

Chapter 278

1977 REPLACEMENT PART

Insurance for Public Bodies

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278.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Department" means the Department of General Services.

(2) "Participating local public body" and "public body" mean any public body other than the state which has elected to participate in the Liability Fund under ORS 30.282.

(3) "Personal property" means tangible personal property owned, leased, controlled or possessed by a state agency and includes all chattels and moveables, such as merchandise, furniture, goods, livestock, vehicles, moveable machinery, moveable tools, moveable equipment and general operating supplies.

(4) "Property" means real and personal property as defined in subsections (3) and (5) of this section.

(5) "Real property" means the land and all buildings, structures, improvements, machinery, equipment or fixtures erected on, above or under the land the title of which is vested in the State of Oregon.

(6) "State agency" or "agency" means each state branch, institution, department, board, commission or activity of whatever nature.

(7) "Vessel" means a boat, ship, craft or structure made to float or travel upon the water which may or may not be powered by a marine engine.

[1961 c 448 §2, 1975 c 609 §21; 1977 c 428 §2]

278.010 [Repealed by 1953 c 581 §11]

278.011 State agencies to submit appraisals of certain property; review. (1) At times determined by the Department of General Services, each state agency shall prepare and submit a statement of the appraised value of its property, except the property subject to ORS 278.022, to the department. The appraised value of the property shall be established on the basis of present day replacement costs excluding the value of land and foundations of buildings and machinery or equipment which are below the surface of the ground or below the undersurface of the lowest basement floor or, if there is no basement, below the surface of the ground inside the foundation walls of the building.

(2) No technical or professional assistance need be utilized by the state agency in forming its judgment of the appraised value of its property; but, if it determines that technical or professional assistance is necessary to make a reasonable judgment as to the appraised value of its property, the state agency

may utilize technical and professional assistance for that purpose. The cost and expense of such technical or professional assistance shall be paid from funds appropriated for the biennial period for paying the general and current expenses of the state agency.

(3) The department shall examine each statement of appraised value submitted pursuant to subsection (1) of this section. If the department determines that the judgment of any state agency as to the appraised value of its property is unreasonable, the department shall notify the state agency of that fact and require it to submit a reasonable judgment as to the appraised value of its property. If a reasonable judgment as to the appraised value of the property of any state agency cannot be secured from it, the department shall make a determination as to the appraised value of the property in question. The cost and expense incurred by the department in making such determination shall be paid from the funds appropriated for the biennial period for paying the general and current expenses of the state agency owning, controlling or possessing the property.

[1953 c 581 §9; 1957 c 385 §1, 1961 c 448 §3, 1965 c 140 §1, 1969 c 670 §5]

278.020 Restoration Fund; proportionate contributions by state agencies; Liability Fund established. (1) There hereby is established the Restoration Fund as a separate fund in the State Treasury, consisting of an account to be used for the purposes set forth in ORS 278.011 to 278.085, and a separate account to be known as the Liability Fund, to be used for the purposes set forth in ORS 278.100 to 278.135. References to the Restoration Fund contained in ORS 278.011 to 278.047, subsections (2) to (4) of this section, and ORS 278.052 to 278.085 shall not be deemed to include or relate to the separate Liability Fund account.

(2) Upon ascertaining the value of the property under ORS 278.011 the department shall apportion to each state agency its proportionate contribution to a sum to be set aside on July 1 of each year, for the purpose of replacing or rebuilding any property designated in ORS 278.011 that may be lost, damaged or destroyed, where the monetary value of the loss, damage or destruction exceeds \$100 for any one incident, by fire, lightning, riot, riot attending a strike, hail, aircraft, vehicles, smoke, explosion, storm, vandalism and malicious mischief, flood, earthquake or burglary or robbery, but excluding any loss from mysterious disappearance.

(3) Except as provided in ORS 278.043, the contribution required of each state agency under subsection (2) of this section shall be one-tenth of one percent of the appraised value of the buildings, equipment, furniture and other property of such state agency. The minimum contribution for any state agency shall be \$10. Agencies reporting less than \$500 of appraised value of property shall make no contribution.

(4) When the Restoration Fund reaches an amount equal to two percent of the appraised value of the buildings, equipment, furniture and other property of all state agencies subject to ORS 278.011 to 278.070, the department shall make further annual apportionments on July 1 of each year as provided in this section so that the Restoration Fund is maintained at such amount; but such apportionments shall not exceed for any year an amount equal to one-tenth of one percent of the appraised value of the buildings, equipment, furniture and other property of all state agencies subject to ORS 278.011 to 278.070.

[Amended by 1953 c.581 §11; 1961 c.448 §4; 1963 c.634 §4; 1967 c.262 §1; 1969 c.670 §1; 1975 c.609 §10]

278.022 State agencies to submit appraisals of vessels; contributions to fund.

(1) At times determined by the department, each state agency owning, leasing, controlling or possessing vessels and property thereon, or property on any other vessel, shall prepare and submit a statement of the appraised value of its vessels and property to the department. The appraised value of the vessels and property shall be established on the basis of present-day replacement costs. The appraisal of the vessels and property shall be conducted in conformity with the provisions of subsections (2) and (3) of ORS 278.011.

(2) Upon ascertaining the appraised value of the vessels and property designated in subsection (1) of this section, the department shall determine the annual contribution to the Restoration Fund of each state agency owning, leasing, controlling or possessing such vessels and property. The rate of contribution on the vessels and property shall not exceed \$10 a year on each \$1,000 of estimated replacement cost. The contribution paid under this section shall be in lieu of the contribution required by ORS 278.020 on such vessels and property, and is for the purpose of replacing or rebuilding any property designated in ORS 278.011 and any vessels, property thereon, and property on any other vessel, as designated in subsection (1) of this section, that may

be lost, damaged or destroyed by any of the hazards described in ORS 278.020.

(3) In addition to the hazards described in ORS 278.020, if any vessel or property designated in subsection (1) of this section is damaged or destroyed as a direct result of collision with another vessel, striking any object, whether submerged or not, sinking, grounding, stranding, or other perils of the sea, the department shall pay the cost of restoring the vessel or property out of the Restoration Fund in an amount not to exceed the appraised value established pursuant to subsection (1) of this section. If a vessel designated in subsection (1) of this section becomes disabled for any reason, the department shall reimburse the agency from the Restoration Fund for the cost of towing the vessel to the nearest port where repairs can be accomplished.

[1961 c.448 §11; 1965 c.140 §2; 1969 c.670 §6, 1975 c.609 §22]

278.025 Contributions to fund reduced when supplemental insurance is purchased. Whenever supplemental insurance for fire, lightning, and the hazards included under the Standard Bureau Extended Coverage Endorsement with an average clause of no less than 90 percent and with a deductible no greater than \$5,000 is purchased, as provided in ORS 278.085, as an addition to Restoration Fund coverage, the property so insured shall be allowed at least a 40 percent discount on the assessment contribution to the Restoration Fund for such insured property.

[1953 c.581 §5; 1969 c.670 §7; 1975 c.609 §23]

278.030 Additional contributions to fund authorized in case of extraordinary hazard. Whenever an extraordinary hazard of loss or damage by fire exists as to any property of the various state institutions, departments, boards, commissions and activities, the department may fix, determine and apportion to the state institution, department, board, commission or activity owning, controlling or possessing such property, in addition to the contributions required by ORS 278.020, such further contributions to the Restoration Fund as the department deems reasonable and conformable to standard insurance practices. In fixing and determining the additional contributions as to properties involving such an extraordinary hazard the department shall consider each of such properties separately and shall set a rate thereon. In determining such rate the department may consider the physical, occupational, moral and other hazards involved as to each of such properties, the

loss experience on properties of such class, and the schedule of rates applicable to similar properties filed by the Oregon Insurance Rating Bureau with the State Insurance Commissioner.

278.035 Purchase of excess catastrophe insurance. (1) The department may procure and keep in force one or more policies of excess catastrophe insurance on the property designated in ORS 278.011. The catastrophe insurance shall insure the Restoration Fund against a loss in excess of a determined amount caused by any of the hazards described in ORS 278.020, or any combination of such causes.

(2) The premiums for the excess coverage under this section shall be paid from the Restoration Fund.

(3) If the department purchases catastrophe insurance pursuant to this section, no company may be permitted to assume a share of the catastrophe insurance risk in excess of the amount permitted by law based upon the assets and liabilities of the company.

[1961 c.448 §§6, 7; 1969 c.670 §8; 1975 c.609 §24]

278.040 Moneys in fund; administrative expenses. The moneys arising from the operation of ORS 278.011 to 278.070 shall be set aside by the State Treasurer and credited to the Restoration Fund. The moneys in the Restoration Fund are continuously appropriated to the department for the purpose of paying the expenses of administering ORS 278.011 to 278.070.

[Amended by 1961 c.448 §8]

Note: Section 4, chapter 101, Oregon Laws 1975, provides:

Sec. 4. To assist in financing the purchase of authorized automobiles, the department, with Emergency Board approval, may borrow sufficient moneys from the Restoration Fund as defined in ORS 278.040, without interest, with repayment of the loan in full to be made within the biennium beginning July 1, 1975

278.043 Additional assessment by state agencies to maintain fund. (1) If money is owed by the Restoration Fund to any of the funds mentioned in ORS 278.047, or if the Restoration Fund in any year is less than one-half of one percent of the total value of the buildings, equipment, furniture and other property of all state agencies subject to ORS 278.011 to 278.070, the department shall make an assessment on July 1 of that year in addition to that required under ORS 278.020 but in the manner prescribed by that section so that amounts owed may be repaid under ORS 278.047 and the Restoration Fund may

be maintained at one-half of one percent of the total value of the buildings, equipment, furniture and other property of all state agencies subject to ORS 278.011 to 278.070. From such additional assessment, amounts specified in ORS 278.047 first shall be repaid and the remainder of the assessment shall be credited to the Restoration Fund.

(2) In no event shall the additional assessment under this section for any year exceed one-tenth of one percent of the total value of the buildings, equipment, furniture and other property of all state agencies subject to ORS 278.011 to 278.070.

[1969 c.670 §3]

278.047 Authority to borrow and use other funds when Restoration Fund insufficient; repayment. (1) In any year when the moneys in the Restoration Fund are not sufficient to make all payments under ORS 278.011 to 278.070, the department may borrow and use for that purpose moneys in the Common School Fund, the Industrial Accident Fund and the Public Employes' Retirement Fund, or any one or more of these funds, to the extent necessary to accomplish the replacement and rebuilding.

(2) Amounts borrowed for purposes of subsection (1) of this section shall be repaid to each fund from which they were borrowed out of additional assessments under ORS 278.043 in annual instalments each not less than one-tenth of the aggregate amount borrowed from such fund and not repaid, but in no event less than \$50,000. Repayments shall be applied first in payment of interest at a rate equivalent to the prevailing commercial rates of interest on comparable investments, as determined by the Department of General Services, on the aggregate amount borrowed but not repaid, and the remainder shall be applied in partial repayment of the principal amount borrowed.

[1969 c.670 §4]

278.050 Use of fund for restoring lost or damaged property; effect of supplemental insurance. (1) Subject to subsections (2) and (3) of this section, if any property designated in ORS 278.011 of an appraised value of \$500 or more is lost, damaged or destroyed by any of the hazards described in ORS 278.020, the department shall pay the cost of restoring the property out of the Restoration Fund in an amount not to exceed the appraised value established pursuant to ORS 278.011.

(2) Any amounts received by an agency from the Restoration Fund may be applied for purposes other than the restoration of the property destroyed provided such use is approved by the Executive Department and further, in the event the amount received from the Restoration Fund exceeds \$50,000, approval must also be received from the Legislative Assembly if in session, or the Emergency Board if during the interim. If the restoration of any property designated in ORS 278.011 that is lost, damaged, or destroyed by any of the hazards described in ORS 278.020 is not required, the cost of razing the property may be paid out of the Restoration Fund.

(3) With respect to property insured by supplemental insurance as provided in subsection (1) of ORS 278.085:

(a) If the loss, damage or destruction was the result of a risk or casualty covered by the insurance, no part of the cost of restoring the property shall be paid from the Restoration Fund.

(b) If the loss, damage or destruction was the result of a risk or casualty not covered by the insurance and the property is restored, there shall be paid from the Restoration Fund the entire cost of restoring the property or the value of the property declared in accordance with ORS 278.011, whichever is less.

(4) With respect to property insured by supplemental insurance as provided in subsection (2) of ORS 278.085, the amount to be paid from the Restoration Fund for restoring the property shall be whichever of the following amounts is the lesser:

(a) The difference between the cost of restoration and the portion of that cost which is covered by supplemental insurance.

(b) Twenty percent of the appraised value of the property as declared in accordance with ORS 278.011.

(5) The Executive Department shall draw warrants on the State Treasurer payable from the Restoration Fund for all claims approved by the department in carrying out the provisions of ORS 278.011 to 278.070.

[Amended by 1953 c.581 §11, 1957 c.385 §2; 1961 c.448 §9; 1965 c.140 §3; 1969 c.670 §9]

278.052 Right of action against person responsible for loss; investigations. (1) If a payment is made out of the Restoration Fund to a state agency to restore any property covered by the Restoration Fund, the department is subrogated, to the extent of the payment, to the rights of the state agency against any person or other entity legally responsible

in damages for the loss. The department may commence an appropriate action in any court, in the name of the state, to enforce the rights. Any amounts recovered as a result of the proceeding shall be paid into the State Treasury and credited to the Restoration Fund.

(2) The department may conduct an investigation of a loss to determine whether legal action should be commenced. The department may administer oaths and examine witnesses in connection with its investigation. The State Fire Marshal and the Department of State Police shall cooperate with the Department of General Services in the investigation.

[1961 c.448 §12]

278.054 [1953 c.581 §6; repealed by 1975 c.605 §33]

278.056 [1953 c.581 §7, repealed by 1975 c.605 §33]

278.060 Adoption of rules and regulations. The department may adopt the rules and regulations it deems necessary for carrying into full force and effect the provisions of ORS 278.011 to 278.070.

[Amended by 1961 c.448 §13]

278.070 Certain laws not repealed. ORS 278.011 to 278.070 do not repeal the provisions of ORS 276.246.

[Amended by 1961 c.448 §14]

278.080 [Amended by 1953 c.581 §11, repealed by 1959 c.12 §1]

278.085 State agency insurance supplemental to that provided by Restoration Fund. (1) Any state agency having control of property built with borrowed funds and required by the terms of the loan agreement to keep the building insured against specified risks shall, until the loan has been repaid, keep the property insured against the risks specified in an amount equal to the appraised value as declared in accordance with ORS 278.011.

(2) Any state agency may, with the approval of the department, insure any property under its control, other than property insured as provided in subsection (1) of this section, against loss, damage or destruction by a hazard described in ORS 278.020 or any other hazard.

(3) The premium for such insurance shall be paid out of the appropriations made for or the funds subject to the disposition of the state agency carrying such insurance. Such insurance shall be supplemental to that afforded by the Restoration Fund, without right of the supplementary insurers, in event

of loss, to subrogation to or contribution from that fund.

[1953 c 581 §1; 1957 c.385 §3; 1961 c.448 §15; 1969 c 670 §10]

278.090 [Amended by 1955 c 288 §1; 1959 c.662 §18; repealed by 1975 c.609 §25]

278.100 Liability Fund established to provide insurance for state and participating local public body tort liabilities; management of fund by Department of General Services. (1) There hereby is established a Liability Fund as a separate account in the Restoration Fund under ORS 278.020, which shall be used to provide insurance or self-insurance for the liability of the State of Oregon and its officers, agents or employes, and for the liability of a participating local public body and its officers, agents or employes, for or on account of any loss, damage or injury within the scope of ORS 30.260 to 30.300, including the operation of motor vehicles within the state's or public body's control.

(2) The Department of General Services shall manage the Liability Fund and administer the provisions of ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135.

[1975 c.609 §2, 1977 c.428 §3]

278.105 State agency purchase of liability insurance to be approved by Department of General Services. After July 2, 1975, no state agency, officer, board or commission shall purchase liability insurance against the liability of the state or its officers, employes or agents, except as may be authorized by the Department of General Services.

[1975 c.609 §3]

278.110 Assessment of state agencies to provide insurance. (1) The Department of General Services shall apportion to each agency its contributions to a total sum to be established by the department, to be set aside on July 1 of each year to indemnify the state, its officers, employes or agents and to purchase insurance or self-insure against liability for loss, damage or injury within the scope of ORS 30.260 to 30.300.

(2) The amount of contribution by each agency shall be determined by the Department of General Services and shall be based upon the factors which reflect the relative risk of liability to which each agency exposes the State of Oregon.

[1975 c 609 §4]

278.115 Disposition of state agency assessments; use of moneys. The contributions apportioned to state agencies and moneys arising from the operation of ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135 including any applicable fund balances, credits or refunds received from any liability insurance policies in force, or actions commenced prior to July 2, 1975, shall be deposited with the State Treasurer and credited to the Liability Fund account in the Restoration Fund. The moneys in the Liability Fund are continuously appropriated for paying sums for which the state or its officers, agents or employes are or may be liable under ORS 30.260 to 30.300, for establishing a self-insurance liability program, for purchasing such liability insurance for the above described purposes as may be required or desirable for the efficient operation of state government, and for paying the expenses of administering ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135.

[1975 c.609 §5]

278.120 Defense of claims by Attorney General; approval of settlements in excess of \$50,000; procedure for remedying deficiencies in Liability Fund. (1) Upon receipt by the Attorney General of a claim for damages as provided in ORS 30.275, if the claim is covered by insurance, he shall tender defense of the claim to the insurer, and if such tender is accepted ORS chapter 180 and the remaining provisions of this section shall not be applicable. If the claim is not covered by insurance or if the tender is rejected, the Attorney General shall cause an investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of ORS 30.260 to 30.300. If the Attorney General determines that the state or a state officer, agent or employe is or may be liable to the claimant under ORS 30.260 to 30.300 he shall defend or may negotiate, compromise and settle with the claimant; and if he determines such action to be appropriate he shall direct payment of the claim or of any portion thereof out of the Liability Fund, subject to the provisions of ORS 30.290 and subsection (2) of this section. The department shall thereupon pay the claim in the amount and to the person or persons designated by the Attorney General.

(2) When the aggregate amount of any settlements arising out of a single accident or occurrence exceeds \$5,000, the settlement shall be approved by the Director of the Department of General Services. Prior to making

the settlement, the Attorney General also shall advise the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board of the terms, conditions and reasons therefor.

(3) If there is no balance in the Liability Fund, or if the balance is insufficient to cover the amount which has been directed to be paid by the Attorney General, the amount remaining in the Liability Fund shall be paid towards satisfaction of the total amount payable and the balance thereof may be advanced through the Liability Fund under the provisions of ORS 293.205 to 293.225. Prior to any advancement to the Liability Fund under the provisions of ORS 293.205 to 293.225, approval of the advancement shall be obtained from the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

(4) Money advanced to the Liability Fund as provided in this section shall be repaid from the Liability Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the indebtedness of the Liability Fund in not more than 10 years.

[1975 c 609 §6]

278.125 Purchase of insurance; payment of premium; legislative approval of self-insurance plan. (1) The Department of General Services is authorized to negotiate for and purchase such insurance as the Department of General Services deems necessary or desirable to accomplish the purposes of ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135.

(2) The premium for such insurance shall be paid from the Liability Fund as an administrative expense under ORS 30.260 to 30.290,

278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135.

(3) The department shall not implement any plan of self-insurance insuring any part of the liability of the state or its officers, employes or agents under ORS 30.260 to 30.300 until after the plan has been submitted to and approved by the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board.

[1975 c.609 §7]

278.130 Employment of staff assistance; payment for services by Attorney General. The Department of General Services and the Attorney General may employ such professional services and other personnel deemed necessary to carry out the administration of ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135. The Attorney General shall charge the Department of General Services for the cost of his services under ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135 pursuant to ORS 180.160, and such costs and the costs incurred by the Department of General Services in the administration of ORS 30.260 to 30.290, 278.005, 278.020 to 278.025, 278.035 and 278.100 to 278.135 shall be paid out of the Liability Fund.

[1975 c 609 §8]

278.135 Investment of Liability Fund moneys; disposition of earnings. The moneys in the Liability Fund may be invested as provided in ORS 293.701 to 293.776 in "investment funds" as defined in ORS 293.701 which includes the Liability Fund. Interest earnings on the Liability Fund shall be credited to the Liability Fund.

[1975 c 609 §9]

278.990 [Repealed by 1975 c.609 §25]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law

Done at Salem, Oregon,
October 1, 1977

Thomas G. Clifford
Legislative Counsel