Columbia River Gorge Commission
Rules Committee
Sec. 5(b) Rules Update Discussion

High-Level Principles	Review Discussion at:
The states' laws on the subjects in sec. 5(b) of the National Scenic Area Act do not directly apply to the Gorge Commission.	Oct. 8, 2024, Staff Report at page 3. Report in Support of Rules at page 3 (Wash. AGO letter); pages 3–4.
Neither the Act nor court decisions provide principled bases to determine whether one state's statutory provisions are more restrictive than the other state's statutory provisions.	Oct. 8, 2024, Staff Report at page 3. Report in Support of Rules at page 3 (Wash. AGO letter); pages 6–7 (draft interpretation of "more restrictive)
The Commission's rules are "for the conduct of [the Gorge Commission's] business."	Oct. 8, 2024, Staff Report at page 3. Report in Support of Rules at page 4 (*Handy* case); page 5 (Or. DOJ letter). Two significant instances where this rule applies are the (1) enforcement and remedies provisions, which govern other agencies and courts, and (2) in division 14, where there are many state laws that apply to former public officials, such as having a financial interest in a transaction, assisting in a transaction, post-public service employment, and disclosing confidential information. One approach to handling the second instance would be for staff to prepare an advisory handout for commissioners when they complete their service with situations to watch for and where to go for assistance.
The enforcement and remedies provisions in the states' laws conflict with the enforcement provisions of the National Scenic Area Act and thus are not included in the rules.	Oct. 8, 2024, Staff Report at page 3. Report in Support of Rules at page 7 (discussion of state enforcement provisions).

Most significant differences between Oregon and Washington laws

Division 11 – Open Meetings

350-011-0070(3) adapts Oregon law to the Gorge Commission. Washington law generally prohibits electronic-only meetings, but Oregon law allows electronic meetings. Oregon further requires that in-person meetings must provide a means for persons to attend and participate electronically (*i.e.*, a hybrid meeting). The Gorge Commission has used Oregon's requirements for hybrid meetings for its in-person meetings since restarting in-person meetings after the Covid-19 pandemic. If the Gorge Commission could not meet electronically, the cost of in-person meetings would mean the Gorge Commission might only be able to hold three or four meetings in a year, which would not allow it to conduct business in a timely manner, such as holding appeal hearings. The requirement in 0070(2) for the Gorge Commission to provide a physical location for a person to listen and participate in the meeting likely satisfies Washington's requirement for a physical location.

350-011-0060 is the list of topics for executive sessions. This list contains the most common or likely subjects of executive sessions, but the states' laws have dozens more specific subjects for executive sessions that are not likely to arise for the Gorge Commission. Subsection (1)(h) allows an executive session for topics allowed in either state as a catch-all for those unusual situations and has been the consistent practice of the Gorge Commission since its inception. If the Commission would be required to discuss a topic that only one state allows as a topic for executive session (and the other state requires discussion in an open meeting), then the Commission could reveal information that one state treats as confidential. Subsection (1)(e) already allows an executive session to consider information that is confidential, so this subjection (1)(h) is a complementary provision. Washington law does not contain a general provision allowing an executive session to discuss information and records that are exempt from public inspection, but that lack of a general provision does not prevent the application of the individual laws requiring confidentiality.

Division 12 – Public Records

660-012-0070(1) Oregon has two different types of records—records that are conditionally exempt from disclosure and records that are unconditionally exempt from disclosure. Washington does not distinguish between records in this matter. The Gorge Commission's rules use Oregon's approach. Conceptually, Oregon's approach could result in providing more records upon request; however, it would not require the Gorge Commission to provide records that are confidential by federal or state law. (*See* ORS 192.355(9)(a) and RCW 42.56.070(1)). Thus, for example, a record that is conditionally exempt under Oregon law could not be provided to a requestor if that record cannot be provided under Washington law.

660-012-0060(9) Oregon allows agencies to charge fees for searching for public records, reviewing records for exemptions, redacting confidential information, and production (*e.g.*, copying or scanning paper records) and shipping. Washington does not allow agencies to charge for searching for public records or for reviewing records for exemptions and redacting confidential information, but allows charging for copying, scanning, and shipping. The Gorge Commission's rules use Washington's approach to fees for public record requests. Most of the Gorge Commission's records are now in electronic form, so fees are rarely charged.

Division 14 – Conflicts of Interest

350-014-0140 refers to 350-016-0140(4), which prohibits ex parte communications: Washington laws differ on whether a pre-proceeding ex parte communication must be disclosed. Oregon law does not require disclosure of pre-proceeding ex parte communications. 350-016-0140(4) applies the requirement to disclose an ex parte communication to communications received prior to serving as a decision maker (either before being appointed to the Gorge Commission, or before a matter is before the Gorge Commission). This adapts RCW 34.05.455(4) (a part of the Washington APA), which suggests disclosure is required for pre-proceeding ex parte communications. In contrast, RCW 42.36.060 (a part of the Washington Appearance of Fairness doctrine) only requires disclosure for communications after a proceeding has started.

The Washington APA only applies to Washington state agencies, and the Appearance of Fairness doctrine only applies to Washington local governments, so this is not a conflict for Washington state agencies or local governments. However, this is a conflict for the Gorge Commission because the Act requires the Commission to have rules consistent with the more restrictive of the states' laws on administrative procedure (i.e., the APA) and appearance of fairness. The conflict is whether gorge commissioners must disclose only communications occurring after a proceeding has started at the Gorge Commission (*e.g.*, after an appeal is filed, or an enforcement action is started, etc.) or communications that occurred before a proceeding has started. Oregon law only prohibits ex parte communications (and thus requires disclosure of inadvertent communications) only after a proceeding has started; however, there is case law establishing that prior communications can cause impermissible bias.

The draft rule specifies that the disclosure requirement extends to ex parte communications before a proceeding has started at the Gorge Commission. This seems like the more restrictive provision because it results in more transparency. But this approach comes with the complexity of commissioners not knowing which communications to document in case they need to make a disclosure at some point in the future.

Division 16 – Administrative Procedure

There are no significant differences in the states' APAs that are relevant to the Gorge Commission's rules. There are many differences, such as content for a notice of rulemaking or the minimum time for a notice prior to a rulemaking or contested case hearing, but the rules could readily address these.

Categories of Rule Changes (significant examples)	Rule Sections			
	Open Meetings 350-011-	Public Records 350-012-	Conflicts of Interest 350-014-	Admin. Procedure 350-016-
The Gorge Commission may only adopt rules "for the conduct of [the Gorge Commission's] business."	0040(5)	0060(11)	0020(2) 0130(2)	0170

Division 11 – Open Meetings

350-011-0040(5) specifies that an action taken at a meeting that failed to comply with notice requirements is null and void. This provision specifies a judicial remedy, which conflicts with the principle that the Gorge Commission may only adopt rules for the conduct or its own business; however, that remedy in Oregon and Washington law conflict. Washington law specifies that an action is null and void; Oregon law specifies that the action is only voidable. This rule specifies the more restrictive remedy to avoid a conflict in the states' laws.

Division 12 – Public Records

350-012-0060(11) allows a requestor to ask the Executive Director to review a response to a request for public records after the Gorge Commission has provided the response. In Washington and Oregon law, a requestor may ask the Attorney General to review a response to a request. In the 1990s and early 2002s, the states' attorneys general sent letters to requestors who asked the attorneys general to review a Gorge Commission response and to order the Gorge Commission to release a record informing the requestors that the states cannot review public request requests responses from the Gorge Commission. The state law remedies of asking the attorneys general to review and order release do not apply to the Gorge Commission and are not included in division 12.

Division 14 – Conflicts of Interest

350-014-0020(2) defines the scope of division 14. This provision is adapted from ORS 244.390(3), which is within the statutory series applicable to the Oregon Government Ethics Commission, but refers to the scope of "this chapter," meaning that it applies generally and not just to the Oregon Government Ethics Commission. None of the other statutes that are applicable to the Oregon Government Ethics Commission are included in the Commission's rules because they do not relate to the Gorge Commission's business.

350-014-0130(2) specifies a remedy that a court may apply if a commissioner does not disclose a conflict of interest. This administrative rule section cannot govern the courts, and the National Scenic Area Act provides the only manner for enforcement of the Gorge Commission's rules. The draft rules do not show this in strikeout text, and the attorneys general did not comment on this section. This section needs to be revised in conjunction with similar remedy provisions for all divisions of the Gorge Commission's rules, and I recommend we come back to this after discussing divisions 11 and 12, where the judicial remedies in the states' statutes are more pronounced.

Division 16 – Administrative Procedure

350-016-0170 specifies that judicial review of Gorge Commission rules and orders is governed by the National Scenic Area Act and not pursuant to the judicial review provisions of the National Scenic Area Act.

The Gorge Commission cannot use a state statutory provision that conflicts with the National Scenic Area Act.	0030(3)		0120(1)(b) 0130(2) 0140	0100(3) 0120(6)

Division 11 – Open Meetings

350-011-0030(3) removes the reference to a quorum, but the requirement for a quorum to meet still exists. First, the quorum requirement is in the definition of "Gorge Commission" in subsection 0010(6). Second, the National Scenic Area Act specifies that a quorum is a majority of commissioners, which the Commission's bylaws has interpreted to mean that a quorum is needed to transact business. This interpretation differs from Washington law, which does not use the concept of a quorum. The quorum requirement in division 11 is consistent with the National Scenic Area Act and staff believes that it results in the same applied outcome as Washington law.

Division 12 – Public Records

No significant example from this division.

Division 14 – Conflicts of Interest

350-014-0120(b)(B) authorizes the rule of necessity when needed to satisfy the quorum requirement in the National Scenic Area Act. The rule of necessity allows a conflicted member of the commission to vote if necessary to make a decision. Draft rule 350-016-0100(3) codifies the rule of necessity for the Gorge Commission. The rule of necessity exists in both Oregon and Washington law but is not part of the ORS or RCW for state officers. The theory behind the rule of necessity is that it is better to have a decision that may be tainted by a disclosed conflict than no decision at all. Having a decision allows parties to move on or to challenge the Gorge Commission's decision. Using the rule of necessity is a rare occurrence for any entity and is highly unlikely for the Gorge Commission because six voting commissioners would need to be conflicted. That has never happened since the Gorge Commission's inception in 1987. But this is an important safeguard.

350-014-0130(2) – see discussion above in this table.

350-014-0140 – see discussion above in the second table.

Division 16 – Administrative Procedure

350-016-0100(3) applies the rule of necessity (discussed above in the conflicts of interest rules). Neither state's APA provides for the rule of necessity for a multi-member body. Oregon's conflict of interest statute, ORS 244.120(2)(b)(B) allows for the rule of necessity. Washington's appearance of fairness statutes, RCW 42.36.090, also allows for the rule of necessity. The rule of necessity is added to this rule to ensure compliance with section 544c(a)(4) of the National Scenic Area Act, which specifies that a quorum is a majority of the

appointed members of the Gorge Commission. The rule of necessity is appropriate only when no alternative exists for a hearing without invoking the rule of necessity. The rule provides that the presiding officer (as determined by the Commission's bylaws), must appoint one member to participate, giving consideration to roughly equal representation between the states and between governor and county appointees. This consideration may not be possible when only one member is disqualified, and other members are not present at the hearing. The limitation on the member appointed under the rule of necessity to just vote and not ask questions of the parties or participate in deliberation or motions comes from ORS 244.120(2)(b)(B) and *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

350-016-0120(6) authorizes the Gorge Commission to issue protective orders to limit disclosure of confidential information. This section specifically states, "A Tribe's traditional cultural practices, enjoyment of treaty reserved rights, the locations of traditional sites, structures, lands, and places of cultural and spiritual significance that a tribe holds sacred, and similar sensitive information are considered confidential under this section unless the governing body of the Tribe expressly waives confidentiality." This confidentiality of a tribe's sensitive information is required in section 6(a)(1)(A) of the National Scenic Area Act. Neither state's APA addresses protective orders, but both states' model rules address protected evidence in OAR 137-003-0568(5) and WAC 10-08-140. This section adapts OAR 137-003-0568(5) because it specifically authorizes protective orders. This requirement that tribal sensitive information be confidential unless the tribe waives confidentiality gives tribes control over their sensitive information. Staff sought input from the tribes' attorneys on the scope of this section.

Choice between Oregon and Washington law where one is not more restrictive than the other	0010(1)-(4)	0060(1)	0010(8) 0100	

Division 11 – Open Meetings

350-011-0010(1) to (4) contain the definitions relevant to determining when the Gorge Commission is holding a meeting subject to division 11. The states' laws use different terms, which are different triggers for applying open meeting requirements. In Washington, a meeting occurs when an agency takes an action. In Oregon, a meeting occurs when a quorum of the governing body convenes to make a decision or deliberate. The application of these triggers results in similar outcomes; however, "action" may be slightly broader in scope because it specifically mentions receipt of public testimony.

Division 12 – Public Records

350-012-0060(1) requires the Gorge Commission to respond to a records request within 5 business days. This five-day requirement appears in both states' laws. Oregon law, however, only requires an "acknowledgment" within five days and a sets a goal of responding within 15 days after receiving a request, which may be extended. Washington law requires a response within five days, if possible, but allows an agency to extend that. Where Washington requires a response within five days, plus an extension if needed, but does not set a goal of 15 days. On balance, both states require a response within five days and extra time if necessary.

Division 14 – Conflicts of Interest

350-014-0100 Gifts. Both states define "gift" similarly and both have long lists of exclusions in the definition. ORS 244.020(7) defines gift, including a long list of items that do not constitute a gift, and ORS 244.040(2)(g) prohibits gifts not excluded in the definition of "gift." RCW 42.52.140 prohibits gifts and RCW 42.52.150 defines gift, including a long list of items that do not constitute a gift, prohibits accepting gifts, and contains another long list of items that presumably would not influence a public official. There are many overlaps in the states' lists. The draft rules use Oregon law because Washington law allows giving items with a cumulative value up to $100 whereas Oregon law allows only gifts up to $50. Although Washington's list is more specific, the use of Oregon law ensures congruity between value and definition of gift.

Division 16 – Administrative Procedure

No significant example from this division.

Adapting state law to apply to the Gorge Commission	0030(5)(a) 0040(2)	0060(11)		0080(1) 0110 0140

All the Gorge Commission's rules adapt the states' laws to some extent, even if just changing a word, like "state" to "Gorge Commission." In division 11, the rules use "Gorge Commission" instead of public agency (Washington's term) or "public body" (Oregon's term). In division 14, the term, the draft defines "public official" specific to the Gorge Commission and removes references to candidates, which refers to candidates for public office, not persons being considered for an administrative appointment.

Division 11 – Open Meetings

350-011-0030(5)(a) lists the locations where the Gorge Commission may meet. Paragraph (C) adapts the Oregon state law requirement that an agency can meet at the nearest practical location to mean within one of the National Scenic Area counties. This change reflects the fact that there are no adequate meeting facilities within the National Scenic Area within some counties (currently, there is no meeting space adequate for a Gorge Commission meeting in the NSA in Multnomah County or Clark County). This change also reflect the fact that the county central administrative office for three of the National Scenic Area counties are outside the National Scenic Area and are not the "nearest" practical location to the National Scenic Area. And this change reflects the value of the Gorge Commission meeting in different locations within a county. For example, in Klickitat County, the Gorge Commission has met in White Salmon and in Goldendale, where different residents and county leaders may choose to attend a meeting. While the Gorge Commission is not holding in-person meetings monthly anymore, this provision allows the Gorge Commission to meet in all counties.

350-011-0040 specifies how the Gorge Commission must give notice of its meetings. Washington law requires agencies to publish notice of their meetings in the Washington State Register. Agencies must also publish changes to meetings and cancellations in the Washington State Register. The Gorge Commission already files an annual schedule of its meetings in the Register but does not file notices of changes or cancellations. Staff evaluated the timing of publishing such notices, which would require the Gorge Commission to publish notice of a

change or cancellation to its next meeting prior to or at the same time it holds a current meeting. The timing is explained in the Report in Support of Division 11. The rules adapt this statutory requirement to continue publishing the annual schedule with a notice directing people to the Gorge Commission's website for any changes or cancellations.

Division 12 – Public Records

350-012-0060(11) allows a requestor to ask the Executive Director to review a response to a request. This section is adapted from ORS 192.411 and RCW 42.56.530, both of which allow, but do not require, requestors to seek review of a denial by the state's attorney general. The attorneys general have previously stated that they do not review responses from the Gorge Commission, so 0060(11) provides a similar review function to reduce the need for judicial review.

Division 14 – Conflicts of Interest

No significant example from this division

Division 16 – Administrative Procedure

350-016-0080(1) adapts the requirements in ORS 183.413 and 183.415 for notices of a proceeding and of a hearing to reflect that the Gorge Commission conducts a hearing and does not require a person to request a hearing. Thus, a separate notice of a right to a hearing in ORS 183.415 is not needed because the Gorge Commission's rules for enforcement provide for requesting a hearing. The Gorge Commission's rules for appeals, plan amendments, and urban area boundary revisions provide for a hearing without any person needing to request a hearing.

350-016-0110 provides for interpreters in hearings upon request. The states' APAs do not provide for interpreters; however, interpreters are required by other state laws governing judicial proceedings and the states' model rules for contested cases (Oregon's term) and adjudications (Washington's term) specify when an agency must provide an interpreter. These model rules are OAR 137-003-0037 and WAC 10-08-150. The Gorge Commission's rules adapt those model rules to ensure due process, equity, and inclusion.

350-016-0140 adapts the states' laws for a party to object to a disclosure of an ex parte communication to fit the Gorge Commission's meeting schedule, which is less frequent relative to a contested case proceeding with a dedicated hearings officer. This section also blends the states' laws to ensure similar opportunities to object to a disclosure.

Choice to use state law provisions that are not required	0090			0080(1)

Division 11 – Open Meetings

350-011-0090 requires public comment on any subject at regular Gorge Commission meetings. Neither state's law contains this requirement; however, Washington law, at RCW 42.30.010, states that, "even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process."

Division 12 – Public Records

No significant example from this division.

Division 14 – Conflicts of Interest

No significant example from this division.

Division 16 – Administrative Procedure

350-016-0080(1) adapts the requirements in ORS 183.413 and 183.415 for notices of a proceeding and of a hearing, requiring a 20-day notice. The notice requirements in RCW 34.05.434(2) are the same as several requirements in the Oregon statutes. The 20-day notice requirement is part of the Gorge Commission's initial administrative procedure rule (350-16-009(1)) and is not found in either state's APA. ORS 183.415(2) requires "reasonable notice," and RCW 34.05.434(1) requires seven days advance notice. 20 days is appropriate in the Gorge Commission's experience.

Using both states' laws rather than adapting one state's law	0060(1)(h)		0120	0040(1) 0120(4)

Division 11 – Open Meetings

350-011-0060(1)(h) – see discussion above in the table of most significant differences.

Division 12 – Public Records

No significant example from this division.

Division 14 – Conflicts of Interest

350-014-0120 – see discussion below in this table.

Division 16 – Administrative Procedure

350-016-0040(1) directs the Gorge Commission to use the forms, time periods, and other manner in each state's rulemaking notice requirements. This is because each state will only publish notices in their state's bulletin (or register) if the notice meets the requirements in that state's law. This means the Gorge Commission must do two notices for each rulemaking action or step, which is how the Gorge Commission has always practiced rulemaking even though the Gorge Commission's rules specify the content for a rulemaking notice. The revised division 16 removes that list and uses just the reference to the states' forms and requirements.

350-016-0120(4) allows forms of discovery other than depositions, site visits, and subpoenas as permitted by ORS 183.425(2) and RCW 34.05.446(2). The states allow different forms of discovery and thus this section specifies that the state law of the state where the property is located governs the forms and manner of discovery allowed and reflects the difficulty of attempting to blend the states' administrative discovery rules.

Blending the states' laws (significant examples)	0010(7)	0010(4)	0060	

Division 11 – Open Meetings

350-011-0010(7) is the Gorge Commission's definition of meeting. The definition blends Washington's and Oregon's definitions, using the concept of a "quorum" from Oregon law

and the term "action" from Washington law. The National Scenic Area Act also uses the term "quorum" in 16 U.S.C. § 544c(a)(4).

Division 12 – Public Records

350-012-0010(4) is the definition of "public record." This definition takes elements from both states' definitions of a public record. This definition is important because it identifies what a requestor may request.

Division 14 – Conflicts of Interest

350-014-0060 prohibits unauthorized disclosure of confidential information. This rule adapts RCW 42.52.050 but also makes the prohibitions in that statute applicable to former public officials as provided in ORS 244.040(4) and (5). The references to "former" public officials in the rule differ from the high-level principle that the Gorge Commission's rules only apply to the conduct of the Commission, it is a reminder that the obligation of confidentiality applies after a commissioner completes their service on the Gorge Commission.

Division 16 – Administrative Procedure

No significant example from this division.

Whether a statute in one state or silence in the other state is more restrictive	0060	0060(5)	0120 0130	

Division 11 – Open Meetings

350-011-0060 – see discussion above in the table of most significant differences.

Division 12 – Public Records

350-012-0060(5) states that the Gorge Commission may provide records in installments, which is consistent with Washington law. Oregon law does not specifically authorize or prohibit installment productions of public records. Staff believes Washington law is more restrictive because installment productions provide quicker access to records when there is a large request. Also, a requestor may receive the records they wanted in an early installment and choose to cancel the remainder of their request.

Division 14 – Conflicts of Interest

350-014-0120 distinguishes between potential conflicts of interest and actual conflicts of interest. This is a distinction in Oregon law. In Oregon, potential conflicts are waivable; actual conflicts are not waivable. Washington law does not make this distinction. Washington's laws prohibit an interest that conflicts with official duties (RCW 42.52.020, captured in 350-014-0030) and are specific in what is permitted and what is not. Those specifics are captured in the draft rules for financial interests, assisting in transactions, compensation for outside activities, honoraria, gifts, etc., so the draft rules use both the Washington and Oregon approaches.

350-014-0130 requires recording disclosures of conflicts in meeting minutes. This comes from ORS 244.130. Washington does not have this requirement in RCW 42.52 but does for municipal officers in RCW 42.23. The Gorge Commission is not a municipal entity and county

appointees are not municipal officers as defined in RCW 42.23.020. Recording disclosures in meeting minutes is a form of transparency and is thus the more restrictive practice.

Division 16 – Administrative Procedure

No significant example from this division.

Where one state's law permits but the other state's law prohibits	0070(3)	0070(1)(a)	None	

Division 11 – Open Meetings

350-011-0070(3) – see discussion above in the table of most significant differences.

Division 12 – Public Records

350-012-0070(1)(a) exempts from disclosure records pertaining to litigation reasonably likely to occur. This comes from Oregon law. Washington law does not have this exemption. However, Washington law protects such records that fall within the attorney-client privilege or work-product exemption. In *Hangartner v. City of Seattle,* 151 Wn.2d 439, 90 P.3d 26 (2004), the Washington Supreme Court held that a statute, RCW 5.60.060(2)(a) (prohibiting an attorney from being examined as to legal advice given without the client's consent) constitutes an "other statute" exemption under Washington's public records act even though it is really an evidentiary statute. That exemption, RCW 42.56.070(1), states that an "other statute which exempts or prohibits disclosure of specific information or records" is treated as a PRA exemption. This "other statute" exception also applies more generally to records through 0070(2)(d) and (2)(e). The draft exemptions stated in 350-012-0070(1)(i) and (2)(k) may be repetitive of 0070(2)(d) and (2)(e).

Division 14 – Conflicts of Interest

No significant difference

Division 16 – Administrative Procedure

No significant example from this division.

Best practice from a reference, treatise, or other source outside of the states' statutes, or interpretation in case law	0010(6)	0060(2)	0120(1)(b)	0010(4)

Division 11 – Open Meetings

350-011-0010(6) applies open meeting requirements to committees of the Gorge Commission established in accordance with the bylaws that have the authority to conduct hearings, take testimony, or make decisions for or recommendations. This means commissioners (fewer than a quorum) may meet ad hoc. This is consistent with *Citizens Alliance for Property Rights v. San Juan County*, 184 Wn. 2d 428, 359 P.3d 753 (2015) and the Oregon Attorney General Public Records and Open Meetings Manual.

Division 12 – Public Records

350-012-0060(2) specifies that the Gorge Commission may develop a search plan and confirm that search plan with the requestor. This section is not adapted from either Washington or Oregon law; however, it is consistent with advice about the states' laws. The Oregon Attorney General Public Records Handbook recommends that agencies may negotiate with requestors to reduce the cost of fulfilling requests. The Washington State Bar Association and WSBA Administrative Law Section Public Records Act Deskbook similarly recommends that sometimes a thorough response will require significant interaction between the requestor and that the agency may work with the requestor to focus or narrow a request or assist the requestor to formulate a request sufficient to fulfill the requestor's objectives.

Division 14 – Conflicts of Interest

350-014-0120(1)(b)(B) prohibits a commissioner who is participating under the rule of necessity from participating in a motion, except to vote. That means no making or seconding a motion and no deliberation. Washington law, RCW 42.36.090, allows full participation, but Oregon's Land Use Board of Appeals has reasoned that participation in deliberations is not necessary, only the vote is necessary. *Wal-Mart Stores, Inc. v. City of Hood River*, 67 Or LUBA 332 (2013).

Division 16 – Administrative Procedure

350-016-0010(4) allows attorneys to appear at the Gorge Commission pro hac vice, which means they may appear as an attorney even though they are not licensed in Oregon or Washington. In short, they must request permission from the Gorge Commission and work with an Oregon or Washington-licensed attorney. This section is not found in the Oregon or Washington APAs. This section is adapted from OAR 661-010-0012 of the Oregon Land Use Board of Appeals and is consistent with Oregon and Washington rules of practice for attorneys and pro hac vice appearance requirements in Oregon and Washington law.

Discussion of Issues Raised by the Rules Committee	Rule Sections			
	Open Meetings 350-011-	Public Records 350-012-	Conflicts of Interest 350-014-	Admin. Procedure 350-016-
Training Requirements: ORS 192.700 and RCW 42.30.205 require training on state open public meetings laws. RCW 42.56.150 requires training on state public records laws. Oregon does not have a mandatory training requirement. Neither state requires mandatory training for conflicts of interest or for administrative procedure, and Washington does not require training for appearance of fairness				
The Gorge Commission can use and adapt written training from the states; request state trainers to do training and adapt their standard materials to our rules; or create its own training. Staff orientations for new commissioners may also satisfy or partially satisfy these requirements. The Rules Committee recommended adapting written training from the states or requesting state trainers to present to the Commission because of the staff time necessary to create the Gorge Commission's own trainings, except that Gorge Commission staff should prepare an advisory handout for commissioners when they complete their service with conflict situations to watch for and where to go for assistance, and that the Gorge Commission's legal counsel can help commissioners with some questions. This does not require changes to the draft rules.				
Campaign contributions as a "gift"			0010(9)(b)	
In draft rule 350-014-0010(9)(b), staff shows "campaign contributions" as deleted text. Staff showed this as a deletion because staff believed that campaign contributions would not be relevant to appointed gorge commissioners. Commissioner Liberty pointed out that several past commissioners were previously elected officials and commissioners could choose to run for office while on the Gorge Commission, in which case, campaign contributions could affect how a commissioner approaches their work. Both states' laws exempt campaign contributions from the definition of "gift." RCW 42.52.010(9)(h) and ORS 244.020(7)(b)(A). Washington's appearance of fairness law (RCW 42.36.050) also states, "nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions." This is exemption is separate from RCW 42.52.020, which prohibits a state officer from having "an interest . . . that is in conflict with the proper				

discharge of [their] official duties." Oregon law, ORS 244.120 requires disclosure of the nature of a conflict but does not specify whether campaign contributions may constitute a conflict.

The deleted reference to campaign contributions in the draft text is a deletion in the exceptions to the definition of "gift," meaning that campaign contributions could be considered a gift even though not required by both states' laws. Thus, the draft rules would require a commissioner to disclose campaign contributions if the contribution could conflict with their official duties; for example, if a significant contributor is a party before the Gorge Commission in a hearing. Examples of contributions that are not significant could be the amount of the Oregon tax credit for political contributions ($50) or the maximum allowable amount contributed during a low-cost fundraiser in Washington that is not tracked individually and is included in a lump sum disclosure ($150). Staff can clarify this in the draft rules.

When a public official is associated with an outside organization			0010(9)(b) 0030(2)	

Draft rule 350-014-0010(9)(b)(K) excludes from the definition of a gift, a thing of value as part of the usual and customary practice of an organization that a public official is employed or volunteers for if the thing of value bears no relationship to the public official's holding of the official position.

350-014-0030(2) prohibits a public official from using their position to obtain a financial benefit or avoid a financial loss to themselves, a member of their household or any business with which the public official or a relative or member of the household of the public official is associated. 350-014-0010(5) defines "business" and exempts "any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

The rules could be more restrictive than the states' laws and include even non-income producing non-profit organizations in the definition of "business." Staff can clarify this in the draft rules.
