. City of Portland, 94 Or App 762, 767 P2d 460 (1989).

The court held that even though the public body ceased its violations of meetings law, the suit was not moot because determining the extent of past violations and the appropriate remedy was still at issue. The court also held that the plaintiffs, as representatives of the press and as legal entities, alleged sufficient facts to have been affected by a decision of the governing body, and therefore had standing to sue. Finally, the court held that the circuit court, not district court, was the appropriate forum to hear a suit under meetings law.

Oregon Ass'n of Classified Employees v. Salem-Keizer School District 24J, 95 Or App 28, 767 P2d 1365 (1989).

The court held that the school district could not justify its emergency meetings because no actual emergency existed as to the matter that was the subject of the decision, even though an emergency existed with respect to a different matter. In addition, an actual emergency could not be justified only based on convenience for the governing body's members.

Oregonian Publishing Co. v. Board of Parole, 95 Or App 501, 769 P2d 795 (1989).

The court held that the Parole Board's exemption from Public Meetings Law for the board's deliberations did not apply to the information-gathering phase of parole hearings.

Harris v. Nordquist, 96 Or App 19, 771 P2d 637 (1989)**.**

The court held that residents, employees, and taxpayers of a school district who were vitally interested in the district's decisions and the information leading to those decisions, had standing to challenge the district's alleged Public Meetings Law violations.

The court also held that the board members' gatherings at restaurants before and after board meetings did not violate ORS 192.630(2) because the evidence showed only that some members had occasionally discussed what was going on at the schools. The court explained that this was not enough to show that the members met with the purpose of deciding on or deliberating towards a decision, or that the discussions in fact involved such deliberations. Evidence that a quorum had a private gathering was not a prima facie case of a violation such that the burden shifted to the board.

The court also held that there had been no "meeting," and that therefore the board did not violate the duty to keep minutes under ORS 192.650. Even if the gathering were prohibited by ORS 192.630(2), there would have been no violation of ORS 192.650 because minutes of prohibited meetings were not required.

Finally, the court held that ORS 192.650 required minutes to be preserved for a reasonable time after a meeting, and that in this instance, one year was a reasonable time.

1991–CURRENT

Students for the Ethical Treatment of Animals v. Institutional Animal Care & Use Committee, 113 Or App 523, 833 P2d 337 (1992).

The court held that groups with the goal of educating the public about animal exploitation had standing under ORS 192.680(2) to seek a declaration that a university committee charged with ensuring that animal research met certain standards violated Public Meetings Law. The court explained that the committee's decisions, and information on which those decisions were made, had a potential impact on the groups' ability to perform an educational role.

Independent Contractors Research Institute v. DAS, 207 Or App 78, 139 P3d 995 (2006).

The court held that an advisory council created by DAS to advise the Chief Procurement Officer on a certain program was exempt from Public Meetings Law because it was providing recommendations to a single official. The court explained that a single official, even one who is an officer of a named group, is not a "public body."

Krisor v. Henry, 256 Or App 56, 300 P3d 199 (2013).

The court held that a challenge to a county fair board's hiring decision was moot because the hired employee was no longer employed, and there was no reason to believe that any future improper hiring decisions would evade a court's review.

Rivas v. Board of Parole, 277 Or App 76, 369 P3d 1239 (2016).

The court held that the Parole Board did not violate Public Meetings Law by using a file-pass procedure to decide whether to order an additional psychological evaluation for an offender. This procedure involved passing the file from board member to board member, with each one commenting on the form in private. The court explained that this procedure did not violate ORS 192.630(1) because it was not a contemporaneous gathering of the board and was therefore not a "meeting." The procedure did not violate ORS 192.630(2) because the board's deliberations are expressly exempt from the meetings law under ORS 192.690(1).

Handy v. Lane County, 360 Or 605, 385 P3d 1016 (2016), *rev'g in part* 274 Or App 644, 362 P3d 867 (2015).

The Supreme Court held that plaintiff had not produced sufficient evidence, in responding to an anti-SLAPP motion to dismiss, that a quorum of the county commission had met in private to decide on or deliberate toward a decision on how to respond to a public records request. The court explained that a commissioner's passive receipt of an e-mail discussing the records request was not sufficient to establish that the commissioner had decided or deliberated on how to respond to the request.

In reaching the opposite conclusion, the Court of Appeals had held that a quorum could meet in violation of ORS 192.630(2) through a series of e-mails and person-to-person conversations, even though no single exchange involved a quorum of commissioners. The dissent concluded that a violation could occur only if there were a contemporaneous gathering of the quorum (whether in-person or electronically). The Supreme Court did not reach this issue in its opinion.

In the portion of its opinion not reviewed by the Supreme Court, the Court of Appeals held that the decision to hold an emergency meeting to discuss the public records request did not violate Public Meetings Law because the county charter did not require a vote of a quorum to hold such a meeting.

TriMet v. Amalgamated Transit Union Local 757, 362 Or 484, 412 P3d 162 (2018), *aff'g* 276 Or App 513, 368 P3d 50.

The court held that TriMet failed to establish that its collective bargaining team's private sessions with the union's team could not violate Public Meetings Law. The court rejected TriMet's argument that, assuming the bargaining team was a governing body, there would be no violation due to the team's lack of a quorum requirement to transact its business. The court first explained that a governing body can "meet" for purposes of ORS 192.630(2) without convening a formal "meeting" under ORS 192.630(1). The court then explained that the bargaining team, and every governing body, has a quorum because there is always "some minimum number of members that must participate in order for the body to be competent to transact business."

The court also held that ORS 192.660(3) did not require labor negotiations to be held in a "meeting." It required only that "*when* a public body conducts labor negotiations in sessions that qualify as 'meetings,' they must be 'open' unless the parties agree otherwise."

State v. Seidel, 294 Or App 389 (2018).

The court upheld the conviction of a disruptive member of the public who disobeyed a police officer's order to leave a city council meeting. Although Public Meetings Law requires that "all persons be permitted to attend any meeting," this was intended to open governmental decision-making to the public, not to prevent public bodies from maintaining order at meetings.

APPENDIX M – SUMMARIES OF OREGON ATTORNEY GENERAL OPINIONS

1974–1980

37 Op Atty Gen 183 (1974), 1974 WL 187704.

The Public Meetings Law prohibited the use of secret ballots by a governing body.

38 Op Atty Gen 50 (1976), 1976 WL 451475.

A governing body could not ban the tape recording of its official public proceedings by individual citizens, and could restrict such taping *only* to the extent necessary to protect the orderly conduct of the proceedings.

38 Op Atty Gen 1471 (1977), 1977 WL 31327.

When a governing body gathers to obtain information on a subject within its jurisdiction, it is deliberating towards a decision and must comply with the meeting requirements.

38 Op Atty Gen 1584 (1977), 1977 WL 31340.

The management board and the advisory committee of the Tri Agency Dog Control Authority (two cities and a county) were both governing bodies subject to the Public Meetings Law.

38 Op Atty Gen 2122 (1978), 1978 WL 29514.

It was constitutional for the Public Meetings Law to provide that information obtained by newspersons during an executive session should not be disclosed. Meetings law did not restrict the rights of the news media, but instead granted a limited right of access, which otherwise would not exist. "[I]n each case where an executive session is authorized by the Public Meetings Law, the operation and interests of an Oregon governing body could be jeopardized if the meeting were made public." Meetings law does not provide for any sanction of the media for violating a directive not to disclose specified information. "The legislature apparently chose to rely upon the good faith of reporters in complying with the requirement."

39 Op Atty Gen 480 (1979), 1979 WL 35604.

The board of education of a community college district could meet in executive session to consider a written personnel evaluation of a college president because the evaluation was exempt under Public Records Law.

39 Op Atty Gen 525 (1979), 1979 WL 35618.

A city council could not vote in private, despite city charter provisions to the contrary.

39 Op Atty Gen 703 (1979), 1979 WL 35661.

It was not an unconstitutional violation of equal protection for the Public Meetings Law to allow access by news media representatives to executive sessions, while denying access to the public.

40 Op Atty Gen 388 (1980), 1980 WL 112751.

Deliberations of a county court (board of commissioners) after a public hearing to consider an appeal on the granting of a subdivision permit had to be held in public. The exemption for equivalent deliberations of a state agency governing body after a contested case hearing did not apply to local government bodies, and the exemption for judicial proceedings did not apply to quasi-judicial proceedings.

40 Op Atty Gen 458 (1980), 1980 WL 112763.

A workshop session of the board of a special district was subject to the Public Meetings Law. Any meeting of a quorum of the board to hear arguments of nonboard members, in any setting, had to be held in public, unless executive session was authorized.

41 Op Atty Gen 28 (1980), 1980 WL 113323.

Home-rule cities and counties were subject to the Public Meetings Law. Regular or special meetings between members of administrative staff and a county governing body were subject to meetings law. Noting regular and special meeting dates on a master calendar in the board's office was *not* sufficient notice of meetings. *Any* meeting of two or more members of a three-member governing body was a "public meeting" if the purpose was to decide or deliberate toward a decision on matters within the jurisdiction of the board, regardless of who else was present.

41 Op Atty Gen 218 (1980), 1980 WL 113360.

The proceedings of the Land Use Board of Appeals qualified as contested case hearings under Public Meetings Law, and therefore the board's deliberations after formal hearings were exempt from the law.

1981–1990

42 Op Atty Gen 187 (1981), 1981 WL 152293.

A three-member body with investigatory and reporting functions, of which one member was appointed by the Governor of Oregon and two by the Governor of Washington, was not subject to the Public Meetings Law because (1) it was not delegated authority to decide policy, to administer, or to make recommendations; (2) the Governor (to whom it reported) as an individual officer was not a "public body" under meetings law; and (3) the body was not an Oregon body.

42 Op Atty Gen 362 (1982), 1982 WL 183044.

A public body could not discuss its chief executive officer's salary in executive session as part of the process of setting it. It could not discuss salary negotiations for nonunion employees in executive session.

42 Op Atty Gen 392 (1982), 1982 WL 183052.

There was no means to ensure that news media attending executive sessions would keep the discussions confidential.

The Oregon Investment Council could employ executive session to consider records exempt under the Public Records Law; if it knew or had good reason to believe that other governmental bodies were in competition for the kind of investment opportunity it was considering; and to deliberate with any person designated by it to negotiate a real property transaction.

Letter of Advice to Sen. Margie Hendricksen (OP-5468) (July 13, 1983).

A governing body could enforce meetings rules that related to order and decorum, limit the time allowed for persons to make presentations, require that no one could have the floor without securing permission from a presiding officer, and prohibit disturbing or disrupting a meeting.

44 Op Atty Gen 69 (1984), 1984 WL 192199.

Student government committees that prepared and made recommendations to the student government on incidental fee assessments and allocations were subject to meetings law.

Letter of Advice to Ron Eachus (OP-6292) (Sept 12, 1988), 1988 WL 416300.

The Public Utility Commission had to comply with the Public Meetings Law when a quorum of the commission met with staff to receive

informational briefings on general topics of public utility regulation and agency administration. Even if information conveyed at a briefing did not relate to a matter requiring immediate action, the information could have some bearing on future decisions, the responsibility for which was placed upon a quorum of the commission.

Letter of Advice to W.T. Lemman (OP-6248) (Oct 13, 1988), 1988 WL 416293.

The meetings of a college-president search committee were subject to the meetings law: even though the committee made its recommendations to the chancellor, a single official, the chancellor had a limited role in screening the recommendations before submitting them to the Board of Higher Education, a public body.

46 Op Atty Gen 155 (1989), 1989 WL 439806.

The board of directors of the Oregon Medical Insurance Pool was not a governing body of a public body, and therefore was not subject to the Public Meetings Law.

Letter of Advice to Rep. Carl Hosticka (OP-6376) (May 18, 1990), 1990 WL 519211.

A governing body could meet in executive session to "conduct deliberations with persons designated by the governing body to negotiate real property transactions." The apparent policy underlying this provision was to permit public bodies to protect their negotiating position in real property transactions by keeping certain information confidential. This provision did not permit a governing body to discuss long-term space needs or general lease site selection policies in executive session.

1991–CURRENT

Letter of Advice to L. Patrick Hearn (OP-1997-4) (Aug 13, 1997), 1997 WL 469004.

Meetings of the State Professional Responsibility Board, which is part of the attorney disciplinary process of the Oregon State Bar, were exempt from Public Meetings Law as judicial proceedings. The meetings were adjudicatory in nature and were part of a process that ultimately could result in a judicial decision.

49 Op Atty Gen 32 (1998), 1998 WL 223374.

Health professional regulatory boards had to hold contested case hearings on a notice of intent to impose discipline of a licensee in executive session because of a general prohibition on disclosing this information. Representatives of the news media could attend these hearings. These boards' deliberations following the hearing were exempt from meetings law; therefore the boards were not required to provide notice, take minutes, or permit attendance by the news media. The boards could not take a final action or make final decisions on such disciplinary cases in executive session, but had to ensure that any discussion in public session did not disclose any confidential information.

Letter of Advice to David F. White (OP-2014-2) (Dec 10, 2014), 2014 WL 7150430.

Meetings of the Board of Bar Examiners that discussed the character and fitness review of bar applicants were not exempt from Public Meetings Law as contested case proceedings because they were not conducted in accordance with the provisions of ORS chapter 183. However, meetings that involved hearing or reviewing evidence, arguments, or deliberations as part of the review process were exempt as judicial proceedings. Meetings concerning the bar examination were subject to meetings law, but discussions of test materials that were exempt from public disclosure under ORS 192.345(4) could take place in executive session.

Op Atty Gen No 8291 (Apr 18, 2016), 2016 WL 2905510.

Representatives of the news media permitted to attend executive session were defined as "individuals who gather news and who have a formal affiliation * * * with an institutional news media entity." Both general interest media and media that covered specific subject areas for special audiences could qualify. Online news media, such as blogs, could also qualify depending on the circumstances.

There was no limit on how many representatives could attend executive session, even if a representative had a direct personal interest in the matter being discussed, had previously disclosed confidential information obtained at executive session, or did not ordinarily report on the governing body holding the session.

APPENDIX N – OREGON REVISED STATUTES

PUBLIC MEETINGS

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters. (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominant use.

(4)(a) Meetings of the governing body of a public body shall be held:

(A) Within the geographic boundaries over which the public body has jurisdiction;

(B) At the administrative headquarters of the public body;

(C) At the nearest practical location; or

(D) If the public body is a state, county or city entity, within Indian country of a federally recognized Oregon Indian tribe that is within the geographic boundaries of this state. For purposes of this subparagraph, "Indian country" has the meaning given that term in 18 U.S.C. 1151.

(b) Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved.

(c) A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location.

(d) Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for

discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Health Authority or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52; 2007 c.100 §21; 2009 c.595 §173; 2017 c.482 §1]

192.640 Public notice required; special notice for executive sessions or special or emergency meetings. (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the

minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

192.650 Recording or written minutes required; content; fees. (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.311 to 192.478 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.311 to 192.478.

(4) A public body may charge a person a fee under ORS 192.324 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063 and 441.196 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) To consider matters relating to school safety or a plan that responds to safety threats made toward a school.

(L) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(m) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(n) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this

section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

(10) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions under subsection (4) of this section. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134; 2007 c.602 §11; 2009 c.792 §32; 2015 c.421 §2; 2015 c.666 §3]

Note: Section 4, chapter 666, Oregon Laws 2015, provides:

Sec. 4. The amendments to ORS 192.660 and 244.290 by sections 1 to 3 of this 2015 Act apply to alleged violations of ORS 192.660 that occur on or after the effective date of this 2015 Act [January 1, 2016]. [2015 c.666 §4]

192.670 Meetings by means of telephone or electronic communication. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication at the time it occurs. A place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1; 2011 c.272 §2]

192.672 State board or commission meetings through telephone or electronic means; compensation and reimbursement. (1) A state board or commission may meet through telephone or other electronic means in accordance with ORS 192.610 to 192.690.

(2)(a) Notwithstanding ORS 171.072 or 292.495, a member of a state board or commission who attends a meeting through telephone or other electronic means is not entitled to compensation or reimbursement for expenses for attending the meeting.

(b) A state board or commission may compensate or reimburse a member, other than a member who is a member of the Legislative Assembly, who attends a meeting through telephone or other electronic means as provided in ORS 292.495 at the discretion of the board or commission. [2011 c.272 §1]

Note: 192.672 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order

payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660. (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

192.690 Exceptions to ORS 192.610 to 192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the Psychiatric Security Review Board, the State Board of Parole and Post-Prison Supervision, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.252 to 36.268, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530. [1973 c.172 §9; 1975 c.606 §41b; 1977 c.380 §19; 1981 c.354 §3; 1983 c.617 §4; 1987 c.850 §3; 1989 c.6 §18; 1989 c.967 §§12,14; 1991 c.451 §3; 1993 c.18 §33; 1993 c.318 §§3,4; 1995 c.36 §§1,2; 1995 c.162 §§62b,62c; 1999 c.59 §§45a,46a; 1999 c.155 §4; 1999 c.171 §§4,5; 1999 c.291 §§25,26; 2005 c.347 §5; 2005 c.562 §23; 2007 c.796 §8; 2009 c.697 §11; 2011 c.708 §26; 2017 c.442 §25]

Note: The amendments to 192.690 by section 25, chapter 442, Oregon Laws 2017, become operative July 1, 2018. See section 36, chapter 442, Oregon Laws 2017. The text that is operative until July 1, 2018, is set forth for the user's convenience.

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the Oregon Health Authority conducted under ORS 161.315 to 161.351, the Psychiatric Security Review Board, the State Board of Parole and Post-Prison Supervision, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.252 to 36.268, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

192.695 Prima facie evidence of violation required of plaintiff. In any suit commenced under ORS 192.680 (2), the plaintiff shall be required to present prima facie evidence of a violation of ORS 192.610 to 192.690 before the governing body shall be required to prove that its acts in deliberating toward a decision complied with the law. When a plaintiff presents prima facie evidence of a violation of the open meetings law, the burden to prove that the provisions of ORS 192.610 to 192.690 were complied with shall be on the governing body. [1981 c.892 §97d; 1989 c.544 §3]

Note: 192.695 was added to and made a part of ORS chapter 192 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

192.710 [1973 c.168 §1; 1979 c.262 §1; repealed by 2015 c.158 §30]

STATEMENT OF NONDISCRIMINATION AND COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act of 1990 (ADA) requires all programs, services and activities of state and local governmental agencies to be accessible to persons with disabilities.

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For additional information regarding (1) the department's ADA compliance, (2) its policy of nondiscrimination, (3) availability of the information on this pamphlet in a different format or (4) procedures for resolving a complaint that the department has discriminated in providing access to the department's programs, services and activities—please contact the department's ADA coordinator:

ADA Coordinator
1162 Court Street N.E. (Northwest Corner at 12th Street)
Salem, Oregon 97301-4096

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