

TITLE 33

PRIVILEGES AND BENEFITS OF VETERANS AND SERVICE PERSONNEL

- Chapter 406. Department of Veterans' Affairs
407. Veterans Loans
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Chapter 406

2005 EDITION

Department of Veterans' Affairs

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BENEFITS OF VETERANS AND SERVICE PERSONNEL

**DEPARTMENT OF VETERANS'
AFFAIRS**

406.005 Department of Veterans' Affairs. (1) The Department of Veterans' Affairs is established.

(2) The department is under the supervision and control of a director appointed as provided in ORS 406.020.

(3) The department is responsible for the administration of federal and state laws relating to veterans. [2005 c.625 §1]

Note: 406.005 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 406 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

406.010 Definition. As used in this chapter, "director" means Director of Veterans' Affairs. [Amended by 2005 c.22 §269]

406.020 Director of Veterans' Affairs; appointment; confirmation. The Department of Veterans' Affairs shall be under the supervision and control of the Director of Veterans' Affairs. The Governor shall appoint the director subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The appointment may not be made without the written approval of the Advisory Committee provided for in ORS 406.210. The director shall be a war veteran, chosen on the basis of executive and administrative ability. [Amended by 1973 c.792 §14; 2005 c.625 §5]

406.030 Administration of veterans' laws; rules. (1) The Director of Veterans' Affairs, in the performance of the duties of the director, shall organize and coordinate the administration of all present and future federal and state laws pertaining to war veterans and their dependents in this state.

(2) The Department of Veterans' Affairs, with the advice of the Advisory Committee provided for in ORS 406.210, shall promulgate such rules and adopt such forms as the department considers necessary and expedient to carry out the provisions of ORS chapter 407 and ORS 88.710 to 88.740, 174.105, 406.010 to 406.090, 406.210 to 406.340, 406.410, 406.420, 408.010 to 408.090, 408.360, 408.365, 408.370, 408.375, 408.380 and 408.385. [Amended by 1971 c.221 §1; 1985 c.790 §4; 1991 c.441 §5; 1999 c.45 §1; 2001 c.104 §140; 2005 c.625 §6]

406.040 General powers and duties of department. The powers, authority and duties relating exclusively to war veterans' affairs now or hereafter imposed by law upon any officer or agency of this state, are hereby also granted to and imposed upon the Department of Veterans' Affairs. Subject to ORS 406.090, the department shall be responsible for and shall supervise the administration of all such laws. The department may employ such personnel as may be nec-

essary to carry into effect the purposes of this chapter and may prescribe the duties and responsibilities of all such employees. [Amended by 2005 c.625 §7]

406.050 Additional powers and duties of director or department; rules; service charges. In addition to other powers and duties, the Director of Veterans' Affairs or the Department of Veterans' Affairs is authorized:

(1) To cooperate with officers and agencies of the United States in all matters affecting veterans' welfare.

(2) To accept grants, donations and gifts on behalf of this state for veterans' welfare from any person, corporation, government or governmental agency. Grants, donations and gifts so received shall be deposited with the State Treasurer and credited to a trust fund. Moneys in the trust fund are continuously appropriated to the department and expendable for the purposes specified in subsections (3) and (4) of this section. Interest earned on the moneys in the trust fund created under this subsection shall accrue to the trust fund.

(3) To expend all or any portion of a grant, donation or gift for the purposes specified in the grant, donation or gift.

(4) To expend all or any portion of a grant, donation or gift in the trust fund created under subsection (2) of this section for the administration of ORS 406.010 to 406.070, 406.090, 406.210, 406.220 and 406.340 and for the administration and purposes of ORS 408.368 when:

(a) The department determines that the purpose specified in the grant, donation or gift has been satisfied, or is not feasible or appropriate; or

(b) The grant, donation or gift specifies no purpose.

(5) To donate or otherwise transfer all or any portion of a grant, donation or gift to other persons, corporations or entities engaged in serving veterans if the department determines that the nature of the grant, donation or gift makes use by the department or conversion to cash for use by the department not feasible or appropriate.

(6) To act as agent or attorney in fact for any war veteran and the dependents or beneficiaries of any war veteran relating to rights under any federal or state law.

(7) To act without bond as conservator of the estate of:

(a) A person who qualifies for benefits from the United States Department of Veterans Affairs.

(b) A dependent, an immediate family member, a survivor or a former spouse who

has not remarried of a person who qualifies for benefits, or who qualified for benefits while alive, from the United States Department of Veterans Affairs, as those persons are defined by rule by the director.

(8) On behalf of the State of Oregon to extend such assistance as the Department of Veterans' Affairs shall determine to be reasonably required to any war veteran and to the dependents of any such war veteran, in the prosecution of any claim or claims before the United States Department of Veterans Affairs, or any other federal or state agency, the securing of employment or relief and any other benefits to which they might be entitled. The Department of Veterans' Affairs may adopt rules and regulations with respect to all matters of administration to carry into effect the purposes of this section.

(9) To require and collect such reasonable service charges as the Department of Veterans' Affairs deems necessary and expedient to carry out a duty, or to exercise a power or authority, conferred on the department by law. [Amended by 1965 c.374 §1; 1967 c.172 §1; 1973 c.823 §127; 1987 c.425 §5; 1991 c.67 §94; 1995 c.106 §1; 1999 c.52 §1; 2001 c.102 §1; 2003 c.152 §1; 2005 c.625 §8]

406.060 Use of services and facilities of other state agencies. The Department of Veterans' Affairs may utilize the services and facilities of any state agency in the course of administration of any law of this state enacted for the benefit and welfare of war veterans and their dependents. All such agencies shall cooperate fully with the department in that regard and furnish such services and facilities when called upon by the department to do so. Neither the authority nor the duties referred to in this section shall be so exercised or performed as to impair the efficient administration of the laws applicable to any state agency. [Amended by 2005 c.625 §9]

406.070 Director to qualify and furnish bond; reimbursement for expenses; location of office. The Director of Veterans' Affairs shall qualify in like manner as other heads of state departments, and furnish a fidelity bond in an amount to be fixed by the Governor. The director shall be reimbursed for necessary expenses incurred in the performance of the duties as are other state officers. The director shall maintain the main office of the director at the state capital. [Amended by 1967 c.2 §3]

406.080 [Amended by 1967 c.211 §9; 1987 c.652 §1; repealed by 1987 c.658 §3]

406.085 Revolving account for department when acting as conservator or personal representative of estate of veteran. The Conservatorship Revolving Account is created, separate and distinct from the General Fund, to provide for disbursement of

funds for the beneficiary. Funds may also be disbursed from the Conservatorship Revolving Account to the Conservatorship Services Account in compensation for claims arising under ORS 406.100. The Conservatorship Revolving Account shall consist of all money received by the Department of Veterans' Affairs as conservator or personal representative herein. Disbursement from the account shall be made by the department, and the Secretary of State shall post audit all the disbursements. Interest earned by the account shall be credited to the account. [1965 c.374 §2; 1973 c.823 §128; 1987 c.425 §6; 1989 c.932 §3; 1989 c.966 §44; 2005 c.625 §10]

406.090 Sections not affected by parts of this chapter. The administration of ORS 273.035 to 273.051, 273.071, 273.161 to 273.175 and 408.710 to 408.750 shall in no way be affected by ORS 406.010 to 406.070, 406.210, 406.220 and 406.340, and such laws are excepted from the operation thereof. The Department of Veterans' Affairs shall cooperate with the person or agency responsible for the administration of such laws, and shall render such reasonable assistance in that regard as may be requested by any such person or agency. [Amended by 1967 c.421 §201; 1967 c.616 §§28,28a; 2005 c.625 §11]

406.100 Claims against estate by department when acting as conservator. If the Department of Veterans' Affairs is appointed as a conservator under ORS 406.050 or a personal representative under ORS 113.085, the department shall have a claim against the estate of the protected person or the decedent, as the case may be, for all of the following:

(1) Reasonable expenses incurred by the department in the execution or administration of the estate.

(2) After the appointment of the department as conservator, compensation for ordinary services in an amount not to exceed five percent of income to the estate, and reasonable compensation for unusual services as set forth by rule by the department.

(3) After the appointment of the department as personal representative, compensation as provided in ORS 116.173.

(4) With prior approval by the court having probate jurisdiction over the estate, fees charged to the department by the Attorney General for advice or assistance in the performance of the department's duties as conservator or personal representative of the estate. [1987 c.425 §3; 2005 c.625 §12]

406.110 Waiver of claims. The Director of Veterans' Affairs may waive all or any portion of a claim arising under ORS 406.100 if the director finds that payment of the claim, or a portion thereof, would pose a

hardship to the person from whose estate the claim is payable, or would deplete the estate. [1987 c.425 §4]

406.120 Conservatorship Services Account; sources; use. (1) The Conservatorship Services Account is established as a separate account within the Oregon War Veterans' Fund. The Conservatorship Services Account shall consist of all moneys received by the Department of Veterans' Affairs as payment of claims arising under ORS 406.100.

(2) The moneys in the Conservatorship Services Account are continuously appropriated to the department for payment of expenses incurred while serving as conservator under ORS 406.050 or personal representative under ORS 406.085.

(3) Moneys in the Conservatorship Services Account shall be held and set aside separately from the other moneys in the Oregon War Veterans' Fund, but such account may be accounted for as part of the Oregon War Veterans' Fund. [1989 c.932 §2; 2005 c.625 §13]

406.130 Veterans' Services Account; uses. There hereby is established in the General Fund of the State Treasury an account to be known as the Veterans' Services Account. Moneys in the Veterans' Services Account are continuously appropriated to the Department of Veterans' Affairs and shall be used by the department for grants and services supplied to veterans by the department under ORS chapters 406 and 408, and for expenses of administration of such grants and services. [1987 c.658 §2; 2005 c.625 §14]

ADVISORY COMMITTEE

406.210 Function of advisory committee; appointment, qualifications and term of members; chairperson; nominations by veterans organizations to fill vacancies.

(1) The Governor shall designate and appoint nine persons, all of whom are war veterans as defined by the laws of this state, who shall constitute the Advisory Committee and who shall act in an advisory capacity to the Director of Veterans' Affairs concerning all matters upon which the director requests counsel.

(2) The representation on the committee provided for in this section shall be maintained by the Governor in making appointments to fill vacancies. When a vacancy occurs, the Governor shall solicit and consider nominations from the executive committees of congressionally chartered veterans' organizations that maintain an Oregon state headquarters. A list of not more than three persons nominated by each executive committee shall be submitted to the Governor within 30 days after the vacancy

occurs. Organizations interested in participating in the nomination process shall report the current address of their state headquarters to the Director of Veterans' Affairs. The director shall notify those organizations of any current or anticipated vacancy.

(3) In addition to the other requirements of this section, until such time as no veteran of a period of service as described in ORS 174.105 or a period of service after January 31, 1955, is willing or able to serve, each period shall be represented by at least one member of the Advisory Committee.

(4) When appointing an individual to the Advisory Committee to succeed an at-large member who vacated or whose term of office is expiring, the Governor may consider the names of the persons recommended for appointment by the executive committees of congressionally chartered veterans' organizations that maintain an Oregon state headquarters. Any recommendation for appointment must be received by the Governor within 30 days after a vacancy occurs or not later than 30 days prior to the expiration of a member's term of office.

(5) The term of office of a member of the Advisory Committee is four years, and a member may be reappointed upon expiration of the member's term. However, a member of the Advisory Committee shall not serve more than two consecutive terms.

(6) After consultation with the Director of Veterans' Affairs, the Advisory Committee shall select one committee member to act as chairperson of the Advisory Committee, subject to approval by the Governor.

(7) Each participating congressionally chartered veterans' organization shall furnish the director with a copy of its Congressional Charter including any subsequent amendments.

(8) In addition to the other requirements of this section, at least one member of the Advisory Committee shall be a veteran of the Korean conflict and at least three members shall be veterans of the period following the Korean conflict. [Amended by 1959 c.675 §1; 1975 c.603 §1; 1982 s.s.1 c.11 §8; 1991 c.798 §1]

406.215 Additional duties of advisory committee. In addition to any other powers and duties granted to the Advisory Committee by law, the Advisory Committee shall:

(1) Work with the Director of Veterans' Affairs to insure that the needs of the veterans and their dependents and survivors who reside in this state are recognized and addressed in a timely and effective manner.

(2) Review current issues affecting veterans and their dependents and survivors who

reside in this state and make recommendations relating to those issues.

(3) Review current operations of the Department of Veterans' Affairs and make recommendations to the director concerning the operation of any part of the department.

(4) Make recommendations to the director for the establishment or revision of programs and entitlements for veterans. [1991 c.798 §2]

Note: 406.215 and 406.217 were added to and made a part of ORS chapter 406 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

406.217 Duties of director concerning advisory committee. The Director of Veterans' Affairs shall:

(1) Solicit recommendations from the Advisory Committee on the administration of all federal and state laws affecting veterans and their dependents and survivors in this state.

(2) Instruct members of the Advisory Committee concerning the operation of all veterans' programs administered by the director. [1991 c.798 §3]

Note: See note under 406.215.

406.220 Meetings and reports. The Advisory Committee shall meet within this state at least once each three months. At each such meeting the Director of Veterans' Affairs shall report upon all matters concerning the administration of the office of the director, and shall request the advice and counsel of the committee on matters concerning the policy thereof. Each August the Advisory Committee shall report to the Governor on all matters which it deems pertinent concerning the administration of the office of the director during the preceding year, and concerning any specific matters previously requested by the Governor, and on the administration of ORS 406.010 to 406.070, 406.090 and 406.340. [Amended by 1957 c.25 §1]

406.230 Compensation and expenses of members. Each member of the Advisory Committee is entitled to compensation and expenses as provided in ORS 292.495. [Amended by 1969 c.314 §33]

RELATIONS WITH VETERANS ORGANIZATIONS

406.310 Director authorized to aid veterans organizations. From funds available to the office of the Director of Veterans' Affairs for this purpose, the director, with the approval of the Advisory Committee, is authorized to aid war veterans' organizations that have been accredited by the United States Department of Veterans Affairs and counties of the state, in connection with

their respective programs of service to war veterans. [Amended by 1991 c.67 §95]

406.320 Qualification of veterans organization for state aid. Organizations desiring to apply for benefits under ORS 406.310 shall submit to the Director of Veterans' Affairs statements of their expenditures incurred in conducting their rehabilitation programs, in acting under power of attorney for veterans in connection with claims for benefits, in assisting veterans in prosecutions of their claims and in solution of problems arising out of previous military service. However, a veterans' organization does not qualify for benefits under ORS 406.310 unless it has carried on a program of veterans' rehabilitation work in Oregon for not less than two years immediately preceding.

406.330 Power to establish regulations for aid program. The Director of Veterans' Affairs, with the consent and approval of the Advisory Committee, may adopt such procedural rules and regulations as the director deems advisable in making distribution of funds under ORS 406.310. The director shall also establish a general and uniform policy to be followed by the various organizations and counties in carrying out the work to which the state contributes aid under ORS 406.310. In establishing such policy the director shall give primary consideration to the rehabilitation of the greatest possible number of war veterans in Oregon. To that end the director shall eliminate, insofar as possible, a duplication of effort and inefficient expenditure of money.

406.340 Director authorized to accept voluntary services. In performance of the duties of the office of the Director of Veterans' Affairs, the director may accept services voluntarily tendered by any person or organization, and may cooperate with the established service agencies and officers of any organization for the benefit and welfare of all war veterans in this state and their dependents or beneficiaries. Insofar as practicable and consistent with the faithful performance of the director's duties, the director shall avoid duplicating the efforts of voluntary service agencies and officers.

ATTORNEY SERVICES FOR VETERANS

406.410 Director authority to contract with attorneys for legal services; types of services allowed; expense. (1) The Director of Veterans' Affairs, on behalf of this state, may, with the agreement of the Attorney General, contract with attorneys for the provision by the attorneys of services as counsel for war veteran residents of Oregon in the preparation, presentation and prose-

cution of claims under laws administered by the United States Department of Veterans Affairs.

(2) Legal services shall be provided under a contract only for claims arising from or relating to:

(a) The status of the war veteran as a prisoner of war under circumstances described in ORS 805.110 (2);

(b) Damages suffered by the war veteran due to exposure to causative agents, as defined in ORS 408.305 (4) while serving on active duty;

(c) Damages suffered by the war veteran as a consequence of exposure to radiation during testing of nuclear weapons; or

(d) Service by the war veteran in any combat zone while the Armed Forces of the United States were engaged in armed conflict with military forces of another nation.

(3) Insofar as possible, the expense of services provided under a contract authorized by this section shall be paid by the state to an attorney from funds available to the Department of Veterans' Affairs.

(4) Attorneys who are parties to a contract authorized by this section shall be active members of the Oregon State Bar.

(5) A contract authorized by this section may allow law students enrolled in an accredited law school in this state, while under the supervision of a member of the Oregon State Bar, to participate in the preparation, presentation and prosecution of claims described in this section. [1985 c.790 §1; 1991 c.67 §96]

406.420 Cooperative program with veterans organizations. The Director of Veterans' Affairs and county service officers appointed under ORS 408.410 shall institute a cooperative program with veterans organizations in this state to refer war veterans to appropriate state and federal agencies for the purpose of filing claims described in ORS 406.410 (2) and obtaining legal counsel and representation for such claims. [1985 c.790 §2]

406.430 Annual report required. The Director of Veterans' Affairs shall submit a report each year to the Legislative Assembly or to the Emergency Board, as appropriate, concerning the programs instituted under ORS 406.030 and 406.410 to 406.430. The report shall be submitted not later than March 1 in each year. [1985 c.790 §3]

COUNTY VETERANS' SERVICE OFFICER PROGRAM

406.450 Services provided by county veterans' service officers. (1) The Director of Veterans' Affairs shall establish a program

to enhance and expand the services provided by county veterans' service officers appointed under ORS 408.410.

(2) The program shall:

(a) Conduct outreach and provide veterans and their spouses and dependents with:

(A) Information regarding veterans' benefit programs and other benefit programs; and

(B) Assistance by trained representatives who are certified by the state in applying for all federal and state veterans' benefits and aid to which veterans and their spouses and dependents may be entitled on account of their military service and in appealing any denial of veterans' benefits or aid;

(b) Develop and offer informational materials and training opportunities for county veterans' service officers;

(c) Develop a comprehensive and coordinated statewide network of information and referral resources for veterans and their spouses and dependents;

(d) Ensure that the receipt of veterans' benefits or aid does not adversely impact other benefits or aid that a veteran or the spouse or dependent of a veteran may be receiving or may be eligible to receive; and

(e) Facilitate coordination of computer systems to ensure the seamless transfer of information. [2005 c.836 §2]

406.452 State certification program for veterans' service officers; rules. The Director of Veterans' Affairs may establish by rule a state certification program for veterans' service officers appointed under ORS 408.410 and other individuals providing similar services to ensure their competency. The program curriculum shall provide the training and education necessary to allow veterans' service officers and other individuals to assist veterans and their spouses and dependents in applying for all federal and state veterans' benefits and aid to which veterans and their spouses and dependents may be entitled and in appealing any denial of veterans' benefits or aid. The curriculum shall include, but need not be limited to, training and education in the following areas:

(1) Applicable federal, state and local laws providing benefits or aid for veterans and their spouses and dependents and other benefits or aid for which veterans or their spouses or dependents may be eligible;

(2) Skills necessary to provide quality representation and advocacy on behalf of veterans or their spouses or dependents, including case preparation and handling of administrative hearings and appeals;

(3) Effective communication skills;

(4) Health care, human services and referral resources; and

(5) Claims management. [2005 c.836 §3]

406.454 Distribution formula; rules. (1)

The Director of Veterans' Affairs shall adopt by rule a formula to distribute to county governing bodies funds appropriated to the director to enhance and expand the services provided by county veterans' service officers appointed under ORS 408.410. In developing the distribution formula, the director shall consider factors that include, but need not be limited to:

(a) The number of veterans residing in each county;

(b) A base amount to be distributed equally among counties;

(c) Retention of an amount, not to exceed six percent of the total amount appropriated to the director for the purposes of ORS 406.450, that would otherwise be distributed to a county governing body if the county governing body has not appointed county veterans' service officers; and

(d) Criteria for withholding funds from a county governing body.

(2) Funds retained under subsection (1)(c) and (d) of this section must be spent on:

(a) Training costs of veterans' service officers and other individuals providing similar services; and

(b) The coordination of computer systems and technology to facilitate efficient delivery of services to veterans and their spouses and dependents. [2005 c.836 §4]

406.456 Rules. The Director of Veterans' Affairs shall adopt rules to implement ORS 406.450, 406.452 and 406.454. The rules shall include, but need not be limited to:

(1) Development and implementation of a distribution formula;

(2) Establishment of reporting and data collection requirements for county veterans' service officers including, but not limited to, the number of interviews conducted, the number of veterans and spouses and dependents of veterans served by the program, the number of claims filed, the outcomes of claims filed and the outreach activities conducted; and

(3) Establishment of service outcomes for county veterans' service officers. [2005 c.836 §5]

406.458 Consultation with Association of Oregon Counties. The Director of Veterans' Affairs shall carry out the provisions of ORS 406.450, 406.452, 406.454 and 406.456 in

consultation with the Association of Oregon Counties. [2005 c.836 §8]

Note: 406.458 to 406.462 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 406 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

406.460 Limitation on use of funds by county governing body; exceptions. (1) A county governing body that receives funds under ORS 406.454 may not use the funds to supplant moneys appropriated by the county governing body for county veterans' service officers.

(2)(a) Notwithstanding subsection (1) of this section, if a county governing body reduces appropriations to county programs, the county governing body may reduce the amount of moneys appropriated for county veterans' service officers by an amount not greater than the average percentage reduction imposed on all county programs for the same period of time.

(b) A county governing body that reduces the amount of moneys appropriated for county veterans' services officers under paragraph (a) of this subsection shall certify to the Director of Veterans' Affairs that the amount of the reduction is not greater than the average percentage reduction imposed on all county programs for the same period of time.

(3) Notwithstanding subsection (1) of this section, if the amount of moneys distributed to a county governing body by the Director of Veterans' Affairs to enhance and expand the services provided by county veterans' service officers appointed under ORS 408.410 for biennia beginning after June 30, 2007, is less than the amount of moneys distributed to the county governing body for the 2005-2007 biennium, the county governing body may reduce the amount of moneys appropriated by the county governing body for county veterans' service officers by an amount not greater than the same percentage of reduction. [2005 c.836 §6]

Note: See note under 406.458.

406.462 Distribution of moneys by Director of Veterans' Affairs. (1) Moneys appropriated to the Director of Veterans' Affairs for the purposes described in ORS 406.450 must be distributed to county governing bodies and expended for the purposes of ORS 406.450 and may not be used to supplant moneys currently budgeted by the director for services provided by county veterans' service officers.

(2) Notwithstanding subsection (1) of this section, the director may reduce the amount of moneys distributed to county governing bodies for county veterans' service officers if there is a decrease in the amount of General

Fund revenues appropriated to the director for the purposes described in ORS 406.450 for the same period of time. [2005 c.836 §7]

Note: See note under 406.458.

