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Budget Information Report

Review of Implementation of Legislation Related to the Ratio of Supervisory to Non-Supervisory Employees in State Agencies with more than 100 Authorized Positions

Prior to the 2011 regular session, concerns were expressed by a number of interested parties over the perceived narrowing of the supervisory span of control in state agencies. The concerned parties cited a number of issues that they believed should be addressed. These included: the ratio of supervisory employees to non-supervisory employees; the lack of union representation for employees performing predominately non-supervisory duties while classified as managers; and managers only supervising other managers. Generally, the concerned parties believed that these issues resulted in operational inefficiencies and increased personnel costs.

The Service Employees International Union, Local 503 (SEIU) published a report in March 2011 that outlined a scenario where it calculated a cost saving of $71,004,424 in General Fund and $253,587,228 in total funds by increasing the "manager-to-worker" ratio by two workers, assuming a reduction in the overall number of managers. The report went on to state that this action may "quite likely actually increase service quality across state agencies with the removal of unnecessary and counterproductive layers of excessive management."

In each of the three legislative sessions, beginning with the 2011 session, legislation was adopted to address these supervisory to non-supervisory concerns. This report provides a brief description of each piece of legislation, including adjustments to the prior law, actions taken by agencies and the Department of Administrative Services, and an analysis of the implementation.

HB 2020 – effective July 6, 2011 (Chapter 603, Oregon Laws 2011)

HB 2020 included two primary components. The first of these was to have the Department of Administrative Services (DAS) provide a report to the Joint Committee on Ways and Means during the 2012 regular session of the Legislative Assembly on the ratio of supervisory employees (or managerial employees acting in a supervisory capacity) to public employees. DAS provided the following table as part of its report dated February 20, 2012 that was presented to the Committee.

AGENCY	AGENCY COUNT	SUPERVISORY		NON-SUPERVISORY MANAGEMENT	ALL MGMT/EXEC SERVICE	
		COUNT	RATIO 1:		COUNT	RATIO 1:
HUMAN SERVICES, DEPARTMENT OF	7842	762	10	197	959	8
OREGON HEALTH AUTHORITY	4789	559	9	273	832	6
TRANSPORTATION, DEPT OF	4742	465	10	151	616	8
CORRECTIONS, DEPT OF	4588	434	11	90	524	9
EMPLOYMENT DEPT	1534	148	10	27	175	9
FISH & WILDLIFE, DEPT OF	1487	223	7	15	238	6
JUSTICE, DEPARTMENT OF	1308	137	9	26	163	8
POLICE, OREGON STATE	1262	230	5	17	247	5
FORESTRY, DEPT OF	1220	172	7	14	186	7
YOUTH AUTHORITY, OREGON	1180	133	9	39	172	7
REVENUE, DEPARTMENT OF	1067	91	12	35	126	8
CONSUMER AND BUS SRVCS, DEPT O	1014	124	8	51	175	6
PARKS & RECREATION, DEPT OF	900	101	9	17	118	8
ADMINISTRATIVE SRVCS, DEPT OF	838	107	8	141	248	3
ENVIRONMENTAL QUALITY, DEPT OF	750	70	11	31	101	7
MILITARY, DEPT OF	551	52	11	20	72	8
AGRICULTURE, DEPT OF	550	57	10	3	60	9
EDUCATION, DEPT OF	458	55	8	12	67	7
PUBLIC EMPS RETIREMENT SYSTEM	369	42	9	21	63	6
PUBLIC SAFETY STANDARDS & TRNG	346	16	22	4	20	17
LIQUOR CONTROL COMMISSION	245	28	9	6	34	7
HOUSING & COMM SRVCS, DEPT OF	221	31	7	23	54	4
SECRETARY OF STATE	199	36	5	161	197	1
OR BUSINESS DEV DEPT	163	25	7	33	58	3
WATER RESOURCES, DEPT OF	153	22	7	5	27	6
PUBLIC UTILITY COMMISSION	144	26	6	7	33	4
ENERGY, DEPARTMENT OF	140	21	7	12	33	4
OR HEALTH LICENSING AGENCY	118	3	39	1	4	30
LABOR & INDUSTRIES, BUREAU OF	115	16	7	5	21	5
LANDS, DEPARTMENT OF STATE	108	17	6	4	21	5
VETERANS' AFFAIRS, DEPT OF	105	17	6	3	20	5
TREASURY, OREGON STATE*	91	19	5	22	41	2

*Although the Oregon State Treasury is listed on the table, it is below the threshold number of positions subject to the legislation. The information was provided by DAS in the original table and is included here for consistency.

The Legislative Fiscal Office (LFO) noted that the report failed to remove the number of supervisory and management/executive services positions from the total number of positions when calculating the ratios shown in the table. This resulted in an overstatement of the ratios. Subsequent reports from DAS appear to have corrected this error.

The Agency Count column in the report included all employees and vacant positions. These counts also overstate the number of budgeted positions since a position is counted more than once where there are double fills. Subsequent reports count each position only once regardless if it is occupied or vacant. Due to this discrepancy, the February 20th report is not used as a starting point by which personnel and ratio changes are measured in subsequent DAS reports; the April 11, 2012 report is used instead.

DAS also included information for the Judicial Department, but this information was calculated as of December 19, 2011 and does not segregate between supervisory and managerial positions. DAS reported a total of 1,608 positions, with 138 of these being supervisory, for a ratio of supervisory to non-supervisory employees of 1 to 10.65 (or 1 to 11 using rounding consistent with the table above).

The second significant component of HB 2020 required DAS to develop a plan for those state agencies with more than 100 employees to attain a ratio of 1 to 11 public employees to supervisory employees and managerial employees acting in a supervisory capacity, and to report to the Joint Committee on Ways and Means during each odd-numbered year regular legislative session on the plan that had been developed. The plan was required to include the ratio of supervisory employees to public employees, the ratio of managerial employees to public employees, and the number of positions authorized for managerial employees who do not act in a supervisory capacity as well as a description of the duties assigned to those positions.

It is notable that the required ratio is an agency-wide ratio and is calculated as such in each of the reports provided by DAS. Individual programs within an agency may vary significantly from the overall agency ratio, with individual programs having either higher or lower ratios that aggregate to the mean values for a given agency as shown in the tables.

Included in the report with the table illustrated above, DAS also provided an update on the actions taken to date to develop the plan required under the law and identified a number of unanswered issues that would be addressed prior to the next report.

Beginning with this initial report and continuing in all subsequent DAS reports, the stated ratio and change in ratio are expressed in whole numbers, which introduces significant rounding errors into the reports. As discussed throughout this report, by not taking these calculations out at least two digits beyond the decimal, the changes in ratios and ratios themselves are often misstated. Should additional modifications to the statute be contemplated, a requirement that the ratio be stated out to a hundredth of a position would add greatly to the accuracy of the reported information.

HB 4131 – effective April 11, 2012 (Chapter 101, Oregon Laws 2012)

HB 4131 made modifications to the law as established under HB 2020, generally simplifying the reporting requirements of the Department of Administrative Services and the calculation of the multiple ratios by replacing the term "public employee" with "employee," eliminating "managerial employees acting in a supervisory capacity," and making the ratio simply supervisory employees to non-supervisory employees. HB 4131 also provided a definition of state agencies that excluded a number of public entities including the Judicial Department, the Secretary of State, and the Oregon State Treasury, which were all included in the initial report by DAS for HB 2020, in addition to the Legislative Branch, the Oregon University System, the Oregon State Lottery Commission, and a number of other entities not included in the initial report. The measure left intact the DAS planning requirements, as modified by the changes noted above.

In addition to the agencies that were excluded explicitly in HB 4131, the Bureau of Labor and Industries and the Department of Veterans' Affairs were eliminated from the list due to agency, administrative, and legislative actions that reduced their positions to at or below the 100-employee threshold.

The measure provided specific directions to state agencies that had not attained a 1 to 11 ratio of supervisory employees to non-supervisory employees as of April 11, 2012. Subject agencies under the law are not to fill the position of a supervisory employee until the agency has increased its ratio of supervisory to non-supervisory employees by at least one, and are further directed by October 31 of any given year to lay-off or reclassify supervisory employees until the increase in the ratio is achieved.

HB 4131 provided a mechanism that allowed for an agency to apply to the Department of Administrative Services for an exception to the minimum annual increase in the supervisory to non-supervisory employee ratio. The measure allows DAS to grant the exception if it determines that the exception is warranted due to unique or emergency circumstances. DAS is required to report to the Joint Committee on Ways and Means, the interim Joint Committee on Ways and Means, or the Emergency Board on all exceptions granted.

On April 11, 2012, the Department of Administrative Services produced a baseline report for subject agencies detailing the total positions, supervisory positions, non-supervisory positions, and the ratio of supervisory to non-supervisory positions for each agency. These numbers were used as the starting point for the period ending October 31, 2012. The following table details the information provided in the report.

AGENCY	Total Positions	Supervisory Positions	Non-Supervisory Positions	Ratio 1:
HUMAN SERVICES, DEPARTMENT OF	7427	738	6689	9
OREGON HEALTH AUTHORITY	4157	494	3663	7
TRANSPORTATION, DEPT OF	4629	464	4165	9
CORRECTIONS, DEPT OF	4512	406	4106	10
EMPLOYMENT DEPT	1515	149	1366	9
FISH & WILDLIFE, DEPT OF	1473	223	1250	6
JUSTICE, DEPARTMENT OF	1288	128	1160	9
POLICE, OREGON STATE	1220	220	1000	5
FORESTRY, DEPT OF	1181	170	1011	6
YOUTH AUTHORITY, OREGON	1156	125	1031	8
REVENUE, DEPARTMENT OF	1051	89	962	11
CONSUMER AND BUS SRVCS, DEPT O	934	123	811	7
PARKS & RECREATION, DEPT OF	870	101	769	8
ADMINISTRATIVE SRVCS, DEPT OF	804	103	701	7
ENVIRONMENTAL QUALITY, DEPT OF	729	74	655	9
MILITARY, DEPT OF	490	50	440	9
AGRICULTURE, DEPT OF	468	57	411	7
EDUCATION, DEPT OF	391	57	334	6
PUBLIC EMPS RETIREMENT SYSTEM	363	42	321	8
PUBLIC SAFETY STANDARDS & TRNG	131	16	115	7
LIQUOR CONTROL COMMISSION	236	28	208	7
HOUSING & COMM SRVCS, DEPT OF	207	27	180	7
OR BUSINESS DEV DEPT	130	24	106	4
WATER RESOURCES, DEPT OF	146	22	124	6
PUBLIC UTILITY COMMISSION	132	27	105	4
ENERGY, DEPARTMENT OF	128	21	107	5
LANDS, DEPARTMENT OF STATE	107	17	90	5
LABOR AND INDUSTIRES, BUREAU OF	101	16	85	5

The information provided in the above table differs significantly from the numbers provided in the February 20th report. The Agency Count column in the February report counted the total number of employees whereas the subsequent reports count total number of authorized positions. Although both measures use the same definition of supervisory employee, HB 4131 simplified the calculation of the required ratio by eliminating the condition that agencies report managerial employees acting in a supervisory capacity. The language of both measures, however, prompted DAS to work with agencies to verify the correct use of representation codes for each position so that the number of supervisory employees would be reported accurately.

During the initial period of April 11 through October 31, 2012 the Department of Administrative Services, Human Resource Services Division provided agencies with letters certifying attainment of the "plus-one" ratio increase. A copy of one of these letters is attached to this report as Appendix A. In the case of the Bureau of Labor and Industries, the letter confirms the abolishment of two positions that reduced the number of positions at the agency below the reporting threshold. These letters notify the agency that it is no longer subject to the application process for exceptions to hire budgeted supervisory positions so long as it maintains the attained ratio until the beginning of the next reporting period; in this case, November 1, 2012.

The following table details the certifications made to each agency by date of letter.

2012 DAS Certifcation Letters		Reported Change in Ratio	
Agency	**Letter Date**	**From**	**To**
Employment, Department of	May 17, 2012	9 to 1	10 to 1
Environmental Quality, Deptment of	June 8, 2012	9 to 1	10 to 1
Oregon Parks and Recreation Department	June 11, 2012	8 to 1	9 to 1
Human Services, Department of	June 12, 2012	9 to 1	10 to 1
Public Employees Retirement System	June 14, 2012	8 to 1	9 to 1
Business and Consumer Services, Department of	June 15, 2012	7 to 1	8 to 1
Energy, Department of	June 20, 2012	5 to 1	6 to 1
State Lands, Department of	June 30, 2012	5 to 1	6 to 1
Agriculture, Department of	July 2, 2012	7 to 1	8 to 1
Public Safety Stanadards and Training, Department of	July 19, 2012	7 to 1	8 to 1
Oregon Business Development Commission	July 19, 2012	4 to 1	5 to 1
Oregon Youth Authority	July 30, 2012	8 to 1	9 to 1
Oregon Health Authority	July 30, 2012	7 to 1	8 to 1
Justice, Department of	August 3, 2012	9 to 1	10 to 1
Corrections, Department of	August 28, 2012	10 to 1	11 to 1
Fish and Wildlife, Department of	August 28, 2012	6 to 1	7 to 1
Labor and Industries	September 4, 2012	Moved below 100 budgeted Positions	
Administrative Services, Department of	September 7, 2012	7 to 1	8 to 1
Water Resources Department	October 8, 2012	6 to 1	7 to 1
Oregon Liquor Control Commission	October 12, 2012	7 to 1	8 to 1
Forestry, Department of	October 15, 2012	6 to 1	7 to 1
Oregon Housing and Communiy Serivces	October 17, 2012	Exempted	
Education, Department of	October 18, 2012	6 to 1	7 to 1
Public Utilities Commission	October 18, 2012	4 to 1	6 to 1
Transportation, Department of	October 25, 2012	9 to 1	10 to 1

The Housing and Community Services Department (HCSD) was granted an exemption by the Department of Administrative Services from the requirement to attain an increase in its ratio due to a reorganization that was undertaken at the agency just prior to the effective date of HB 4131. According to the DAS letter, HCSD increased its ratio of supervisory positions to non-supervisory positions from 1:5 to 1:7 during the reorganization. DAS based the exemption on this increase. No letter was issued for the Department of Revenue (DOR). The April 11, 2012 baseline report shows DOR as achieving the 1:11 ratio and therefore no change was required according to the Department of Administrative Services. By calculating its ratio to two decimal points, the actual ratio for DOR was 1 to 10.81. However, by the November baseline report, DOR had increased its ratio to 1 to 11.27.

As required by the measure, the Department of Administrative Services produced a report on the exceptions granted and the plan that DAS had developed to ensure that subject agencies meet the requirements of HB 4131. This report was presented to legislative leadership via letter from the DAS director on January 16, 2013. A copy of the letter and the attached report can be found at http://library.state.or.us/repository/2013/201301171417154/

During the period prior to November 1, 2012, the Department of State Police (OSP) and the Oregon Military Department (OMD) did not increase their ratios sufficiently enough to be certified as achieving a plus-one increase by the Department of Administrative Services. The DAS report states that neither OSP or OMD achieved the required increase in ratio, but were provided general exceptions along with a brief explanation for the exception reason. The law requires those agencies not achieving an increase of at least one in their ratio by October 31 of a given year to suspend hiring of additional supervisory employees until it has achieved the required increase, and further requires the agency to lay-off or reclassify the number of supervisory employees required to attain the ratio increase if that increase is not otherwise achieved by October 31 of the following year. The exemptions granted by DAS for OSP and OMD waived these requirements.

On November 1, 2012, the Department of Administrative Services produced a baseline report (below left) for subject agencies detailing the total positions, supervisory positions, non-supervisory positions, and the ratio of supervisory to non-supervisory positions for each agency. These numbers were used as the starting point for the following 12-month reporting period.

November 1, 2012					Change from 4/11/12 to 11/1/12			
AGENCY	Total Positions	Supervisory Positions	Non-Supervisory Positions	Ratio 1:	Total Positions	Supervisory Positions	Non-Supervisory Positions	Change in Ratio
HUMAN SERVICES, DEPARTMENT OF	7366	699	6667	10	-61	-39	-22	0.47
OREGON HEALTH AUTHORITY	4121	475	3646	8	-36	-19	-17	0.26
TRANSPORTATION, DEPT OF	4622	429	4193	10	-7	-35	28	0.80
CORRECTIONS, DEPT OF	4491	384	4107	11	-21	-22	1	0.58
EMPLOYMENT DEPT	1547	139	1408	10	32	-10	42	0.96
FISH & WILDLIFE, DEPT OF	1503	195	1308	7	30	-28	58	1.10
JUSTICE, DEPARTMENT OF	1294	120	1174	10	6	-8	14	0.72
POLICE, OREGON STATE	1222	189	1033	5	2	-31	33	0.92
FORESTRY, DEPT OF	1181	157	1024	7	0	-13	13	0.58
YOUTH AUTHORITY, OREGON	1153	121	1032	9	-3	-4	1	0.28
REVENUE, DEPARTMENT OF	1043	85	958	11	-8	-4	-4	0.46
CONSUMER AND BUS SRVCS, DEPT O	934	107	827	8	0	-16	16	1.14
PARKS & RECREATION, DEPT OF	875	91	784	9	5	-10	15	1.00
ADMINISTRATIVE SRVCS, DEPT OF	809	86	723	8	5	-17	22	1.60
ENVIRONMENTAL QUALITY, DEPT OF	723	68	655	10	-6	-6	0	0.78
MILITARY, DEPT OF	501	50	451	9	11	0	11	0.22
AGRICULTURE, DEPT OF	470	51	419	8	2	-6	8	1.01
EDUCATION, DEPT OF	394	51	343	7	3	-6	9	0.87
PUBLIC EMPS RETIREMENT SYSTEM	365	36	329	9	2	-6	8	1.50
PUBLIC SAFETY STANDARDS & TRNG	131	15	116	8	0	-1	1	0.55
LIQUOR CONTROL COMMISSION	235	27	208	8	-1	-1	0	0.28
HOUSING & COMM SRVCS, DEPT OF	207	26	181	7	0	-1	1	0.29
OR BUSINESS DEV DEPT	129	23	106	5	-1	-1	0	0.19
WATER RESOURCES, DEPT OF	146	19	127	7	0	-3	3	1.05
PUBLIC UTILITY COMMISSION	131	17	114	7	-1	-10	9	2.82
ENERGY, DEPARTMENT OF	130	18	112	6	2	-3	5	1.13
LANDS, DEPARTMENT OF STATE	107	15	92	6	0	-2	2	0.84

The table on the right shows the change in the total number of positions, change in the number of supervisory and non-supervisory positions, and the change in the ratios from the April 11, 2012 baseline report to the November 1, 2012 baseline report. The change in the ratio is expressed as a decimal rather than rounded to the nearest whole number. This illustrates that rounding may introduce a significant amount of error into the reporting of the achievement of ratio increase required by the law. The most extreme examples of this during the reporting period include the Oregon Business Development Department (OBDD) and the Department of State Police. OBDD's actual ratio increase during the period was 0.19, but due to the rounding used, the agency increased its ratio by one as certified by the Department of Administrative Services, Human Resource Services Division letter dated July 19, 2012. Conversely, OSP increased its ratio by 0.92, but because the increase did not result in the ratio being rounded up to the next whole number, no change in the ratio was certified for the period. It is also notable that only nine of the 27 subject agencies (26 if DOR is excluded due to having a 1:11 ratio as of the April 11, 2012 report) achieved an increase of at least one additional non-supervisory position for each supervisory position.

HB 3165 – effective August 14, 2013 (Chapter 748, Oregon Laws 2013)

HB 3165 dealt primarily with the Department of Administrative Services exception process established under HB 4131. The measure shifted the authority to grant exceptions from DAS generally to the DAS director. The measure also replaced generalized exception authority with specific language identifying qualifying circumstances and application of exceptions. A secondary component removed the requirement for the Department of Administrative Services to develop a plan for state agencies to attain the 1 to 11 ratio and report on that plan during odd-year legislative sessions. The measure did establish language that DAS shall make a report to the Joint Committee on Ways and Means on actions taken by state agencies during a prior biennium to attain the 1 to 11 ratio.

During the period of November 1, 2012 through October 31, 2013, the Department of Administrative Services, Human Resource Services Division provided agencies with letters certifying attainment of the plus-one ratio increase. This was the first full-year period in which agencies were required to increase their ratios. These letters notified the agency that it was no longer subject to the application process for exceptions to hire budgeted supervisory positions so long as it maintained the attained ratio until the beginning of the next reporting period. Additionally, letters certifying exceptions to the ratio attainment or other exceptions as allowed under HB 3165 were provided to agencies as applicable.

The following table details the certifications made to each agency by date of letter.

2013 Certifcation Letters		**Reported Change in Ratio**	
Agency	**Letter Date**	**From**	**To**
Business and Consumer Services, Department of	November 14, 2012	8 to 1	9 to 1
Justice, Department of	December 3, 2012	10 to 1	11 to 1
Energy, Department of	January 14, 2013	6 to 1	7 to 1
Oregon Health Authority	January 25, 2013	8 to 1	9 to 1
Public Employees Retirement System	February 5, 2013	9 to 1	10 to 1
Police, Oregon State	March 5, 2013	5 to 1	11 to 1
Administrative Services, Department of	March 7, 2013	8 to 1	9 to 1
Environmental Quality, Deptment of	April 3, 2013	10 to 1	11 to 1
Oregon Parks and Recreation Department	October 22, 2013	10 to 1	11 to 1
Agriculture, Department of	October 22, 2013	8 to 1	9 to 1
Fish and Wildlife, Department of	October 28, 2013	7 to 1	8 to 1*
Oregon Liquor Control Commission	October 28, 2013	8 to 1	9 to 1
Transportation, Department of	October 28, 2013	10 to 1	11 to 1*
State Lands, Oregon Department of	October 29, 2013	6 to 1	7 to 1
Human Services, Department of	October 31, 2013	10 to 1	12 to 1*
Public Safety Stanadards and Training, Department of	October 31, 2013	8 to 1	13 to 1*
Oregon Military Department	October 31, 2013	9 to 1	10 to 1
Water Resources Department	December 11, 2013	7 to 1	8 to 1
Forestry, Department of	December 11, 2013	7 to 1	7 to 1**
Education, Department of	December 11, 2013	7 to 1	8 to 1
Employment, Department of	No letter		
Oregon Business Development Department	No letter		
Public Utilities Commission	No letter		
Oregon Youth Authority	No letter		
Housing and Community Services, Department of	No letter		

* These agencies achieved the stated ratio as a result of an exception granted by the Deparment of Administrative Serivces

** These agencies were exempted from having to achieve a plus-one ratio increase by the Department of Administrative Services

Agencies that had attained a 1 to 11 ratio as of the prior reporting period

- Department of Corrections
- Department of Revenue

Exceptions grants during the November 1, 2012 to October 31, 2013 reporting period

- Department of Fish and Wildlife – Applied for and was granted an exception for 211 positions in various hatchery programs throughout the state; 33 positions are part-time or seasonal, 138 positions are non-supervisory, and 40 positions are supervisory. The Department of Fish and Wildlife (ODFW) request was based, in part, on the unique operating environment of the hatcheries. ODFW noted that the majority of these facilities have less than 11 permanent employees and that supervisory personnel act as "working" supervisors. In addition, although not represented by a count of budgeted positions, ODFW utilizes hundreds of temporary and volunteer employees at these locations throughout the year; which, if counted towards the calculated ratio, would reduce the stated supervisory to non-supervisory employee ratio at these locations significantly.

- Department of Human Services – Applied for and was granted an exception for 1,578 positions. The exception includes 1,379 child welfare caseworkers and 199 supervisors. The Department of Human Services requested the exemption based on concerns for child safety and quality of work. The agency noted that national guidelines recommend a supervisor to staff range of 1:3 to 1:5 depending on the nature of the work being supervised.

- Department of Public Safety Standards and Training – Applied for and was granted an exception to the calculation of the ratio by positions and thereby was allowed to utilize the number of part-time and volunteer employees as a proxy for a number of budgeted instructor positions in the Training Division. Instead of using the 23 budgeted, non-supervisory positions, the exception allowed the Department of Public Safety Standards and Training to count the 97 part-time employees (average monthly number used during the 2011-13 biennium) that the budgeted positions fund when providing the number of non-supervisory positions used to calculate its ratio.

- Department of Transportation – Applied for and was granted an exception for seven positions related to call center operations for the Driver and Motor Vehicle Services Division. These include two supervisory positions and five non-supervisory positions that work in conjunction with up to 52 contract inmate workers at the Oregon State Correctional Institution and Coffee Creek Correctional Facility. The contract inmate workers are not counted in the total number of non-supervisory positions and therefore the inclusion of the associated budgeted positions slightly negatively impacts the agency's ratio if no exception is provided. Although this exception was granted by the DAS director, it does not make a difference to the attainment of the 1:11 ratio as calculated by DAS by rounding up to the next whole number.

- Department of Forestry – Applied for and was granted an exception from the requirement to increase its ratio beyond the 1:7 ratio that it had achieved by the exception application date of November 22, 2013. The exception stated that the DAS director had reviewed the exception application, which noted the unique structure of the agency including the large number of extra-agency and seasonal personnel employed by the agency and information from the U.S. Forest Service that indicated an industry accepted ratio of 1:5 in conjunction with granting the exception. The exception expires on June 30, 2015.

<u>Agencies that did not achieve an increase in the ratio</u>

During the reporting period between November 1, 2012 and October 31, 2013, there were five agencies that did not improve their ratio sufficiently enough to attain certification by the Department of Administrative Services. Statute does not provide for a penalty or direct corrective action in the case where an agency does not achieve the required improvement in the ratio. However, the Department of Administrative Services has continued to work with these agencies to bring them into compliance or to provide a reasoned exception to the requirements of the law. DAS provided a brief explanation of the circumstances that prevented the achievement as well as the actions that are being undertaken to achieve compliance for each of the agencies (in italics).

- Employment Department – *"Employment's budget was dependent upon Education's budget due to a program legislatively moved from OED to ODE. The budgets were not approved prior to 10/31/13 in order for the budget to reflect the correct ratio. Consequently, the Employment Department did not achieve their plus-one prior to the end of the reporting year (October 31, 2013). As soon as OED budget was approved, it moved the agency to the appropriate ratio."*

  On January 20, 2014 the Department of Administrative services provided a plus-one certification letter to the Employment Department stating that OED had achieved 1 to 11 ratio for the 2014 reporting period. The agency, in effect, skipped the required improvement in the 2013 reporting year.

- Oregon Business Development Department – *"DAS Classification and Compensation unit has been working with OBDD since June 2013 and is finally close to resolving the reclassification issues. If the reclass is approved, it will improve the agency's ratio by 1 (1:6). DAS was provided with an agency-prepared plan to increase their ratio to 1:7 by changing two supervisory positions' representation code, reclassifying a supervisory position and abolishing a supervisory position. If the actions are complete this reporting year, the plan states the agency will be in compliance with the law."*

  At the time of publication of this report, the reclassification had not been completed.

- Public Utility Commission – *"PUC did an agency-wide reorganization in 2012 and increased their ratio by 3. …CHRO [Chief Human Resources Office]…granted a 'bye' for this reporting year due to the large increase."*

  The Public Utility Commission underwent an organizational change following the initial April 2012 baseline report, which moved the agency from a 1:4 ratio to a 1:7 ratio. PUC, in a series of emails, contended that this change would "cover" the minimum increase in ratio required through the 2014 reporting period. Email responses from DAS confirm the exemption request initially through the 2013 reporting period and then subsequently for the 2014 reporting period. Although this is technically an exception to the ratio change requirement, no formal exception request was made and no formal exception letter was produced.

- Oregon Youth Authority – *"The agency provided DAS an internal memo indicating their plan to restructure departments and change the service type of 8 positions. The memo states these actions will increase the agency's ratio to 1:10. The agency submitted service type changes to DAS and 7 were approved on December 20, 2013 and entered shortly thereafter. The agency needs one more position to increase the agency's ratio to 1:10. The agency is currently working on a plan for one more position."*

- Housing and Community Services Department – *"The agency has been in the process of an agency-wide restructure. A number of budgeted limited duration positions dropped off which decreased their ratio to 1:6. The agency increased back up to 1:7 and has also forwarded a reclassification to DAS Class & Comp on January 10, 2014 for review. If approved, the reclass will increase their ratio to 1:8."*

On October 31, 2013, the Department of Administrative Services produced a baseline report for subject agencies detailing the total positions, supervisory positions, non-supervisory positions, and the ratio of supervisory to non-supervisory positions for each agency. These numbers were used as the starting point for the following 12-month reporting period (the 2014 period).

Included in this reporting period are columns detailing the exemptions granted by the Department of Administrative Services. The table to the right of the baseline report below shows the change in the total number of positions, the change in the number of supervisory and non-supervisory positions, and the change in the ratios from the 2012 baseline report to the 2013 baseline report. As with the previous reporting period, DAS continues to round to the nearest whole number. A comparison between the ratios calculated by LFO in the table below and the stated ratios shown in the 2013 certification letters table illustrate the discrepancy between the increases certified and the actual increases achieved.

11/1/2013	Total Positions		Supervisory Positions		Non-Supervisory Positions		Ratio 1:		Change from 11/1/2012 including exemptions: Total Positions		Supervisory Positions		Non-Supervisory Positions		Ratio (Including Exceptions) 1:
Agency	All	Exempted	All	Exempted	All	Exempted	All	As Exempted	All	Exempted	All	Exempted	All	Exempted	
HUMAN SERVICES, DEPARTMENT OF	7647	1578	690	199	6957	1379	10.08	11.36	281	1578	-9	199	290	1379	1.82
OREGON HEALTH AUTHORITY	4501		443		4058		9.16		380	0	-32	0	412	0	1.48
TRANSPORTATION, DEPT OF	4569	7	392	2	4177	5	10.66	10.70	-53	7	-37	2	-16	5	0.92
CORRECTIONS, DEPT OF	4492		369		4123		11.17		1	0	-15	0	16	0	0.48
EMPLOYMENT DEPT	1594		139		1455		10.47		47	0	0	0	47	0	0.34
FISH & WILDLIFE, DEPT OF	1551	211	193	40	1358	171	7.04	7.76	48	211	-2	40	50	171	1.05
JUSTICE, DEPARTMENT OF	1277		108		1169		10.82		-17	0	-12	0	-5	0	1.04
POLICE, OREGON STATE	1259		103		1156		11.22		37	0	-86	0	123	0	5.76
FORESTRY, DEPT OF	1199		157		1042		6.64		18	0	0	0	18	0	0.11
YOUTH AUTHORITY, OREGON	1031		106		925		8.73		-122	0	-15	0	-107	0	0.20
REVENUE, DEPARTMENT OF	1080		84		996		11.86		37	0	-1	0	38	0	0.59
CONSUMER AND BUS SRVCS, DEPT O	928		88		840		9.55		-6	0	-19	0	13	0	1.82
PARKS & RECREATION, DEPT OF	863		75		788		10.51		-12	0	-16	0	4	0	1.89
ADMINISTRATIVE SRVCS, DEPT OF	791		81		710		8.77		-18	0	-5	0	-13	0	0.36
ENVIRONMENTAL QUALITY, DEPT OF	728		62		666		10.74		5	0	-6	0	11	0	1.11
MILITARY, DEPT OF	523		47		476		10.13		22	0	-3	0	25	0	1.11
AGRICULTURE, DEPT OF	475		49		426		8.69		5	0	-2	0	7	0	0.48
EDUCATION, DEPT OF	396		50		346		6.92		2	0	-1	0	3	0	0.19
PUBLIC EMPS RETIREMENT SYSTEM	371		35		336		9.60		6	0	-1	0	7	0	0.46
PUBLIC SAFETY STANDARDS & TRNG*	135	209	15		120	194	8.00	12.93	4	209	0	0	4	194	5.20
LIQUOR CONTROL COMMISSION	233		24		209		8.71		-2	0	-3	0	1	0	1.00
HOUSING & COMM SRVCS, DEPT OF	209		26		183		7.04		2	0	0	0	2	0	0.08
OR BUSINESS DEV DEPT	135		24		111		4.63		6	0	1	0	5	0	0.02
WATER RESOURCES, DEPT OF	146		18		128		7.11		0	0	-1	0	1	0	0.43
PUBLIC UTILITY COMMISSION	129		17		112		6.59		-2	0	0	0	-2	0	-0.12
ENERGY, DEPARTMENT OF	115		15		100		6.67		-15	0	-3	0	-12	0	0.44
LANDS, DEPARTMENT OF STATE	106		14		92		6.57		-1	0	-1	0	0	0	0.44

*Please see previous section detailing DPSST exception for explanation of exception calculation.

Summary and Recommendations

Three individual pieces of legislation have been adopted since 2011 dealing with the ratio of supervisory employees to non-supervisory employees: HB 2020, requiring a report and plan to achieve the 1:11 ratio by all state agencies with at least 100 employees; HB 4131, simplifying the reporting requirements, providing more specific definition of terms, explicitly excluding a number of state agencies, specifying minimum increases in the ratio, and providing an exception mechanism; and HB 3165, amending and expanding the exception process, and removing the DAS planning requirement. As of April 11, 2011 the average supervisory to non-supervisory employee ratio of the subject state agencies was 1 to 7.98. The ratio as of November 1, 2013 was 1 to 9.68 (1 to 9.94 including exceptions); an increase of 1 to 1.7.

Change in Supervisor to Non-Supervisor Ratio	
Without Exceptions	1.70
With Exceptions	1.96

As shown in the following table, the total number of positions since the April 2011 baseline report has increased by 608 positions. Total increases in positions overall are attributable to legislative actions outside of the scope of the legislation covered by this report. Legislative actions also may have impacted the changes between supervisory and non-supervisory positions. It is likely that the proportional increase in non-supervisory positions equal to the decrease in supervisory positions is due to reclassifications resulting in positions being shifted between these two categories, with the remainder being accounted by the overall increase in positions. Statute does not require that the individual position changes be tracked for the purpose of reporting this information.

Summary of Changes between April 2011 and November 2013 Baseline Reports

	Total	Supervisory	Non-Supervisory
Positions	608	-571	1179
Exemptions	1796	241	1555

Of the 27 subject agencies, nine had achieved the 1:11 ratio as calculated by the Department of Administrative Services. Three of these were due to exceptions granted by DAS. By calculating the ratio out to two decimal points as discussed previously, the number of agencies to achieve the 1:11 ratio drops to five. Two of these were due to exceptions.

There are significant unresolved issues dealing with the legislation's current implementation: 1) The rounding of the ratio to the nearest whole number introduces significant error in the reporting; 2) the process encourages the achievement of the minimum change in ratio; 3) there is no process or requirement to track and report the fiscal impact of the legislation; 4) there is no process or requirement to track and report the operational impact of the legislation; and 5) there are no specific consequences, other than hiring restrictions, for agencies that fail to meet the minimum standards.

1) The choice made by the Department of Administrative Services to round the ratio to the nearest whole number introduces significant errors in the reporting. These errors are on both sides of the equation, a benefit to some agencies and a detriment to other agencies when reporting year-over-year gains. Without the rounding, only slightly over half of the agencies certified as having met the 1:11 ratio actually achieved it. Therefore, the rounding is detrimental to the explicit purpose of the legislation and should be eliminated.

2) Although the explicit goal of the legislation is to have the subject agencies achieve a 1:11 ratio of supervisory to non-supervisory employees, the law may encourage agencies to achieve only the minimum increase allowed under statute. Since an agency is required to continuously increase the ratio from its annual October 31st baseline ratio, an increase in ratio greater than the minimum in any given year would possibly reduce the potential of achieving the minimum increase in the following year. The certification letters provided by DAS seem to support the idea of stopping at the minimum gain as well. As detailed previously, the Employment Department and the Public Utility Commission were allowed by DAS to skip the required ratio gain in the 2013 reporting year because they achieved an aggregate average minimal gain in an adjacent reporting year.

3) There is no reporting requirement related to the compensation of individual positions affected by the legislation that would allow for calculating a direct fiscal impact of the legislation. Anecdotal information and reviews of fiscal impact estimates provided by affected agencies during the legislative process suggest that individuals in reclassified positions would simply continue to be compensated at or above the previous rate (above in the case where a previously exempt person would subsequently be eligible for overtime or some other differential).

4) In addition to the lack of quantifiable fiscal gain due the implementation of the legislation, the operational impact to the subject agencies is unknown, other than those used to justify a requested exemption.

5) For those agencies under the 1:11 ratio, the law restricts the hiring of supervisory employees and further requires agencies to lay-off or reclassify supervisory employees in order to achieve the minimum gain in the agency's ratio by October 31 of each year if the ratio has not otherwise been

sufficiently improved. Five agencies did not improve their ratio sufficiently enough to attain certification by the Department of Administrative Services during the last reporting period. Statute does not provide for a penalty or direct corrective action in the case where an agency does not achieve the required improvement in the ratio.

Should additional modification to the statute be contemplated, the inclusion of objective, quantifiable measurements, and a statement of legislative intent may help to guide the implementation of the law and the application of exceptions to the law. Without these, the change in the ratio appears arbitrary, and the changes undertaken by agencies to achieve these changes in ratio without merit as to a specific reasoning. Therefore, the Legislative Fiscal Office recommends that any modification to the statutes include the following:

- A clear and concise statement of legislative intent.
- A requirement that the ratio is calculated to a minimum of two decimal places.
- A mechanism to encourage and incentivize agencies to achieve more than the minimum increase in the ratio, including carrying-forward greater than minimum gains into subsequent reporting periods.
- A requirement that the Department of Administrative Services compiles and reports the reclassifications, new hires, or lay-offs that are used by subject agencies to achieve the required change in ratio by agency, including the fiscal and operational impact of the changes.
- A requirement that the agency director of those agencies that have not achieved the minimum requirements in any given reporting period submit a report at the next meeting of an appropriate legislative committee detailing the reasons for not achieving the minimum requirements and the agency's plan to make up the deficiency.
- A provision to require agencies not directly subject to the achievement of the 1:11 ratio simply due to size (less than 100 positions) to report to the Joint Committee on Ways and Means during the odd-numbered year session on their ratio, for informational purposes.

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This report is available on the Legislative Fiscal Office website at www.oregonlegislature.gov/lfo