APPENDIX B

RULES FOR CONSTRUCTION OF STATUTES

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1. IN GENERAL.

a. Function of Court in Construing Statute.

In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted. ORS 174.010; Appling v. Chase, 224 Or. 112, 355 P.2d 631 (1960); Fullerton v. Lamm, 177 Or. 655, 163 P.2d 941 (1945); 2A Sutherland, *Statutory Construction* §4501 (4th ed. Sands 1972); 21 *Oregon Digest*, Statutes §174 (1961).

1. Rules apply only where statute ambiguous. Rules of construction of statutes may be invoked only where the language is ambiguous. If the language used in a statute is plain and understandable, legislative intent must be gathered from it and there is no need to resort to rules of statutory construction. Whipple v. Howser, 291 Or. 475, 632 P.2d 782 (1981);

Appling v. Chase, 224 Or. 112, 355 P.2d 631 (1960); Ohm v. Fireman's Indem. Co., 211 Or. 596, 317 P.2d 575 (1957); But see Peters v. McKay, 195 Or. 412, 238 P.2d 225, 246 P.2d 535 (1952); 21 *Oregon Digest*, Statutes §190.

In order to justify interpretation of a statute on the ground of ambiguity, it is not necessary that the ambiguity appear in the particular phrase or clause under examination. State Highway Comm. v. Rawson, 210 Or. 593, 312 P.2d 849 (1957); 21 *Oregon Digest*, Statutes §190.

2. Legislative intent. In interpreting a statute, the court's task is to discern the intent of the legislature. PGE v. Bureau of Labor and Industries, 317 Or. 606, 610, 859 P.2d 1143 (1993). The best evidence of the legislature's intent is the text of the statute. *Id*. at 610-611. In reading the text, the court uses relevant rules of construction, such as the rule that words of common usage typically should be given their ordinary meaning. *Id*. at 611. Also at the first level of analysis, the court considers the context of the statutory provision at issue, including other provisions of the same statute and other statutes relating to the same subject. *Ibid*. If the intent of the legislature is not clear from the text and context of the statute, the court considers the legislative history of the statute. *Id*. at 611-612. If the intent of the legislature remains unclear after the completion of the foregoing inquiries, the court may resort to general maxims of statutory construction for assistance in resolving the remaining uncertainty. *Id*. at 612. See also Gaston v. Parsons, 318 Or. 247 (1994); Mathel v. Josephine County, 319 Or. 235 (1994); Weidner v. OSP, 319 Or. 295 (1994).

However, as one court observed:

Per Curiam: Two admittedly conflicting statutes compete in litigious depth for jurisdiction over the process of collective bargaining. . . . As two courts already have come to know in **painful and dissentient succession** . . ., the competition presents that most difficult of all appellate problems; the ascertainment of legislative intent when there is no evidentiary or other reasonably authoritative guide to pertinent meaning or purpose of the legislators. For such difficulty, Cardozo has provided our first and most dependable range light (*The Nature of the Judicial Process*, pp. 14, 15, published 1921):

> Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had nonetheless a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. "The fact is," says Gray in his lectures on the Nature and Sources of the Law, "that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, **but to guess what it would have intended on a point not present to its mind, if the point had been present."** (Emphasis added.)

In a long and sharply worded dissent to Edwards v. Aguillard, 482 U.S. 578, 636, 637, 107 S. Ct. 2573 (1987), Justice Scalia argued that it is virtually impossible to determine the intentions of legislators. Although it is possible to discern the objective purpose of a statute and even its formal motivation, the Justice noted that "discerning the subjective motivation of those enacting the statute, is to be honest, almost always an impossible task." He notes that "the number of possible motivations . . . is not binary, or indeed even finite."

Because there are no good answers to the questions of intent, the U.S. Supreme Court has recognized from Chief Justice Marshall in Fletcher v. Peck, 10 U.S. 87, 130 (1810), to Chief Justice Warren in United States v. O'Brien (391 U.S. 367 (1968) at 383-384), that determining the subjective intent of legislators is a perilous enterprise. ORS 174.020; Whipple v. Howser, 291 Or. 475, 632 P.2d 782 (1981); 21 *Oregon Digest*, Statutes §181(1). See also Civil Service Commission v. Wayne County Board of Supervisors, 384 Mich. 363, 184 N.W. 2d 201 (1971).

When the legislative intent in enacting a statute is determined, it should be given effect although the literal meaning of the words is not followed. Easton v. Hurita, 290 Or. 689, 625 P.2d 1290 (1981); Peters v. McKay, 195 Or. 412, 238 P.2d 225, 246 P.2d 535 (1952); Swift & Co. v. Peterson, 192 Or. 97, 233 P.2d 216 (1951); Simon v. Brown, 5 Or. 285 (1874).

In Whipple v. Howser, 291 Or. 475, 632 P.2d 782 (1981), the intent of the legislature regarding retroactivity is difficult to detect:

> Sometimes, however, it is impossible to **discern** the intent of the legislature regarding retroactivity or other matters from the language of the statute itself. For that reason, a number of **rules** or **maxims** of statutory construction have been developed to aid the courts in such cases in determining probable legislative intent as to whether a statute should be applied retroactively. We have held, however, that such **rules** or **maxims** of statutory construction are not to be resorted to if the language of the statute itself expresses the intent of the legislature. (Emphasis added.)

For a discussion of legislative silence as evidence of intent, see State v. Miller, 309 Or. 362, 788 P.2d 974 (1990).

3. Reasonable construction. Where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail. ORS 174.030; James v. Carnation Co., 278 Or. 65, 562 P.2d 1192 (1977).

Where the language of a statute admits of two constructions, one absurd and the other reasonable, the court will apply the latter construction even if such is at variance with the clear and literal language of the statute. Hollinger v. Blair, 270 Or. 46, 526 P.2d 1015 (1974); Wright v. Blue Mt. Hosp. Dist., 214 Or. 141, 328 P.2d 314 (1958); Pendleton v. Umatilla County, 117 Or. 140, 241 P. 979 (1926); State v. Gates, 104 Or. 112, 206 P. 863 (1922); 21 *Oregon Digest*, Statutes §181(2); but see Young v. State, 161 Or. App. 32, 983 P.2d 1044 (1999) (PGE v. BOLI step-by-step method for statutory construction places the absurd-result maxim at the third level of analysis; if intent is clear from text, context or legislative history, then court does not apply absurd-result maxim).

b. Strict or Liberal Construction.

1. In general. A strict or liberal construction will depend upon a combination of many factors. Broadly speaking, a strict or liberal interpretation will be made with reference to former law, persons and rights affected, the language of the statute and the purposes and objects of the statute. Reading of statute should not foreclose reasonable construction in order to ascertain legislative intent, nor thwart legislative purposes. Oregon Stamp Society v.

State Tax Commission, 1 OTR 190 (1963); Multnomah School of the Bible v. Multnomah Co., 218 Or. 19, 343 P.2d 893 (1959).

2. Criminal statutes. Traditionally, penal statutes have been construed in favor of the defendant. The rule that criminal statutes are to be strictly construed has no application to the criminal and criminal procedure statutes of Oregon. Their provisions are to be construed according to the fair import of their terms with a view to their object to promote justice. ORS 161.025 (2); State v. Collis, 243 Or. 222, 413 P.2d 53, (1966); Merrill v. Gladden, 216 Or. 460, 337 P.2d 774 (1959); State v. Dunn, 53 Or. 304, 99 P. 278, 100 P. 258 (1909); 21 *Oregon Digest*, Statutes §§241-243.

3. Acts in derogation of common law. Statutes that impose a duty or burden, or establish a right or benefit that was not recognized by common law will be construed strictly. The courts are wary of at law generalizations. Be sure right existed at common law. Naber v. Thompson, 274 Or. 309, 546 P.2d 467 (1976); Marsh v. McLaughlin, 210 Or. 84, 309 P.2d 188 (1957); Smith v. Meier & Frank Inv. Co., 87 Or. 683, 171 P. 555 (1918); but Wash. Pub. Power Supply System v. Pac. Northwest Power Co., 217 F. Supp. 481 (D.C. Or. 1963); 21 *Oregon Digest*, Statutes §§222, 239.

The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of Oregon. ORS 109.305; Hughes v. Aetna Casualty and Surety Co., 234 Or. 426, 383 P.2d 55 (1963); 43 Or. L. Rev. 92 (1963). State v. Jones, 4 Or. App. 447, 479 P.2d 1020 (1971).

4. Statutes affecting rights or liabilities. Statutes that infringe on the personal or property rights of individuals are strictly construed. Lane County v. Heintz Constr. Co., 228 Or. 152, 364 P.2d 627 (1961); Morton v. Wessinger, 58 Or. 80, 113 P. 7 (1911).

Statutes imposing a liability where none would otherwise exist are to be strictly construed. Clary v. Polk Co., 231 Or. 148, 372 P.2d 524 (1962); Hillman v. North Wasco Co. PUD, 213 Or. 264, 323 P.2d 664 (1958); Jones v. Union County, 63 Or. 566, 127 P. 781 (1912); 21 *Oregon Digest*, Statutes §240.

5. Remedial statutes. Remedial statutes are to be given a liberal interpretation and construction to remedy the defects in the law for which purpose the statute was enacted. "Remedial" is used to mean either the converse of penal or procedural rather than substantive rights. Remedial statutes are normally applied retroactively. Perkins v. Willamette Industries, Inc., 273 Or. 566, 542 P.2d 473 (1975); Myers v. Directors of Tualatin Rural Fire Dist., 5 Or. App. 142, 483 P.2d 95 (1971); Columbia River Salmon & Tuna Packers Ass'n v. Appling, 232 Or. 230, 375 P.2d 71 (1962); Sunshine Dairy v. Peterson, 183 Or. 305, 193 P.2d 543 (1948); 16 Op. Atty. Gen. 140 (1933); 21 *Oregon Digest*, Statutes §§236, 243.

6. State agency authority. An administrative agency is not at liberty to limit or restrict the terms of a statute. Cook v. Workers' Compensation Department, 306 Or. 134, 138, 758 P.2d 854 (1988).

7. Miscellaneous. Statutes in derogation of sovereignty are to be strictly construed. Schrader v. Veatch, 216 Or. 105, 337 P.2d 814 (1959); Peters v. McKay, 195 Or. 412, 238 P.2d 225 (1951); 21 *Oregon Digest*, Statutes §237.

Statutes creating tax exemptions are to be construed strictly in favor of the state and a taxpayer must clearly show that the taxpayer comes within the legislative intent of the exemption statute. Houck & Sons v. State Tax Comm., 229 Or. 21, 366 P.2d 166 (1961); Unander v. U.S. Nat'l Bank, 224 Or. 144, 355 P.2d 729 (1960); 1 *Oregon Digest*, Statutes §245; for contra rule used in many states.

Doubt or ambiguity in taxing statute must be strictly construed **against** government. Willamette Val. Lumber Co. v. United States, 252 F. Supp. 199 (1966); but Parr v. Dept. of Revenue, 276 Or. 113, 553 P.2d 1051 (1976), overruling Crook v. Curry County, 206 Or. 350, 292 P.2d 1080 (1956).

Election laws are to be liberally construed. Othus v. Kozer, 119 Or. 101, 248 P. 146 (1926); State ex rel. Davis v. Wolf, 17 Or. 119, 20 P. 316 (1888).

Clear, unambiguous statutes are to be construed according to their plain meaning. ORS 174.010; Satterfield v. Satterfield, 292 Or. 780, 782, 643 P.2d 336 (1982); Johnson v. Star Machinery, 270 Or. 694, 530 P.2d 53 (1974).

2. THE ACT.

a. In General.

1. Purpose of statute. A statute is to be interpreted with reference to its purpose. Every word, clause and provision is to be liberally construed to carry out the purpose for which the statute was enacted. It is assumed that every enactment has a definite purpose and that the subsidiary provisions are in harmony with that purpose. Fitzgerald v. Neal, 113 Or. 103, 231 P. 645 (1924); Lommasson v. School Dist. No. 1, 201 Or. 71, 267 P.2d 1105 (1954); 21 *Oregon Digest*, Statutes §188.

2. Title and preamble. Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title. Or. Const. Art. IV §20.

The title may not be used to contradict clear provisions in the body of the Act, but where it is necessary to construe ambiguous language, the title of the Act, being a part of the statute, can be considered to ascertain the meaning of the statute. State v. Zook, 27 Or. App. 543, 556 P.2d 989 (1976); Portland v. Duntley, 185 Or. 365, 203 P.2d 640 (1949); 21 *Oregon Digest*, Statutes §211.

The preamble of a statute is not an essential part thereof and neither enlarges nor confers powers, but in a doubtful case, the preamble may be considered in construction. Curly's Dairy, Inc. v. State Dept. of Agriculture, 244 Or. 15, 415 P.2d 740 (1966); Sunshine Dairy v.

Peterson, 183 Or. 305, 193 P.2d 543 (1948); 17 Op. Att'y Gen. 429 (1935); 21 *Oregon Digest*, Statutes §210.

3. Policy statements. Statements of general policy can serve as contextual guides to the meaning of particular provisions of statutes as long as they have genuine bearing on the meaning of the provision being construed. Policy statements cannot be used to delineate specific policies not articulated in statute. Warburton v. Harney County, 174 Or. App. 322, 25 P.3d 978 (2001); Department of Land Conservation and Development v. Jackson Co., 151 Or. App. 210, 948 P.2d 731 (1997).

4. Leadline. Title heads, chapter heads, division heads, section and subsection heads or titles, explanatory notes and cross-references in ORS do not constitute a part of the law. An exception is made for unit and section captions of statutes created by approved initiative petition, if the text approved by the voters included the unit and section captions. For an example, see ORS 127.800 et seq. ORS 174.540; Upham v. Bramwell, 105 Or. 597, 209 P. 100, 210 P. 706, 25 A.L.R. 919 (1922); 21 *Oregon Digest*, Statutes §211; but see Earle v. Holman, 154 Or. 578, 61 P.2d 1242 (1936) (stating that subtitles and subheads constituting part of an enrolled bill are part of the act and may be resorted to in resolving ambiguity or doubt as to legislative intent).

5. Conflict between provisions. Where apparently inconsistent provisions occur in the same Act, it is the duty of the courts to harmonize them. Todd v. Bigham, 238 Or. 374, 395 P.2d 163 (1964).

The rule that, where there is an irreconcilable conflict between the provisions of the same Act, the last provision in order of position prevails, does not apply where the earlier provision conforms to the obvious policy and intent of the legislature. Gilbertson v. Culinary Alliance, 204 Or. 326, 282 P.2d 632 (1955); 21 *Oregon Digest*, Statutes §207.

6. Punctuation. Punctuation is a part of the Act and it may be considered in the interpretation of the Act but may not be used to create doubt or to distort or defeat the intention of the legislature. Punctuation may be disregarded or rearranged to achieve the purpose of a statute. Fleischhauer v. Bilstad, 233 Or. 578, 379 P.2d 880 (1963); Pape v. Hollopeter, 125 Or. 34, 265 P. 445 (1928); State v. Banfield, 43 Or. 287, 72 P. 1093 (1903); 24 Or. L. Rev. 157 (1945); 21 *Oregon Digest*, Statutes §200.

7. Grammar. In construing a statute, a court is not bound to accept and apply literally rules of grammatical construction. The doctrine of the last antecedent is not inflexible and is never applied when a further extension is clearly required by the intent and meaning of the context or when to apply a grammatical rule literally would lead to an absurd or unreasonable result, defeating the legislative purpose. Doctrine will be applied at first level of statutory analysis. Johnson v. Craddock, 228 Or. 308, 365 P.2d 89 (1961); State v. Webb, 324 Or. 380, 927 P.2d 79 (1996); 21 *Oregon Digest*, Statutes §200.

8. Clerical errors. When clerical errors would defeat purpose of act, court will correct them when true meaning is obvious. Zidell Marine Corp. v. West Painting, Inc., 133 Or. App. 729, 894 P.2d 481 (1995).

b. Specific Phrases.

1. *Noscitur a sociis*. The meaning of doubtful words may be determined by reference to their relation to associated words and phrases. Thus, when two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word. State v. Fuller, 164 Or. 383, 101 P.2d 1010 (1940); Eugene Theatre Co. v. City of Eugene, 194 Or. 603, 243 P.2d 1060 (1952); 21 *Oregon Digest*, Statutes §195.

2. *Ejusdem generis*. Where general words follow the enumeration of particular classes of persons or things, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. Skinner v. Keeley, 47 Or. App. 751, 615 P.2d 382 (1980); State v. Brantley, 201 Or. 637, 271 P.2d 668 (1954); O'Neill v. Odd Fellows Home of Oregon, 89 Or. 382, 174 P. 148 (1918); but Harrison v. PPG Industries Inc., 446 U.S. 578, 100 S.Ct. 1889, 64 L.Ed.2d 525 (1980); 21 *Oregon Digest*, Statutes §194; Bellikka v. Green, 306 Or. 630, 638, 762 P.2d 997 (1988).

3. *Expressio unius*. The inclusion of specific matter in a statute tends to imply a legislative intent to exclude related matters not mentioned. If a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are affirmatively or negatively designated, there is an inference that all omissions were intended by the legislature. Smith v. Clackamas County, 252 Or. 230, 448 P.2d 512 (1968), overruled on other grounds, Whipple v. Howser, 291 Or. 475, 487, 632 P.2d 782 (1981); Anderson v. Gladden, 188 F. Supp. 666 (D.C. Or. 1960); State v. Standard Oil Co., 61 Or. 438, 123 P. 40 (1912); but Matheson v. Armbrust, 284 F.2d 670 (9th Cir. C. A. 1960) cert. den. 365 U.S. 870 (1961) and Miller v. Employment Division, 45 Or. App. 1117, 610 P.2d 293 (1980); 21 *Oregon Digest*, Statutes §195.

4. Passage of this Act. "Passage of this Act" means when the Act is signed by the Governor rather than the otherwise effective date of the Act. Brassfield v. Brassfield, 183 Or. 217, 191 P.2d 639 (1948); State v. Hecker, 109 Or. 520, 221 P. 808 (1923); 21 *Oregon Digest*, Statutes §253, 255.

5. This Act. A statute contained the words "contrary to this Act." An amendment repeated the words without change. "This Act" refers to the original Act, as amended. State v. Davis, 207 Or. 525, 296 P.2d 240 (1956).

6. Provisos. Provisos are strictly construed since they are intended to restrain or limit that which would otherwise be within the scope of general language. Holman Transfer Co. v. Portland, 196 Or. 551, 249 P.2d 175 (1952); Meyers v. Pacific States Lumber Co., 122 Or. 315, 259 P. 203 (1927); 21 *Oregon Digest*, Statutes §228.

c. Specific Words.

1. Popular meaning. Words of common use in a statute are to be taken in their natural, plain and obvious meaning, as they are popularly used. Portland v. Meyer, 32 Or. 368, 52 P. 21 (1898); Fishburn v. Londershausen, 50 Or. 363, 92 P.2d 1060 (1907).

2. Technical words. Every Act and joint resolution shall be plainly worded, avoiding as far as possible the use of technical terms. Technical words, legal terms and other words of art are presumed to have been used with their technical or legal meaning. Commercial terms, when used in statutes relating to trade or commerce, are presumed to have been used in their ordinary trade or commercial meaning. Or. Const. Art. IV §21; Multnomah Co. v. Dept. of Revenue, 7 OTR 315 (1978); Anthony v. Veatch, 189 Or. 462, 220 P.2d 493 (1950); Cordon v. Gregg, 164 Or. 306, 97 P.2d 732 (1940); 21 *Oregon Digest*, Statutes §192.

3. Same words have same meaning. In the absence of anything in the Act indicating a contrary intent, where the same word or phrase is used in different parts of the Act, it will be presumed to be used in the same sense. Where the meaning of a word is clear in one instance, the same meaning will be attached to the word elsewhere in the Act. Dalles Cherry Growers v. Employment Division, 25 Or. App. 645, 550 P.2d 1250 (1976); Pense v. McCall, 243 Or. 383, 413 P.2d 722 (1966); School Dist. No. 17 v. Powell, 203 Or. 168, 279 P.2d 492 (1955); In re Norton, 177 Or. 342, 162 P.2d 379 (1945); 21 *Oregon Digest*, Statutes §§196, 208, 209.

When the legislature uses different language for similar statutory provisions, we assume that it intended different meanings. Lindsey v. Farmers Insurance Co. of Oregon, 170 Or. App. 458, 12 P.3d 571 (2000). See Emerald PUD v. PP&L, 76 Or. App. 583, 593, 711 P.2d 179 (1985), aff'd 302 Or. 256 (1986); State v. Crumal, 54 Or. App. 41, 45, 633 P.2d 1313 (1981).

4. Number and gender. The singular number may include the plural and the plural number, the singular. Words used in the masculine gender may include the feminine and neuter. ORS 174.127. However, the 1979 legislature enacted ORS 174.129, which states: ". . . that all statutes . . . be written in sex-neutral terms unless it is necessary for the purpose of the statute . . . that it be expressed in terms of a particular gender." 21 *Oregon Digest*, Statutes §198.

5. Includes. A definition clause that declares that a particular word "includes" a variety of things not generally within its meaning extends rather than limits the natural or usual meaning. "Including" within an Act is interpreted as a word of enlargement or of illustrative application as well as a word of limitation. Premier Products Co. v. Cameron, 240 Or. 123, 400 P.2d 227 (1965); State v. Standard Oil Co., 61 Or. 438, 123 P. 40 (1912); American Building Maintenance v. McLees, 296 Or. 772, 679 P.2d 1361 (1984); 21 *Oregon Digest*, Statutes §199.

6. Shall, Must and May. Generally "shall" and "must" are interpreted as imposing a duty, direction or command that something be done. "May" usually implies the presence of discretion or permission. "May" has been held to be directory where the statute prescribes a duty or grants a power to a public officer where the rights of public or third persons are affected. "Shall" has been interpreted to mean "may" where it was clear that the legislature wished discretion to be exercised. Springfield Milling Co. v. Lane County, 5 Or. 265 (1874); King v. Portland, 23 Or. 199, 31 P. 482 (1892); Lyons v. Gram, 122 Or. 684, 260 P. 220 (1927); 14 Op. Att'y Gen. 367 (1929); 21 *Oregon Digest*, Statutes §§199, 227.

7. And and Or. If two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive "and" should be used. If the failure to comply with any requirement imposes liability, the disjunctive "or" should be used. In order to avoid an unreasonable or absurd result, "and" may be construed to mean "or," and "or" construed to mean "and" where there is cogent proof of legislative error. Lommasson v. School Dist. No. 1, 201 Or. 71, 261 P.2d 860 (1953); Persons Adm'r. v. Raven et al. 187 Or. 1, 207 P.2d 1051 (1949); Ollilo v. Clatskanie Peoples' Utility Dist., 170 Or. 173, 132 P.2d 416 (1942); Kornbrodt v. Equitable Trust Co., 137 Or. 386, 389 (1931); 21 *Oregon Digest*, Statutes §197; 1A Sutherland Stat. Const. §21.14 (5th Ed.).

d. Severability.

ORS 174.040 provides that it is the legislative intent, in the enactment of any statute, that if any part of the statute is held unconstitutional, the remaining parts shall remain in force unless:

1. The statute provides otherwise;

2. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the remaining parts would not have been enacted without the unconstitutional part; or

3. The remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

Dilger v. School Dist. 24CJ, 222 Or. 108, 352 P.2d 564 (1960); Gilliam County v. Department of Environmental Quality, 114 Or. App. 369, 837 P.2d 965 (1992); 21 *Oregon Digest*, Statutes §207.

The same principle of severability applies to local ordinances. D.S. Parklane Development, Inc. v. Metro, 165 Or. App. 1, 994 P.2d 1205 (2000).

e. Prospective or Retrospective Operation.

Generally a statute expressed in general terms and words of present or future tense will be applied, not only to situations existing and known at the time of enactment, but also prospectively to things and conditions that come into existence thereafter. Statutes that affect substantive rights are applied prospectively, but statutes that affect procedures and remedies may be applied to existing rights as well as to those that accrue in the future. Statutes will not be interpreted to be retrospective unless an intent to the contrary clearly appears. Fish and Wildlife v. L.C.D.C., 288 Or. 203, 603 P.2d 1371 (1979); Joseph v. Lowery, 261 Or. 545, 495 P.2d 273 (1972); State ex rel. Nilsen v. Or. St. Motor Ass'n, 248 Or. 133, 432 P.2d 512 (1967); Childers v. Civil Service Comm. of Washington County, 232 Or. 327, 375 P.2d 417

(1962); Lane v. Brotherhood of L.E. & F., 157 Or. 667, 73 P.2d 1396 (1937); 29 Op. Att'y Gen. 246 (1959); 14 Op. Att'y Gen. 195 (1929); 21 *Oregon Digest*, Statutes §§234, 261-268.

However, in Whipple v. Howser, 291 Or. 475, 632 P.2d 782 (1981) the court held that:

> Barring constitutional limitations, the legislature may impose any special conditions it desires upon its enactments. Moreover, this court has recently held that, with the exception of ex post facto laws, there is no constitutional bar to the legislature providing that its laws be applied retroactively. See Hall v. Northwest Outward Bound School, 280 Or. 655, 572 P.2d 1007 (1977). Thus, in determining whether to give retroactive effect to a legislative provision, it is not the proper function of this court to make its own policy judgments, but its duty instead is to attempt to **discern** and **declare** the intent of the legislature.
>
> This duty of the court to **discern** and **declare** the intention of the legislature has also been recognized by this court in the retroactive application of statutes on a number of occasions. It is the legislature's intent that governs. Legal rules relating to retroactive and prospective application of statutes are merely rules of construction by which the court attempts to ascertain **the probable legislative intent.** See Joseph v. Lowery, 261 Or. 545, 495 P.2d 273 at 552 (1972). (Emphasis added.)

f. Effective Date of Act.

1. Generally. No Act shall take effect, until 90 days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble, or in the body of the law. However, unless otherwise provided, the effective date of an Act is January 1 of the year after passage of the Act. Or. Const. Art. IV §28; ORS 171.022; State v. Hecker, 109 Or. 520, 221 P. 808 (1923); §§33.01-33.12; 21 *Oregon Digest*, Statutes §§248-250, 254-259.

2. Emergency Act. An Act to which an emergency clause is attached takes effect at once on the Governor's approval, or on the date specified in the Act if that date is after the date of the Governor's approval. An Act containing an emergency clause ("effective on passage") becomes effective on the date the Governor filed the bill with the Secretary of State. Simpson v. Winegar, 122 Or. 297, 258 P. 562 (1927); Bennett Trust Co. v. Sengstacken, 58 Or. 333, 113 P. 863 (1911); 21 *Oregon Digest*, Statutes §251.

See 100 Or. App. 706 (1990) for retroactive effect of legislation with emergency clause. But see also dissent that argues contra.

3. Referendum measure. A measure referred to the people becomes law 30 days after approval by a majority of the votes cast thereon. Generally no more force is attached to an express effective date provision in a legislative Act than to an implied 90-day provision unless the expressed date is one that follows the referendum election. Or. Const. Art. IV §1(4)(d); Portland Pendleton Motor Transp. Co. v. Heltzel, 197 Or. 644, 255 P.2d 124 (1953); Salem Hospital v. Olcott, 67 Or. 448, 136 P. 341 (1913); 29 Op. Att'y Gen. 287 (1959); 21 *Oregon Digest*, Statutes §255.

3. THE EFFECT OF OTHER ACTS

a. Former Version of Statute.

Where a statute has been amended, the original Act may be used to explain any ambiguity that might exist in the language of the amended Act, but not to supply omissions. Holman Transfer Co. v. Portland, 196 Or. 551, 249 P.2d 175 (1952); State v. Simon, 20 Or. 365, 26 P. 170 (1891).

See ORS 174.530 for construction of statutes enacted as part of 1953 revision. State v. Lermeny, 213 Or. 574, 326 P.2d 768 (1958); State v. Davis, 207 Or. 525, 296 P.2d 240 (1956).

b. *In Pari Materia*.

Where there are several provisions or particulars, a construction is, if possible, to be adopted that will give effect to all. All statutes on the same subject must be taken *in pari materia*, and read together as one law. ORS 174.010; State v. Buck, 200 Or. 87, 262 P.2d 495 (1953); Taggart v. School Dist. No. 1, 96 Or. 422, 188 P. 908, 1119 (1920); 21 *Oregon Digest*, Statutes §223.2(1).

c. Conflicts.

1. Special prevails over general. Where a general and particular provision are inconsistent, the latter prevails over the former. A specific intent controls over a general one that is inconsistent with it. ORS 174.020; Colby v. Larson, 208 Or. 121, 297 P.2d 1073 (1956); Steamboaters v. Winchester Water Control Dist., 69 Or. App. 596, 599, 688 P.2d 92 (1984); Smith v. Mult. Co. Bd. of Commissioners, 318 Or. 302, 865 P.2d 356 (1994).

A later general statute that does not expressly repeal a prior special statute does not affect the special provisions of the earlier statute. Davis v. Wasco I.E.D., 286 Or. 261, 593 P.2d 1152 (1979); Hill v. Hartzell, 121 Or. 4, 252 P.2d 552 (1927); State v. Sturgess, 9 Or. 537, 10 Or. 58 (1881); 21 *Oregon Digest*, Statutes §207.

2. Acts passed at same session. Where statutes relating to the same subject are enacted at the same session of the legislature, all the clauses of the several enactments should be construed together, so as to permit each to remain intact. However, if some provisions are so repugnant to succeeding sections that both cannot exist at the same time as substantive law, the latter one necessarily controls. Salahub v. Montgomery Ward & Co., 41 Or. App. 775, 599 P.2d 1210, pet. den. 288 Or. 249, 603 P.2d 1381 (1979); Benson v. Withycombe, 84 Or. 652, 166 P. 41 (1917); 21 *Oregon Digest*, Statutes §§161, 223.3.

Where two Acts are passed by the legislature at the same session and are approved by the Governor on the same day, the Act containing an emergency clause prevails if there is a conflict or inconsistency. Daly v. Horsefly Irr. Dist., 143 Or. 441, 21 P.2d 787 (1933); 28 Op. Att'y Gen. 12 (1956).

3. Same law amended by separate Acts at same session. If at any session of the legislature, there are enacted two or more Acts amending the same section of the statutes, each of the Acts shall be given effect to the extent that the amendments do not conflict in

purpose. Otherwise, the Act last signed by the Governor shall control. Or. Const. Art. IV §22.

4. Measures voted on by people at same election. If two or more conflicting laws are approved at the same election, the law receiving the greatest number of affirmative votes is paramount in all matters on which there is conflict, even though such law may not have received the greatest majority of affirmative votes. If two or more conflicting amendments to the Constitution are approved at the same election, according to statute, the amendment receiving the greatest number of affirmative votes is paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes. The statute has not been judicially construed. ORS 254.065 (2); 30 Op. Att'y Gen. 252 (1961).

d. Operation and Effect of Amendments.

1. When amendment operates as repeal of original statute. When all or a part of a criminal statute is amended, the criminal statute or part thereof so amended remains in force for the purpose of authorizing the prosecution, indictment, trial, conviction and punishment of all persons who violated such statute prior to the effective date of the amending Act. ORS 161.035; State v. Holland, 202 Or. 656, 277 P.2d 386 (1954); Ibach v. Jackson, 148 Or. 92, 35 P.2d 672 (1934).

Amendment of a statute by setting it out in full so as to read in a particular way operates as entire obliteration of the former statute after new statute goes into effect. Skinner v. Davis, 156 Or. 174, 67 P.2d 176 (1937); State v. Smith, 56 Or. 21, 107 P. 980 (1910); 21 *Oregon Digest*, Statutes §140.

2. Amendment presumed to change law. Because an amendment is defined as an Act that changes an existing section, the mere fact that the legislature enacts an amendment indicates that it intended to change the original Act and a change in legal rights is presumed. Fifth Ave. Corp. v. Washington Co., 282 Or. 591, 581 P.2d 50 (1978); Houck & Sons v. State Tax Comm., 229 Or. 21, 366 P.2d 166 (1961); but Pac. Power & Light Co. v. State Tax Comm., 249 Or. 103, 437 P.2d 473 (1968); 21 *Oregon Digest*, Statutes §212.5.

3. Substituted statute deemed continuation of former law. The provisions of the ORS as enacted in 1953 shall be considered as substituted in a continuing way for the provisions of the prior statute laws of a general, public and permanent nature repealed in 1953 when the ORS was enacted as the law. ORS 174.550. Holbrook v. Holbrook, 240 Or. 567, 403 P.2d 12 (1965).

Presumption that revision did not change the law and is substituted in a continuing way for the previous law does not control if the revision as adopted by the legislature clearly changes preexisting law. State v. Davis, 207 Or. 525, 296 P.2d 240 (1956).

Repeal and simultaneous reenactment of same statutory provisions are not to be considered as repeal, but are considered to be a continuation of the language repealed. Smith v. Patterson, 130 Or. 73, 279 P. 271 (1929); Sisters of Mercy v. Lane County, 123 Or. 144, 261 P. 694 (1927); 21 *Oregon Digest*, Statutes §147.

e. Implied Repeal or Amendment.

1. Statutes can be repealed or amended by implication as well as expressly. If there are two Acts on the same subject, which are repugnant in some of their provisions, the later Act repeals the earlier to the extent of such repugnancy, even without express repealing words. State v. McIntire, 22 Or. App. 161, 537 P.2d 1151 (1975); Lilly v. Gladden, 220 Or. 84, 348 P.2d 1 (1959); State v. Buck, 200 Or. 87, 262 P.2d 495 (1953); Miller v. School Dist. No. 1, 106 Or. 108, 211 P. 174 (1922); 21 *Oregon Digest*, Statutes §142.

Amendment of statutes by implication is recognized when the matter is clear. State v. Scott, 237 Or. 390, 390 P.2d 328 (1964).

Repeals by implication are not favored and before a repeal will be implied there must be an irreconcilable conflict between such statute and the subsequent statute. State v. Shumway, 291 Or. 153, 630 P.2d 796 (1981); United States v. Georgia Pacific Co., 421 F.2d 92 (1970); Appleton v. Oregon Iron & Steel Co., 229 Or. 81, 358 P.2d 260 (1961); Croft v. Lambert, 228 Or. 76, 357 P.2d 513 (1960); 21 *Oregon Digest*, Statutes §§158, 159.

2. Implied repeal operates as repeal and not mere suspension. Constitutional amendment abolishing capital punishment did not merely suspend statutes providing for execution of death sentence; it repealed them. State v. Hecker, 109 Or. 520, 221 P. 808 (1923).

3. Specific repeal of statute operates to impliedly repeal dependent statutes. Repeal of an Act repeals the penalty, and such penalty cannot be made to apply to the violation of subsequent law on subject, unless expressly or impliedly provided. State v. Gaunt, 13 Or. 115, 9 P. 55 (1885).

4. Effect of subsequent reference to abolished office. Reference to an abolished office does not indicate a legislative intent to perpetuate the office and, if necessary, may be construed to apply to a current office. Reed v. Dunbar, 41 Or. 509, 69 P. 451 (1902).

5. Amendment of statute for another purpose does not give new life to impliedly repealed parts. If a section of an Act is amended "so as to read as follows" and the amended law sets forth the changes contemplated, the parts of the old section that are incorporated in the new are not treated as having been repealed and reenacted, but are considered as portions of the original statute; only the new parts of the amended law are considered as enacted at that time. Renshaw v. Lane County, 49 Or. 526, 89 P. 147 (1907); Allison v. Hatton, 46 Or. 370, 80 P. 101 (1905).

If an Act has been repealed by implication, a subsequent statute purporting to amend it does not reenact the provisions of the original law that are copied without change. Stingle v. Nevel, 9 Or. 62 (1880).

6. Specific repeal clause negates repeal by implication. If a statute expressly repeals specific Acts, there is a presumption that it was not intended to repeal others not specified,

but there is an implied approval of statutes not specified. Erickson v. Erickson, 167 Or. 1, 115 P.2d 172 (1941).

f. Unconstitutionality of Amending or Repealing Act; Effect on Original Statute.

After an amendatory section of a statute is declared unconstitutional, the section sought to be amended thereby remains in effect. State ex rel. Musa v. Minear, 240 Or. 315, 401 P.2d 36 (1965); Skinner v. Davis, 156 Or. 174, 67 P.2d 176 (1937); Portland v. Coffey, 67 Or. 507, 135 P. 358 (1913); 21 *Oregon Digest*, Statutes §§161(3), 168; Also ORS 174.520.

g. Effect of Repeal of a Repealing, Validation or Curative Statute, or One That Has Accomplished Its Purpose.

Whenever a statute that repealed a former statute, either expressly or by implication, is repealed, the former statute shall not thereby be revived unless it is expressly so provided. ORS 174.080.

The repeal of a validating or curative Act shall not affect any validation or cure theretofore accomplished. ORS 174.070.

Whenever a constitutional provision that repeals or suspends in whole or in part a former constitutional provision, either expressly or by implication, is repealed, the former constitutional provision so repealed or suspended thereby shall not be revived unless it is expressly so provided. ORS 174.090; Klamath Falls v. Oregon Liquor Control Comm., 146 Or. 83, 29 P.2d 564 (1934).

h. Adoption by Reference; Effect of Amendment of Adopted Section.

When one statute refers to another, either by general or by specific reference or designation, the reference shall extend to and include, in addition to the statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted. ORS 174.060; Seale v. McKennon, 215 Or. 562, 336 P.2d 340 (1959); State v. Caseday, 58 Or. 429, 115 P. 287 (1911); 37 Or. L. Rev. 274 (1958); 31 Op. Att'y Gen. 482 (1964). ORS 174.060 changed the common law. See State v. Ganong, 93 Or. 440, 184 P. 233 (1919).

In providing for a state income tax, the legislature has merely incorporated certain provisions of the Internal Revenue Code into Oregon's income tax law and made them applicable state law for various determinations regarding the state income tax. The legislature's incorporation by reference is equivalent to its having republished the specified federal provisions in the state statutes. Okorn v. Dept. of Rev., 312 Or. 152, 818 P.2d 928 (1991).

4. OTHER AIDS TO CONSTRUCTION.

Johnstone, "The Use of Extrinsic Aids to Statutory Construction in Oregon," 29 Or. L. Rev. 1 (1949) is generally useful.

a. Journals and Bill History.

Courts may consider legislative journals, committee reports, committee minutes and other bill history in determining the legislative intent where an Act is ambiguous, but comments of legislators following enactment are probably not very useful.

While the courts may consult the legislative history for "invaluable insight" into the process, the history remains supplemental to the wording of the statute. Northwest Natural Gas Co. v. Frank, 293 Or. 374, 648 P.2d 1284 (1982). Thompson v. IDS Life Ins. Co., 274 Or. 649, 549 P.2d 510 (1976); Appling v. Chase, 224 Or. 112, 355 P.2d 631 (1960); Portland v. Duntley, 185 Or. 365, 203 P.2d 640 (1949); State ex rel. Baker v. Payne, 22 Or. 335, 29 P. 787 (1892); but Murphy v. Nilsen, 19 Or. App. 292, 527 P.2d 736 (1974); Bryson v. P.E.R.B. 45 Or. App. 27, 607 P.2d 768 (1980); 21 *Oregon Digest*, Statutes §213-217.

b. Official Voters' Pamphlet.

Arguments appearing in the official voters' pamphlet will be considered in construing a statute. Chapman v. Appling, 220 Or. 41, 348 P.2d 759 (1960); Allen v. Multnomah County, 179 Or. 548, 173 P.2d 475 (1946); Eugene School Dist. No. 4 v. Fisk, 159 Or. 245, 79 P.2d 262 (1938).

c. Bar Committee Reports.

Oregon State Bar committee reports may be considered by a court in construing a statute. Lilly v. Gladden, 220 Or. 84, 348 P.2d 1 (1960); Western Amusement Co., Inc. v. City of Springfield, 274 Or. 37, 545 P.2d 592 (1976).

d. Statute Adopted from Another State or Federal Government.

Interpretation placed upon the law of another state by courts of that state prior to adoption of such statute by Oregon governs the construction to be placed on it in Oregon or is highly persuasive. State v. Cooper, 874 P.2d 822, 319 Or. 162 (1994); Meyer v. Ford Industries, Inc., 272 Or. 531, 538 P.2d 353 (1975); School Dist. No. 1 v. Rushlight & Co., 232 Or. 341, 375 P.2d 411 (1962); State v. Burke, 126 Or. 651, 269 P. 869, 270 P. 756 (1928); 21 *Oregon Digest*, Statutes §226. Federal law: Univ. of Oregon Co-Operative Store v. State, Dept. of Revenue, 542 P.2d 900, 273 Or. 539 (1975).

e. Legislative Approval of Judicial Interpretation.

Legislative inaction for many years after judicial interpretation of statute may indicate legislative approval of that interpretation but inaction may be a "weak reed." Berry v. Branner, 245 Or. 307, 421 P.2d 996 (1966); Drake Lumber Co. v. Paget Mortgage Co., 203 Or. 66, 274 P.2d 804 (1955); Consolidated Freightways v. West Coast Freight, 188 Or. 117, 212 P.2d 1075 (1950); 21 *Oregon Digest*, Statutes §220.

f. Contemporaneous Construction.

The interpretation of an ambiguous statute by an agency charged with its administration, although not binding upon the courts, is entitled to their careful consideration, but sponsor's later view is entitled to little weight; drafter's reservations are not binding on court. Zollinger v. Warner, 286 Or. 19, 593 P.2d 1107 (1979); Gunther v. Washington County, 623 F.2d 1303, aff'd 452 U.S. 161 (1981); State v. Forrester, 29 Or. App. 409, 564 P.2d 289 (1977); Gouge v. David, 185 Or. 437, 202 P.2d 489 (1949); 21 *Oregon Digest*, Statutes §§218.