Chapter 271

1991 EDITION

Use and Disposition of Public Lands Generally; Easements

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DEFINITIONS

271.005 Definitions. As used in ORS 271.005 to 271.540:

(1) "Governing body" means the board or body in which the general legislative power of a political subdivision is vested.

(2) "Governmental body" means the State of Oregon, a political subdivision, the United States of America or an agency thereof.

(3) "Political subdivision" means any local government unit, including, but not limited to, a county, city, town, port, dock commission or district, that exists under the laws of Oregon and has power to levy and collect taxes. [1981 c.787 §2]

VACATION

271.010 [Amended by 1965 c.25 §1; 1971 c.287 §1; repealed by 1981 c.153 §79]

271.020 [Amended by 1953 c.283 §3; 1977 c.275 §1; repealed by 1981 c.153 §79]

271.030 [Amended by 1953 c.283 §3; repealed by 1981 c.153 §79]

271.040 [Repealed by 1981 c.153 §79]

271.050 [Repealed by 1981 c.153 §79]

271.060 [Repealed by 1981 c.153 §79]

271.070 [Repealed by 1981 c.153 §79]

271.080 Vacation in incorporated cities; petition; consent of property owners. (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

(2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing and duly acknowledged before an officer authorized to take acknowledgments of deeds.

271.090 Filing of petition; notice. The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

271.100 Action by council. The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

271.110 Notice of hearing. (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be; the notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be not less than 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treas-

ury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1]

271.120 Hearing; determination. At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

271.130 Vacation on council's own motion; appeal. (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.

(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.

(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.

(4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice or district court in civil cases.

271.140 Title to vacated areas. The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

271.150 Vacation records to be filed; costs. A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

271.160 Vacations for purposes of rededication. No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

271.170 Nature and operation of statutes. The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement. To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce

and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

(1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.

(2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.

(3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

271.190 Consent of owners of adjoining property; other required approval. No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

271.200 Petition; notice. (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.

(2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

271.210 Hearing; grant of petition. Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

271.220 Filing of objections; waiver. All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

271.230 Records of vacations; fees. (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county and shall be in-

dexed under the letter "V," title "Vacations." Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon the original plat and any copy thereof certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such original plat or copy thereof, giving the book and page of the deed record in which the order or ordinance is recorded.

(2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the original plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30]

MISCELLANEOUS PROVISIONS RELATING TO THE TRANSFER, LEASE, DONATION OR USE OF PUBLIC LANDS

271.300 Application and administration of ORS 271.300 to 271.360. (1) The power granted by ORS 271.300 to 271.360 is vested in each political subdivision of the State of Oregon. The power is self-operating, without the necessity of further legislation.

(2) In carrying ORS 271.300 to 271.360 into effect, a political subdivision shall act through its duly constituted governing body. Each political subdivision through its governing body may provide rules necessary in carrying out ORS 271.300 to 271.360. [Amended by 1981 c.787 §26; 1985 c.443 §4]

271.310 Transfer or lease of real property owned or controlled by political subdivision; procedure in case of qualified title. (1) Except as provided in subsection (2) of this section, whenever any political subdivision possesses or controls real property not needed for public use, or whenever the public interest may be furthered, a political subdivision may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of their interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both.

(2) If the ownership, right or title of the political subdivision to any real property set apart by deed, will or otherwise for a burial ground or cemetery, or for the purpose of interring the remains of deceased persons, is limited or qualified or the use of such real property is restricted, whether by dedication or otherwise, the political subdivision may, after the county court or governing body thereof has first declared by resolution that such real property is not needed for public use, or that the sale, exchange, conveyance or lease thereof will further the public interest, file a complaint in the circuit court for the county in which such real property is located against all persons claiming any right, title or interest in such real property, whether the interest be contingent, conditional or otherwise, for authority to sell, exchange, convey or lease all or any part of such real property. The resolution is prima facie evidence that such real property is not needed for public use, or that the sale, exchange, conveyance or lease will further the public interest. The action shall be commenced and prosecuted to final determination in the same manner as an action not triable by right to a jury. The complaint shall contain a description of such real property, a statement of the nature of the restriction, qualification or limitations, and a statement that the defendants claim some interest therein. The court shall make such judgment as it shall deem proper, taking into consideration the limitation, qualifications or restrictions, the resolution, and all other matters pertinent thereto. Neither costs nor disbursements may be recovered against any defendant.

(3) Real property needed for public use by any political subdivision owning or controlling the property shall not be sold, exchanged, leased or conveyed under the authority of ORS 271.300 to 271.360, except that it may be exchanged for property which is of equal or superior useful value for public use. Any such property not immediately needed for public use may be leased if, in the discretion of the governing body having control of the property, it will not be needed for public use within the period of the lease.

(4) The authority to lease property granted by this section includes authority to lease property not owned or controlled by the political subdivision at the time of entering into the lease. Such lease shall be conditioned upon the subsequent acquisition of the interest covered by the lease. [Amended by 1955 c.755 §1; 1961 c.136 §1; 1979 c.284 §127; 1981 c.787 §27; 1985 c.443 §5]

271.320 Exchange of trust fund assets. If any property owned by a political subdivision is held as an asset of any special trust fund securing the payment of bonds, it may be exchanged, under the authority granted in ORS 271.310, for other property of equal or superior value, and property so received in exchange shall be an asset of the fund in lieu of the property previously held. [Amended by 1981 c.787 §28]

271.330 Relinquishing title of property not needed for public use. (1) Any political subdivision is granted express power to relinquish the title to any of its property not needed for public use to any governmental body, providing such property shall be used and continue to be used, for a public purpose by the governmental body in the State of Oregon. These transfers for public purposes may include transfers without consideration of property held by counties as a result of tax foreclosures.

(2) Any political subdivision is granted express power to relinquish the title to any of its property to a nonprofit or municipal corporation for the purpose of providing low income housing, social services or child care. Low income housing includes programs resulting in transfer of property to low income families or individuals. These transfers may include transfers without consideration of property held by counties as a result of tax foreclosures.

(3) Before any county court or board of county commissioners may transfer, under subsection (1) of this section, any tax foreclosed lands in which the state or a political subdivision has represented delinquent and uncollected taxes, liens or assessments, it shall advertise in a newspaper of general circulation in the county for two successive weeks its intention to so transfer the property. The notice shall state when the county court will hear objections to the transfer and must specifically describe the property intended to be transferred. After the hearing set in the notice is held and objections are heard, it may, in its sound discretion, proceed with the transfer. After the transfer the interests of the state or any political subdivision in the land on account of uncollected taxes, liens or assessments are extinguished, and the county is relieved of the necessity to account for uncollected taxes, liens or assessments. [Amended by 1981 c.787 §29; 1991 c.556 §1]

271.340 Property valuation in exchange to be equal. When property is exchanged under the authority of ORS 271.310 to 271.330, the value of the real property accepted by the political subdivision in exchange for any of its property plus cash, if any, shall not be less than the value of the property relinquished. [Amended by 1981 c.787 §30]

271.350 Determining valuation of property in exchanges. The value of the respective properties proposed to be exchanged shall be determined by the governing body of the political subdivision. The governing body shall cause it to be appraised by one or more competent and experienced appraisers. The compensation, if any, of the appraisers shall be borne equally by the respective owners of the property. In case the valuation shall not be mutually satisfactory to the respective owners it shall not be binding upon them. [Amended by 1981 c.787 §31]

271.360 Lease requirements. Every lease entered into pursuant to ORS 271.310 shall be authorized by ordinance or order of the body executing the same and shall provide terms and conditions as may be fixed and determined by the governing body executing the lease. The lease may provide that the lessee shall pay ad valorem taxes assessable against the leased property, or that the political subdivision shall pay these taxes, in which latter event the anticipated amount of taxes shall be taken into consideration in fixing the rental charge. [Amended by 1981 c.787 §32]

271.370 [Amended by 1981 c.787 §33; 1983 c.660 §1; repealed by 1985 c.443 §1]

271.375 Public grazing lands; sale; lease or exchange. The counties of the state are authorized to sell, convey, lease or exchange any or all county-owned lands chiefly suitable for grazing, to or with the state or each other and with the United States of America for other lands either of equal acreage or of equal value. All powers granted by this section to the several counties are in addition to and not in derogation of powers previously conferred by law. [Formerly 273.240; 1981 c.787 §34]

271.380 Indemnifying political subdivision for loss or damage resulting from occupancy of its property. Any political subdivision occupying a street or public property of another political subdivision by any structure above, on or under the surface, may provide a contract of indemnity to protect the other political subdivision against loss or damage resulting from that occupancy. [1959 c.442 §1; 1981 c.787 §35]

271.390 Lease or purchase of real estate by county and city. The governing body of any county, and the governing body of any city or town, may enter into contracts for leasing or rental, including contracts for rental or long time leases under an optional contract for purchase, or for purchase of any real property in Oregon necessary for proper and convenient housing of officers or for conducting the business of said bodies. Leases or contracts made by a city or town shall be made subject to the terms of its charter.

271.400 Conveyances by political subdivision to state. Notwithstanding any other law, the governing body of a political subdivision may convey, by a proper deed of conveyance executed by the proper governing body, to the State of Oregon, by and through any state agency, for carrying out the pur-

poses of that agency, any lands or rights therein vested in the political subdivision, upon terms and conditions as may be agreed upon with the state agency. [Amended by 1981 c.787 §36]

271.405 Transfer of property by city or town to county for public institutions and works. Whenever any property or rights therein required by any county in carrying out public purposes is owned by an incorporated city or town within such county, the city or town may, if in the judgment of the governing body of the city or town the public may be benefited thereby, convey and transfer to such county by proper conveyances, and the county may accept, such property or rights. [Amended by 1981 c.153 §59]

271.410 Use of municipal property for rodeos, games, racing and exhibitions. Any municipal corporation having the right to possession of real property within or without its corporate limits may rent, lease or otherwise give possession of such real property for the purpose of conducting such rodeos, baseball games, football games, racing and exhibitions generally as are authorized under the laws of this state.

271.420 City bonds as payment for land sold by city. By ordinance duly passed by its governing body, any incorporated city or town may authorize the acceptance of its general obligation bonds or interest coupons, or both, in payment of the purchase price of any lands acquired and for sale by such city or town.

271.430 Lease of space above or below street or highway; effect on prior dedication or grant for public purpose. Any political subdivision holding the easement or fee title to a street or highway may lease the space above or below that street or highway for private purposes for such period as the governing body determines the space will not be needed for public purposes, and upon other terms and conditions the governing body finds to be in the public interest. Before leasing the space, the governing body shall determine that the use of the space will not unreasonably interfere with the public use and utility use of the street or highway, and shall notify the property owners abutting the space proposed to be leased under this section and give them an opportunity to be heard with respect to the proposed leasing. Lease of space above or below a street or highway for private purposes shall not affect prior dedication or grant of the area for street or highway purposes. [1969 c.586 §2; 1981 c.787 §37]

271.440 Agreements for location of transmission lines on property of political subdivision. Any political subdivision, owning or controlling any real property or rights therein, may enter into agreements with the United States or any agency thereof, relative to the conditions for and places where electrical and other transmission lines may be placed and maintained across that property. The agreements may be in perpetuity or for a shorter period. However, an agreement shall not affect the constitutional rights of any owners of private property who do not join therein. [Formerly 758.030; 1981 c.787 §38]

ACQUISITION AND DISPOSITION OF INDUSTRIAL FACILITIES

271.510 Definitions for ORS 271.510 to 271.540. As used in ORS 271.510 to 271.540, "industrial facility" means any land, any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for industrial, commercial, manufacturing, research and development or warehousing purposes, but shall not include port facilities, railroads or facilities for any purposes or enterprises which are subject to regulation by the Public Utility Commission of Oregon. [1965 c.553 §2; 1981 c.787 §39; 1983 c.459 §13; 1985 c.541 §3]

271.520 Declaration of legislative purpose. It is hereby declared that there is a need for the continued development of industrial, commercial, manufacturing, research and development and warehouse facilities to insure the growth and prosperity of the state, and of the counties and cities within the state. It is the purpose of ORS 271.510 to 271.540 to provide the counties and cities within the state with the power to acquire title by gift, grant or donation to one or more industrial facilities and to lease, sell and convey such facilities to any person, firm, partnership or corporation, either public or private. It is further declared that the acquisition of title to such facilities and the lease, sale and conveyance of such facilities as provided by ORS 271.510 to 271.540 is a public purpose and shall be regarded as performing an essential governmental function in carrying out the provisions of ORS 271.510 to 271.540. [1965 c.553 §1; 1983 c.459 §14]

271.530 Powers of counties and cities to acquire and dispose of industrial facilities. In addition to any other powers which they may now have, and notwithstanding any law to the contrary, each county and city shall have the following powers:

(1) To acquire by gift, grant or donation one or more industrial facilities, which shall be located within the state, and which may be located within, without, or partially

within or partially without, such county or city.

(2) To lease to any person, firm, partnership or corporation, either public or private, any or all of such industrial facilities acquired pursuant to subsection (1) of this section from a nonprofit corporation formed for the purpose of stimulating industrial development, including any part thereof, for such rentals and upon such terms and conditions and for such period or periods as the governing body of the appropriate county or city may deem advisable.

(3)(a) To sell or convey all or any of such industrial facilities acquired by a county, including any part thereof, at public or private sale, with or without advertisement, and to do all acts necessary to the accomplishment of such sale and conveyance.

(b) To sell or convey all or any of such industrial facilities acquired by a city, including any part thereof, at public or private sale as authorized under ORS 221.725 or 221.727, and to do all acts necessary to the accomplishment of such sale and conveyance. [1965 c.553 §3; 1983 c.216 §3]

271.540 County or city not to operate industrial facility except as lessor. A county or city shall not operate an industrial facility as a business enterprise or in any manner except as a lessor. [1965 c.553 §4]

271.610 [1953 c.158 §§1, 2; repealed by 1981 c.787 §58]

CONSERVATION AND HIGHWAY SCENIC PRESERVATION EASEMENTS

271.710 [1967 c.318 §1; repealed by 1983 c.642 §11]

271.715 Definitions for ORS 271.715 to 271.795. As used in ORS 271.715 to 271.795 and 390.805, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(2) "Highway scenic preservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open space values of property.

(3) "Holder" means:

(a) The state or any county, city or park and recreation district acting alone or in cooperation with any federal or state agency, public corporation or political subdivision; or

(b) A charitable corporation, charitable association, charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(4) "Third-party right of enforcement" means a right provided in a conservation easement or highway scenic preservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder. [1983 c.642 §1; 1985 c.160 §1]

271.720 [1967 c.318 §2; 1975 c.511 §1; 1981 c.787 §40; repealed by 1983 c.642 §11]

271.725 Acquisition and creation of conservation or highway scenic preservation easement. (1) The state, any county, city or park and recreation district may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain, unless specifically authorized by law, conservation easements in any area within their respective jurisdictions wherever and to the extent that a state agency or the governing body of the county, city or park and recreation district determines that the acquisition will be in the public interest.

(2) Except as otherwise provided in ORS 271.715 to 271.795 and 390.805, a conservation easement or highway scenic preservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(3) The state, any county, city or park and recreation district may acquire by purchase, agreement or donation, but not by exercise of the power of eminent domain unless specifically authorized by law, highway scenic preservation easements in land within 100 yards of state, county or city highway rights of way. These easements may be acquired only in lands that possess significant scenic value in themselves and contribute to the overall scenic beauty of the highway.

(4) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement or highway scenic preservation easement before

its acceptance by the holder and recordation of the acceptance.

(5) Except as provided in ORS 271.755 (2) a conservation easement or highway scenic preservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(6) An interest in real property in existence at the time a conservation easement or highway scenic preservation easement is created is not impaired by it unless the owner of the interest is a party to or consents to the conservation easement or highway scenic preservation easement. [1983 c.642 §2; 1985 c.160 §2]

271.730 [1967 c.318 §3; 1981 c.787 §41; repealed by 1983 c.642 §11]

271.735 Hearing; notice. (1) Before the acquisition of a conservation easement or highway scenic preservation easement, the state agency, county, city, or park and recreation district considering acquisition of such an easement shall hold one or more public hearings on the proposal and the reasons therefor. The hearings shall be held in the community where the easement would be located and all interested persons, including representatives of other governmental agencies, shall have the right to appear and a reasonable opportunity to be heard.

(2) Notice of the hearing shall be published at least twice, once not less than 12 days and once not less than five days, prior to the hearing in a newspaper of general circulation in the community. The notice may also be published by broadcasting or telecasting generally in the community.

(3) At least 30 days prior to the hearing, the state agency shall mail notice of the hearing to the governing body of each county, city and other governmental agency having jurisdiction in the area of the proposed easements.

(4) This section does not apply to conservation easements or highway scenic preservation easements acquired pursuant to ORS 390.121, 390.310 to 390.338 and 390.805 to 390.925. [1983 c.642 §9; 1985 c.160 §3; 1989 c.904 §29]

271.740 [1967 c.318 §4; 1981 c.787 §42; repealed by 1983 c.642 §11]

271.745 Validity of conservation or highway scenic preservation easement. A conservation easement or highway scenic preservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract. [1983 c.642 §4; 1985 c.160 §4]

271.750 [1967 c.318 §5; 1975 c.511 §2; 1981 c.787 §43; repealed by 1983 c.642 §11]

271.755 Action affecting conservation or highway scenic preservation easement; standing to bring action. (1) An action affecting a conservation easement or highway scenic preservation easement may be brought by:

(a) An owner of an interest in real property burdened by the easement;

(b) A holder of the easement;

(c) A person having a third-party right of enforcement; or

(d) A person authorized by other law.

(2) ORS 271.715 to 271.795 and 390.805 do not affect the power of a court to modify or terminate a conservation easement or highway scenic preservation easement in accordance with the principles of law and equity. [1983 c.642 §3; 1985 c.160 §5]

271.765 Applicability. (1) ORS 271.715 to 271.795 and 390.805 apply to any interest created after October 15, 1983, which complies with ORS 271.715 to 271.795 and 390.805, whether designated as a conservation easement or highway scenic preservation easement, or as a covenant, equitable servitude, restriction, easement, or otherwise.

(2) ORS 271.715 to 271.795 and 390.805 apply to any interest created before October 15, 1983, if it would have been enforceable had it been created after October 15, 1983, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(3) ORS 271.715 to 271.795 and 390.805 do not invalidate any interest, whether designated as a conservation or preservation easement or as a convenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state. [1983 c.642 §5; 1985 c.160 §7]

271.775 Rules governing conservation and highway scenic preservation easements. The board or officer administering a state agency or the governing body of any county, city or park and recreation district may make and enforce reasonable rules, regulations, orders or ordinances governing the care, use and management of its conservation easements and highway scenic preservation easements. [1983 c.642 §7; 1985 c.160 §8]

271.785 Taxation of property subject to conservation or highway scenic preservation easement. For the purpose of taxation, real property that is subject to a conservation easement or a highway scenic preservation easement shall be assessed on the basis of the real market value of the property less any reduction in value caused by the conservation easement or a highway scenic preservation easement. Such an easement shall be exempt from assessment and taxation the same as any other property owned by the holder. [1983 c.642 §8; 1985 c.160 §6; 1991 c.459 §371]

271.795 Construction of Act. ORS 271.715 to 271.795 and 390.805 shall be applied and construed to effectuate the general purpose to make uniform the laws with respect to the subject of ORS 271.715 to 271.795 and 390.805 among states enacting it. [1983 c.642 §6]