

## CHAPTER SEVEN

### DEFINITIONS; SHORT TITLE; POLICY AND PURPOSE STATEMENTS; LEGISLATIVE FINDINGS

1. DEFINITIONS
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#### **1. DEFINITIONS.**

The use of definitions should be considered when drafting a bill. If the drafter desires a particular word to have a particular meaning, a definition is essential. The length of bills can be reduced and the bill made clearer through the use of definitions. However, a word should **not** be defined if it is not used in the bill.

Definitions are useful to:

1. Limit or extend the meaning of a word, particularly if the word is used in other than its normal sense or has several meanings.
2. Translate technical terms or words of art into common language. See, for example, “acknowledgment” in ORS 197.015.

As a general rule, definitions should not be used for a word when that word has a clear and definite dictionary meaning and that meaning is the one intended. A statutory definition is unnecessary and could lead to confusion. On the other hand, if a word has a well-defined legal meaning (that is, one well-defined in case law) and there is no statutory definition, the court will assume that the well-defined legal meaning is what the Legislative Assembly intended. See *Johannesen v. Salem Hospital*, 336 Or. 211 (2003). Therefore, if there is a common law meaning, and the Legislative Assembly intends that the definition of the term actually be something else, the drafter should define the term whether or not the intended meaning is identical to the dictionary definition. The appellate courts will use *Webster’s Third New International Dictionary, Unabridged*, to determine the meaning of a word if there is no statutory definition or well-defined legal meaning. In *State v. Cox*, 219 Or. App. 319 (2008), the court noted that when resorting to dictionary definitions of a term it is important to consider the form of the word. For example, when a statute uses a word in its noun form, the definitions applicable to the verb form of the same word don’t apply.

A definition should not be used to twist a word into meaning something **wholly** foreign to its dictionary meaning; for example “dog” means “cat.” After a word is defined, the defined word should be used rather than the definition.

The drafter should take care not to place substantive matter in a definition. To do so makes the substantive matter hard to locate and usually detracts from the clarity of the definition. ORS 442.015 contains several examples of substance entwined with definitions.

Definitions should never be phrased in the alternative unless the use of the defined terms in the bill does not require judgment as to which alternative applies; for example, “commission means XYZ Commission **or** ABC Commission” may be acceptable, but not if the reader has to make a judgment as to which agency fits the definition each time the term “commission” is used.

Acronyms and abbreviations should be used sparingly in bill drafts, and only if previously defined.

ORS chapter 174 contains general rules of construction and certain definitions that apply throughout the statutes. These definitions should not be duplicated in a bill. If any of the words defined in ORS chapter 174 are used in the bill, the words will have the meaning given them in ORS chapter 174 unless specifically provided otherwise. Other terms defined in ORS that have a more or less general application are listed in the cross-references for ORS chapter 174. If a bill relates to crime or criminal procedure, general definitions in ORS 161.015, 161.055 and 161.085 must be considered. The drafter should also consult the topic **WORDS AND PHRASES** in the ORS General Index or the computer search program as a source for definitions of similar words or phrases used elsewhere in the statutes.

The drafter must also keep in mind the definitions and phraseology used in the ORS chapter in which a section being drafted will be compiled, or in which the section being amended is located. If a new section ought to be compiled only in one ORS chapter or within one ORS series, the definitions that apply to the existing ORS chapter or series can be made to apply also to the new section by adding the new section to, and making it a part of, the existing ORS chapter or series. This is one of the basic reasons for the “add” technique.

Definitions usually begin with a reference to the particular sections in the bill that rely on those definitions: “As used in sections x to y of this (year) Act ...” or “As used in sections 2, 3 and 10 of this (year) Act ...” Housekeeping or amended sections at the end of the bill may not depend on the definitions, so “As used in this (year) Act” should not be used. The ORS editors substitute all sections in an Act for references to “this (year) Act.” If only a few sections depend on the definition, the substitution is confusing.

When writing a section of definitions, the drafter should place each definition in a separate subsection or paragraph. The defined words must be placed in quotation marks and arranged in alphabetical order.

“Means” is used in the definition if the definition restricts or limits the meaning of a word. “Includes” is used if the definition extends the meaning. The combination “means and includes” should **never** be used. A doubt is raised as to whether the definition is intended to be restrictive or extensive. The singular form of “means” and “includes” is used even if the term being defined is plural because the subject of “means” or “includes” is the “word”; e.g., [the word] “Toys” includes teddy bears.

In some cases a drafter may not want to define a word or phrase completely and exactly, yet may want to make certain that the word or phrase **includes** all the specific cases in mind. See American Building Maintenance v. McLees, 296 Or. 772 (1984). If so, the drafter may find the following example useful:

**SECTION 1.** As used in sections \_\_\_\_ to \_\_\_\_ of this (year) Act, “conveyance” includes, but is not limited to, an assignment, lease, mortgage or encumbrance.

A drafter may want to **exclude** a meaning from an extensive definition. However, a drafter should not use adjustments in a definition to create substantial law such as exceptions to the application of the law. If the exclusion is properly part of the definition, the definition should be phrased as follows:

**SECTION 1.** As used in sections \_\_\_\_ to \_\_\_\_ of this (year) Act, “fish” includes both game fish and nongame fish, but does not include *thaleichthys pacificus*, commonly known as smelt.

A drafter may wish to incorporate by reference a definition found elsewhere in ORS. This practice allows more than one definition to be changed by a single amendment and is more efficient than repeating the definition when the desire is to keep the applicable definitions identical. The following form will accomplish the desired result:

**SECTION 1.** As used in sections \_\_\_\_ to \_\_\_\_ of this (year) Act, “renewable energy resource” has the meaning given that term in ORS 469.185.

When using in the text of a bill a word that is defined in the definition section, the drafter should **always** use the word in the sense in which it is defined. This is true even though the definition section applies “unless the context requires otherwise.” Some drafters drop that phrase because it offers a wider possibility of meaning than they wish to allow. Notwithstanding the scope of a definition, judicial construction may limit the application of the word defined by reason of the context in which the word is found. Nilsen v. Davidson Industries, Inc., 226 Or. 164, 167 (1961); State v. Pacific Powder Co., 226 Or. 502, 507 (1961).

Definitions generally should be placed at the beginning of the bill so that the reader can be aware of special meanings given to words and phrases before encountering them in the bill. However, in defining an expression that is used in one section only, it may be more convenient for the reader if the drafter adds the definition to that section, usually in a separate subsection at the beginning of the section. A definition that applies to only two or three sections in a rather lengthy bill may be placed more conveniently just before those sections, rather than at the beginning of the bill.

## **2. SHORT TITLE.**

A short title is seldom used in legislation in Oregon except for Uniform Acts, e.g., the Uniform Commercial Code. Statutes are more conveniently cited by reference to ORS chapter or section numbers. However, if a lengthy bill establishes a continuing program of considerable importance, a short title may be used. See, for example, ORS 801.010.

An Act should not be titled using a date; for example, the title “Oregon Criminal Code of 1971” cannot be adjusted to reflect later amendments even if the new material is added to one of the series that constitutes the code unless the title section is also amended. The result misleads the reader who may conclude that the 1971 code has never been amended.

### **3. POLICY AND PURPOSE STATEMENTS.**

If a statement of policy or purpose is required, a drafter may make it a section of the bill. It then will follow the enacting clause and, consequently, have the effect of law, as distinguished from a preamble, which appears before the enacting clause and does not have the effect of law. See ORS 696.007 for an example of an enacted purpose statement.

In some instances a declaration of purpose may be intended as a guide for judicial construction or administrative application of a bill. The Oregon Supreme Court relied on ORS 337.110 (since repealed) in its effort to ascertain the meaning of another section in Webb v. State, 217 Or. 1 (1959).

Policy or purpose statements cause some misunderstanding since they are often far more ambitious than the scope of the accompanying provisions. See Peacock v. Veneer Services, 113 Or. App. 732 (1992). Unless requested to do so, the drafter should not include policy or purpose statements. If such a statement is requested, it should be drafted to reflect the scope of the bill. If such a statement is submitted with a proposal, check it for redundancy, conflicts with substantive provisions of the draft or use of undefined terms. A rhetorical exercise in nonlegal concepts becomes law but is not mere window dressing. Where the purpose of a section is highly specific, the phrase “For the purpose of . . .,” may be included in the section to which the specific purpose applies.

### **4. LEGISLATIVE FINDINGS.**

Occasionally a drafter is asked to include a legislative finding in a bill. It is wise to ask the requester to supply the text. Caution should be urged. The following statement from City of Portland v. Tidyman, 306 Or. 174, 185 (1988), indicates that the courts may take a dim view of the efficacy of enacting legislative findings into law:

[Legislative] findings are only a recital of premises for legislation. As such, their vagueness or concreteness and their past or continued accuracy are immaterial. Their omission would not affect the validity of the [law]. If legislative findings mattered, drafters merely would busy themselves with inserting whatever prefatory recitals courts have quoted in sustaining similar laws. But lawmakers do not need to find or declare the factual predicates for legislation, unless some special statute requires it, and such a recital gains nothing for the validity of the legislation, though it can sometimes help toward its purposeful interpretation. It is the operative text of the legislation, not prefatory findings, that people must obey and that administrators and judges enforce.