

# **Review of Semi-independent Agency Reports**



**Legislative Fiscal Office  
December 2006**



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LEGISLATIVE FISCAL OFFICE**

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To the Members of the Seventy-Fourth Oregon Legislative Assembly:

Enclosed is the first Legislative Fiscal Office report on review of semi-independent agencies' biennial reports, in accordance with ORS 182.472. This report is the means by which the Legislative Assembly receives budgetary and administrative information on the several agencies whose budgets are not subject to Executive Branch review, or approval or modification by the Legislative Assembly.

We trust you will find this report useful. Please feel free to call the Legislative Fiscal Office at 503-986-1828 should you have questions.

A handwritten signature in black ink, appearing to read "Ken Rocco".

Ken Rocco  
Legislative Fiscal Officer



## **Summary of review conclusions**

The review of semi-independent agency reports submitted in December 2005 required by ORS 182.472, and additional research, resulted in the following conclusions:

- All affected agencies generally included items referenced in ORS 182.472 in their reports.
- More specific guidance needs to be provided to agencies to ensure that there is sufficient explicative information for the Legislative Fiscal Office (LFO) to assess that they are meeting the intent of ORS 182.472. LFO offers five recommendations for accomplishing this.
- In the future, more specific reporting guidelines may need to be developed for agencies that do not provide licensing, examination, or professional registration services.
- Statutes applying to three additional semi-independent agencies – Oregon Tourism Commission, Travel Information Council, and Oregon Film and Video Office – are inconsistent among each other and with the other eleven semi-independent agencies. These inconsistencies represent more variations in the financial accountability and reporting requirements of semi-independent agencies. The Legislative Assembly may wish to further examine the semi-independent governance model to determine whether consistent reporting and audit requirements would be appropriate.

## **Background**

As a result of a review of small agencies conducted in 2004 by LFO for the Joint Legislative Audit Committee (JLAC), the 2005 Legislative Assembly modified biennial reporting requirements of certain agencies. ORS 182.454 requires the following eleven semi-independent agencies (see Appendix A) to submit a biennial report to the Governor, Senate President and Speaker of the House, and the Legislative Fiscal Officer by January 1 of each even-numbered year:

- Appraiser Certification and Licensure Board
- Oregon Board of Architect Examiners
- Oregon State Board of Examiners for Engineering and Land Surveying
- Board of Geologist Examiners
- State Landscape Architect Board
- State Landscape Contractors Board
- Oregon Board of Massage Therapists
- Oregon Board of Optometry
- Physical Therapist Licensure Board
- Oregon Patient Safety Commission
- Oregon Wine Board

## Required report content

Content of the report is specified in ORS 182.472; these provisions first apply to the reports submitted December 2005, which are the subject of this analysis.

ORS 182.472. Not later than January 1 of each even-numbered year, each board subject to ORS 182.456 to 182.472 shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Legislative Fiscal Officer. The Legislative Fiscal Officer shall review the reports, and shall prepare and submit a statement of findings and conclusions to the Joint Legislative Audit Committee. The report must include the following:

- (1) A copy of the most recent audit of the board.
- (2) A copy of the actual budget for the prior biennium and a copy of the board's adopted budget for the biennium in which the report is made. The budget documents must show:
  - (a) The beginning balance and ending balance for each of the two biennia;
  - (b) A description of material changes between the two biennia;
  - (c) A description of the public hearing process used to establish the budget adopted for the current biennium; and
  - (d) A description of current fees and proposed changes to fees, along with information supporting the amounts of the current fees and any proposed changes to the fees.
- (3) A description of all temporary and permanent rules adopted by the board since the last report was submitted.
- (4) A description of board actions promoting consumer protection that were taken since the last report was submitted.
- (5) If the board issues licenses, a description of the board's licensing activities performed since the last report that is adequate to allow evaluation of the board's performance of its licensing responsibilities, including:
  - (a) The number of license applications;
  - (b) The number of licenses issued;
  - (c) The number of examinations conducted;
  - (d) The average time between application for and issuance of licenses;
  - (e) The number and types of complaints received about persons holding licenses;
  - (f) The number and types of investigations conducted;
  - (g) The number and types of resolutions of complaints;
  - (h) The number and type of sanctions imposed; and
  - (i) The number of days between beginning an investigation and reaching a resolution.
- (6) A description of all other actions taken since the last report in the performance of the board's statutory responsibilities that is adequate to allow evaluation of the board's performance.

## **Authority to conduct review**

ORS 182.472 requires the Legislative Fiscal Officer to review the reports and issue a statement of findings and conclusions to JLAC. This report fulfills this requirement.

## **Findings**

LFO reviewed the submitted reports for completeness of required content and to evaluate whether there was sufficient explicative information to assess that the agencies were meeting the intent of the requirements. Two agencies that were not part of the review conducted in 2004 submitted reports: Oregon Patient Safety Commission and Oregon Wine Board. Additional scrutiny was given to their submissions because they are new semi-independent agencies. In a couple of cases, additional information was requested to more accurately assess the significance of an issue that emerged from review of the report. This review should not be considered an agency audit, as findings and conclusions are typically limited to the information provided in the reports. LFO found:

- All eleven agencies submitted a report that generally complied with the content requirements specified in ORS 182.472.
- In all cases, “the most recent audit of the Board” was submitted. In one case, an audit referenced a management letter that was not included in the reports. LFO requested this information and confirmed that recommendations were addressed by the agency.
- Budget materials varied from report to report. Most agencies submitted actual and projected income and expense reports as their budget materials. In most cases, the agencies did not clearly identify beginning and ending balances. For those that submitted ending balances, the values did not always clearly reconcile with submitted income and expense reports.
- All agencies referenced actions taken to comply with public hearing requirements and rule making processes, however, sufficient information was not always provided to explain that filing deadlines identified in statute were respected.
- Specifically, the Oregon Patient Safety Commission violated ORS 183.715 by not filing a certificate of adoption of administrative rules with the Office of Legislative Counsel in

a timely manner.<sup>1</sup> LFO notified the agency of this issue. By communication on October 24, 2006, the agency notified LFO that temporary rules were filed and the process for adoption and certification of permanent rules will be made timely.

- The Oregon Wine Board (Board) may have violated statutes relating to rule-making and public meeting statutes. It does not appear that the Board's statutes provide for a delegation of its rule-making authority. On that basis, administrative rules on which the Board placed no motion and took no Board vote, but were filed with the Secretary of State and certified effective December 15, 2005, may have been put in place without appropriate Board action. In addition, e-mail communication among Board members deliberating on the administrative rules may have constituted a public meeting under ORS 192.610 to 192.690.

Further, the Board's written policies and procedures conform to ORS 192.630(4), which requires that Board meetings be held within the geographic boundaries over which the Board has jurisdiction (i.e., the state boundaries). However, the Board conducted a meeting at Walla Walla, Washington, on August 24, 2006, at which a motion was placed and passed by unanimous vote to allocate up to \$52,400 for market research. ORS 192.680 (1) states:

A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

The Executive Director of the Board notified LFO on November 13, 2006 that the Board will take appropriate new action to adopt administrative rules and reaffirm the decisions made at the meeting in Washington.

- Five of the eleven agencies increased fees. Two agencies introduced new fees for services provided. For example, the Appraiser Certification and Licensure Board instituted new

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<sup>1</sup> ORS 183.715 states, in part: "A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1)." Further, ORS 183.335 (11) (b) states: "In addition to all other requirements with which rule adoptions must comply, a rule is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.715."



fees for reviewing and qualifying education requirements, both pre-license and for continuing education, as required by federally-adopted appraiser education requirements. For other agencies, the primary justification for fee increases was rising pension and health care costs.

- Agencies generally identified the applicable volume of services provided: applications, licenses, exams, registrations, complaints, investigations, and/or resolutions. The reporting timeframes were not consistent across the reports. Because of the December 31 report deadline, the most common timeframe was January 1, 2005 to November 30, 2005, which represents 11 months of service. As this was a first report, most agencies did not provide information on current trends – whether numbers were increasing or decreasing and by how much.
- While the reports were generally complete, there was often insufficient information to assess that the agencies were meeting the intent of the requirements. Suggestions for improving upon this weakness are presented in the next section.
- One additional activity referenced by most of the agencies in their reports is their participation in the identification and commitment to implementation of best management practices for operations of a semi-independent agency. The document will be made available to JLAC after final editing.
- Three additional semi-independent agencies – Oregon Tourism Commission, Travel Information Council, and Oregon Film and Video Office – were identified in the course of this review. The Oregon Tourism Commission is funded from the 1% state transient lodging tax; the Oregon Film and Video Office receives Lottery Funds passed through the Oregon Economic and Community Development Department for agency operations and certifies up to \$1 million of income tax credits per year; and the Travel Information Council is funded by fees charged for voluntary participation in travel-related highway signage.

Statutes applying to these agencies in the areas of financial accountability and reporting are inconsistent among each other and with the other eleven semi-independent agencies. These inconsistencies represent still more variations in the models of semi-independent agencies established by the Legislative Assembly.

## Conclusions and recommendations

All subject agencies generally included items referenced in ORS 182.473 in their December 2005 biennial reports. The materials were presented in an organized and understandable manner. In addition, agencies have been responsive to LFO's requests for additional information. Despite this, the experience gained from this first review suggests the need to define more specific reporting expectations to achieve more thorough reports.

The purpose of adding additional guidance on reporting would be to ensure that sufficient information is provided to allow LFO to evaluate whether agencies are meeting the intent of the requirements. Specifically, in future reports LFO recommends that agencies:

1. Include copies of management letters if they are provided as part of the agency audit. Agencies should also include a status report on implementation of recommendations outlined in the management letter.
2. Present budgets that include detailed income and expense actuals for the previous biennium and the Board-approved income and expense budget for the upcoming biennium. In addition, a summary that clearly identifies:
  - Actual beginning balance from previous biennium
  - Actual adjustments (income/expense totals)
  - Actual ending balance for the biennium
  - Projected beginning balance for upcoming biennium
  - Projected adjustments
  - Projected ending balance for the biennium

The Oregon Board of Optometry included this type of summary table in their budget materials. Presenting information in this way ensures that the agency clearly identifies beginning and ending balances, and that balances are properly adjusted for period income/expense adjustments.

3. Provide date(s) of budget hearing(s) and submission dates on filings done in accordance with public hearing or rules requirements so the agency clearly identifies that statutory deadlines are met.
4. Include information on the processes and tools used by the Board to evaluate the need for a new fee or fee increase. The expectation is that fee increases, or the addition of new fees, are a last resort strategy for ensuring continued solvency of the Board. The report commentary should identify the steps taken to ensure that due consideration precedes the decision to adjust fees.

5. Adjust application, licensing, and registration data reporting to a fiscal year. This would mean that the report due in December 2007 would include information for the timeframe July 1, 2005 to June 30, 2007, with data reported for each year (FY 2006, 2007). This would create consistency across the agencies and allow for historical trending between the various biennial reports.
6. Two of the agencies, the Oregon Patient Safety Commission and Oregon Wine Board, do not provide licensing, exam, or registration services, so subsection 5 of ORS 182.472 is not applicable. In the future, more specific guidelines may need to be developed to set reporting expectations for these agencies.
7. The Oregon Wine Board may have violated statutes relating to rule-making and public meeting statutes on two occasions. The Board should be aware of, and comply with, the laws and administrative procedures that do apply to this agency.
8. Statutes applying to three additional semi-independent agencies which are not subject to this biennial report – Oregon Tourism Commission, Travel Information Council, and Oregon Film and Video Office – are inconsistent among each other and with the other eleven semi-independent agencies. The Legislative Assembly may wish to further examine the semi-independent governance model to determine, among other issues, whether consistent reporting and audit requirements would be appropriate for all agencies established as “semi-independent.”



# Appendix A

## Board Summary

	Positions/FTE	Board Members Industry/Public	Board Meetings/Year (●plus committees)	Approximate # Licensees 2005	Board Stipend	Director Salary/Mo at December 2005	2003-2005 Actual Expenditures	2005-2007 Adopted Budget
Oregon Board of Architect Examiners	4/3.5	5/2	7	3,036 (active)	\$30	\$4,020	\$633,699	\$647,750
Appraiser Certification and Licensure Board	5/?	6/1	4	1,816	\$30	\$5,587	\$877,741	\$1,081,030
Oregon State Board of Examiners for Engineering and Land Surveyors	8/8	9/2	6●	13,900	\$30	\$4,523	\$1,670,209	\$1,814,012
Oregon Board of Geologist Examiners	2/1.5	4/1	4●	1,240	\$30	\$3,720	\$235,977	\$330,076
State Landscape Architect Board	★	4/3	4●	400	None paid	★	\$250,544	\$215,450
State Landscape Contractors Board	4/3.5	5/2	6 (2-day meets)	2,659	\$30	\$4,099	\$720,360	\$1,021,167
Oregon Board of Massage Therapists	4/4	4/3	11●	5,500	\$100	\$5,486	\$787,342	\$931,768
Oregon Board of Optometry	3/2.2	4/1	6-8	1,207	\$50■	\$5,946	\$470,600	\$553,724
Physical Therapist Licensure Board	3/2.8	6/1	7-8	3,963	\$30	\$6,048	\$740,765	\$796,000
Oregon Patient Safety Commission*	3/2.5 (2006)	15/2	6	N/A	\$50	\$6,042	N/A	\$945,299
Oregon Wine Board**	5/4	9/0	8 (2006)	N/A	None paid	\$10,188	\$495,992▲	\$682,084▲

\* Chapter 686, 2003 Oregon Laws effective August 21, 2003.

\*\* Chapter 797, 2003 Oregon Laws effective September 23, 2003.

★ Contracted services from Oregon Board of Geologist Examiners.

▲ Reflects annual budget as required by ORS 576.678(2)(a), for fiscal years 2004-2005 and 2005-2006.

■ Pro-rated on an 8-hour day basis, and applied to actual time spent.