

TITLE 22

PUBLIC OFFICERS AND EMPLOYEES

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Chapter 236

1979 REPLACEMENT PART

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**VACANCIES AND
ELIGIBILITY GENERALLY**

236.010 Causes for vacancies in office. (1) An office shall become vacant before the expiration of the term if:

(a) The incumbent dies, resigns or is removed.

(b) The incumbent ceases to be an inhabitant of the district, county or city for which he was elected or appointed, or within which the duties of his office are required to be discharged.

(c) The incumbent is convicted of an infamous crime, or any offense involving the violation of his oath.

(d) The incumbent refuses or neglects to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law.

(e) The election or appointment of the incumbent is declared void by a competent tribunal.

(f) The incumbent is found to be a mentally diseased person by the decision of a competent tribunal.

(g) The incumbent ceases to possess any other qualification required for election or appointment to such office.

(h) Appointment of the incumbent is subject to Senate confirmation under section 4, Article III of the Oregon Constitution and the appointment is not confirmed.

(2) The provisions of paragraph (b) of subsection (1) of this section shall not apply where residence within the district, county or city for which he was elected or appointed is not required for such election or appointment.

[Amended by 1969 c 669 §3; 1979 c.351 §3]

236.020 Vacancy for breach of official bond. The Governor shall declare vacant the office of every officer required by law to execute an official bond whenever a judgment is obtained against such officer for a breach of the conditions of the bond.

236.030 Persons ineligible for office because of membership in certain organizations. (1) No person who is a member of, or affiliated with, any organization which teaches the doctrine of, or advocates, the overthrow of the Government of the United States by force or violence shall be a candidate for public office or eligible for appointment to a public office.

(2) The name of a person defined in subsection (1) of this section shall not be placed upon any ballot in connection with any election.

236.040 Leave of absence for Peace Corps volunteer; reinstatement. (1) As used in this section:

(a) "Public officer or employe" means any person who renders service to and is paid therefor by a public employer.

(b) "Public employer" means the state or a county, city, school district or other public corporation, commission, agency, board or entity organized for a public purpose.

(2) Public employers shall grant leaves of absence without pay for at least two years to any full-time salaried public officer or employe who serves, and while he serves, as a volunteer in the Peace Corps. Upon expiration of the leave the public officer or employe shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty, without loss of seniority or other employment rights, if any. Failure of the officer or employe to report within 90 days after termination of his service shall be cause for dismissal. [1963 c.199 §§1, 2]

236.100 Political affiliation of person appointed to fill vacancy in partisan elective office. Whenever a vacancy occurs in any partisan elective office in this state and is to be filled by appointment, including the office of United States Senator, no person shall be eligible for such appointment unless he is affiliated, as determined by the appropriate entry on his official election registration card, with the same political party as that by which the elected predecessor in such office was designated on the election ballot. [Formerly 236.135]

**VACANCIES IN AND
REMOVAL FROM STATE AND
FEDERAL OFFICES**

236.110 [Repealed by 1957 c.608 §231]

236.120 Manner of filling vacancy of United States Representative. Whenever a vacancy occurs in the office of Representative in Congress, the Governor shall issue his writ of election to fill such vacancy. The writ shall be directed to the county clerk of each county wholly or partly within the congressional district in which the vacancy occurs, com-

manding him to hold a special election to fill the vacancy at the time appointed by the Governor. [Amended by 1957 c.608 §229; 1965 s.s. c.1 §2]

236.130 Manner of filling vacancy of United States Senator. Whenever there is a vacancy in the office of Senator of the United States, the Governor shall fill the vacancy by appointment until such time as the vacancy is filled by a Senator of the United States regularly elected and qualified.

236.135 [1953 c.473 §1; renumbered 236.100]

236.137 [1955 c.210 §1; repealed by 1971 c.302 §1]

236.140 Term, removal from, vacancy in appointive offices. Any person holding an appointive office in any of the offices, departments or institutions of this state, shall hold the same for an indefinite term, not exceeding four years, and shall at all times be subject to removal by the appointive power which made the appointment. The appointive power may in all cases appoint a successor.

236.145 State board or commission members prohibited from accepting certain positions. No person who has been appointed by the Governor to serve on a state board or commission shall accept a salaried position with such body during his tenure on, or within one year after his resignation or retirement from, such board or commission. [1953 c 594 §1]

236.150 Recess appointment by Governor. Whenever a vacancy occurs during the recess of the legislature in any office which the legislature is authorized to fill by election, the Governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

236.160 Qualification and term of interim appointees. Any person appointed pursuant to ORS 236.150 shall, before proceeding to execute the duties assigned him, qualify in the same manner as required by law of the officer in whose place he is appointed, and he shall continue to exercise and perform the duties of the office to which he is appointed until the vacancy is regularly supplied as provided by law.

VACANCIES IN AND REMOVAL FROM COUNTY OFFICES

236.210 Filling vacancies in county and precinct offices. When there is a vacancy in the office of county clerk, sheriff or any county or precinct office, some suitable person shall be appointed by the county court or board of county commissioners to perform the duties of the office until the vacancy is regularly supplied as provided by law. Before proceeding to execute the duties assigned him, the person appointed shall qualify in the same manner as required by law of the officer in whose place he is appointed. [Amended by 1965 c.221 §24]

236.220 Deputy to fill vacancy in certain offices until person appointed qualifies. (1) During the interval between the time when a vacancy occurs in any county office, except the office of county commissioner, and the time when the person appointed by the county court or board of county commissioners to fill the vacant office qualifies therefor, the chief deputy of the affected office shall perform all the official acts and duties of such office.

(2) During the period the chief deputy serves as provided in subsection (1) of this section, he shall be deemed to continue to occupy the position of chief deputy for the purpose of determining his status and rights under the civil service law and Public Employees' Retirement System, and such service shall in no respect affect his status or rights under those systems. [Amended by 1963 c.161 §1]

236.225 Filling vacancies in all offices of members of county governing body. (1) If vacancies exist at the same time in all of the offices of members of a county governing body, two qualified persons shall be appointed by the Governor, and one by the appointees of the Governor, to perform the duties of the offices until the vacancies are filled as provided by law. If vacancies exist at the same time in all but one of such offices, the Governor shall appoint one qualified person who, with the incumbent serving in office, shall appoint another, each to perform the duties of the offices until the vacancies are filled. If county judge is one of the offices vacant, one of the appointments made by the Governor under this section shall be to the office of county judge. ORS 236.100 applies to appointments under this section.

(2) As used in this section, "county govern-

ing body” means the county court or the board of county commissioners. [1967 s s c.6 §1]

236.230 Filling of vacancy in office of county clerk. In case of a vacancy in the office of county clerk it shall be filled by the county judge and county commissioners of the county by appointment of some suitable person.

236.240 Removal of county treasurer from office. Whenever suit has been commenced on the official bond of any delinquent treasurer, he may be removed by the county court of his county.

236.250 Removal of Clackamas County auditor; filling of vacancy. If at any time the county court of Clackamas County desires to remove the county auditor it may do so by filing a petition in the circuit court, stating the reasons why he should be removed. The circuit court may hear such petition in a summary manner and may either grant or deny the petition. If the circuit court grants the petition, the county court may remove the auditor and declare the office vacant. If the petition is denied by the circuit court, all proceedings shall cease and no further steps for the removal of the auditor shall be taken for a period of 90 days. There shall, in either event, be no appeal from the decision of the circuit court, and its decision shall be final. In case of removal of the auditor, the county court shall, within 10 days, appoint an auditor who shall qualify as such. Any vacancy in the office of county auditor shall be filled by the county court for the unexpired term.

RESIGNATIONS

236.310 Right of officers to resign. Any person who receives a certificate of election as a member of the Legislative Assembly or commissioner of the county court is at liberty to resign his office, though he may not have entered upon the execution of its duties or taken the requisite oath of office. [Amended by 1965 c.221 §25]

236.320 Recipient of resignation. Resignation shall be made as follows:

(1) By the Secretary of State, State Treasurer and all officers elected by the legislature, to the Governor.

(2) By all officers who hold their offices by election, to the officer authorized by law to order a special election to fill the resulting vacancy.

(3) By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

DISCIPLINARY ACTIONS AGAINST POLICE OFFICERS

236.350 Definitions for ORS 236.350 to 236.370. As used in ORS 236.350 to 236.370:

(1) “Police officer” has the meaning given that term in subsection (6) of ORS 181.610.

(2) “Disciplinary action” means any action taken against a police officer by a public employer for the purpose of punishing the officer, including dismissal, demotion, suspension without pay, reduction in salary, written reprimand or transfer.

(3) “Just cause” means a cause reasonably related to the employee’s ability to perform required work. The term includes any wilful violation of reasonable work rules, regulations or written policies. [1979 c.618 §2]

236.360 Disciplinary actions; just cause; notice; procedures. (1) No disciplinary action shall be taken against a police officer without just cause.

(2) A public employer that intends to take disciplinary action shall:

(a) Notify the police officer in writing of the charges against the officer and the proposed disciplinary action; and

(b) Provide the police officer with an opportunity to respond to the charges at an informal hearing which may be recorded, with the person or persons having authority to impose the proposed disciplinary action.

(3) Public employers of police officers shall prepare and maintain written procedures to implement the provisions of ORS 236.350 to 236.370. [1979 c 618 §3]

236.370 ORS 236.350 to 236.370 not applicable to certain police officers. ORS 236.350 to 236.370 does not apply to disciplinary action taken against police officers who are:

(1) In an initial probationary period of employment that does not exceed 12 months or in a probationary period under a collective bargaining agreement which is in excess of 12 months;

(2) Under a collective bargaining agreement requiring just cause for disciplinary action;

(3) Under a county civil service system adopted pursuant to ORS 241.002 to 241.012;

(4) Under a county or municipal civil service system which provides police officers with disciplinary action protections at least equivalent to those provided under ORS 236.350 and 236.360;

(5) The chief executive officers of law enforcement units, as defined in subsection (4) of ORS 181.610; or

(6) Supervisory employes, as defined under subsection (14) of ORS 243.650, where a collective bargaining agreement is in effect with their public employer. [1979 c.618 §4]

236.405 [1961 c.287 §1; repealed by 1979 c.59 §1]

236.415 [1961 c.287 §2; repealed by 1979 c.59 §1]

236.420 [1961 c.287 §3; repealed by 1979 c.59 §1]

236.425 [1961 c.287 §4; repealed by 1979 c.59 §1]

236.430 [1961 c.287 §23; repealed by 1979 c.59 §1]

236.435 [1961 c.287 §24; repealed by 1979 c.59 §1]

236.440 [1961 c.287 §5; repealed by 1979 c.59 §1]

236.445 [1961 c.287 §6; repealed by 1979 c.59 §1]

236.450 [1961 c.287 §25; repealed by 1979 c.59 §1]

236.455 [1961 c.287 §26; repealed by 1979 c.59 §1]

236.460 [1961 c.287 §7; repealed by 1979 c.59 §1]

236.465 [1961 c.287 §8; repealed by 1979 c.59 §1]

236.470 [1961 c.287 §9; repealed by 1979 c.59 §1]

236.475 [1961 c.287 §10; repealed by 1979 c.59 §1]

236.485 [1961 c.287 §11; repealed by 1979 c.59 §1]

236.490 [1961 c.287 §12; repealed by 1979 c.59 §1]

236.495 [1961 c.287 §13; repealed by 1979 c.59 §1]

236.500 [1961 c.287 §14; 1973 c.773 §3; repealed by 1979 c.59 §1]

236.505 [1961 c.287 §15; 1973 c.773 §4; repealed by 1979 c.59 §1]

236.510 [1961 c.287 §16; repealed by 1979 c.59 §1]

236.515 [1961 c.287 §17; repealed by 1979 c.59 §1]

236.520 [1961 c.287 §19; repealed by 1979 c.59 §1]

236.525 [1961 c.287 §18; repealed by 1979 c.59 §1]

236.530 [1961 c.287 §20; repealed by 1979 c.59 §1]

236.535 [1961 c.287 §21; repealed by 1979 c.59 §1]

236.540 [1961 c.287 §22; repealed by 1979 c.59 §1]

TRANSFER OF PUBLIC EMPLOYEES

236.610 Rights of employe when duties assumed by different public employer. (1) No public employe shall be deprived of his employment solely because the duties of his employment have been assumed or acquired by another public employer, whether or not an agreement, annexation or consolidation with his present employer is involved. Notwithstanding any statute, charter, ordinance or resolution, but subject to ORS 236.610 to 236.650, the public employe shall be transferred to the employment of the public employer who assumed or acquired his duties, without further civil service examination.

(2) As used in subsection (1) of this section, "public employe" means an employe whose salary or wages is paid from public funds and "public employer" includes an Oregon nonprofit corporation that has accepted, by agreement, the transfer of a public facility from a political subdivision of this state for maintenance and operation.

(3) In transferring a public employe under subsection (1) of this section, his employer shall furnish the employment records of that employe to the transferee employer at the time of transfer. The time of transfer shall be by written agreement between the public employers involved. [1963 c.204 §§1, 2; 1971 c.500 §1]

236.620 Status of transferred employe. A public employer who receives a transferred employe under subsection (1) of ORS 236.610, including an employe whose transfer is provided for by an agreement under ORS 190.010, shall place that employe on its employe roster, subject to the following:

(1) If the employe was serving a probationary period with his employer at the time of transfer, his past service on probation shall apply on the regular probation requirements of the transferee employer.

(2) Notwithstanding any other provision of law applicable to a retirement system for employes of the prior employer or of the transferee employer, the employe at his option may elect to continue under any retirement system in which he was participating prior to his transfer or, if he meets the qualifications therefor, he may elect to participate in the retirement system available to employes of the transferee employer. The employe's election shall be in writing and made within 30

days after the date of his transfer. If the employe elects to continue under the retirement system in which he was participating prior to his transfer, he shall retain all rights and be entitled to all benefits under that system, he shall continue to make contributions to that system and the transferee employer shall make contributions on his behalf to that system as required of employers participating in that system, as if the transfer had not occurred.

(3) The employe shall retain the seniority he accrued under his prior employment, but no regular employe of the transferee employer shall be demoted or laid off by reason of that seniority.

(4) The employe otherwise shall enjoy the same privileges and be subject to the same regulations as other employes of the transferee employer. [1963 c.204 §3; 1967 c.550 §10]

236.630 Authority of new employer over transferred employe. A public employer who receives a transferred employe under subsection (1) of ORS 236.610 shall place that employe in a position comparable to the position he enjoyed under his prior employment, subject to the following:

(1) The transferee employer, in determining a comparable position, shall consider the employe's educational and physical qualifications, experience, and the salary, duties and responsibilities of his prior employment.

(2) If the transferee employer finds that no comparable position exists under subsec-

tion (1) of this section, the employe shall be offered a lesser position, if such position is available, according to his qualifications, by the transferee employer. The finding and action of such employer under this subsection, and subsection (3) of this section shall be subject to a hearing upon the employe's request and subject to review under ORS 34.010 to 34.100.

(3) If the transferee employer finds that no position exists, the employe shall be listed as a regular laid-off employe and shall have priority to appointment over other persons eligible for any position for which he is qualified. [1963 c.204 §4]

236.640 Reemployment right of employe at end of cooperation agreement. At the end of a cooperation agreement the employe transferred shall be entitled to his position with the transferring employer prior to transfer, if he has remained an employe of the transferee employer in good standing to the termination of the agreement. [1963 c.204 §5]

236.650 Construction of ORS 236.610 to 236.650. The provisions of ORS 236.610 to 236.650 shall be liberally construed. [1967 c.550 §9]

PENALTIES

236.990 Penalties. Violation of ORS 236.145 is punishable, upon conviction, by a fine not to exceed \$1,000. [1953 c.594 §2]

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, 1979.

Thomas G. Clifford
Legislative Counsel

