

## 2007 LEGISLATIVE REVIEW & SUMMARIES

The following was drafted with an eye to changes in the existing statutes, selected for their applicability to local government. It is presumed that the previously existing rules are familiar to the reader. It is not a comprehensive explanation of each statute discussed.

SB 10 – ETHICS REFORM (see HB 2595 below for more on ethics)

*Effective date: varies by subsection, but is 1-1-08 unless otherwise stated*

The bill makes a series of changes relative to the Government Standards and Practices Commission (GSPC), lobbyists, legislators and public officials.

Section 2 adds to ORS 244 directing the GSPC to generate an estimate of expenses for a biennium, the total of which will be borne by public bodies, local governments, local service districts and special government bodies subject to the Municipal Audit Law. The percentage to each body will be a share based on multiplying the rate (determined by the GSPC) by the number of public officials serving the body. The charge will be based on the same proportion assigned to the municipal audit fee under ORS 297.485. GSPC will adopt rules specifying the methods for calculating and collecting the rates and charges. *The GSPC will first impose charges for the biennium beginning 7-1-09.*

Section 9c amends ORS 244.290 and directs the GSPC to adopt by rule an electronic filing and reference system for statements of economic interest, gifts and compensation. A clause directs the GSPC to make available a training program for lobbyists but nothing is stated for similar reporting requirements by public officials (the LOC analysis says there will be training, but does not specify for whom). *Compliance required by 1-1-10.*

Section 11 amends ORS 244.350 to increase penalties imposed on public officials for failure to comply with any portion of this chapter to \$5,000 and to impose a late fee system for untimely submission of statements of economic interest, gifts or compensation.

Section 14 amends ORS 260.407 to limit the appropriate uses of campaign contributions in excess of campaign expenditures, specifically in terms of legal expenses.

Section 16 amends ORS 244.020 to add “member of the household” to the set of people with whom the rules concerning public officials and gifts/compensation apply and redefines “relative”. Also significantly redefines and amends the list of those items not considered gifts and the ethics rules that apply to the extended family of public officials (*LOC analysis indicates that the gift limits take effect 1-1-09 but I have found no evidence that they do not begin 1-1-08*).

Section 17 amends ORS 244.040 to add a prohibition against the use of confidential information for personal gain after ceasing to hold a position of public office.

Section 18 amends 244.040 to decrease the maximum annual aggregate gift value from one source to \$50 and prohibits any repayment of entertainment expenses from a party with “a legislative or administrative interest”.

Section 19 amends ORS 244.060 to redefine how a public official determines what income must be included in the required statement. Previously based on a percentage of total income and changed to “the five most significant sources of income”. Also requires a more comprehensive listing of members of household and relatives outside the household.

Section 21a amends ORS 244.100 by overhauling the parameters of expenses that must reported in a filed statement. Includes, but is not limited to, aggregate expenses exceeding \$50 during various types of trips, honoraria with a value exceeding \$15, income exceeding \$1,000

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from sources with legislative or administrative interests. Section 23 sets a new timeline for the filing of statements four times a year. Section 23a prohibits the direct financial benefit by a former public official as a result of a decision by the public body of which they were a member for two years after ceasing to hold the office.

Section 24 doesn't specify the applicable section in ORS. Limits the receipt of honorarium received. Must not have a cost in excess of \$50 or it must be in relation to the public officer's private profession, occupation, etc.

Section 25a amends ORS 244.280 to remove the protections of a GSPC determination (formerly advisory interpretation) as they were provided to businesses with which a public official is affiliated.

Sections 29 through 37 add to ORS 244 concerning Legal Expense Trust Funds. Set out the process by which a public official can apply to the GSPC for permission to establish a fund and various guidelines such as appropriate uses of the fund, contributions, trusteeship, account management rules, filing of statements, termination of the fund and return of contributions upon termination.

### SB 267 – COURT OF RECORD PROCEDURE

*Effective date: 1-1-08*

A justice court (ORS 51.025) or municipal court (ORS 221.342) may become a court of record upon entry of an order by the Supreme Court. The order is due from the Supreme Court within 30 days of receiving a declaration from the lower court that includes: a statement of the following requirements having been met, the address and phone number of the clerk of the court, the date on which the lower court will commence as a court of record, and the presence of a court reporter or audio recording device. There shall be no filing fee charged by the Supreme Court. The lower court may cease to operate as a court of record by going through a similar process.

*The due date for the submission of a declaration by a lower court already acting as a court of record is 6-30-08.*

### SB 554 – TIMELY RESPONSE FOR PUBLIC RECORDS REQUEST

*Effective date: 1-1-08*

Amends ORS 192.440 to require that a public body respond to a public record request as soon as practicable and without unreasonable delay. A variety of interim responses short of production of the records are provided. A public body must also make available to the public a written procedure for submitting the requests, including at least one person and address to which it can be sent along with fee calculation methods.

### SB 571 – SMOKING RESTRICTIONS

*Effective date: 1-1-09*

Changes the statute from regulating acceptable smoking in public to a near complete ban (ORS 433.840). Amends and adds to related definitions, including adding subcategories of "places of employment" such as "vehicles operated by more than one person", "meeting rooms", "elevators" and "stairways" (ORS 433.835). Prohibits smoking within 10 feet of the following parts of public places: entrances, exits, windows that open, ventilation intakes that serve an enclosed area and jury rooms in use or about to be (ORS 433.845). Limits exemptions from

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smoking ban to a percentage of hotel/motel rooms, specified ceremonies, smoke shops and cigar bars (ORS 433.850). Fines for violations are increased (ORS 433.990). Repeals an existing statute that provides for the limitation of prohibition by local government (ORS 433.863).

### SB 596 – LIMITATION FOR PUBLIC CONTRACTING COMPETITION

*Effective date: 1-1-08*

Adds to ORS 279A.140 - .155, allowing a contracting agency to limit competition for a public contract to certified emerging small business enterprises if the contract estimate does not exceed \$100,000, is funded by the Emerging Small Business Account, and is implemented by an ordinance, resolution or rule.

### SB 671 – ATTORNEY CLIENT PRIVILEGE REVISIONS

*Effective date: 1-1-08*

ORS 192.502 sets forth public records which are exempt from disclosure under ORS 192.410 - .505. Creates a new ORS 192.502 (9)(b), setting forth five exceptions to previous exemptions to disclose public records or information. Public records that are subject to disclosure under the new subsection may be released as condensations from the record of significant facts which are not otherwise exempt. The release does not waive any privilege. Denials of requests can be reviewed by petition, in which case a district attorney or court will conduct a comparison. Disclosure to the district attorney pursuant to ORS 192.460 or by order compelling disclosure does not waive any privilege. The exceptions include: claims of exemption under ORS 40.225; disclosure not prohibited under any state or federal law, regulation or court order and is not otherwise exempt under ORS 192.410 to 192.505; the information was compiled as part of an investigation of wrong doing by the public body; the info was not compile in preparation for litigation, arbitration or an administrative proceeding; and the holder of the privilege has made or authorized a public statement characterizing or partially disclosing the information.

*Applies to records created on or after the effective date.*

### SB 806 – TAX LEVIES: BIENNIAL BUDGETING

*Effective date: 1-1-08*

Amends ORS 294.437 to resolve a technical issue regarding local option tax revenue in the second year of a biennial budget by authorizing a municipal corporation to collect the tax provided that an ordinance is first adopted to determine, make and declare the tax, as well as categorize the amount or rate.

### SB 1036 – SCHOOL FACILITY EXCISE TAX/LOCAL GOVERNMENT PREEMPTION

*Effective date: 9-27-07*

Preempts local governments/service districts from imposing a privilege tax on construction improvements to real property unless imposed prior to 5-1-07. Allows school districts to impose construction taxes except on private school improvements, public improvements under ORS 279A.010, affordable residential housing, hospital improvements, improvements to religious facilities and agricultural buildings under ORS 455.315 (2)(a). The specifics, such as amounts per square foot, maximum amounts and more can be found in section 4. Taxes can be imposed by passage of a resolution along with an IGA to deal with the collection of taxes, which can be

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collected by local governments/service districts on the school districts' behalf. Administration and expenditure of the funds are addressed in sections 6 through 8.

*Sunsets 1-2-18.*

### HB 2595 – REFORM IN ETHICS COMMISSION PROCESS

*Effective date: 7-31-07*

The bill makes a series of changes relative to the Government Standards and Practices Commission (GSPC), lobbyists, legislators and public officials.

Section 2 amends ORS 244.390 to require the commission or a court to consider public interest and other penalties imposed on a public official as a result of the same conduct before undertaking an investigation or imposing a penalty. Section 3 adds requirements including but not limited to the commission posting its opinions on the internet, beginning a procedure for performing accuracy audits of reports and statements, and establishing criteria for determining civil penalties.

Section 7 amends ORS 244.110 to require statements of economic interest be signed and certified as true by the public official required to file it.

Section 8 amends ORS 244.020 to rename the GSPC the Oregon Government Ethics Commission (OGEC).

Section 10 amends ORS 244.195 to shift the responsibility of providing information regarding statements of financial interest to new public officials from the city recorder/county clerk to “a person designated by a public body”.

Sections 12, 14 and 15 amend and add to ORS 244.280 regarding advisory opinions. They establish a triple tier of opinions available from the OGEC, each with different deadlines, authors and degree of subsequent protection for the requesting party: a written commission advisory opinion, a written staff opinion, and written or oral staff advice. The commission opinion is 60 days, drafted by the OGEC, and provides full protection from commission or court. The written staff opinion is 30 days, drafted by the executive director, and shall be considered by commission or court. The written or oral staff advice has no timeline, is drafted by executive director or staff, and may be considered by commission or court.

Sections 26a through 26d add language to ORS 244 concerning nepotism. Definitions are found in section 26b. Section 26c prohibits a public official from appointing, employing, promoting, discharging, firing, or demoting a relative or member of the household under a public body that the public official serves or exercises jurisdiction or control. The statute specifically states that a public body may do all of these things in terms of a relative or member of the household of a public official who has complied with the conflict of interest requirements. Section 26d prohibits the direct supervision by a public official of a relative or member of the household with the exception of volunteer work.

Section 36 amends ORS 244.320 to direct OGEC to prepare and post online a manual with uniform reporting methods for the filing of statements.

### HB 2254 – PERSONNEL RECORDS

*Effective date: 1-1-08*

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Amends ORS 652.750 to set a 45 day deadline for an employer to respond to an employee request to inspect or receive certified copies of records. Same is true for former employees in terms of receipt of copies of records. Applies to requests made after the effective date.

### HB 2713 – UTILITY EASEMENTS

*Effective date: 1-1-08*

Amends ORS 92.044 to redefine “partition land” to a division of land creating not more than three parcels within a calendar year. No change to the existing exceptions. “Utility easement” now includes a private utility infrastructure. A utility infrastructure may not be placed within one foot of a survey monument location that is noted on a subdivision or partition plat.

### HB 2776 – PUBLIC WORKS BOND

*Effective date: 1-1-08*

Amends ORS 279C.836 to provide certified disadvantaged, minority, women or emerging small business enterprises the option of not filing a public works bond for up to four years after certification. Also allows any contractor or subcontractor the option of not filing a bond for contracts that do not exceed \$100,000. Amendments are applicable to contracts advertised or entered into after the effective date.

### HB 2792 – WATER BILL DELINQUENCY NOTICE

*Effective date: 1-1-08*

Amends ORS 757.069 to restrict the mandatory delivery of delinquent bills 120 days after due date to those property owners the utility asserts to be the party responsible to pay.

### HB 3303 – ISLAND ANNEXATION IN CITIES THAT HAVE CHARTER ELECTION REQUIREMENTS

*Effective date: 6-27-07*

Amends ORS 222.750 such that if a city charter, ordinance or resolution requires a vote by electors for annexation, then in cases of island annexation the election must include both those electors within the city and the territory to be annexed. If the majority favors the annexation the governing body shall proclaim it approved by ordinance or resolution. Applies to annexations after the effective date.

### HB 3455 – URBAN RENEWAL CONSOLIDATED BILLING TAX RATE

*Effective date: 9-27-07*

Amends ORS 457.010 to redefine “consolidated billing tax rate” to include urban renewal plans that existed on 10-6-01, with the exception of ad valorem tax “option 3” plans, and that was substantially amended on or after 10-6-01. A “reduced rate” plan remains a “reduced rate” plan after amendment, ensuring that local option taxes are not diverted into urban renewal unless it is an “option 3” plan.