

## APPENDIX A

### ESTABLISHING NEW AGENCY; TRANSFERRING FUNCTIONS BETWEEN AGENCIES; ABOLISHING AGENCY; “PRIVATIZING” AGENCY

1. ESTABLISHING NEW AGENCY
2. TRANSFERRING FUNCTIONS BETWEEN AGENCIES
3. ABOLISHING AGENCY
4. “PRIVATIZING” AGENCY

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#### 1. ESTABLISHING NEW AGENCY.

Use this boilerplate language and modify as appropriate: <boiler newagency>

##### ESTABLISHING NEW STATE AGENCY

**SECTION 1.** (1) The Department of \_\_\_\_\_ is established.

(2) The department shall \_\_\_\_\_.

(3) The department may \_\_\_\_\_.

##### DIRECTOR

**SECTION 2.** (1) The Department of \_\_\_\_\_ is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the department.

(2) The Governor shall appoint the Director of the Department of \_\_\_\_\_, who holds office at the pleasure of the Governor.

(3) The director shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) For purposes of administration, subject to the approval of the Governor, the director may organize and reorganize the department as the director considers necessary to properly conduct the work of the department.

(5) The director may divide the functions of the department into administrative divisions. Subject to the approval of the Governor, the director may appoint an individual to administer each division. The administrator of each division serves at the pleasure of the director and is not subject to the provisions of ORS chapter 240. Each individual appointed under this subsection must be well qualified by technical training and experience in the functions to be performed by the individual.

##### CONFIRMATION BY SENATE

**SECTION 3.** The appointment of the Director of the Department of \_\_\_\_\_ is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

##### EMPLOYEES

**SECTION 4.** (1) The Director of the Department of \_\_\_\_\_ shall, by written order filed with the Secretary of State, appoint a deputy director. The deputy director serves at the pleasure of the director, has authority to act for the director in the absence of the director and is subject to the control of the director at

all times.

(2) Subject to any applicable provisions of ORS chapter 240, the director shall appoint all subordinate officers and employees of the Department of \_\_\_\_\_, prescribe their duties and fix their compensation.

#### GENERAL AUTHORITY TO ADOPT RULES

**SECTION 5.** In accordance with applicable provisions of ORS chapter 183, the Director of the Department of \_\_\_\_\_ may adopt rules necessary for the administration of the laws that the Department of \_\_\_\_\_ is charged with administering.

#### CIVIL PENALTIES

**SECTION 6.** (1) In addition to any other liability or penalty provided by law, the Director of the Department of \_\_\_\_\_ may impose a civil penalty not to exceed \$ \_\_\_\_ on a person for any of the following:

(a) Violation of section \_\_\_\_\_ of this (year) Act.

(b) Violation of any rule adopted by the director under section 5 of this (year) Act.

(2) Civil penalties under this section must be imposed in the manner provided by ORS 183.745.

(3) All civil penalties recovered under this section must be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

**CAUTIONARY NOTE:** The decision to include any of the following requires consulting the drafting manual and the requester.

#### TERM OF OFFICE ALTERNATE TO SECTION 2 (2)

**SA NOTE:** See drafting manual. Four years, the constitutional maximum, is the default term of office for the director. If the requester wants a term of office of less than four years, you should substitute this provision for section 2 (2). <spm agency-term>

#### ESTABLISHING DIVISIONS

**SA NOTE:** If the request necessitates creating divisions in statute, as opposed to letting the director create them pursuant to section 2 of the boilerplate, you might want to use this provision. <spm agency-division>

#### TRAVEL AND SUBSISTENCE EXPENSES

**SA NOTE:** See drafting manual. If the request necessitates something other than the statutory default language, you might want to use this provision. <spm agency-expenses>

#### FIDELITY BOND

**SA NOTE:** See drafting manual. If the request requires something other than the statutory default language, you might want to use this provision. <spm agency-bond>

## SPECIAL REQUIREMENTS AND QUALIFICATIONS

**SA NOTE:** See drafting manual. <spm agency-require>

## OATH OF OFFICE

**SA NOTE:** See drafting manual. <spm agency-oath>

## AUTHORITY TO ADOPT SPECIFIC TYPES OF RULES

**SA NOTE:** See drafting manual. If the agency needs rulemaking authority that is more particular than that granted in section 5 of the boilerplate (for example, if the agency needs to be able to establish fees through rules), you might want to use some of the following provisions. <spm agency-rules>

## CRIMINAL PENALTIES

**SA NOTE:** See drafting manual. <spm agency-penalty>

## APPLICATION OF ADMINISTRATIVE PROCEDURES ACT

**SA NOTE:** See drafting manual. The APA applies to agencies unless specifically exempted. If the request necessitates alternative procedures, you might want to use the following provision. <spm agency-apa>

## OATHS, DEPOSITIONS, SUBPOENAS

**SA NOTE:** See drafting manual. <spm agency-subpoena>

## ADVISORY AND TECHNICAL COMMITTEES

**SA NOTE:** See drafting manual. <spm agency-comm>

## UNIT AND SECTION CAPTIONS

**SA NOTE:** The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-sec> or <spm captions-unit>

The following standard phrases are available for use with new agency boilerplate, if appropriate in the circumstances of a particular draft:

<spm agency-term>

**(2) The Governor shall appoint the Director of the Department of \_\_\_\_\_ . The director holds office for a term of \_\_\_\_\_ years, but may be removed at any time during the term at the pleasure of the Governor.**

<spm agency-division>

**SECTION \_\_\_\_\_ . (1) The \_\_\_\_\_ Division is established within the Department of \_\_\_\_\_ .**

**(2) The division shall \_\_\_\_\_ .**

<spm agency-expenses>

**SECTION \_\_\_\_.** In addition to being paid a salary, but subject to any applicable law regulating travel and other expenses of state officers and employees, the Director of the Department of \_\_\_\_\_ shall be reimbursed for actual and necessary travel and other expenses incurred by the director in the performance of official duties.

<spm agency-bond>

**SECTION \_\_\_\_.** Before assuming the duties of the office, the Director of the Department of \_\_\_\_\_ shall give to the state a fidelity bond, with one or more corporate sureties authorized to do business in this state, in a penal sum prescribed by the Director of the Oregon Department of Administrative Services, but not less than \$50,000.

<spm agency-require>

**SECTION \_\_\_\_.** An individual is not eligible to hold the office of Director of the Department of \_\_\_\_\_, or to hold any office or employment in the Department of \_\_\_\_\_, if the individual has any connection with persons engaged in or conducting any \_\_\_\_\_ business of any kind, holds stock or bonds in any \_\_\_\_\_ business of any kind, or receives any commission or profit from or has any interest in the purchases or sales made by the department.

<spm agency-oath>

**SECTION \_\_\_\_.** Before assuming the duties of the office, the Director of the Department of \_\_\_\_\_ shall subscribe to an oath that the director faithfully and impartially will discharge the duties of the office and that the director will support the Constitution of the United States and the Constitution of the State of Oregon. The director shall file a copy of the signed oath with the Secretary of State.

<spm agency-rules>

**SECTION \_\_\_\_.** In accordance with applicable provisions of ORS chapter 183, the Director of the Department of \_\_\_\_\_ may adopt rules necessary for the administration of sections \_\_\_\_\_ to \_\_\_\_\_ of this (year) Act.

<spm agency-lic-rules>

**SECTION \_\_\_\_.** In accordance with applicable provisions of ORS chapter 183, the Director of the Department of \_\_\_\_\_ may adopt rules:

- (1) Establishing standards for \_\_\_\_\_;
- (2) Relating to the professional methods and procedures used by persons licensed by the Department of \_\_\_\_\_;
- (3) Governing the examination of applicants for licenses issued by the department and the renewal, suspension and revocation of the licenses; and
- (4) Establishing fees for \_\_\_\_\_.

<spm agency-penalty>

**SECTION \_\_\_\_.** Violation of section \_\_\_\_\_ of this (year) Act, or of any rule adopted under section \_\_\_\_\_ of this (year) Act, is a Class C misdemeanor.

<spm agency-apa>

**SECTION \_\_\_\_.** Except as otherwise provided in section \_\_\_\_\_ of this (year) Act, ORS chapter 183 applies to the Department of \_\_\_\_\_.

<spm agency-subpoena>

**SECTION \_\_\_\_.** The Director of the Department of \_\_\_\_\_, the deputy director and authorized representatives of the director may administer oaths, take

depositions and issue subpoenas to compel the attendance of witnesses and the production of documents or other written information necessary to carry out the provisions of sections \_\_\_\_\_ to \_\_\_\_\_ of this (year) Act. If any person fails to comply with a subpoena issued under this section or refuses to testify on matters on which the person lawfully may be interrogated, the director, deputy director or authorized representative may follow the procedure set out in ORS 183.440 to compel obedience.

<spm agency-comm>

**SECTION \_\_\_\_\_.** (1) To aid and advise the Director of the Department of \_\_\_\_\_ in the performance of the functions of the Department of \_\_\_\_\_, the director may establish such advisory and technical committees as the director considers necessary. These committees may be continuing or temporary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director is an ex officio member of each committee.

(2) Members of the committees are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the department for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

## **2. TRANSFERRING FUNCTIONS BETWEEN AGENCIES.**

These are samples of provisions that may be needed to transfer functions from one state agency to another. They should not be followed slavishly. Each line must be suitable in the particular situation covered by the bill being drafted.

**To abolish an agency and transfer its functions**, use this boilerplate language and modify as appropriate:

<boiler aboltran>

### **ABOLISH AND TRANSFER**

**SECTION 1.** (1) The Old Agency is abolished. On the operative date of this section, the tenure of office of the members of the Old Agency Board and of the Director of the Old Agency ceases.

(2) All the duties, functions and powers of the Old Agency are imposed upon, transferred to and vested in the New Agency.

### **RECORDS, PROPERTY, EMPLOYEES**

**SECTION 2.** (1) The Director of the Old Agency shall:

(a) Deliver to the New Agency all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this (year) Act; and

(b) Transfer to the New Agency those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The Director of the New Agency shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act, without

reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Old Agency and the New Agency relating to transfers of records, property and employees under this section, and the Governor's decision is final.

#### UNEXPENDED REVENUES

**SECTION 3.** (1) The unexpended balances of amounts authorized to be expended by the Old Agency for the biennium beginning July 1, \_\_\_\_, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act are transferred to and are available for expenditure by the New Agency for the biennium beginning July 1, \_\_\_\_, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Old Agency remain applicable to expenditures by the New Agency under this section.

**SA NOTE:** This provision assumes that the effective date of the transfer will be sometime after the Legislative Assembly has completed a budget for the biennium. Thus, it is transferring moneys that were appropriated to the old agency to the new agency. If, for example, the effective date of the abolition and transfer is January 1, 2008, the blanks above would be filled in with "2007." If the effective date of the abolition and transfer coincides with the beginning of a biennium, presumably there will be no need for this provision as the Legislative Assembly will have appropriated moneys only to the new agency.

#### ACTION, PROCEEDING, PROSECUTION

**SECTION 4.** The transfer of duties, functions and powers to the New Agency by section 1 of this (year) Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the New Agency is substituted for the Old Agency in the action, proceeding or prosecution.

#### LIABILITY, DUTY, OBLIGATION

**SECTION 5.** (1) Nothing in sections \_\_\_\_ to \_\_\_\_ of this (year) Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act. The New Agency may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Old Agency legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this (year) Act are transferred to the New Agency. For the purpose of succession to these rights and obligations, the New Agency is a continuation of the Old Agency and not a new authority.

#### RULES

**SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1 of this (year) Act, the rules of the Old Agency in effect on the operative date of section 1 of this (year) Act continue in effect until superseded or repealed by

rules of the New Agency. References in rules of the Old Agency to the Old Agency or an officer or employee of the Old Agency are considered to be references to the New Agency or an officer or employee of the New Agency.

**SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, reference is made to the Old Agency or an officer or employee of the Old Agency, the reference is considered to be a reference to the New Agency or an officer or employee of the New Agency.

#### NEW DIRECTOR

**SECTION 8.** The Director of the New Agency may be appointed before the operative date of section 1 of this (year) Act and may take any action before that date that is necessary to enable the director to exercise, on and after the operative date of section 1 of this (year) Act, the duties, functions and powers of the director pursuant to section 1 of this (year) Act.

#### AGENCY NAME CHANGE

**SECTION 9.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Old Agency” or its officers, wherever they occur in statutory law, words designating the “New Agency” or its officers.

#### ACCOUNT NAME CHANGE

**SECTION 10.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the “Old Agency Account,” wherever they occur in statutory law, words designating the “New Agency Account.”

#### OPERATIVE DATE

**SECTION 11.** Except as otherwise specifically provided in section 8 of this (year) Act, sections 1 to 10 of this (year) Act become operative on January 1, \_\_\_\_.

#### UNIT AND SECTION CAPTIONS

**SA NOTE:** The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-sec> or <spm captions-unit>

The following standard phrases are available for use with transfer boilerplate, if appropriate in the circumstances of a particular draft:

<spm agency-op>

**SECTION \_\_\_\_.** The transfer of duties, functions, powers, records, property, employees and moneys by sections 1, 2 and 3 of this (year) Act does not become operative until the Director of the Receiving Agency has been appointed and has qualified. Until then, the Transferring Agency shall continue to perform the duties and functions, exercise the powers and have charge of the records, property, employees and moneys.

**SECTION \_\_\_\_**. Except as otherwise specifically provided in section \_\_\_\_ of this (year) Act, sections \_\_\_\_ to \_\_\_\_ of this (year) Act become operative on January 1, \_\_\_\_.

<spm name-change2>

**SECTION \_\_\_\_**. For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Transferring Agency>> or its officers, wherever they occur in ORS chapter \_\_\_\_, other words designating the <<Receiving Agency>> or its officers.

**To transfer functions between existing agencies**, use this boilerplate language and modify as appropriate:

<boiler transfer>

#### TRANSFER

**SECTION 1.** The duties, functions and powers of the Transferring Agency relating to \_\_\_\_\_ are imposed upon, transferred to and vested in the Receiving Agency.

#### RECORDS, PROPERTY, EMPLOYEES

**SECTION 2.** (1) The Director of the Transferring Agency shall:

(a) Deliver to the Receiving Agency all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this (year) Act; and

(b) Transfer to the Receiving Agency those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The Director of the Receiving Agency shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1 of this (year) Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the Transferring Agency and the Receiving Agency relating to transfers of records, property and employees under this section, and the Governor's decision is final.

#### UNEXPENDED REVENUES

**SECTION 3.** (1) The unexpended balances of amounts authorized to be expended by the Transferring Agency for the biennium beginning July 1, \_\_\_\_, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act are transferred to and are available for expenditure by the Receiving Agency for the biennium beginning July 1, \_\_\_\_, for the purpose of administering and enforcing the duties, functions and powers transferred by section 1 of this (year) Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the Transferring Agency remain applicable to expenditures by the Receiving Agency under this section.

#### ACTION, PROCEEDING, PROSECUTION

**SECTION 4.** The transfer of duties, functions and powers to the Receiving Agency by section 1 of this (year) Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Receiving Agency is substituted for the Transferring Agency in the action, proceeding or prosecution.

#### LIABILITY, DUTY, OBLIGATION

**SECTION 5.** (1) Nothing in sections \_\_\_\_ to \_\_\_\_ of this (year) Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act. The Receiving Agency may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Transferring Agency legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date of section 1 of this (year) Act and accruing under or with respect to the duties, functions and powers transferred by section 1 of this (year) Act are transferred to the Receiving Agency. For the purpose of succession to these rights and obligations, the Receiving Agency is a continuation of the Transferring Agency and not a new authority.

#### RULES

**SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1 of this (year) Act, the rules of the Transferring Agency with respect to such duties, functions or powers that are in effect on the operative date of section 1 of this (year) Act continue in effect until superseded or repealed by rules of the Receiving Agency. References in such rules of the Transferring Agency to the Transferring Agency or an officer or employee of the Transferring Agency are considered to be references to the Receiving Agency or an officer or employee of the Receiving Agency.

**SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 1 of this (year) Act, reference is made to the Transferring Agency, or an officer or employee of the Transferring Agency, whose duties, functions or powers are transferred by section 1 of this (year) Act, the reference is considered to be a reference to the Receiving Agency or an officer or employee of the Receiving Agency who by this (year) Act is charged with carrying out such duties, functions and powers.

#### AGENCY NAME CHANGE

**SA NOTE:** If there are discrete chapters of ORS in which ALL of the references to the Transferring Agency can be changed to the Receiving Agency, you might want to use this provision. In all other situations, you need to pull in each section and amend it to change the name. <spm name-change2>.

#### OPERATIVE DATE WHEN FUNCTIONS ARE BEING TRANSFERRED TO AN EXISTING AGENCY

**SECTION .** Sections 1 to 8 of this (year) Act become operative on January 1, \_\_\_\_.

**POSSIBLE OPERATIVE DATE PROVISIONS WHEN FUNCTIONS  
ARE BEING TRANSFERRED TO A NEW AGENCY**

**SA NOTE: If transferring to a new agency, you should substitute this provision for section 9. <spm agency-op>**

**UNIT AND SECTION CAPTIONS**

**SA NOTE: The unit captions in the boilerplate are for the convenience of the drafter. If you have used unit and section captions in your draft, you need to include this provision. If you have used only unit captions or only section captions in your draft, you need to use the appropriate provision. <spm captions> or <spm captions-unit> or <spm captions-sec>**

Chapter 839, Oregon Laws 1979, is an example of a bill dividing the functions of a single agency and assigning part of them to another officer. Chapter 419, Oregon Laws 1967, is an example of a bill abolishing an agency and dividing its functions between two new agencies. Chapter 616, Oregon Laws 1967, is an example of a bill that transferred certain functions of one agency to a new agency but left the old agency in charge of the new agency. Chapter 616, Oregon Laws 1965, is an example of a bill that grouped several officers and agencies under a single new agency.

**3. ABOLISHING AGENCY.**

When an agency is abolished, there may be some transitional requirements such as:

Relating to the Law Enforcement Council; creating new provisions; amending ORS 423.510; and repealing ORS 423.205, 423.210, 423.220, 423.230, 423.240 and 423.280.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. The Law Enforcement Council is abolished.**

**SECTION 2. ORS 423.205, 423.210, 423.220, 423.230, 423.240 and 423.280 are repealed.**

**SECTION 3. ORS 423.510 is amended to read:**

423.510. (1) There is [*hereby*] established the Community Corrections Advisory Board consisting of 15 members appointed by the Governor. The board shall be composed of:

- (a) Three persons representing community corrections agencies;
- (b) Two persons representing state agencies;
- (c) Two persons representing private agencies;
- (d) Four lay citizens;
- (e) A member of the judiciary;
- (f) A law enforcement officer; [*and*]
- (g) [*Two members of the Law Enforcement Council.*] **One district attorney; and**
- (h) **One member of a county governing body.**

(2) Members of the board shall serve for a period of four years at the pleasure of the Governor provided they continue to hold the office, position or description required by subsection (1) of this section. The Governor may at any time remove any member for

inefficiency, neglect of duty or malfeasance in office. Before the expiration of the term of the member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the board shall receive no compensation for service as a member, but all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or rule under ORS 292.220 to 292.250.

**SECTION 4.** (1) Notwithstanding the term of office specified by ORS 423.510, of the two Community Corrections Advisory Board members appointed pursuant to the amendments to ORS 423.510 by section 3 of this (year) Act to replace the two members formerly appointed from the Law Enforcement Council:

(a) One shall serve for a term ending June 30, (year+1); and

(b) One shall serve for a term ending June 30, (year+3).

(2) Notwithstanding the abolition of the Law Enforcement Council and the adjustment of categories by the amendments to ORS 423.510 by section 3 of this (year) Act, the two members of the council appointed before the effective date of this (year) Act to serve upon the Community Corrections Advisory Board shall continue their service until January 1, (year+1), or until the appointment of their successors, whichever occurs first.

(3) Nothing in this (year) Act prevents the Governor from appointing either or both of the two board members appointed from the Law Enforcement Council to a new position on the board created by the amendments to ORS 423.510 by section \_\_\_ of this (year) Act, so long as the candidate for appointment meets the category requirement of ORS 423.510 (1).

#### **4. “PRIVATIZING” AGENCY.**

To privatize means to alter the status of an entity, such as a business, industry or agency, so as to transform it from a publicly owned or controlled entity to one that is privately owned or controlled. However, the word is often used imprecisely and may encompass a wide range of meanings.

A request for a bill to privatize a state agency may therefore indicate any one of a number of intended objectives. Before beginning to prepare a “privatization” bill, the drafter must determine with some precision what the requester wants to accomplish.

If the requester wishes to abolish a state agency and have its functions assumed, if at all, by a private corporation, the drafter may use the provisions set out previously in this appendix for abolishing an agency. If the abolished agency collected, received or expended moneys, ORS 182.080 provides a procedure to be used in winding up the affairs of the abolished agency and also saves any rights or liabilities accruing prior to the abolition of the agency.

The requester may want a private corporation to assume the functions of a state agency and to manage the assets and property of the former agency under a contract with the State of Oregon. Senate Bill 1172 (1991) is an example of such an approach to “privatization.”

When it becomes clear that a request for a bill to privatize a state agency is actually a request to transform the state agency into a public corporation, the drafter should try to determine why the requester wants the agency to become a public rather than a private corporation. Some likely reasons are the retention of the Governor's power to appoint the governing body of the corporation, a desire to maintain the former agency's protection against tort liability under ORS 30.260 to 30.300 or preservation of various employment and retirement benefits for the corporation's employees. When fully informed concerning the requester's objectives, the drafter has a number of statutory examples that may be used as drafting guides. The State Accident Insurance Fund Corporation (ORS 656.751 to 656.776), the Oregon State Bar (ORS 9.005 to 9.665) and corporations for use and control of water (ORS chapter 554) are public corporations that may serve as models for proposed public corporations.