TITLE 22

PUBLIC OFFICERS AND EMPLOYEES

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Chapter 236

2003 EDITION

Eligibility; Resignations, Removals and Vacancies; Discipline; Transfers

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VACANCIES AND ELIGIBILITY GENERALLY

236.010 Causes for vacancies in office. (1) An office shall become vacant before the expiration of the term if:

(a) The incumbent dies, resigns or is removed.

(b) The incumbent ceases to be an inhabitant of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office of the incumbent are required to be discharged.

(c) The incumbent is convicted of an infamous crime, or any offense involving the violation of the oath of the incumbent.

(d) The incumbent refuses or neglects to take the oath of office, or to give or renew the official bond of the incumbent, or to deposit such oath or bond within the time prescribed by law.

(e) The election or appointment of the incumbent is declared void by a competent tribunal.

(f) The incumbent is found to be a mentally diseased person by the decision of a competent tribunal.

(g) The incumbent ceases to possess any other qualification required for election or appointment to such office.

(h) Appointment of the incumbent is subject to Senate confirmation under section 4, Article III of the Oregon Constitution and the appointment is not confirmed.

(2) The provisions of subsection (1)(b) of this section shall not apply where residence within the district, county or city for which the incumbent was elected or appointed is not required for such election or appointment. [Amended by 1969 c.669 §3; 1979 c.351 §3]

236.020 Vacancy for breach of official bond. The Governor shall declare vacant the office of every officer required by law to execute an official bond whenever a judgment is obtained against such officer for a breach of the conditions of the bond.

236.030 Persons ineligible for office because of membership in certain organizations. (1) No person who is a member of, or affiliated with, any organization which teaches the doctrine of, or advocates, the overthrow of the Government of the United States by force or violence shall be a candidate for public office or eligible for appointment to a public office.

(2) The name of a person defined in subsection (1) of this section shall not be placed upon any ballot in connection with any election.

236.040 Leave of absence for Peace Corps volunteer; reinstatement. (1) As used in this section:

(a) "Public officer or employee" means any person who renders service to and is paid therefor by a public employer.

(b) "Public employer" means the state or a county, city, school district or other public corporation, commission, agency, board or entity organized for a public purpose.

(2) Public employers shall grant leaves of absence without pay for at least two years to any full-time salaried public officer or employee who serves, and while the public officer or employee serves, as a volunteer in the Peace Corps. Upon expiration of the leave the public officer or employee shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty, without loss of seniority or other employment rights, if any. Failure of the officer or employee to report within 90 days after termination of service shall be cause for dismissal. [1963 c.199 §§1,2]

236.100 Political affiliation of person appointed to fill vacancy in partisan elective office. (1) Except as provided in subsection (2) of this section, whenever a vacancy occurs in any partisan elective office in this state and is to be filled by appointment, no person shall be eligible for such appointment unless the person is affiliated, as determined by the appropriate entry on the person's official election registration card with the same political party:

(a) As that by which the elected predecessor in the office was designated on the election ballot, if the name of the predecessor was printed on the election ballot.

(b) As that by which the elected predecessor in the office was designated on the elector registration card of the predecessor on the date of the election at which the predecessor was elected, if the name of the predecessor was not printed on the ballot.

(2) Under either of the following circumstances, a person who is otherwise eligible for appointment to fill a vacancy described in subsection (1) of this section may be appointed to fill the vacancy regardless of the person's affiliation or lack of affiliation with a political party:

(a) If the name of the elected predecessor in the office was printed on the ballot and the predecessor was not designated on the election ballot as affiliated with a political party.

(b) If the name of the elected predecessor in the office was not printed on the ballot and the predecessor was not designated as

affiliated with a political party on the elector registration card of the predecessor on the date of the election at which the predecessor was elected. [Formerly 236.135; 1985 c.586 §2; 1985 c.808 §74]

236.110 [Repealed by 1957 c.608 §231]

236.115 Diversity included in criteria for filling certain vacancies. (1) In filling a vacancy on any new or existing appointive state board, commission, committee or council established by statute, if the vacancy is to be filled by a person who is not employed full time and who is compensated as provided under ORS 292.495, the appointing authority shall include in the criteria for appointment, but need not limit the criteria to, the degree to which the candidate will contribute to one or more of the following:

(a) Diversity of viewpoint;

(b) Demographic variety reflecting the racial and gender population of the state or the region of appointment; and

(c) Remediation of existing disparities between the number of qualified applicants of one race or gender and the number of members of such groups serving on the board, commission, committee or council.

(2) The appointing authority for boards, commissions, committees and councils described under subsection (1) of this section shall report annually to the office of the Governor specifying the efforts taken to comply with this section and the result of those efforts. [1997 c.539 §1]

Note: 236.115 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 236 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

236.120 [Amended by 1957 c.608 §229; 1965 s.s. c.1 §2; repealed by 1985 c.586 §4]

236.130 [Repealed by 1985 c.586 §4]

236.135 [1953 c.473 §1; renumbered 236.100]

236.137 [1955 c.210 §1; repealed by 1971 c.302 §1]

VACANCIES IN AND REMOVAL FROM STATE OFFICES

236.140 Term, removal, vacancy in appointive offices. Any person holding an appointive office in any of the offices, departments or institutions of this state, shall hold the same for an indefinite term, not exceeding four years, and shall at all times be subject to removal by the appointive power which made the appointment. The appointive power may in all cases appoint a successor.

236.145 Employment prohibitions for state board or commission members. A person who has been appointed by the Governor to serve on a state board or commission may not be employed by the board or commission in a salaried position:

(1) While the person is serving on the board or commission; or

(2) Within one year after the person's normal term on the board or commission expires, without regard to whether the person continues to serve on the board or commission after expiration of the person's term. [1953 c.594 §1; 2003 c.749 §9]

236.147 Exception to ORS 236.145. ORS 236.145 does not apply to any appointee to the position of executive director of a board who serves in that capacity as an ex officio member of the board making the appointment. [1983 c.402 §6]

236.150 [Repealed by 1985 c.565 §35]

236.160 [Repealed by 1985 c.565 §36]

VACANCIES IN AND REMOVAL FROM COUNTY OFFICES

236.210 Filling vacancies in county offices; qualification. (1) When there is a vacancy in any elective county office other than the office of county judge or county commissioner, the county court or board of county commissioners shall appoint a person to perform the duties of the office until the vacancy is filled by election.

(2) Except as provided in subsection (3) of this section, when a vacancy occurs in the nonpartisan office of county judge who does not exercise judicial functions or county commissioner, the remaining members of the county court or board of county commissioners shall appoint a person to perform the duties of the office until the vacancy is filled by election.

(3) When a vacancy occurs in the office of county judge who exercises judicial functions, the Governor shall fill the vacancy by appointment as provided in section 16, Article V of the Oregon Constitution.

(4) Before a person appointed under subsection (1) or (2) of this section takes office, the person shall qualify in the same manner as required by law of the officer in whose place the person is appointed. [Amended by 1965 c.221 §24; 1983 c.327 §6; 1985 c.17 §1; 1987 c.549 §1; 2001 c.430 §3]

236.215 Filling vacancies in partisan elective office of county judge or commissioner. (1) When a vacancy occurs in the partisan elective office of county judge who does not exercise judicial functions or county commissioner, the remaining members of the county court or board of county commissioners of the county, pursuant to ORS 236.217, shall appoint a person qualified to hold office who is an elector of the county to perform the duties of the office until the term of of-

fice expires or the vacancy is filled by election.

(2) When the provisions of ORS 236.217 apply, the appointment shall be made from a list of not fewer than three nor more than five nominees furnished by the county clerks. If fewer than three names of nominees are furnished or if no list is received by the appointing authority, the county court or board of county commissioners may consider additional qualified persons. The person so appointed must have been a member of the same major political party at least 180 days before the date the vacancy to be filled occurred.

(3) The vacancy must be filled by appointment within 30 days after its occurrence. [1987 c.549 §3; 1989 c.171 §29; 2001 c.430 §4]

236.217 Nominations. When any vacancy under ORS 236.215 exists in any partisan elective office of county judge who does not exercise judicial functions or county commissioner occupied by a member of a major political party and that vacancy is to be filled by an appointing authority as provided in ORS 236.215, the major political party pursuant to party rule shall nominate not fewer than three nor more than five qualified persons to fill the vacancy. The nominating procedure shall reflect the principle of one-person, one-vote to accord voting weight in proportion to the number of party members represented. At the request of a party making a nomination, the county clerk or chief elections officer of the county in which the vacancy exists shall assist the party in determining the number of electors registered as members of the party in the electoral district. As soon as the nominees have been appointed, but no later than 20 days after the vacancy occurs, the party shall notify the county clerk of the persons nominated. The county clerk shall notify the remaining members of the county court or board of county commissioners of the county in which the vacancy exists of the nominees. [1987 c.549 §4; 1993 c.797 §19; 2001 c.430 §5]

236.220 Deputy to fill vacancy in certain offices until person appointed qualifies. (1) During the interval between the time when a vacancy occurs in any county office, except the office of county commissioner, and the time when the person appointed by the county court or board of county commissioners to fill the vacant office qualifies therefor, the chief deputy of the affected office shall perform all the official acts and duties of such office.

(2) During the period the chief deputy serves as provided in subsection (1) of this section, the chief deputy shall be deemed to continue to occupy the position of chief deputy for the purpose of determining the status and rights of the chief deputy under the civil service law and Public Employees Retirement System, and such service shall in no respect affect the status or rights of the chief deputy under those systems. [Amended by 1963 c.161 §1]

236.225 Filling vacancies in offices of county governing body. (1) If vacancies exist at the same time in all of the offices of members of a county governing body, two qualified persons shall be appointed by the Governor, and one by the appointees of the Governor, to perform the duties of the offices until the vacancies are filled as provided by law. If vacancies exist at the same time in all but one of such offices, the Governor shall appoint one qualified person who, with the incumbent serving in office, shall appoint another, each to perform the duties of the offices until the vacancies are filled. If county judge is one of the offices vacant, one of the appointments made by the Governor under this section shall be to the office of county judge.

(2) When a county charter establishes a county governing body with more than three members, if a number of vacancies exist at the same time in the offices of members of that governing body so that all the remaining members do not constitute a quorum for the conduct of county business, the Governor shall appoint to the vacant offices the minimum number of qualified persons sufficient, with the incumbent members of the county governing body, to form a quorum. Persons appointed by the Governor under this subsection, together with the incumbent members serving in office, shall appoint qualified persons to the remaining vacant offices. All persons appointed under this subsection shall perform the duties of the office of member of the county governing body until the vacancies are filled as provided by law.

(3) ORS 236.100 applies to appointments under this section. [1967 s.s. c.6 §1; 1983 c.327 §7]

236.230 [Repealed by 1983 c.327 §16]

236.240 Removal of county treasurer from office. Whenever suit has been commenced on the official bond of any delinquent treasurer, the delinquent treasurer may be removed by the county court of the county.

236.250 [Repealed by 1983 c.310 §21 and 1983 c.327 §16]

RESIGNATIONS

236.310 Right of county commissioner to resign. Any person who receives a certificate of election as a commissioner of the county court is at liberty to resign the office, though the person may not have entered upon the execution of its duties or taken the

requisite oath of office. [Amended by 1965 c.221 §25; 1981 c.517 §25]

236.320 Recipient of resignation. Resignation shall be made as follows:

(1) By the Secretary of State, State Treasurer and all officers elected by the legislature, to the Governor.

(2) By all officers who hold their offices by election, to the officer authorized by law to order a special election to fill the resulting vacancy.

(3) By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

236.325 Resignation of office effective at future date; selection of successor; exception. Notwithstanding any other provision of law:

(1) The holder of a public office may resign the office effective at a future date that is prior to the expiration of the term of the office.

(2) Any person who receives a certificate of election as a holder of a public office, even though the person may not have entered upon the execution of its duties or taken the requisite oath of office, may resign the office effective at a future date that is:

(a) Prior to the beginning of the term of the office; or

(b) After the beginning of the term of the office.

(3) Except where an election is required by law, if the holder of a public office or a person who receives a certificate of election as a holder of a public office resigns the office effective at a future date, the appointing authority required by law to fill a vacancy in the public office may begin the process to fill the vacancy and may select a successor prior to the effective date of any resignation under this section.

(4) The appointing authority may appoint a successor to fill a vacancy in the public office at any time after the effective date of a resignation described in this section. This subsection does not apply where a person who receives a certificate of election as a holder of a public office resigns prior to the beginning of the term of office and an incumbent still holds the public office.

(5) A resignation is binding unless withdrawn in writing by the end of the third business day after the resignation is made.

(6) Where the effective date of a resignation is less than 21 calendar days before the deadline for filing a nominating petition, declaration of candidacy or certificate of nomination necessary to fill the office at the general election next following the effective date of the resignation, and the deadline for withdrawing the resignation has passed, the filing officer for the office shall accept filings of nominating petitions, declarations of candidacy and certificates of nomination and the vacancy shall be filled at the general election next following the effective date of the vacancy.

(7) This section does not apply to the office of Governor. [1991 c.719 §39; 1995 c.607 §68]

Note: 236.325 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 236 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

DISCIPLINARY ACTIONS AGAINST POLICE OFFICERS

236.350 Definitions for ORS 236.350 to 236.370. As used in ORS 236.350 to 236.370:

(1) "Police officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security.

(2) "Disciplinary action" means any action taken against a police officer by a public employer for the purpose of punishing the officer, including dismissal, demotion, suspension without pay, reduction in salary, written reprimand or transfer.

(3) "Just cause" means a cause reasonably related to the employee's ability to perform required work. The term includes any willful violation of reasonable work rules, regulations or written policies. [1979 c.618 §2; 1991 c.742 §14; 1993 c.594 §6; 1993 c.623 §3]

236.360 Disciplinary actions; just cause; notice; procedures. (1) No disciplinary action shall be taken against a police officer without just cause.

(2) A public employer that intends to take disciplinary action shall:

(a) Notify the police officer in writing of the charges against the officer and the proposed disciplinary action; and

(b) Provide the police officer with an opportunity to respond to the charges at an informal hearing which may be recorded, with the person or persons having authority to impose the proposed disciplinary action.

(3) Public employers of police officers shall prepare and maintain written procedures to implement the provisions of ORS 236.350 to 236.370. [1979 c.618 §3]

236.370 ORS 236.350 to 236.370 not applicable to certain police officers. ORS 236.350 to 236.370 does not apply to disciplinary action taken against police officers who are:

(1) In an initial probationary period of employment that does not exceed 12 months or in a probationary period under a collective bargaining agreement which is in excess of 12 months;

(2) Under a collective bargaining agreement requiring just cause for disciplinary action;

(3) Under a county civil service system adopted pursuant to ORS 241.002 to 241.009;

(4) Under a county or municipal civil service system which provides police officers with disciplinary action protections at least equivalent to those provided under ORS 236.350 and 236.360;

(5) The chief executive officers of law enforcement units, as defined in ORS 181.610; or

(6) Supervisory employees, as defined under ORS 243.650, where a collective bargaining agreement is in effect with their public employer. [1979 c.618 §4; 1991 c.742 §15; 1993 c.185 §22; 1993 c.623 §4; 1995 c.286 §19]

PERSONNEL ACTIONS AGAINST STATE EMPLOYEES

236.380 State officials not to forbid personnel actions based on sexual orientation. (1) For purposes of this section, "sexual orientation" means heterosexuality, homosexuality or bisexuality.

(2) No state official shall forbid the taking of any personnel action against any state employee based on the sexual orientation of such employee.

(3) This section shall not be deemed to limit the authority of any state official to forbid generally the taking of personnel action against state employees based on nonjob related factors. [1989 c.3 §§2,3,4]

236.405 [1961 c.287 §1; repealed by 1979 c.59 §1]

236.415 [1961 c.287 §2; repealed by 1979 c.59 §1]

236.420 [1961 c.287 §3; repealed by 1979 c.59 §1]

236.425 [1961 c.287 §4; repealed by 1979 c.59 §1]

236.430 [1961 c.287 §23; repealed by 1979 c.59 §1]

236.435 [1961 c.287 §24; repealed by 1979 c.59 §1]

236.440 [1961 c.287 §5; repealed by 1979 c.59 §1]

236.445 [1961 c.287 §6; repealed by 1979 c.59 §1]

236.450 [1961 c.287 §25; repealed by 1979 c.59 §1]

236.455 [1961 c.287 §26; repealed by 1979 c.59 §1]

236.460 [1961 c.287 §7; repealed by 1979 c.59 §1]

236.465 [1961 c.287 §8; repealed by 1979 c.59 §1]

236.470 [1961 c.287 §9; repealed by 1979 c.59 §1]

236.475 [1961 c.287 §10; repealed by 1979 c.59 §1]

236.485 [1961 c.287 §11; repealed by 1979 c.59 §1]

236.490 [1961 c.287 §12; repealed by 1979 c.59 §1]

236.495 [1961 c.287 §13; repealed by 1979 c.59 §1]

236.500 [1961 c.287 §14; 1973 c.773 §3; repealed by 1979 c.59 §1]

236.505 [1961 c.287 §15; 1973 c.773 §4; repealed by 1979 c.59 §1]

236.510 [1961 c.287 §16; repealed by 1979 c.59 §1]

236.515 [1961 c.287 §17; repealed by 1979 c.59 §1]

236.520 [1961 c.287 §19; repealed by 1979 c.59 §1]

236.525 [1961 c.287 §18; repealed by 1979 c.59 §1]

236.530 [1961 c.287 §20; repealed by 1979 c.59 §1]

236.535 [1961 c.287 §21; repealed by 1979 c.59 §1]

236.540 [1961 c.287 §22; repealed by 1979 c.59 §1]

TRANSFER OF PUBLIC EMPLOYEES

236.605 Definitions for ORS 236.605 to 236.640. As used in ORS 236.605 to 236.640:

(1) "Public employee" means an employee whose compensation is paid from public funds.

(2) "Public employer" includes the state, or cities, or counties, or special districts but not including school districts, or an Oregon nonprofit corporation any of which has accepted the transfer of a public program from a public employer in this state for maintenance and operation. [1991 c.918 §2; 1995 c.286 §20]

236.610 Rights of employee when duties assumed by different public employer; employer duties. (1) No public employee shall be deprived of employment solely because the duties of employment have been assumed or acquired by another public employer, whether or not an agreement, annexation or consolidation with the present employer is involved. Notwithstanding any statute, charter, ordinance or resolution, but subject to ORS 236.605 to 236.640, the public employee shall be transferred to the employment of the public employer that assumed or acquired the duties of the public employee, without further civil service examination.

(2) The transferred public employee shall not have the employee's salary reduced as a result of a transfer under this section during the first 12 months of employment with the receiving employer. After the first 12 months of employment with the receiving employer, the transferred public employee shall be placed at the closest salary for the position as designated under the receiving employer's salary schedule.

(3) It is the responsibility of the transferring employer to liquidate accrued compensatory time at the time of transfer, consistent with any applicable statute or collective bargaining agreement.

(4)(a) At the time of transfer, the transferred public employee may elect to:

(A) Retain any accrued sick leave;

(B) Retain up to 80 hours of vacation leave; and

(C) Retain additional vacation leave if agreed to by the transferring employer, the receiving employer and the transferred public employee.

(b) At the time of transfer, the transferring employer shall pay to the receiving employer a sum equal to the number of hours of accrued leave retained times the employee's hourly rate of pay.

(c) After the transfer, the receiving employer shall grant any leaves according to its rules or any bargaining agreement governing use of leaves.

(5) In the event that any transferred employee is subject to a waiting period for coverage of preexisting conditions under the health insurance plan of the receiving employer, the receiving employer shall arrange for a waiver of such waiting period with its health insurer. The transferring employer shall reimburse the receiving employer for the additional premium costs, if any, resulting from such waiver, for a period of not to exceed 12 months.

(6) In transferring a public employee under subsection (1) of this section, the employer shall furnish the employment records of that employee to the receiving employer at the time of transfer. The time of transfer shall be by written agreement between the public employers involved.

(7) If the public employer that is transferring a public employee participates in the Public Employees Retirement System, the transferring employer and the receiving employer must enter into a written agreement that addresses the manner in which any unfunded Public Employees Retirement System liability or surplus of the transferring public employer will be paid or credited, as required by ORS 238.225 (12). [1963 c.204 §§1, 2; 1971 c.500 §1; 1991 c.918 §3; 1995 c.286 §21; 2003 c.802 §165]

236.620 Status of transferred employee. (1) A public employer who receives a transferred employee under ORS 236.610 (1), including an employee whose transfer is provided for by an agreement under ORS 190.010, shall place that employee on its employee roster, subject to the following:

(a) If the employee was serving a probationary period with the employer at the time of transfer, the past service of the employee on probation shall apply on the regular probation requirements of the receiving employer.

(b) Notwithstanding any other provision of law applicable to a retirement system for employees of the prior employer or of the receiving employer, but subject to subsection (2) of this section, the employee at the option of the employee may elect to continue for 12 months under any retirement system in which the employee was participating prior to transfer or, if the employee meets the qualifications therefor, the employee may elect to participate in the retirement system available to employees of the receiving employer. The employee's election shall be in writing and made within 30 days after the date of transfer. If the employee elects to continue under the retirement system in which the employee was participating prior to transfer, the employee shall retain all rights and be entitled to all benefits under that system, the employee shall continue to make contributions to that system and the receiving employer shall make contributions on behalf of the employee to that system as required of employers participating in that system, as if the transfer had not occurred.

(c) The employee shall retain the seniority the employee accrued under prior employment, but no regular employee of the receiving employer shall be demoted or laid off by reason of that seniority at the time the transfer occurs. Thereafter, the employee's seniority from the transferring employer shall be regarded as seniority acquired under the receiving employer.

(d) The employee otherwise shall enjoy the same privileges, including benefits, hours and conditions of employment, and be subject to the same regulations as other employees of the receiving employer.

(2) The Public Employees Retirement Board may terminate membership in the Public Employees Retirement System for any transferred employee if the board determines that allowing membership for the employee would cause the system or the Public Employees Retirement Fund to lose qualification as a qualified governmental retirement plan and trust under the Internal Revenue Code and under regulations adopted pursuant to the Internal Revenue Code. [1963 c.204 §3; 1967 c.550 §10; 1991 c.918 §4; 1995 c.286 §22; 1999 c.317 §4]

236.630 Authority of new employer over transferred employee. A public employer who receives a transferred public employee under ORS 236.610 (1) shall place that employee in a position comparable to the position the employee enjoyed under prior employment, subject to the following:

(1) The receiving employer, in determining a comparable position, shall consider the employee's educational and physical qualifications, experience, and the salary, duties and responsibilities of prior employment.

(2) If the receiving employer finds that no comparable position exists under subsection (1) of this section, the employee shall be offered a lesser position, if such position is available, according to the qualifications of

the employee, by the receiving employer. The finding and action of such employer under this subsection, and subsection (3) of this section shall be subject to a hearing upon the employee's request and subject to review under ORS 34.010 to 34.100.

(3) If the receiving employer finds that no position exists, the employee shall be listed as a regular laid-off employee and shall have priority to appointment over other persons eligible for any position for which the employee is qualified, subject to any applicable collective bargaining agreement. [1963 c.204 §4; 1991 c.918 §5; 1995 c.286 §23]

236.640 Reemployment right of employee at end of cooperation agreement. At the end of a cooperation agreement the employee transferred shall be entitled to the position of the employee with the transferring employer prior to transfer, if the employee has remained an employee of the transferee employer in good standing to the termination of the agreement. [1963 c.204 §5]

236.650 [1967 c.550 §9; repealed by 1995 c.286 §34]

PENALTIES

236.990 Penalties. Violation of ORS 236.145 is a Class A violation. [1953 c.594 §2; 1999 c.1051 §167]