

Special Districts Administrative Handbook



**ACCOUNTING
(Chapter 1)**

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INTRODUCTION

Financial management is necessary for the control of district financial affairs. A financial management policy should be developed which includes rules for conducting all aspects of financial control and transactions. All phases of the financial management process should have documentation showing when and why money was received and disbursed.

Citizens entrust resources to you for the specific purpose of providing services. Therefore, it is not enough simply to ensure that assets are safeguarded; they also must be used efficiently and effectively to achieve their intended purpose.

ACCOUNTING SYSTEM

A good accounting system should do the following:

- Assemble information on all finance-related transactions and events.
- Provide the ability to analyze all data collected.
- Classify data in accordance with the chart of accounts.
- Record data in the appropriate books of accounts.
- Report data to management and to outside parties in an appropriate format and in a timely manner.
- Maintain accountability of assets.
- Retain data according to the State of Oregon's retention schedule for special districts.

The complexity of the accounting system will be determined by the needs of the individual district. A basic accounting system will include at least the following:

- A general ledger.
- Subsidiary ledgers as necessary, including revenue, expenditures, and payroll.
- Written documentation supporting, authorizing, and explaining individual financial transactions including invoices, bank statements, purchase orders, payroll, and fund transfers.
- Any other data deemed necessary to prepare financial statements.

POLICY AND PROCEDURES MANUAL

An accounting policies and procedures manual should clearly outline the specific authority and responsibility of individual employees, thus providing the essential foundation needed for establishing employee accountability. It also serves as a reference tool for employees seeking guidance on the proper handling of less frequently encountered transactions and situations. In addition, an accounting policies and procedures manual lessens the threat to continuity posed by employee turnover.

It is also important that an accounting policies and procedures manual do more than simply describe the appropriate handling of transactions and events. The accounting policies and procedures manual should also clearly communicate the design and objective of the district's internal control structure. Employees are more likely to perform control procedures faithfully if they are aware of their purpose and importance.

FUND ACCOUNTING

Public accounting and budgeting is based on funds. Revenues and expenses must be kept separate by each type of fund. The main types of funds include the General Fund, Special Revenue Fund, Debt Service Fund, Enterprise Fund, Trust Fund and Reserve Funds.

- General Fund - Composed of accounts for the financial operations of the district, which are not accounted for in any other fund. The principal sources of revenue are property taxes and interest income. Primary expenditures in the General Fund are made for general district services and administration.
- Special Revenue Fund - Authorized for a specific purpose and generally operate on a year-to-year basis until the fund is discontinued or revised by proper legislative authority. In the event the fund is discontinued, any excess funds should be returned to the originating jurisdiction or the General Fund.
- Debt Service Fund - Used to account for the payment of principal and interest on all general obligation long-term debt, including that payable exclusively from revenue-producing enterprises. Resources cannot be diverted or used for any other purpose.
- Capital Projects Fund - Operate until the capital project is completed. Upon completion, any remaining cash is transferred to the Debt Service Fund, the originating source of the funds, or the General Fund.
- Internal Service Fund - Finances and accounts for services furnished by a department or agency to other departments or agencies within the district. Amounts expended from the fund are restored from either operating earnings or as operating expenditures from other funds to the Internal Service Fund.
- Enterprise Fund - Established to finance and account for acquiring, operating, and maintaining facilities and services which are self-supporting from user charges and fees (such as water and sewer).
- Trust and Agency Fund - Assets are sometimes held or revenue received by districts in a fiduciary capacity to be used for a certain specified purpose.
- Reserve Fund - Accumulates money for financing the cost of any service, project, property, or equipment that the district can legally perform or acquire. Some districts will even have a reserve fund established for debt service in the event revenues are insufficient to meet

future payment obligations on long-term obligations.

BANKING SERVICES

Major banking services must meet the following minimum criteria:

- Institution must be listed on the Oregon State Treasurer's list of qualified depositories.
- Be insured by the Federal Deposit Insurance Corporation (FDIC)
- Be able to facilitate transfers to and from the Local Government Investment Pool managed by the Oregon State Treasurer (or any other investment option)

CONTROL POLICIES AND PROCEDURES

The primary focus of control policies and procedures is to process transactions correctly. Transaction processing controls, including documentation requirements, should be designed with these objectives in mind:

- Recorded transactions are valid and supported by appropriate documentation; none of which are fictitious.
- All valid transactions are recorded; none are omitted.
- Transactions are properly authorized.
- Transaction dollar amounts are properly calculated and accurately recorded.
- Transactions are properly classified in the accounts.
- Transaction accounting/posting is complete; no required fields for sub-ledger entries are omitted.
- Transactions are recorded in the proper accounting period (fiscal year).
- Duties are segregated. As much as practical, no single individual should be able to (1) authorize a transaction, (2) record the transaction in the accounting system, and (3) take custody of the assets resulting from that transaction.
- Access to assets and records is controlled.

Policy standards

All transactions must be supported by appropriate documentation. In all cases, the documentation must be complete and accurate and must allow a transaction to be traced from the source documentation, through its processing, to the financial reports. All documentation should be readily available for examination.

Records of transactions and significant accounting events may be initiated and stored in a variety of media and physical formats. These records should be retained the minimum length of time and authorized for disposition in accordance with the requirements described in the Oregon Archived Division's records retention schedule for special districts.

Documentary Evidence

Regardless of the format used for storage purposes, all recorded transactions, (including adjusting entries and transfers) should be supported by copies of source documents (such as vendor invoices, receiving records, cash receipts, timesheets, loan documents, or bank

statements) and other supporting information sufficient to provide clear evidence of the following:

- The authenticity of the transaction.
- The purpose or reason for the transaction.
- The vendor/customer involved in the transaction, when applicable.
- That the transaction was properly authorized.

Risk Assessment

Risk assessment is the identification, measurement, and management of risks relevant to the achievement of the organization's objectives. Risks include external and internal events or circumstances that may occur and adversely affect operations. Once risks are identified, management should consider their significance, the likelihood of their occurrence, and how to manage them. Management may initiate plans, programs, or actions to address specific risks or it may decide to accept a risk because of cost or other considerations. Risks can arise or change due to circumstances such as the following:

- Changes in operating environment.
- New personnel.
- New or revamped information systems.
- Rapid growth.
- New technology.
- New activities or lines of service.
- Organization restructure.
- Accounting pronouncements (adoption of new accounting principles or changing accounting principles).

BONDING

The governing body of a district must require a bond or an irrevocable letter of credit of any member of the governing body or any officer or employee of the district who is charged with possession and control of district funds and properties. The amount of the bond shall be fixed by the governing body of the district, and the premium shall be paid from the district funds. The letter of credit shall be issued by a commercial bank (ORS 198.220).

All board members or employees can be bonded for a minimal additional charge to the cost (premium) of bonding only one board member. It is practical and beneficial to take the necessary steps to bond all board members and the district manager.

INVESTMENTS

Districts should have an established and documented investment policy. Funds that are not needed for immediate cash flow should be invested in safe investments that offer the maximum yield possible. An investment policy should be adopted by the governing body and reviewed and updated periodically. The Oregon State Treasurer's Investment Policy for Local Governments is available online at the State Treasury Department website.

Public Funds Collateralization Program

ORS Chapter 295 governs the collateralization of Oregon public funds and provides the statutory requirements for the Public Funds Collateralization Program. Bank depositories are required to pledge collateral against any public funds deposits in excess of deposit insurance amounts. This provides additional protection for public funds in the event of a bank loss. ORS 295 sets the specific value of the collateral, as well as the types of collateral that are acceptable. ORS 295 creates a shared liability structure for participating bank depositories, better protecting public funds though still not guaranteeing that all funds are 100% protected.

AUDITS

Oregon local governments are subject to Municipal Audit Law, ORS 297.405 to 297.555. Unless otherwise specified in the Oregon Revised Statutes, all districts must be audited.

Audits and reviews must be conducted in accordance with the “Minimum Standards for Reviews of Oregon Municipal Corporations” adopted by the Secretary of State Audit’s Division. These rules prescribe the financial statements that must be included in audit or review reports, the minimum procedures that must be followed, and the standards that must be followed in an audit or review.

- A district with expenditures of less than \$150,000, and whose chief fiscal officer is bonded for the total amount of money received during the year may file unaudited financial statements with the Secretary of State’s Office within 90 days after its fiscal or calendar year ends.
- A district, other than a county or school district, with expenditures of more than \$150,000 but less than \$500,000, and whose chief officer responsible for receiving or disbursing moneys on behalf of the district was covered during the entire year by a fidelity or faithful performance bond in an amount at least equal to 10 percent of the total receipts for the year, but not less than \$10,000 and whose financial statements have been reviewed by a licensed municipal auditor may file “review reports” with the Secretary of State’s Office within 180 days after its fiscal or calendar year ends.
- A district, including counties and school districts, that must have its financial statements reviewed or audited, must contract with an accountant licensed as a municipal auditor by the Oregon Board of Accountancy.

Purpose of the Audit

The auditor’s main purpose is to independently review the financial statements to attest to their fairness. In addition to this, the auditor will also:

- Comment on the compliance of the district’s financial affairs with applicable laws and budget requirements.

- Assist the district in revising its accounting system to increase efficiency and ease of function.
- Help the district institute procedures that will increase accuracy of record keeping and strengthen internal controls.

Documents to be audited

- General ledger and related subsidiary ledgers posted accurately and up to date.
- Books of original entry that provide, in an orderly manner, the summarization of transactions.
- Source documents supporting the transactions in the books of original entry filed in a neat and orderly manner. (Source documents include all revenues as well as all expenditures).
- Explanations of apparent differences between general ledger balances and source documents.
- Copies of reports required to be filed with government agencies and an explanation of any differences between amounts reported and the accounting reports.
- Specifically, the above would include such items as minutes of regular meetings, budget committee meetings, insurance forms and policies, copies of adopted resolutions that may not be included in the regular minutes, copies of the ballot title and abstracts of any bond issues, copies of published newspaper notices of budget committee meetings and hearings, a copy of the proceeding year's budget, county tax turn over documents, right-of-way documents, and copies of lease contracts on equipment.

The Audit Report

At the conclusion of the audit examination, the auditor will issue an audit report. This report will contain:

- The financial statement of the district with appropriate notes.
- The auditor's opinion on these statements.
- The auditor's comments about the district's financial affairs and its compliance with legal requirements.

Recommendations on how the district may improve its accounting system or more effectively conduct its financial affairs.

RECORDS RETENTION

Districts are required to follow the State of Oregon's Records Retention Policy, which is located on the State Archive Division's website. Unless otherwise provided in the schedules, the Division recommends that records not specifically be mentioned shall be maintained for a

period of not less than two years. Minutes should be maintained forever.

Records typically have a four-stage life cycle:

- The period of creation, when data or information is generated.
- The period of active use, which can range from a few days to several years. During this period, users frequently reference the record and need quick access to it. Therefore, the record should be maintained in the office area.
- The period of inactivity. During this period, the record is in storage or is kept either because of legal reasons or because of infrequent reference needs. Some records have no inactive period while others may remain in this stage for several years, or permanently.
- The final stage in the cycle is destruction, which occurs when the record is no longer required by law to be kept. With confidential or proprietary records, special attention must be taken to ensure destruction is total and that records can in no way be recreated.

RESOURCES

Audits of Public Funds and Financial Records (ORS 297)

www.oregonlegislature.gov/bills_laws/ors/ors297.html

Borrowing and Bonds of Local Governments (ORS 287)

www.oregonlegislature.gov/bills_laws/ors/ors287.html

Depositories of Public Funds and Securities (ORS 295)

www.oregonlegislature.gov/bills_laws/ors/ors295.html

Minimum Standards of Audits (OAR 162-001-000 through 162-020-0330)

secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=519

Oregon Local Budget Law (ORS 294)

www.oregonlegislature.gov/bills_laws/ors/ors294.html

Oregon State Treasury: www.oregon.gov/treasury/Pages/index.aspx

SDAO Resource Library/Accounting: www.sdaoresourcelibrary.com/

Secretary of State Archives Division: sos.oregon.gov/archives/Pages/default.aspx

Secretary of State Audits Division: sos.oregon.gov/audits/Pages/default.aspx

**BUDGETING
(Chapter 2)**

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INTRODUCTION

A budget is a financial plan containing estimates of revenues and expenditures for a single fiscal year. Most local governments operate within a fiscal year beginning on July 1 and ending the following June 30. However, local governments have the option of budgeting on a 24-month budget, which is called a biennial budget. The budget must be completed by June 30 – one day before the start of the fiscal year for which the budget applies.

Besides outlining programs for the coming year, the budget controls local governments spending authority. Since the budgeting process encourages citizen input, the budget is also a vehicle for obtaining public opinion about proposed programs and fiscal policies of your district.

A local government's authority to spend money or incur debt obligations expires on June 30 of either a fiscal year or a biennial budget period. The ability to impose a property tax is also tied to the budgeting process. Districts that have property taxing authority cannot levy taxes unless their budgets have been adopted.

The Department of Revenue supervises the local budget process and has responsibility for administering and interpreting budget law. Oregon's local budget law is set out in Oregon Revised Statutes 294.305 – 294.565.

Local budget law does two important things:

- It establishes standard procedures for preparing, presenting, and administering the budget.
- It requires citizen involvement in the preparation of the budget and public disclosure of the budget before it's formally adopted.
- It gives a method for estimating expenses, resources, and proposed taxes.
- It offers a way of outlining the programs and services provided by the local governments, and the fiscal policy to carry them out.

EXCEPTIONS TO LOCAL BUDGET LAW

Most local governments in Oregon prepare and adopt an annual budget. There are a few exceptions. The following districts are either totally or partially exempted from local budget law requirements (ORS 294.316):

- Drainage districts organized under ORS chapter 547;
- District improvement companies organized under ORS chapter 554;
- Highway lighting districts organized under ORS chapter 372;
- Irrigation districts organized under ORS chapter 545;
- Road districts organized under ORS chapter 371;
- Soil and water conservation districts organized under ORS chapter 568 that will not levy an ad valorem tax during the ensuing year or ensuing budget period;

- People’s utility districts organized under ORS chapter 261, operating without ad valorem tax support during the ensuing year or ensuing budget period;
- Water control districts organized under ORS chapter 553 that will not levy an ad valorem tax during the ensuing year or ensuing budget period;
- Diking districts organized under ORS chapter 551;
- Health districts organized under ORS 440.315 to 440.410; and
- Intergovernmental entities created under ORS 190.010, including councils of governments described in ORS 294.900 to 294.930, except that an intergovernmental entity or a council of governments that proposes to impose ad valorem property taxes for the ensuing year or budget period is subject to ORS 294.305 to 294.565 for the budget prepared for that year or period.

A newly formed local government is not required to prepare a budget under local budget law during the first fiscal year it is formed. If a local government is formed between March 1 and June 30, it does not have to prepare a budget for the upcoming fiscal year. (ORS 294.338(10))

THE LOCAL BUDGET LAW PROCESS

Local budget law process requires that certain, specific actions must happen as a local government prepares its annual or biennial budget. The Department of Revenue’s *Local Budgeting in Oregon Manual* outlines the process for preparing the proposed budget.

Publication Forms

The Department of Revenue supplies forms to be used to publish notice of the budget committee meeting and to present the budget summary and notice of budget hearing. These forms are “Notice of Budget Committee Meeting,” LB-1, LB-2, and LB-3.

Budget Officer Appointed

Each local government must have a budget officer, appointed by the board of directors, who prepares or supervises the preparation of the budget document. (ORS 294.331)

Budget Committee Appointed

The budget committee is made up of the governing body and an equal number of appointed registered voters of the local government. Members are appointed for three-year terms. Appointed members of a budget committee that prepares a biennial budget serve for four years. The terms must be staggered so that, as near as practicable, one-third or one-fourth of the terms will end each year. The appointed members cannot be officers, agents or employees of the district. All members of the budget committee have equal authority.

The budget committee has several purposes. It conducts public meetings to hear the proposed budget message and review the budget proposed by the budget officer. One of its most important purposes is to listen to comments and questions from interested citizens. It considers this public input as it deliberates on the budget. It can revise the proposed budget to reflect changes it wants to make to the local government’s fiscal policy.

Approving the Budget

Budget officer publishes notice

When the proposed budget and budget message are ready, the budget officer publishes a "Notice of Budget Committee Meeting." If notice is only published in a newspaper of general circulation, it must be published at least 30 days prior to the scheduled budget committee meeting date. The notice may be published at least twice (five to 30 days before the scheduled budget committee meeting) as long as it is also published on the district's website at least 10 days before the meeting. The newspaper notice must include the website address. If notice is hand delivered or mailed, only one notice is required not later than 10 days prior to the meeting.

A budget message is required as part of the budget preparation. The statute requires that the budget message contain a brief description of the financial policies reflected in the proposed budget and, in connection with the financial policies, explain the important features of the budget. The budget message must also explain proposed changes from the prior year's budget and explain any major changes in financial policies.

Budget committee meets

Local budget law requires that the budget committee hold at least one meeting for the purpose of:

- Receiving the budget message and budget document, and
- Providing members of the public with an opportunity to ask questions about and comment on the budget.

The budget officer provides a copy of the proposed budget to each member of the budget committee. The copies may be distributed any time before the advertised budget committee meeting or distributed at the advertised meeting. When the budget is given to the budget committee, it becomes a public record and must be made available to the public.

The budget committee members cannot get together in person, by telephone, or email before the advertised meeting to discuss the budget. All budget discussions must be held at a public meeting.

Some reasons why you may choose not to take public comments at the first meeting include:

- Giving the budget committee time to hear and to discuss the budget message,
- Allowing the committee time to understand the proposed fiscal policy reflected in the proposed budget, and
- Giving the committee and public time to walk through the budget document to understand how it is arranged.

If the budget committee does not invite the public to comment during the first meeting, the committee must provide that opportunity in at least one subsequent meeting. Notice of committee meetings must tell the public at which meeting comments will be taken.

Committee approves budget

When the budget committee is satisfied with the budget it is approved. Approval of the budget and the amount or rate of ad valorem taxes for each fund receiving property tax revenue should be made by motion and be recorded in the minutes of the meeting. (ORS 294.428)

Advertising and Holding Hearings

Budget summary and notice of budget hearing published

After the budget is approved, a budget hearing must be scheduled. ORS 294.438 requires that a notice of the meeting and a financial summary of the budget as approved by the budget committee must be published by one or more of the methods described in ORS 294.311 (35) at least once.

If no newspaper is published in your district and estimated expenditures for the ensuing year do not exceed \$100,000, you may provide the budget summary and notice of budget hearing by posting it in three conspicuous places within the district for at least 20 days prior to the date of the hearing.

If your district is located in Multnomah County, you have different publication and hearing requirements. You need to refer to the *Budget Manual for Local Governments in Multnomah County* produced by the Tax Supervising and Conservation Commission (TSCC).

Budget hearing held

The governing body must hold the budget hearing on the date specified in the public notice. The purpose of the hearing is to listen to citizens' testimony on the approved budget. Additional hearings may be held. All hearings are open to the public. Form LB-1 notifies the public of the budget hearing date and time and where to obtain a copy of the budget. (ORS 294.453).

Adopting the Budget

Budget adopted, appropriates made, tax levy declared and categorized

The governing body may make changes in the approved budget before or after it is adopted, but not later than the beginning of the fiscal year in which the budget relates. However, without first publishing a revised budget summary and holding another budget hearing:

- Taxes may not be increased beyond the amount approved by the budget committee, and
- Estimated expenditures in a fund may not be increased by more than \$5,000 or 10 percent, whichever is greater.

To adopt the budget, the governing body must enact a resolution or ordinance to (1) formally adopt the budget, (2) make appropriations, and if needed, (3) levy, and (4) categorize any tax. The resolution or ordinance must be adopted no later than June 30. **It should not be formally adopted until the latter part of June** so that last-minute revisions to revenue or expenditure estimates can be incorporated.

The resolution (or ordinance) making appropriations gives the local government the authority to spend money and incur obligations in the coming year. The schedule of appropriations also sets limits on the amount of money that can be spent in each object classification within each fund.

During the budget year, spending cannot exceed the amounts specified in the resolution unless additional budgeting steps are taken. Exceeding appropriation authority, at the least, can result in a comment in your audit report. At the worst, it can result in litigation against the governing body under ORS 294.100. Under this statute, the officials of the local government can be held personally liable for spending money in excess of the amount authorized or for a different purpose than authorized.

Mistakes on the publication forms

Correctable errors include such things as typographical errors, failure to mail or hand deliver to each street address, math errors, errors in estimating tax revenue, and failure to publish within the required time periods. Errors can be corrected as long as you make a good faith effort to publish correctly.

If an error occurs you can correct it as follows: At the first regularly scheduled meeting of the governing body after the error is discovered, inform the governing body in writing of the error. Give testimony before the governing body about what the error was and what the correct information should have been.

It should be noted that these are errors in the published documents. You can't change the expenditures, resources, or taxes approved by the budget committee. If the committee approved an incorrect amount, the governing body can make the correction at the budget hearing.

Budget filed and levy certified

Since local governments have the option of imposing no property taxes or imposing less tax than their taxing authority allows, each year they must officially state their intent to impose taxes. A resolution (or ordinance) that states this intent must accompany the notice of property tax certification form that is submitted to the assessor by July 15th.

The resolution imposing and categorizing taxes must state the taxes in an exact form and amount that the local government wants to certify to the assessor. If it is the local government's intent to impose taxes to its full permanent rate limit, then that rate must be included in the resolution.

By July 15th of each year, you must give the assessor's office:

- Two copies of notice of levy and the categorization certification, and
- Two copies of the budget resolution or ordinance.

If your district is subject to local budget law, but does not levy taxes, send a copy of the resolution adopting the budget and making appropriations to the Department of Revenue on or before July 15th. A copy of the complete budget must also be sent to the county clerk on or before September 30th.

Changing the Adopted Budget

After the district is operating within the adopted budget for the current budget period, changes in appropriated expenditures are sometimes necessary. Resolution transfers and supplemental budgets can change the adopted budget. One of these actions must be taken before money can be spent for a different purpose than appropriated in the adopted budget. It is unlawful to spend public money in excess of the amounts budgeted or for a different purpose than budgeted. Public officials can be sued for such actions if the expenditure is found to be malfeasance in office or willful or wanton neglect of duty. Creating a supplemental budget or a resolution transfer after the expenditure is made does not protect the governing body members from suit.

Appropriation transfers

The governing body's spending authority in existing appropriations can be changed by (1) transferring amounts among existing appropriations in the same fund, (2) or transferring from an existing appropriation in one fund to an existing appropriation in another fund.

You can't, however, use a resolution to transfer appropriations and resources from a special revenue fund to the general fund. A supplemental budget must be used to move resources and appropriations from a special revenue fund to the general fund.

Supplemental Budgets

A supplemental budget is a budget prepared during the fiscal or biennial year that modifies the adopted budget. Supplemental budgets are used to create new appropriations to spend increased resources. They can also be used to transfer resources and appropriations from a special revenue fund to a general fund. Additionally, they can be used to create a new appropriation category within a fund. A supplemental budget can be used to establish a category for capital outlay and transfer appropriations from another category into it. A supplemental budget can also be used to establish a new fund.

You may prepare a supplemental budget only if one or more of the following circumstances exist (ORS 294.471):

- An occurrence or condition that is not ascertained when preparing the original budget or a previous supplemental budget for the current year or current budget period and that requires a change in financial planning.
- A pressing necessity that could not reasonably be foreseen when preparing the original budget or a previous supplemental budget for the current year or current budget period and that requires prompt action.
- Funds that are made available by another unit of federal, state or local government and the availability of which could not reasonably be foreseen when preparing the original budget or a previous supplemental budget for the current year or current budget period.
- A request for services or facilities the cost of which is to be supplied by a private individual, corporation or company or by another governmental unit and the amount of which could not be accurately estimated when preparing the original budget or a previous supplemental budget for the current year or current budget period.
- Proceeds from the involuntary destruction, involuntary conversion, or sale of property that necessitates the immediate purchase, construction or acquisition of different facilities in order to carry on governmental operations.
- Ad valorem property taxes that are received during the fiscal year or budget period in an amount sufficiently greater than the amount estimated to be collected such that the difference will significantly affect the level of government operations to be funded by the taxes as provided in the original budget or a previous supplemental budget for the current year or current budget period.
- A local option tax described in ORS 294.476 that is certified for extension on the assessment and tax roll under ORS 310.060 for the fiscal year or budget period in which the local option tax measure is approved by voters.

- A reduction in available resources that requires the governing body to reduce appropriations in the original budget or a previous supplemental budget for the current year or current budget period.

A supplemental budget may not extend beyond the end of the fiscal year or budget period during which it is submitted.

Except as provided in ORS 294.476, the making of a supplemental budget does not authorize the governing body to increase the district's total ad valorem property taxes above the amount or rate published with the regular budget and certified to the assessor under ORS 310.060 in conjunction with the regular budget for the fiscal year or for each fiscal year of the budget period to which the supplemental budget applies.

Supplemental budgets may not be prepared to deal with a situation that was known at the time the adopted budget was prepared. Also, you can't use a supplemental budget to spend money in an un-appropriated ending fund balance, except when needed because of a natural disaster, civil disturbance, or involuntary conversion. Involuntary conversion happens when property is unintentionally damaged or destroyed.

Supplemental budget process for change of less than 10 percent

When the change to an individual fund of the adopted budget is less than 10 percent of the expenditures of that fund, use the following process:

- The governing body adopts the supplemental budget at a regularly scheduled board meeting. The budget committee is not required.
- Notice of the regular meeting at which the supplemental budget will be adopted is published by one of the publication methods discussed earlier. The notice is published not less than five days before the meeting. The notice includes the following:
 - The name of each fund being adjusted, and
 - The amount of the change to each fund's resources and expenditures.
- At the meeting, a resolution or ordinance adopting the supplemental budget and making appropriations is approved.

Supplemental budget process for changes of 10 percent or greater

When the supplemental budget will adjust a current budget fund by 10 percent or more of the expenditures of that fund or create a new fund, then a longer process must be used to adopt the supplemental budget.

- A special hearing must be held to discuss and adopt the supplemental budget. The governing body holds the hearing. The budget committee is not required to be involved.
- The governing body enacts a resolution or ordinance to adopt and appropriate the supplemental budget after the hearing.

Situations Where Unappropriated Money Can Be Spent

These situations are referred to as exceptions to local budget law. The most common are:

- Receipts of grants, gifts, or bequests, or devises during the fiscal year for a specific purpose. Expenditures of these moneys can be made in the fiscal year received after enactment of a resolution or ordinance.
- Occurrence of a natural disaster or civil disturbance. Expenditure of money to deal with the damage or destruction of property can be made after adoption of a resolution or ordinance.

“Emergency situation” means:

- Involuntary conversion or destruction of the property of a municipal corporation;
- Civil disturbance;
- Natural disaster; or
- Any public calamity.

SAMPLE BUDGET CALENDAR

1. Appoint budget officer and budget committee December 8
2. Prepare proposed budget February 28
3. Publish 1st notice of budget committee meeting no more than 30 days before the meeting March 10
4. Publish 2nd newspaper notice of budget committee meeting at least 5 days before the meeting, or post online at least 10 days before the meeting.
Note: If publishing by mail or hand-delivery, only one notice is required, at least 10 days before the meeting March 20
5. Budget committee meeting March 30
6. Second budget committee meeting (if needed) April 6
7. Publish notice of budget hearing 5 to 30 days before the hearing..... April 19
8. Hold budget hearing May 4
9. Board meeting to enact resolutions to adopt budget, make appropriations, impose and categorize taxes June 15
10. Submit tax certification documents to the assessor by July 15 July 12
11. Submit copy of complete budget document to county clerk September 30

BUDGET PROCESS CHECKLIST

Administration Checklist

- ✓ Gather budget requests.
- ✓ Evaluate the budget requests and develop proposed budget.
- ✓ Develop estimates of revenue.
- ✓ Prepare budget proposal.
- ✓ Estimate ad valorem taxes in budget document.
- ✓ Prepare budget message.
- ✓ Publish required notices and budget summary.
- ✓ Provide citizens with information about approved budget.

Budget Committee Checklist

- ✓ Establish a meeting calendar.
- ✓ At first meeting, elect presiding officer (required) and vice chair (optional).
- ✓ At first meeting, establish budget committee procedural rules.
- ✓ At first meeting, receive budget message and proposed budget.
- ✓ Request information.
- ✓ Make budget documents available to any person.
- ✓ Provide opportunities for citizens to ask questions.
- ✓ Approve budget and recommend to governing body.

Note: Local governments in Multnomah County may have a slightly different process involving the Tax Supervising and Conservation Commission.

RESOURCES

Department of Revenue Home Page: www.oregon.gov/DOR/

Local Budget Forms: www.oregon.gov/DOR/forms/Pages/default.aspx

Local Budgeting in Oregon: www.oregon.gov/DOR/forms/FormsPubs/local-budgeting-oregon_504-400.pdf

Local Budgeting Manual: www.oregon.gov/DOR/forms/FormsPubs/local-budgeting-manual_504-420.pdf

Oregon Local Budget Law (ORS 294): www.oregonlegislature.gov/bills_laws/ors/ors294.html

SDAO Resource Library/Budget: www.sdaoresourcelibrary.com

CONTRACTING
(Chapter 3)

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INTRODUCTION

As public agencies, special districts in Oregon are required to comply with public contracting laws for construction projects and when purchasing goods and services. Public contracting laws are intended to promote fair competition for public contracts; prioritize transparency in expenditures of public funds; take advantage of market conditions and innovations; and make sure public agencies get the best quality they can at the best price.

The information in this chapter pertains to the public contracting laws of the State of Oregon. Expenditures of federal funds may require compliance with federal contracting laws and procedures, which are not addressed here.

This chapter is designed to present an overview of the laws as they pertain to special districts, and to provide basic guidance for satisfying legal requirements. It does not describe all legal requirements for all circumstances. It should not be used as a substitute for assistance of qualified legal counsel or, when appropriate, assistance from experienced construction professionals.

DEFINING "PUBLIC CONTRACT"

Every expenditure of public funds is a public contract (whether or not there is a written agreement), so unless the law provides otherwise, some kind of process will be required for the expenditure.

Exceptions from the Public Contracting Code. According to the Public Contracting Code, the following types of common contracts are not "public contracts," so the Code does not apply:

- Employee compensation
- Intergovernmental agreements (ORS chapter 190)
- Contracts for the purchase and sale of real estate (ORS chapter 271)
- Contracts where no funds of the public agency are used
- Grants (meaning the grant process itself; *expenditures* of grant funds are public contracts)
- Energy-saving performance contracts (see ORS 279A.010(1)(g))
- Contracts relating to the incurring of debt or investment of public funds
- Contracts for employee benefit plans
- Purchases through federal purchasing programs, provided the agency's local rules authorize such purchases
- Contracts with qualified nonprofit agencies providing employment opportunities for disabled individuals. ORS 279A.025(l)(4) requires a local contracting agency to check the list of qualified products maintained by the Department of Administrative Services before procuring any product or service. If the product or service needed is listed, and if

it is of the appropriate specifications and is available when needed, the contracting agency must obtain the product or service from the qualified non-profit agency. The purchase may not be competitively bid.

- Contracts for professional or expert witnesses in litigation
- Sole-source expenditures when rates are set by law for purposes of source selection

Although no competitive bidding processes are required for the types of contracts listed above, other statutes or rules may apply. Districts should obtain legal counsel or other appropriate professional guidance before entering into these contracts.

Contracts Subject to the Code. Contracts not specifically excluded from the Public Contracting Code will take one of three forms:

1. Personal Services (also called Professional Services): Contracts with professionals hired for their knowledge, expertise, training, or other unique qualifications, to provide services of a specialized nature to the district. Typical examples are engineers, architects, attorneys, accountants, surveyors, auditors, consultants, and instructors.
2. Procurements. Contracts for purchases of goods, and of services that are not Personal Services. Examples include bookkeeping, janitorial services, and grounds maintenance.
3. Public Improvements. Contracts for construction, reconstruction, remodeling, and painting of real property, performed by or for a public agency.

The district's first step is to determine the type of contract that is being considered. Once the planned expenditure is categorized, the laws and rules specific to that type of contract will direct the process to be followed in awarding the contract.

LAWS, RULES, AND REQUIREMENTS

Laws. Oregon's Public Contracting Code (ORS 279A, 279B, and 279C) contains the primary statutes that govern public contracting procedures. The Code requires all public bodies to procure public contracts through a competitive process unless a specific exception or exemption applies.

The Public Contracting Code is divided into the following three chapters, which align with the contract categories described in Section 1:

- **ORS 279A. General Provisions.** Applies to all public contracts. Includes, among other things, the requirement to adopt Local Rules, and that the Local Rules govern the agency's processes for awarding personal services contracts.

- **ORS 279B. Public Procurement.** Applies to the purchase of goods, and routine services that are not personal services, including repairs, maintenance, and minor renovations to real estate (“Procurements”).
- **ORS 279C. Public Improvements.** Applies to contracts for construction, reconstruction, or major renovation of real property by or for a public agency. Also applies to contracts for construction-related services such as architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services.

Contracting Rules. The Public Contracting Code requires each public agency to adopt contracting rules ("Local Rules" or "Local Contracting Rules") that spell out the criteria and procedures that will be used to carry out public contracting requirements. The rules must meet the threshold requirements of the Public Contracting Code, but otherwise may be tailored to the needs of the local agency.

The Local Rules govern the agency's internal processes; they do not apply directly to vendors, contractors, or potential contractors. [Those requirements will be communicated in the solicitation for competitive bids and proposals, which is discussed in Section ___ of this chapter.] Because they are an internal policy of the District, Local Contracting Rules should be adopted by resolution of the board of directors and should likewise be amended by resolution.

Carefully drafted and properly adopted Local Rules can give the public agency helpful flexibility with its contracting processes, particularly in the procurement of goods and services. For example, local contracting agencies can and should adopt rules that address the following:

- Definition of “personal services” and procedures for granting personal services contracts;
- Delegation of authority for decision-making in the award of public contracts;
- Procedures for awarding contracts in an emergency, including defining "emergency";
- Procedures for disposal of surplus property.

The Oregon Attorney General has established Model Public Contracting Rules ("Model Rules") that apply to purchases by state agencies and departments. Because the Public Contracting Code requires every contracting agency to have contracting rules, the Model Rules will apply by default to any public entity that has not adopted its own Local Rules. Local governments may expressly decline to adopt the Model Rules and adopt different rules, or adopt some combination of the Model Rules and their own rules, provided all of the rules are consistent with Oregon law and are formally adopted by the board. Whether a contracting agency adopts the Model Rules affirmatively or adopts its own rules, it must review any changes to statutes or the Model Rules to determine if the Local Rules likewise need to be updated or modified.

The Model Rules can be found in Oregon Administrative Rules (OAR) chapter 137. Like the Public Contracting Code, the Model Rules are divided based on the type of contract:

- **Division 46. General Provisions.** Applies to all public contracts.
- **Division 47. Public Procurements for Goods and Services.** Applies to contracts for purchases of goods, and for services that are not personal services.
- **Division 48. Consultant Selection: Architectural, Engineering and Land Surveying and Related Services Contracts.** Applies to the selection of construction-related professional services.
- **Division 49. General Provisions Related to Public Contracts for Construction Services.** Applies to contracts for construction, including reconstruction, remodeling, and painting of public buildings.

The Model Rules can be reviewed for free on-line at <https://secure.sos.state.or.us/oard/displayChapterRules.action>. A hard copy of the Oregon Attorney General's Public Contracting Manual (2010), which includes the Public Contracting Code, the Model Rules, and case law summaries, may be purchased for \$65 at *All Forms, Manuals & Reports - Oregon Department of Justice (state.or.us)*.

DECISION-MAKING AUTHORITY

Local Contract Review Board. Every local contracting agency must establish a Local Contract Review Board ("LCRB"), which has certain specific authorities under the Public Contracting Code that cannot be delegated elsewhere, including:

- Granting exemptions from competitive bidding;
- Granting waivers from bonding requirements;
- Holding hearings on exemptions, when necessary; and
- Hearing and deciding appeals of disqualified bidders.

ORS 279A.060 provides that unless the governing body of a local contracting agency takes formal action to authorize a different LCRB, the governing body (i.e., the board of directors) is the LCRB for the District. Thus, in nearly every case the board of directors and the LCRB are the same people, who when exercising LCRB duties are wearing their "LCRB hat." The LCRB may act within a regularly scheduled board meeting; no special meeting or agenda is required to exercise these duties. The meeting minutes should reflect, however, that the board is "acting as the Local Contract Review Board" when it performs these duties.

Board of Directors. Only the governing body of the District (i.e., the board) is authorized to enter into legally binding agreements unless it formally delegates some of this authority. Therefore, all public contracts of the district must either be approved by the board, or the board must make a clear delegation of authority to enter into these contracts.

Delegation. Unlike the duties specifically given to the LCRB, which cannot be delegated elsewhere, ORS 279A.075 authorizes the board of directors to delegate certain administrative contracting responsibilities to someone else, such as a district manager or purchasing officer. If the board chooses to delegate some of its contracting authority, the nature and scope of the delegation should be clearly spelled out in the Local Rules. For example, "The District Manager may solicit and approve contracts for personal services not to exceed \$10,000 without further approval from the board of directors. Personal services contracts exceeding this amount must be approved by the board." A well-crafted delegation rule gives clear guidance to staff about the limits of their authority, which helps to protect both the board and the staff member from legal exposure for improper spending. The rules also should state who, other than the board, is authorized to approve contracts in an emergency (see "Emergency Contracts" in the next section).

COMPETITIVE BIDDING REQUIREMENTS; EXEMPTIONS

Unless a specific exception from the Public Contracting Code exists (see Section 1, above), or unless exempted from competitive bidding as provided in the applicable statute (see later discussion), public contracts must be awarded using a competitive, sealed bidding or proposal process (collectively referred to as "the solicitation"), with the contract awarded to the lowest responsive, responsible bidder.

A "responsive" bid or proposal substantially complies with the requirements spelled out in the solicitation. A "responsible" bidder or proposer has met all legal requirements to do the work; has not been disqualified from bidding; and has demonstrated the ability and the capacity to do the work. Bidders or proposers who are not responsive and responsible must be disqualified.

The Public Contracting Code specifically allows the following contracts to be awarded without competitive bidding:

- Contracts for Personal Services. Direct award (no competitive process required) is allowed for personal services contracts, provided the contracting agency's adopted Local Rules allow for this. (See Section 6.)
- Emergency Contracts. Emergency contracts for any reason, provided the emergency is documented in writing either before or as soon as possible after the emergency, and the process for awarding emergency contracts that is set forth in the Local Rules has been followed. The public agency is required to encourage competition as much as possible under the circumstances.
- Small Procurements.
 - For procurements of goods and routine services that are not personal services, the contract value will not exceed \$10,000

- For public improvements, the contract value will not exceed \$5,000

The contract may be awarded in any way that is practical and convenient for the contracting agency.

- Intermediate Procurements (Informal Bids Required). Bids, quotes, or proposals have been sought from at least three qualified contractors (if less than three can be found, document efforts made to find them), and the contract:
 - For procurements, will not exceed \$150,000. The contract is awarded to the bidder or proposer whose bid or proposal is "most advantageous" to the contracting agency, whether or not it is the lowest bid.
 - For public improvements, will not exceed \$100,000. The contract is awarded to the bidder or proposer "whose quote will best serve the interests of the contracting agency, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility." If an award is not made to the contractor offering the lowest price, the contracting agency must make a written record of the basis for award.

Requests for informal bids or quotes should be made in writing so that all bidders receive the same specifications. All bids or quotes should also be submitted in writing so that the district has the required written record of the bids received.

- LCRB Exemption. Any contract or class of contracts, if the Local Contract Review Board has followed the required procedures for declaring an exemption from bidding.
 - For procurements, see ORS 279.085, "Special Procurements"
 - For public improvements, see ORS 279C.335(2), "Exemptions"

Written findings are required to be made, and in some cases a public hearing is required. Refer to the statute or applicable Model Rules for specific requirements.

- Sole-Source Contract. When proper findings have been made to declare a sole source contract.
 - For procurements, see ORS 279B.075
 - For construction specifications, see ORS 279C.345
- Alternative Construction Methods. For construction projects when an alternative contracting process, such as Design-Build or Construction Manager/General Contractor

(CM/GC) will be used, and requirements for declaring an exemption in ORS 279C.335, 279C.337, and applicable administrative rules have been met.

- Transfers of Fire Protection Equipment. Whether the equipment is sold or given at no cost, transfers of fire protection equipment between regularly organized fire departments may be made without competitive bidding provided:
 - The recipient department makes a written request for the fire protection equipment to the transferor department;
 - The equipment is surplus to or unusable by the transferor;
 - The total fair market value of the equipment does not exceed \$50,000 per calendar year; and
 - The transferor holds a public hearing, with hearing notice published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing, and finds that the public contract is in the public’s interest.
- "In-House" Projects. The contracting agency may use its own qualified personnel to perform needed construction work, provided the following requirements are met:
 - If the cost of the work exceeds \$5,000, the district must adopt and apply a cost accounting system that complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services.
 - If the project is estimated to cost more than \$125,000, the district must demonstrate that doing the work itself is the least costly alternative, by preparing adequate plans and specifications and the estimated unit cost for each classification of work. The estimated cost must include a reasonable allowance for the cost, including investment cost, of any equipment used. "Adequate" plans and specifications are those “sufficient to control the performance of the work and to assure satisfactory quality of construction by the public district personnel.”
 - The district must keep an accurate account of the costs of performing the work, including all engineering and administration expenses and costs, including investment costs, and make proper reports to the Bureau of Labor and Industries (BOLI).
- Purchasing Through the State of Oregon. Districts may purchase certain supplies and equipment through the State Department of Administrative Services without going through the bidding process. The Department of Administrative Services is authorized to acquire, warehouse and distribute surplus property to all eligible governmental units

and certain nonprofit organizations. To obtain information contact the Department of Administrative Services, (503) 378-4642; *State of Oregon: Department of Administrative Services - Home*.

- Cooperative Procurements ("Piggybacking"). Contracting agencies may participate in cooperative procurements whereby at least one of the participating agencies conducts required bidding processes and enters into a contract for the product or service, and other public agencies can procure the product or service on the same terms as conditions stated in the contract without going through a separate competitive bidding process. Cooperative procurements may be "joint" procurements (all participants are identified so the contract applies only to them) or "permissive" procurements (all participants are not identified so other unnamed parties may use it). Interstate cooperative procurements are also authorized between public entities in Oregon and those from other states. Specific requirements for each process are spelled out in ORS 279A.200 to 279A.225.

FORMAL BIDDING PROCESSES

If no exemption or exception applies to the contract, formal competitive bidding procedures must be followed for procurements in excess of \$150,000, and for public improvements in excess of \$100,000. They also can be used for smaller projects, or anytime competitive bidding is not required, if the contracting agency chooses.

In summary, formal bidding procedures include:

- Advertising the solicitation (invitation to bid or request for proposals);
- Preparing and issuing the solicitation to interested bidders or proposers in the manner required by the Code;
- Holding hearings if required by statute;
- Publicly opening bids or proposals;
- Scoring and evaluating submitted bids or proposals;
- Issuing a notice of intent to award the contract;
- Procuring performance and payment bonds from the successful bidder or proposer, if required or advisable; and
- Issuing the contract.

Formal bidding procedures, particularly for public improvements, require strict adherence to statutory requirements and should be undertaken only with professional guidance, such as from a project manager, architect, or engineer experienced with similar projects. Solicitation documents, including the proposed contract documents, should be reviewed by a knowledgeable attorney before they are issued.

Advertisements. Advertisements for bids or proposals must be published at least once in a newspaper of general circulation in the area where the contract is to be performed. The LCRB may, by rule or order, authorize advertisements for public improvement contracts to be

published electronically instead of in a newspaper of general circulation, if the LCRB determines that doing so is likely to be cost-effective. The LCRB also may require an advertisement to be published more than once or in one or more additional publications.

If the contract is for a public improvement with an estimated cost in excess of \$125,000, the advertisement must also be published in a trade journal or newspaper of statewide circulation, such as the *Daily Journal of Commerce*.

At minimum, all advertisements must contain the following information:

- A description of the project or service;
- For public improvements, the office where the specifications for the work may be reviewed.
- If the contract requires prequalification of bidders, a date by which all prequalification applications must be filed and the class or classes of work for which bidders must be prequalified.
- The date and time by which all bids must be received in order to be eligible for the contract. For public improvements, the date and time must not be set less than five (5) days from the date the advertisement is published. For procurements, the solicitation deadline must be at least seven (7) days from the date of advertisement. In either case, the advertisement may permit bidders to submit bids by electronic means.
- The name and title of the person who is to receive the bids.
- The date, time and place that the district will publicly open the bids.
- If the contract is for a public works project, a statement that it is subject to ORS 279C.800 to 279C.870 or the Davis Bacon Act (40 U.S.C. 3141 et. seq.) [prevailing wage laws].

Solicitation Documents.

- Procurements. The contracting agency may choose whether to use an invitation to bid ("ITB") or a request for proposals ("RFP") (ORS 279B.060). Specific requirements for each are provided in ORS 279B.055 and ORS 279B.060, respectively.

As a general rule, ITBs are easiest and most efficient when the item to be procured is not particularly unique, and price will be paramount in making the award decision. RFPs may be more useful when something other than price is important to the procurement of the good or service, such as unique qualifications and experience of the proposer, or

when the approach to providing the good or service can vary and the contracting agency is open to creative solutions. The solicitation document should clearly spell out the criteria on which bids or proposals will be evaluated, and the basis for the award.

- Public Improvements. The solicitation document for a public improvement contract must, at minimum, include the following:
 - A description of the project.
 - The office where the specifications for the work, material or things may be reviewed.
 - If the contract requires prequalification of bidders, the date when all prequalification applications must be filed and the class or classes of work for which bidders must be pre-qualified.
 - The date and time by which all bids must be received in order to be eligible for the project. The date and time must not be set less than five days from the date the advertisement is published.
 - The name and title of the person who is to receive the bids.
 - The date, time and place that the district will publicly open the bids.
 - A statement that if the contract is for a public works project subject to ORS 279C.800 to 279C.850 (state prevailing wage requirements) or federal prevailing wage rates under the Davis Bacon Act (40 U.S.C. 3141 et. seq.), no bid will be received or considered unless the bid contains a statement by the bidder that it will comply with these laws.
 - A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120.
 - A statement that the public contracting agency may reject any bid not in compliance with all public bidding procedures and requirements and may reject for good cause any or all bids upon a finding that it is in the public interest to do so.
 - Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720 (asbestos removal).
 - A statement that no bid for a construction contract shall be received or considered by the public contracting district unless the bidder is registered with the

Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.

- Bid or proposal security requirements. For public improvement contracts of \$100,000 or more, bid bonds, payment bonds, and performance bonds all are required unless waived by the board.
- The method by which the district will provide addenda to the Solicitation Document.
- For a public improvement contract of \$100,000 or more, a requirement that the bidder or proposer disclose its first-tier subcontractors who will be furnishing labor, or labor and materials, in connection with the contract and whose contract value is equal to or greater than 5 percent of the total project bid, or \$15,000, whichever is larger; or \$350,000, regardless of the percentage of the total bid. When this requirement applies, the solicitation must designate a deadline for submission of bids on a Tuesday, Wednesday, or Thursday between 2 p.m. and 5 p.m. The subcontractor disclosure must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract.

Bid Opening. All bids or proposals must comply with all requirements of the solicitation, and also must be:

- In writing.
- Filed with the person designated by the district to receive the bids.
- Opened publicly by the contracting agency at the specific time designated in the advertisement for the bid.
- Filed for public inspection after they have been opened.
- For public improvement contracts, include a surety bond, cashier's check, or certified check for bid security unless the contract has been exempted from the requirement. Bid security may not exceed 10 percent of the amount bid for the contract.

PERSONAL SERVICES CONTRACTS

The Attorney General's Model Public Contracting Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no "default" rules for personal services contracts. Without rules that say otherwise, a local government entity must competitively bid all personal services contracts, regardless of the size of the contract.

Special districts can give themselves lots of latitude for awarding personal services contracts by creating and following specific rules in their Local Contracting Rules for evaluating and awarding these types of contracts. ORS 279A.055 allows local governments to include in their Local Rules a definition of "personal services" that will apply to that entity. This definition should include the standard professions of architect, engineer, attorney, accountant, auditor, etc., but also can

include other professions that commonly provide assistance to that particular type of district, such as consultants, trainers, and artists.

The Local Rules must include criteria for evaluating, screening, and selecting individuals or firms that provide these services, and describe the procedures the district will follow to award the contract. With the exception of construction-related professional services (see below), these procedures can include awarding the contract directly (without competition) to a selected contractor who meets the criteria described in the Rules.

Construction-Related Professional Services; QBS. The ability to award a contract for personal services directly is limited by statute for certain types of construction-related personal services: Architects, engineers, surveyors, and photogrammetrists (aerial surveying and mapping) and "related services" as defined in the statute. The part of the Public Contracting Code that governs construction contracts (ORS chapter 279C) permits contracts of this kind to be awarded according to the local agency's Local Rules, including by direct appointment (no bidding). However, ORS 279C.110 sets out specific criteria that must be considered when awarding these types of contracts and requires a competitive process (no direct appointment) if the amount of the contract is expected to exceed \$100,000. For these larger contracts, the agency must apply a qualification-based-selection (QBS) process described in ORS 279C.110 that considers qualifications first and negotiate price only after the most qualified candidate or candidates has/have been selected. ORS 279C.110 also lists certain requirements that must be included in the request for proposals. Districts anticipating entering into large contracts of this nature should carefully review these requirements before soliciting proposals and obtain legal review if appropriate.

PUBLIC IMPROVEMENT CONTRACTS (CONSTRUCTION)

Construction projects for public entities are subject to a long list of legal requirements, from preliminary filings with state agencies, to requirements that must be included in the solicitation documents, to specific bidding procedures that must be followed, to requirements that must be included in the contract itself.

These requirements increase with the size of the contract, such as \$50,000 (prevailing wages apply), \$100,000 (formal bidding required, including bid security, performance bonds, and payment bonds). The larger and more complex the project, the more important it is for districts to enlist the help of qualified professionals (architects, engineers, project managers, construction managers, attorneys) early in the process to ensure the process proceeds smoothly and with minimal exposure to liability and legal challenges.

Definitions. A public improvement is "a project for construction, reconstruction or major renovation on real property by or for a contracting agency." Public improvements do not include contracts for emergency work, minor alterations, or ordinary repair and maintenance needed to preserve the public improvement, which are awarded in the manner used to contract for Procurements pursuant to ORS chapter 279B.

The definition of "public improvement" also specifically excludes projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspections are excluded. This addresses situations when the public entity is offered or receives a donation of construction services, when a project is being entirely funded by a private source, such as under a public-private partnership agreement.

Public improvement contracts costing \$50,000 or more are "public works" under the Public Contracting Code, meaning that payment of prevailing wages is required.

Prevailing Wages. For public works of \$50,000 or more, the prevailing wage rate must be paid by all contractors and subcontractors. Oregon's prevailing wages laws are addressed in ORS 279C.800 through 279C.870, and are enforced by the Oregon Bureau of Labor and Industries (BOLI).

"Public works" includes, but is not limited to:

- Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting which is carried on or contracted for by a public agency to serve the public interest;
- A project for the construction, reconstruction, major renovation or painting of a privately- owned road, highway, building structure or improvement of any type that uses funds of a private entity and \$750,000 or more funds of a public agency; or
- A project for the construction of a privately-owned road, highway, building structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

Complying with prevailing wage requirements is the responsibility of the contractor or subcontractor. The contracting agency's responsibilities under the prevailing wage laws are:

- Include this requirement in both the solicitation document and the ensuing contract
- Cite the applicable rates (year, region) in the solicitation
- Incorporate the applicable rates into the contract, either by incorporating an electronic link or attaching a hard copy of the rates to the contract

- If both state and federal prevailing wage rates must be included in the bid specifications, include information showing which prevailing wage rate is higher for workers in each trade or occupation in each locality. [ORS 279C.815(2)(a)]
- Notify BOLI – on forms provided by BOLI – within 30 days of awarding a contract subject to prevailing wage. Include subcontractor disclosure forms.
- While the contract is being performed, receive and review certified payroll reports to verify prevailing wages are being paid

BOLI Filings. On an annual basis, districts must prepare and file with the Commissioner of the Bureau of Labor and Industries (BOLI) a list of every public improvement that the district plans to fund in the upcoming budget year. For each project, the district must indicate whether it intends to do the work itself or hire a private contractor.

If the district intends to do its own work on a project estimated to cost over \$125,000, it must show that the decision to perform the construction using district personnel and equipment is the least cost to the district.

The information must be filed at least 30 days prior to adoption of the district’s budget and should include a description of the improvement and an estimate of the total on-site construction costs.

Current law requires that the contracting agency also notify BOLI when it has awarded a public works contracts, and at the time of notification pay a fee to BOLI to cover the costs of surveys, administration, and education relating to prevailing wage laws. The fee is 0.1% of each contract, with a minimum of \$250 and a maximum of \$7,500.

Filings should be made with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #1045, Portland, Oregon 97232. Forms for providing this information (WH-118 and WH-119) can be found in the back of every PWR rate book and on BOLI’s website at www.oregon.gov/BOLI. ORS 279C.305; OAR 839-025-0008

Rejection of Bids. The solicitation document should state that the district may reject any bid not in compliance with all public bidding procedures and requirements. The district also may reject all bids for good cause if it makes written findings showing that it is in the public interest to do so. If all of the bids are rejected and the contract is not abandoned, the district may call for new bids.

Negotiation With Lowest Bidder. As a general rule, the district may not negotiate with the low bidder in a public improvement contract. However, according to ORS 279C.340, if all bids exceed the district’s estimate of what the contract will cost, the district may, according to its adopted rules, negotiate with the lowest responsive, responsible bidder prior to awarding the

contract in order to attempt to bring the price within the district's estimate, provided the negotiation does not result in a significant change in the scope of work. Bidder records used in negotiating the contract are not subject to public inspection until after the contract has been awarded or the negotiation process terminated.

Performance and Payment Bonds.

- Performance Bonds. Performance bonds provide recourse to get the job done if the contractor fails or is unable to do so under the contract. Performance bonds are required for public improvement contracts of \$100,000 or more unless specifically waived by the contracting agency. They can be required for other contracts at the agency's discretion when it may be advisable to do so, such as for purchases of a substantial size.
- Payment Bonds. Payment bonds also are required for public improvement contracts of \$100,000 or more unless specifically waived. Payment bonds ensure that all laborers and suppliers under a contract are paid if the contractor fails to do so. In the absence of a payment bond, those who supplied or performed work on a public contract may bring a claim against the district for unpaid compensation.

Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The performance and payment bonds must be payable to the contracting agency or to the public agency or agencies for whose benefit the contract was awarded and be in a form approved by the contracting agency.

Performance and payment bonds may be excused in cases of an emergency, or when the interest or property of the contracting agency would suffer material injury or delay or other cause. A declaration of the emergency must be made in accordance with ORS 279A.065.

A local contract review board can exempt certain contracts or classes of contracts from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance of the contract.

RFPs/Competitive Proposals. When authorized or required by an exemption granted under ORS 279C.335 after proper findings, a contracting agency may award a public improvement contract by competitive proposals instead of by traditional invitation to bid. A contract awarded under this section may be amended only in accordance with rules adopted by the contracting agency in accordance with ORS 279A.065.

With limited exceptions, competitive proposals are not subject to the following requirements of competitive bidding that might otherwise apply:

- First-tier subcontractor disclosure under ORS 279C.370; and
- Reciprocal preference under ORS 279A.120.

If the RFP allows, a contracting agency may award the contract to the responsible proposer whose proposal “is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals.” Price does not have to be determinative, but the RFP should describe how pricing will be evaluated.

When provided for in the RFP, the contracting agency may employ methods of contractor selection including, but not limited to, award based solely on the ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked proposers, or any combination of methods, as authorized or prescribed in the Local Rules.

Notwithstanding the public records law, proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation. Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

At least seven (7) days before the award of a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency must issue to each proposer or post, electronically or otherwise, a notice of intent to award.

PREQUALIFICATION OF PRODUCTS OR BIDDERS

Qualified Products List. A contracting agency may develop and maintain a qualified products list when it is necessary or desirable to test or examine goods before initiating a procurement.

In developing a qualified products list, the agency must first comply with ORS 279B.055(4) by giving public notice of the opportunity for potential suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list. The contracting agency may send a written solicitation to representative groups of potential contractors, sellers or suppliers, inviting them to submit goods for testing and examination, but a potential supplier may offer goods or services for consideration even if not invited to do so.

Inclusion of goods on a qualified products list must be based on the results of tests or examinations. Notwithstanding public records rules, a contracting agency may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier, and may keep confidential trade secrets, test data and similar information provided if requested in writing to do so by the potential contractor, seller or supplier.

The qualified products list is used to define products that are acceptable for the district's intended use. A comparable process is available to prequalify contractors, even if they sell or supply the goods on the qualified products list.

Prequalifying Bidders. Districts have the option of prequalifying all bidders for a particular contract or type of contract. For procurement of goods and routine services, ORS 279B.120 provides that the method of submitting prequalification applications, information required in order to be prequalified, and the forms to be used for submitting prequalification information, are determined by the contracting agency or otherwise prescribed by rules adopted by the LCRB. For public improvements, 279C.430 permits the contracting agency to adopt a rule or ordinance requiring prequalification for construction projects, and the statute describes the procedures that must be followed.

If the contracting agency denies prequalification, or revokes prequalification from a vendor or supplier who was previously prequalified, the applicant must be notified in writing as provided in the applicable statute and notified of the right to a hearing on the denial. Appeals of the denial decision are made to the LCRB, according to hearing procedures spelled out in ORS 279B.425 (for procurements) and ORS 279C.450 (for public improvements).

DEBARMENT OR DISQUALIFICATION OF BIDDERS

After providing the bidder with written notice and a reasonable opportunity to be heard, a district may disqualify a bidder from bidding on district contracts for a period of up to three years, for any of the following reasons:

- Conviction of a criminal offense in obtaining or attempting to obtain or perform a public or private contract or subcontract.
- Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the prospective bidder's or proposer's responsibility as a contractor.
- Conviction under state or federal anti-trust statutes.
- Violation of a contract provision, and debarment for such violation was listed in the contract terms and conditions as a potential penalty. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance, provided the failure is not caused by acts beyond the control of the contractor.
- The prospective bidder or proposer does not carry workers' compensation or unemployment insurance as required by law.

Disqualification decisions must be in writing and mailed or otherwise furnished to the disqualified person and must state the reasons for disqualification and inform the bidder of their right to appeal. The disqualified person has three business days after receipt of the disqualification submit a written request for appeal to the district. Upon receipt of the notice, the district must immediately notify the LCRB, which conducts the appeal hearing. The hearing procedure is spelled out in ORS 279B.425 (for procurements) and 279C.450 (for public improvements).

CONTRACT DOCUMENTS

A public contract is generally assumed to incorporate the terms of the solicitation and the winning bid or proposal, so careful drafting of the solicitation document is nearly as important as the contract itself. Some of the basic requirements for a formal solicitation are discussed in Section 5, Formal Bidding Process.

Once the winning contractor is selected, he or she should always be required to sign a written contract before any work begins. In most cases the district should provide its own contract document, but if opts to use one provided by the contractor, the district should obtain legal review to make sure the agreement is fair and includes necessary protections for the district.

Districts are strongly discouraged from preparing their own contracts, or from borrowing and recycling contracts from other agencies, without the help of knowledgeable advisors. Public contracts, particularly significant construction projects, are not interchangeable, and are subject to a variety of laws and requirements that increase in complexity with the size of the contract. For example, the Public Contracting Code requires certain clauses to be included in certain public contracts, such as:

For procurements:

- **279B.045.** Contractor warranty and covenant concerning tax law compliance.
- **279B.220.** Conditions concerning payment, contributions, liens, withholding.
- **279B.225.** Condition concerning salvaging, recycling, composting or mulching yard waste material.
- **279B.230.** Condition concerning payment for medical care and providing workers' compensation.
- **279B.235.** Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits.

For construction contracts:

- **279C.505.** Conditions concerning payment, contributions, liens, withholding, drug testing.
- **279C.510.** Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.
- **279C.515.** Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.

- **279C.520.** Condition concerning hours of labor; compliance with pay equity provisions; employee discussions of rate of pay or benefits.
- **279C.525.** Provisions concerning environmental and natural resources laws; remedies.
- **279C.527.** Inclusion of amount for green energy technology or woody biomass energy technology in public improvement contract; written determination of appropriateness; conditions, exemptions and limitations; rules.
- **279C.528.** State Department of Energy requirements and specifications; record keeping requirements; rules.
- **279C.530.** Condition concerning payment for medical care and providing workers' compensation.
- **279C.533.** Condition concerning employment of apprentices to perform percentage of work hours that workers in apprenticeable occupations perform on public improvements.
- **279C.537.** Condition concerning use of diesel engines in motor vehicles used in performing certain public improvement contracts; rules.
- **279C.830.** Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; bond.

CONTRACT PREFERENCES

The Public Contracting Code states certain preferences that contracting agencies either may or must grant when awarding public contracts.

- Preference for Oregon goods and services; Resident Bidder (ORS 279A.120). A “resident bidder” is a bidder that does business in Oregon – i.e., has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid and has a business address in Oregon. Bidders who do not meet these criteria are “non-resident bidders.”

All things being equal—including price, fitness, availability and quality—districts must “prefer” goods that have been manufactured or produced in Oregon, or services that are performed by a resident bidder. This is done by adding to the non-resident bidder’s bid a percentage equal to the preference, if any, given to the bidder in the state where the bidder resides.

When contracts in excess of \$10,000 are awarded to a non-resident bidder, the contractor is required to report the total contract price, terms of payment, length of the contract and any other information required by the Oregon Department of Revenue. Districts must be satisfied that this requirement has been met before they issue a final payment on a contract. This can be done by requesting a copy of the required notice.

For public improvement contracts, bid documents must require bidders to state whether they are resident bidders, and indicate the percentage amount that a bid will be increased for non-resident bidders.

Each year the Oregon State Department of Administrative Services publishes a list of states that give preference to in-state bidders, with the percent increase applied in each state. The contracting agency that relies on this document in its bidding process cannot be held liable to any bidder when determining the lowest responsible bidder.

- Preference for recycled materials (ORS 279A.125). When procuring goods, a contracting agency must give preference to goods manufactured from recycled materials if:
 - (a) The recycled product is available;
 - (b) The recycled product meets applicable standards;
 - (c) The recycled product can be substituted for a comparable nonrecycled product;and
 - (d) The recycled product's costs do not exceed the costs of nonrecycled products by more than five percent, or a higher percentage if a written determination is made by the contracting agency.

- Preference for goods fabricated or processed, or services performed, within Oregon (ORS 279A.128). When purchasing services, including personal services, a contracting agency may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within Oregon if the goods or services cost not more than 10 percent more than goods fabricated or processed, or services performed, not entirely within Oregon. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in Oregon.

The board of directors may set a percentage higher than 10 percent if it makes a written determination that there is good cause to set the higher percentage, and explains its reasons. This preference does not apply, however, to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320(1).

- Preference for exceeding Buy America requirements for transit projects; rules (ORS 279A.130). A contracting agency that receives and uses federal funds for a transit project may give preference to a bidder or proposer that exceeds federal Buy America requirements that apply to federally funded transit projects.

- Subcontracting to Emerging Small Businesses or Businesses Owned or Controlled by Disabled Veterans. A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from,

a business enterprise that is certified under ORS 200.055 as an emerging small business or a business enterprise that is owned or controlled by a disabled veteran, as defined in ORS 408.225.

DISPOSAL OF SURPLUS PROPERTY

"Surplus property" is anything (other than real estate, which is disposed of according to ORS chapter 271) that the contracting agency no longer needs and wants to dispose of. Because publicly owned property belongs to the public, the Public Contracting Code directs how local agencies may dispose of it.

The Model Public Contracting Rules do not address disposition of surplus property, so no rule will apply by default if a contracting agency does not adopt its own rules. If no rules are adopted, the contracting agency has no authority to dispose of surplus property except through the bidding processes provided by statute.

Under ORS 279A.185, local contracting agencies may dispose of surplus property in accordance with their Local Rules. These may include donating the property; throwing it away; or selling it in any way the rules allow. For items with substantial value, the district should consider whether to require an appraisal of the item's value before selling it. The Local Rules also should state whether board approval of the disposal will be required, and when.

PROTESTS AND DISPUTES

A protest regarding the procurement process, the contents of solicitation documents or the award or proposed award of any original contract must first be directed to the administering contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425.

A protest regarding the use of a cooperative procurement by a purchasing contracting agency after the execution of an original contract may only be directed to the purchasing contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425 and is limited in scope to the purchasing contracting agency's authority to enter into a cooperative procurement contract.

LEGAL REMEDIES

Legal remedies for violations of public contracting laws are provided in the following statutes. Other remedies may also apply:

- ORS 279A.225. Protests and disputes regarding cooperative procurements
- ORS 279B.400. Judicial review of approvals of special procurements
- ORS 279B.405. Protests and judicial review of solicitations
- ORS 279B.410. Protests of contract award

- ORS 279B.415. Judicial review of protests of contract award
- ORS 279B.420. Judicial review of other violations
- ORS 279B.425. Review of prequalification and debarment decisions (procurements)
- ORS 279C.350. Appeal of exemption decision
- ORS 279C.445. Appeal of disqualification
- ORS 279C.450. Appeal of prequalification decisions (public improvements)
- ORS 279C.460. Suit by or on behalf of adversely affected bidder or proposer
- ORS 279C.465. Action against successful bidder
- ORS 279C.470. Compensation for contractor when contract declared void

**ELECTIONS
(Chapter 4)**

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INTRODUCTION

Oregon special districts must hold elections to select board members, obtain voter approval of new or increased tax rates or bond measures, and for most boundary changes, such as formation, annexation, consolidation, merger, and dissolution of the district. Elections also are required when voters petition for a referendum on a district ordinance or revenue bond, or when the board seeks an advisory vote from the electorate before enacting local legislation.

ORS chapter 255 governs most special district elections. Two types of districts – drainage districts (ORS chapter 547) and irrigation districts (ORS chapter 545) -- have different election processes, and the principal Act for other types of districts may include specific additional requirements, so before planning an election it's a good idea to check the principal Act.

Laws and rules governing local elections are administered statewide by the Secretary of State's Election Division, and by the county clerk for each county who serves as the elections officer for local elections. When a special district measure is to be submitted to voters, the district board must notify the county clerk, who can explain necessary requirements. Depending on the subject matter of the election, certain statutory procedures will apply, and each county may impose specific additional requirements or require information to be submitted on county-generated forms.

Election processes can be complex and non-negotiable deadlines apply, so districts should start early working with the county clerk to ensure that all steps are completed properly.

ELECTION DATES

Special district elections generally are held on the following dates:

- The second Tuesday in March.
- The third Tuesday in May.
- The third Tuesday in September.
- The first Tuesday after the first Monday in November.

Special districts may propose ballot measures at any of the four election dates, with the following exceptions:

- A measure to form a new special district with a permanent tax rate must be held at either the May or November election. If no tax rate is being sought, the formation measure may be submitted to voters at any election, or an election may not be necessary if the proposed district is located entirely within a single county and that county's board agrees to form the district without an election.
- If a new district is being formed, the initial board is elected at the time of formation.

- Board elections for existing boards are held at the May election in odd-numbered years.

A special election may be held on a date other than the four regular election dates if the district board adopts a resolution finding that an election sooner than the next available election date is required on a measure to finance repairs to property damaged by fire, vandalism or a natural disaster.

ELECTIONS TO FILL BOARD VACANCIES; TERMS

When a district board position becomes vacant between elections, the vacancy must be filled by appointment of the remaining board members, or by the county board of commissioners if the district board can't agree or there are insufficient remaining board members to fill the vacancy.

For districts subject to ORS chapter 255, the person appointed to fill a vacancy will serve until June 30th following the next regular district board election in May of the next odd-numbered year. The successor elected at the May election then serves for the remainder of the unexpired term, which may be less than a standard board term. This ensures that the board terms remain staggered and multiple vacancies aren't created at once.

For districts not subject to ORS chapter 255 (such as drainage districts and irrigation districts), the term of the appointed board member expires the day before the first Monday in January of the year following the election of the successor board member. The elected successor takes office on the first Monday in January of the year following the election, then serves the remainder, if any, of the term for which the appointment was made.

ELECTION NOTICES

Board Elections. Four to five months before the date of the board election (specific time frames are established by statute) the county clerk is required to deliver to each special district a form for updating information on members of district boards. At minimum, the form must include board positions to be filled at the next election and certain information about the candidates. The district must return the completed form by the stated deadline. If it fails to do so, the county clerk may complete the form with the most current information available; or, if the form is returned after the deadline, the county may require the district to pay the cost of correcting the notice of election.

Using the information in the completed form, the county clerk publishes a notice stating the date of the election, the board positions to be voted upon, and the latest date when candidates may file petitions for nomination or declarations of candidacy. The clerk must print the notice

once in a newspaper of general circulation in the district not later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy. In addition to publishing the notice in the newspaper, the clerk may publish a notice on the county's website for a minimum of seven (7) days. In addition to or in lieu of publication by newspaper and website, the clerk may mail the notice, postage prepaid, to each elector of the district, no later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy.

Bond Measures or Other Ballot Measures. Typically, the district board authorizes by resolution any district ballot measure to be submitted for election. The district must deliver a Notice of Election to the county clerk at least 61 days before the election, along with a proposed ballot title. ORS 255.085 requires the ballot title to be prepared "with the assistance of the district attorney for the county of the elections officer or an attorney employed by the district." [It may be worth asking if the county district attorney will assist with the ballot measure, but it is likely the county will expect the special district to hire its own counsel for this process. Election planning should include budgeting funds for legal assistance.]

A notice of election called to approve the issuance of bonds must include:

- (a) The purpose for which the bonds are to be used;
- (b) The amount and the term of the bonds;
- (c) The kind of bonds proposed to be issued; and
- (d) If the bond election is authorized by ORS 450.900 [relating to improvements by sanitary authorities], the additional notice requirements in ORS 450.905.

Although uncommon, local citizens may also submit initiative or referendum petitions for district measures to the county clerk to be included on the ballot. The number of signatures required for initiative and referendum petitions are described in ORS 255.165(1), and ORS 255.085(4) describes the notice and publication requirements to be followed by the county clerk for measures submitted by citizen petition. Petitioners must complete and file the Secretary of State's form SEL 803 (Local Initiative and Referendum Prospective Petition), available at sos.oregon.gov/elections/Documents/SEL803.pdf. The text of the proposed measure being initiated, or the district ordinance being referred, must be included, as well as a Petition for Local Measure (SEL 370), sos.oregon.gov/elections/Documents/SEL370.pdf.

After receiving the prospective initiative petition, the county elections official must notify the chief petitioners no later than five (5) business days after the proposed initiative is filed that the text complies with the procedural requirement contained in the Oregon Constitution, Article IV, Section 1 and ORS 255.140.

Once it is approved, circulation of the petition may begin. Circulation requirements are described in ORS 255.135 and can be obtained from the county clerk.

CANDIDATES FOR DISTRICT OFFICE

Elections for special district boards are non-partisan.

Except as provided in ORS 255.400 to 255.424 (the Oregon Voting Rights Act, primarily pertaining to elections for school districts and education service districts), a district board candidate can be nominated by filing with the county clerk either:

- (a) A petition for nomination signed by at least 25 electors, or 10 percent of the electors, residing in the election district for the office, whichever number is less; or
- (b) A declaration of candidacy accompanied by a filing fee of \$10.

The petition or declaration of candidacy for the district board must be filed no sooner than the 40th day before the filing deadline, which is the 61st day before the date of the district election if the election is a regular district election or the first district board election; or the 70th day before the date of the district election if the election is held on the date of a primary election or general election (i.e., in May or November of even-numbered years).

Candidates for special district offices filing by petition or declaration must submit the following forms to the county clerk before circulating the petition:

- Filing of Candidacy for Special District Nomination (SEL 190)
sos.oregon.gov/elections/Documents/SEL190.pdf
- Statement of Organization (SEL 220)
sos.oregon.gov/elections/Documents/SEL220.pdf
- If you receive or spend campaign contributions, you may have to submit a Statement of Organization for Petition Committee (SEL 222)
sos.oregon.gov/elections/Documents/SEL222.pdf

Forms are supplied by the Oregon Secretary of State and provided to each county clerk. The nominating petition or declaration of candidacy must contain:

- The name by which the candidate is commonly known. A candidate may use a nickname in parentheses in connection with the candidate's full name.

- Address information as required by the Secretary of State by rule.
- The office and department or position number, if any, for which the candidate seeks nomination, and the zone board members are elected by zone.
- A statement that the candidate is willing to accept the nomination or election if elected.
- A statement that the candidate will qualify if elected.
- The signature of the candidate.
- A statement of the candidate's occupation, educational and occupational background and prior governmental experience.
- Information regarding the candidate's race and ethnicity (optional).
- A statement that the required fee is included with the declaration.

A nominee may withdraw the nomination not later than 5 p.m. of the last day specified for filing by filing a written withdrawal of candidacy with the county clerk. The withdrawal must state the reasons for withdrawal and be signed by the nominee. The form for Withdrawal of Candidacy or Nomination (SEL 150) is available at the following link:

sos.oregon.gov/elections/Documents/SEL150.pdf

Candidates for public office have specific duties and responsibilities if they accept campaign contributions. Those responsibilities are not fully described in this chapter. Prospective candidates should review the 2020 Campaign Finance Manual at sos.oregon.gov/elections/Documents/campaign-finance.pdf, which is prepared by the Oregon Secretary of State.

Abstracts and Certificates of Election. Not later than the 20th day after an election, the county clerk must prepare an abstract of the votes and deliver it to the district election authority (i.e., the board). By the 40th day after receiving the abstract, the district elections officer (i.e., the board) must determine the results of the election. This is generally done by resolution, or by formal vote of the board.

The county clerk must issue a certificate of election after the district elections officer has notified the county clerk in writing of the result of the election.

ELECTION CONTESTS, RECOUNT, AND RECALL

Procedures for election contests, recount, and recall for special districts are the same as for any other election in the state. Provisions regarding election contests and recounts are found in ORS chapter 258. Provisions regarding recall are found in ORS chapter 249.

RESTRICTIONS ON POLITICAL CAMPAIGNING

This Chapter provides general information on restrictions that apply to political campaigning by elected officials and public employees of special districts. It is not intended to be a substitute for legal counsel. Public officials and candidates should seek legal advice for specific issues and questions.

In general, campaign restrictions on public officials are intended to prevent the use of public funds to advocate for specific political causes or candidates. If a district or candidate wants to promote a cause or candidate, the appropriate approach is to have interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/distribute advocacy materials. The processes for creating a PAC are not addressed in this Chapter, but forms and guidebooks for forming and operating a PAC are available from the county clerk.

General. Public agencies are prohibited from using public funds to support or oppose a ballot measure or candidate. Furthermore, ORS 260.432 prohibits public employees from spending time “while on the job during working hours” promoting or opposing a ballot measure or candidate.

The definition of “public employee” in this context includes any public official who is not elected, whether they are paid or unpaid (i.e., volunteers), and includes members of appointed boards and commissions.

The Oregon Secretary of State and the Oregon Attorney General have authority to enforce violations of ORS chapter 260, which may include assessing civil penalties, or imposing criminal penalties for intentional violations. Individual elected officials and employees also may be found personally liable for misuse of public funds under ORS 294.100, which is part of the Local Budget Law.

Preparation and Distribution of Written Material. All materials about the measure or candidate that are paid for with public funds, or which are distributed by local elected officials or employees, must be factual and impartial. The information may describe the expected effects of a ballot measure and give the public a fair presentation of relevant facts, but it may not advocate for a particular position or outcome. For example, “proceeds from the proposed bond measure will be used to build a new fire station on Main Street,” is acceptable. “Voters should approve the proposed bond measure if they don’t want their houses destroyed by fire” would not be.

Staff may spend work time doing research and preparing information that fairly assesses the effects of the measure on the district, and local officials can use such information in meeting with individuals and organizations, e.g., newspaper editors and reporters, legislators, local civic organizations, and special interest groups to explain objectively the measure’s impact on the agency.

Factors that may be used to determine the line between information and advocacy may include the following:

- The timing of the material relative to an election date.
- The balance of factual information including pros and cons about the measure.
- Have facts been presented neutrally so they inform rather than persuade?
- Is the tone of the text and headings dispassionate rather than enthusiastic for one side or the other?
- Does the material refer to supporting or opposing PACs or citizen groups or individuals in a way that suggests a preferred outcome?
- Does the content explicitly urge a “yes” or “no” vote?

The Secretary of State’s Office will review materials prior to printing and distribution to ensure that the content is appropriately neutral. Good campaign planning should include time to submit the information, obtain the approval, and make changes if needed.

The Governing Body. A governing body of elected officials (i.e., the board of directors) is presumed to be in support of its own ballot measures, but it may also take official positions on ballot measures proposed by other public entities; for example, “the Board of Directors of XYZ Water District supports the City of ABC’s proposed bond measure to build a new water treatment plant.”

Whether for its own or another agency’s ballot measure, if the endorsement is part of the board’s official business, staff can record votes and type resolutions of support or opposition if that is part of their normal work duties. Staff can also do research during work hours to provide information to the governing body to inform its decision-making, such as providing background information on the measure and describing its potential effects, both pro and con, and may use the district’s office facilities to copy the resolution and share it in response to a records request.

Elected Officials. Restrictions on campaign activities by public employees do not apply to individual elected officials. Elected officials are generally expected to take positions on major issues, particularly those that affect the governmental body on which they serve. However, elected officials must be careful not to involve support staff in their advocacy efforts. For example, district staff are not permitted to type advocacy statements or speeches for elected officials on work time.

District Staff. When an employee is on duty, he or she may provide factual information on a proposed ballot measure but may not advocate for any particular position or outcome. For example, the district manager may attend the local Chamber of Commerce meeting to

announce the district's proposed bond measure on the September ballot and the reasons why it's being proposed; but the District Manager may not tell, or even encourage, attendees to vote for the measure, or even just encourage them to vote.

Agency staff *may* advocate for ballot measures or candidates on their personal time, including during breaks or vacations from work, but when they do so they should make it clear that they are not representing or speaking for their employer. For example, an employee may write a letter to the newspaper in support of or opposing a particular measure, but if there is a possibility the reader could confuse the employee's individual status with that of the individual's status as an employee, the letter should specifically explain that the individual is speaking in his or her personal capacity and not on behalf of the district.

Subject to limited regulation by the employer to avoid disruption in the workplace or to avoid suggesting to the public that the employee's personal political views are endorsed by his or her employer, public employees may express their personal opinions on the job and may wear buttons or engage in other activities which are protected under their right to free speech.

A public employee may not be coerced or pressured to vote for a measure or candidate, or to work to advocate for or against the measure or candidate. For example, a board member or the manager of the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but may not threaten them with financial loss or other repercussions if they vote in a particular way.

Each public employer is required to post in a conspicuous place a notice that outlines legal restrictions on the political activity of their employees while on the job during working hours. The text of the notice is provided in ORS 260.432(3).

RESOURCES

The Oregon Secretary of State's Elections Division prepares and provides several publications at no cost that summarize the requirements for elections. These are available on-line at sos.oregon.gov/elections/Pages/manuals-tutorials.aspx. They include:

- *County, City and District Initiative and Referendum Manual.*

The manual is used by Oregon's 36 county clerks who are responsible for overseeing special district elections. It is available at sos.oregon.gov/elections/Documents/countycitydistrictir.pdf. It is updated regularly to provide a current elections calendar and filing dates.

- *Campaign Finance Manual* for candidates and political committees.

This manual is a must for any district candidate or political committee that will be

accepting financial contributions. It can be found at sos.oregon.gov/elections/documents/campaign-finance.pdf.

- The Oregon Secretary of State provides a useful quick reference guide on political campaign restrictions: sos.oregon.gov/elections/documents/260.432_quickref.pdf.

**FORMATION, ALTERATION, AND DISSOLUTION OF SPECIAL DISTRICTS
(Chapter 5)**

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INTRODUCTION

Special districts offer advantages over other forms of government. Because they provide a specific service, all decision-making and all funds collected are dedicated to providing that service. This allows special districts to concentrate on a particular mission and avoid many of the complexities that surround general-purpose local governments like cities and counties, which must continually weigh the needs of competing groups or interests in both management and funding decisions.

Unlike counties and cities, which are typically governed by home rule charter, special districts derive nearly all of their authority directly from Oregon law in the form of Oregon Revised Statutes (“ORS”). The process for special district boundary changes, including formation, dissolution, merger, consolidation, and annexation, is primarily covered in Oregon Revised Statutes (ORS) Chapter 198 - “Special Districts Generally.”

Some types of districts have additional requirements in their principal enabling statute (“principal Act”). Before considering a boundary change or change in organization, be sure to check both ORS chapter 198 and the principal Act for your type of district.

APPLICABLE STATUTES

ORS Chapter 198 covers formation and other boundary changes for the following types of districts:

1. A domestic water supply district organized under ORS chapter 264.
2. A cemetery maintenance district organized under ORS chapter 265.
3. A park and recreation district organized under ORS chapter 266.
4. A metropolitan service district organized under ORS chapter 268.
5. A special road district organized under ORS 371.305 to 371.360.
6. A road assessment district organized under ORS 371.405 to 371.535.
7. A highway lighting district organized under ORS chapter 372.
8. A health district organized under ORS 440.305 to 440.410.
9. A sanitary district organized under ORS 450.005 to 450.245.
10. A sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989.
11. A vector control district organized under ORS 452.020 to 452.170.
12. A rural fire protection district organized under ORS chapter 478.
13. A water improvement district organized under ORS chapter 552.
14. A water control district organized under ORS chapter 553.
15. A weather modification district organized under ORS 558.200 to 558.440.
16. A port organized under ORS 777.005 to 777.725 and 777.915 to 777.953.
17. A geothermal heating district organized under ORS chapter 523.
18. A transportation district organized under ORS 267.510 to 267.650.
19. A library district organized under ORS 357.216 to 357.286.

20. A heritage district organized under ORS 358.442 to 358.474.
21. A radio and data district organized under ORS 403.500 to 403.542.
22. A sand control district organized under ORS 555.500 to 555.535.
23. The urban flood safety and water quality district created under ORS 550.150 to 550.400.
24. A county road district organized under ORS 371.055 to 371.110.
25. A county service district organized under ORS chapter 451.
26. The Port of Portland created by ORS 778.010.
27. A translator district organized under ORS 354.605 to 354.715.

Special districts with different or additional procedures for boundary changes include:

1. A corporation for irrigation, drainage, water supply or flood control, formed under ORS chapter 554.
2. A county service district authorized by ORS chapter 451.
3. A drainage district formed under ORS chapter 547.
4. An emergency communications district authorized by ORS 403.300 to 403.380.
5. An irrigation district formed under ORS chapter 545.
6. A mass transit district authorized by ORS 267.010 to 267.390.
7. A people's utility district formed under ORS chapter 261.
8. A rural fire protection district authorized by ORS chapter 478.
9. A soil and water conservation district formed under and authorized by ORS chapter 568.

FORMATION

For most types of boundary changes or changes in organization, i.e., merger, consolidation, annexation, or dissolution, the process is typically driven by the boards of directors of the existing district(s) based on the needs of the community and the overall strategic plan of the district(s) considering the change.

In comparison, the first step in forming a new special district is usually to form a committee of interested citizens or stakeholders to analyze the need for the district and to discuss the process involved.

The following general guidelines apply to the formation of most types of special districts:

1. Initial Considerations. Interested citizens with time, energy, and a willingness to raise or bear certain expenses form an unofficial or "ad hoc" committee to begin conceptual planning for the new district. The committee's considerations should include:
 - The need(s) the district is seeking to address;

- The likelihood of community support for the new district;
- The area to be served;
- Potential impacts on other providers or government entities in the area;
- The assessed valuation of the area;
- The estimated cost to provide the services being contemplated;
- The type and amount of revenue that could be generated;
- Long and short-term debt structure, if any; and
- Sources of revenue for the initial costs of formation, such as a security bond and election costs.

If possible, before undertaking any initial steps the committee members should contact others who have recently gone through the district formation process to learn from their experience.

2. Costs. The committee must determine who will initiate the formation and where the initiators will derive financial support. Costs will include obtaining a security deposit to accompany the formation petition (currently up to \$100 per precinct up to a maximum of \$10,000); costs of the election if one is required (determined by the county elections division and typically shared among all the entities with measures on the ballot); attorney or consultant fees; costs to prepare a legal description and boundary map of the area to be served; and costs of public education efforts, including costs for printing and publication. Election costs and some other expenditures may be refunded if the district is successfully formed, but the committee members should expect to pay all other costs without reimbursement.
3. Community Outreach. Public education and requests for public input should start early. The committee should plan multiple meetings in the community and invite residents within the area to attend, listen, and provide feedback. The committee should develop a succinct fact sheet that describes the needs the committee wants to address with the district; the process and estimated timeline for completion and the target election date, if applicable; any relevant historical information or context about the area that helps to support the committee's objectives; and the estimated financial impact on voters if the district is formed. The fact sheet should be distributed widely with meeting notices and to those who attend discussion meetings; be shared with the media; and be posted or distributed at key locations throughout the community.

At the end of each meeting, the committee should conduct an unofficial poll to measure the degree of community support for going forward with the formation effort. If community generally indicates support for the formation of the district, the committee can begin the steps to form the district.

4. Planning. Once the process of formation formally starts, even if all goes smoothly a special district formation may take 12 to 24 months, depending on the type of

district and whether it will assess property taxes. The timeline will be longer if there is a legal challenge, or a mandatory deadline is not met and the process is derailed for a time.

ORS chapter 198 spells out several mandatory steps that must follow a prescribed timeline, so careful planning is essential to a successful formation. The most effective approach is usually to identify a target formation date and work backwards to develop a timeline and identify key milestones. It is a good idea to employ an attorney familiar with special district formation and election laws to advise and help guide the process.

Overview. A special district may be formed from contiguous or noncontiguous territory located in one or more adjoining counties. (Be sure to consult the applicable principal Act to identify any exceptions or limitations). A district also may include territory within a city if the city governing body consents to the formation.

The boundaries of a new district may only include territory that can be reasonably served by the facilities or services of the proposed district. And, the new district cannot include territory already being served by a district formed under the same principal Act that is providing the same services as the proposed district unless that territory is formally withdrawn from the existing district.

The county where the proposed district will be located is responsible for overseeing the formation process, and ultimately for approving the district's formation and/or calling an election on the question of formation. In most cases the point of contact for any special district boundary change is the county clerk. The Secretary of State's Elections Division provides a list of county clerks at the following link:

sos.oregon.gov/elections/Pages/countyofficials.aspx

If the proposed district will be located in two or more counties, the formation process is conducted in the county in which the greatest portion of the assessed valuation of all taxable property in the proposed district is located ("principal county").

Initiation of Formation. The process for formation of a special district may be initiated in one of three ways:

- By filing a petition for formation with the appropriate county;
- By obtaining the consent of all property owners within the area of the proposed district; or
- By approval and order of the county board.

A description of each of these processes is provided below.

1. Initiation by Petition. Pursuant to ORS 198.800, formation of a special district may be initiated by a petition filed with the county board of the principal county.

- Chief Petitioners. The petition must designate not more than three (3) persons as “chief petitioners,” setting forth their names and mailing addresses. The chief petitioners are responsible for submitting the required security deposit along with the petition and will be responsible for paying the costs of the election if one is held.
- Petition Requirements. The petition may consist of a single document or separate documents, but it must include all required information and components.

A. Contents. ORS 198.750 requires the petition to contain the following information:

- A statement that the petition is filed pursuant to ORS 198.705 to 198.955.
- A statement of the names of all affected districts and all affected counties.
- A designation of the principal Act of each affected district.
- A statement of the nature of the proposal, whether formation of a district or change of organization and the kind of change proposed.
- A statement whether the territory subject to the petition is inhabited or uninhabited (“uninhabited” means there reside less than twelve (12) electors who were residents within the territory thirty (30) days prior to the date a proceeding is commenced to form the district).
- A statement whether the district board members are elected and, if so, the number of members on the board.
- If the proposed district will assess a permanent tax rate, a proposed rate sufficient to support the services and functions described in the economic feasibility statement and a declaration of the rate of taxation necessary to raise an amount of revenue equal to the proposed permanent tax rate. The tax rate limit must be expressed in dollars per thousand dollars of assessed value, and must be calculated for the latest tax year for which the assessed value of the proposed district is available.

- A statement of the proposed terms and conditions, if any, to which a proposed formation is to be subject.
 - A statement or indication opposite each signature on the petition whether the signers of the petition are landowners within the district or electors registered within the district, or both.
 - A description of the boundaries of the territory proposed to be included in the district.
 - A request that proceedings be taken for formation of the district.
 - The proposed name of the new district.
 - The circulator of the petition must certify on each signature sheet that the circulator witnessed the signing of the signature sheet by each individual who signed it.
- B. City Resolution. If the proposed district includes territory within a city, a certified copy of a resolution of the city's governing body approving the petition must be filed with the petition.
- C. Economic Feasibility Statement. Before circulating the petition for formation, the chief petitioners must complete an economic feasibility statement for the proposed district. The feasibility statement forms the basis for any proposed permanent tax rate and must contain:
- A description of the services and functions to be performed or provided by the proposed district;
 - An analysis of the relationships between those services and functions and other existing or needed government services; and
 - A proposed first-year line item operating budget and a projected third-year line item operating budget for the new district that demonstrates its economic feasibility.
 - The economic feasibility statement must be attached to the petition when it is filed with the county and before it is circulated for signing.
- Prospective Petition. Before circulating a petition, the chief petitioners must file with the county clerk of the principal county a prospective petition that includes the information required for the petition. Although ORS chapter 198 doesn't require the prospective petition to be approved by the county clerk, it's a good

idea to have the clerk review it for completeness before it is circulated to make sure all requirements have been met and it will not be subject to legal challenges later.

- Signature Requirements. The petition for formation must be signed by at least:
 - 15 percent of the electors or 100 electors, whichever is more, registered in the territory to be included in the proposed district; or
 - 15 landowners or the owners of 10 percent of the acreage, whichever is greater, within the territory to be included in the proposed district.

Most county clerks can provide standardized signature forms for petitions. The petition should provide space for each signer to both print and sign his or her name and add the date of signing. If the person is signing as an elector, the signer must include the person's residential address. If the signer is signing as a landowner, the person must list the number of acres of land owned by the signer and the name of the county with authority to assess property taxes on it. If the signer is a legal representative of the owner of the property, the signature must be accompanied by a certified copy of the signer's authority to sign as a legal representative.

A signer may withdraw his or her name from the petition up until the time of filing with the county but may not withdraw the name after filing.

- Petition Filing Requirements. If the petition for formation of a district includes a permanent tax rate for the proposed district, the petition must be filed not later than 180 days before the date of the next regular statewide primary or general election where it may be voted upon.

The county may not accept the petition for filing unless:

- All signatures have been secured within six (6) months of the date on which the first signature was obtained;
 - The petition is accompanied by the economic feasibility statement required under ORS 198.749; and
 - The petition is accompanied by the required security deposit, in the form of a bond, cash deposit, or other form approved by the county clerk.
- After Circulation. Once the petition has been circulated and signatures obtained, the chief petitioners submit the signed petition to the clerk of the principal county. The clerk has ten (10) days from the date the petition is received to

review it and determine whether it has been signed by the requisite number of qualified signers. If the clerk determines there are sufficient signatures, the clerk files the petition. If the clerk determines there are insufficient signatures, the clerk notifies the chief petitioners and may return the petition to the petitioners.

After a petition satisfying all the statutory requirements has been filed, the county board must set a date for an initial hearing on the petition and give notice of the hearing by posting and publication as specified in ORS 198.730 and 198.800(2).

The process thereafter is subject to specific timelines spelled out in ORS chapter 198. See paragraph below in this section, "Hearings."

2. Initiation by Consent of Property Owners. ORS 198.830 allows a special district to be created by consent of all owners of real property within the area of the proposed district. The petition must contain all the information required by ORS 198.750 to 198.755 (see "Petition Requirements, Contents" above), must state the names of the person who will serve as members of the first district board, and must contain the written acceptance of each person agreeing to serve as a board member. The petition must include an affidavit of one of the petitioners that the petitioner believes that the signers of the petition comprise all the owners, at the time of the verification, of all the land included within the proposed district.

As with an initiative petition, a petition submitted by consent of all property owners is submitted to the county clerk, who submits it to the county board of commissioners for a hearing. If the county board finds that all property owners within the proposed district have joined in the petition and that the area could be benefited by formation of the district, the board adopts an order approving formation of the district. If the formation is approved, any election otherwise required by law is dispensed with. The board enters an order creating the district, and the people nominated by the petition and accepting the nomination constitute the first board of the district.

3. Initiation by County Board. Pursuant to ORS 198.835, a county board may initiate and pay the cost of the formation of a district to be located entirely within the county by adopting an order stating the county board's intention to initiate formation of the district, identifying the principal act, describing the name and boundaries of the proposed district, and setting a time, date, and place for a public hearing on the proposal. If any of the territory to be included within the proposed district is within the boundaries of a city, a certified copy of the city governing body's resolution approving the order must be attached to the order.

Initiation of the formation by the county board makes circulation of a petition unnecessary which can substantially shorten the time required to form the district.

However, once the county adopts an order initiating the process, it must follow the same schedule for holding hearings that apply to a formation by initiative petition, and must call an election on the formation if a tax rate is proposed.

Whether or not an election on the formation is ordered, the county must order that an election be held for the initial board of directors on the next available election date.

Hearings. Once the formation process is initiated, either by citizen petition or by county order, the county is required to set an initial hearing on the petition between 30 days and 50 days after the date the petition is filed. Notice of hearing must be posted in at least three places and published by two insertions in a newspaper. The notice must include:

- The purpose for which the district is to be formed.
- The name and boundaries of the proposed district.
- The time and place of the hearing on the petition.
- A statement that all interested persons may appear and be heard.

On or before the date set for the hearing, any person interested in the proposed formation may appear and present an oral or written statement for or against the granting of the petition. Any written statement objecting to the formation must clearly identify the error, omission, or defect, which is the basis for the objection. If the written objection is not timely filed, the objection is considered waived.

After concluding the hearing, the county board must evaluate the formation petition by applying certain land use criteria in ORS 199.462. That statute requires consideration of local comprehensive planning for the area, economic, demographic, and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed district, and the statewide goals.

The board may modify the boundaries of the proposed district to include or exclude territory considering the benefit the proposed district will have to territory in or out of the district. The board may not modify the boundaries to exclude land that could be benefited by the district formation and may not include land that will not be benefited. If the county board determines that land that has been improperly omitted from the proposed district and the owner has not appeared, the county board must continue the hearing and order notice to be given to the non-appearing owner in the manner required by ORS 198.805.

If the county board approves the formation of the petition, the board adopts an order identifying the name and boundaries of the proposed district and setting a time and place for a final hearing on the petition between 20 and 50 days from the date of the order, for a final hearing on the petition. The order must state that if no written requests for an election are filed, the board will adopt an order creating the district at the final hearing. The county must publish notice of the final hearing as required by ORS 198.800 and 198.840.

Because the hearing schedule is mandated by statute, the county has little flexibility when conducting the hearings and the formation can be subject to challenge if the schedule isn't properly followed. Those considering forming a district should note that the hearing process alone will take between 50 and 100 days to complete and is subject to the county board's meeting schedule. Close coordination with the county clerk or the county counsel will be necessary to procure a spot on the meeting agenda at the appropriate times, particularly if an election will be required.

Election. If the approved petition includes a permanent tax rate, an election on the question of formation of a special district is required. An election is also required if the county board receives requests for an election filed by at least 15 percent of the electors or 100 electors, whichever is less, on or before the date of the final hearing, even if the petition for formation includes no permanent tax rate.

In addition, except when the formation is initiated by unanimous consent of landowners or if the principal Act for the district stipulates otherwise, an election will be required to select the initial board of directors. The procedure for nominating and electing the first board is provided in ORS Chapter 255.

If an election on the formation is required, the county board issues an order calling the election on the "next available election date for which the deadline can be met." If voters will be asked to approve a tax rate, the formation election may be held only in May or November, and "double-majority" approval requirements do not apply. If no tax rate is being requested, the formation election may be held on any of the four election dates in ORS chapter 255. If no election on formation is required, the county board issues an order dismissing election requirements and enters an order creating the district.

When the proposal for formation includes a permanent tax rate for the proposed district, the ballot title must clearly indicate that a single question is being proposed which is:

- Whether the proposed district should be formed.
- Whether the permanent tax rate specified in the ballot title should be adopted as the initial permanent tax rate of that district.

After the Election. Following the election, the county board has thirty (30) days to canvass the votes and adopt an order regarding the proposed formation. If a majority of voters approve formation of the district, the board adopts an order creating the district. After the date of the order, the new district becomes a municipal corporation with all the powers conferred by the principal Act. The new district pays the costs of forming the district and the county clerk refunds any cash deposit or other form of security to the persons who posted the security with the county.

If a majority votes against formation of the district, the county board adopts an order dismissing the petition. The county clerk reimburses the county for the costs of the attempted formation from the security deposit posted by the chief petitioners and refunds any remaining portion of the security deposit to the chief petitioners. If the costs of the attempted formation exceed the amount of the deposit, the chief petitioners must pay the amount of the excess costs.

Within ten (10) days after the final order of formation is adopted, ORS 198.780 requires duplicate copies of the order to be filed with the Department of Revenue, the Secretary of State, and the county clerk and the county assessor of each county affected by the formation. This requirement generally falls to the county clerk to perform, but the petitioners would be wise to either confirm that the county has made the required filings or undertake these filings themselves.

Challenges to District Formation. Pursuant to ORS 198.785, any citizen(s) of the affected district or territory may initiate proceedings to challenge the county clerk's refusal to accept and file a petition for formation or the county board's refusal to call a special election on the question of formation within ten (10) days of such refusal. The citizen(s) may file in circuit court of the principal county for a writ of mandamus to compel the county clerk to accept and file the petition or to compel the county board to call an election. If the circuit court finds that the petition for formation is legally sufficient and the requisite number of signatures is attached, the circuit court will direct the county board to call the election. The courts are required to handle and decide such suits as quickly as possible. The circuit court's decision is appealable.

Proceedings to challenge the validity of the formation itself may be brought by filing a challenge to a government proceeding pursuant to ORS 33.710 and 33.720, or a writ of review pursuant to ORS 34.010 to 34.100.

Summary of Steps for District Formation.

- Establish a working committee.
- Identify up to three people to act as Chief Petitioners.
- Set up community meetings and contact local agencies with experience forming new districts.
- Contact county clerk for information on formation process.

- Determine preliminary boundaries of district.
- Research property values within boundaries to determine assessed values and whether new tax rate will be subject to compression.
- Consider whether to hire an attorney or consultant to assist with the process.
- Develop budget to cover formation costs.
- Begin preparing an Economic Feasibility Statement.
- Develop final boundary maps and legal descriptions acceptable to the county assessor and Department of Revenue.
- Obtain petition forms from county clerk or Secretary of State. Submit prospective petition to county clerk.
- Circulate petitions. Total time from first signature to final signature may not exceed 180 days (six months).
- Obtain resolutions from any affected cities.
- Submit final petition, Economic Feasibility Statement, and security deposit 180 days prior to election to County Clerk and Surveyor for review.
- Either county counsel or committee's attorney drafts county resolutions and orders.
- County schedules hearing date.
- County holds initial hearing.
- County holds second hearing.
- County enacts formation order and calls election if applicable.
- Election is held. Formation election required in May or November if seeking a permanent tax rate. Initial board must be elected even if formation election is not required.
- If formation is approved by voters, submit county's final formation order to county clerk, county assessor, and Secretary of State.
- If a permanent tax rate is approved, submit formation materials and map to Department of Revenue by March 31.

MERGERS AND CONSOLIDATIONS

Consolidation and merger are statutory methods for joining two or more existing districts into a single district. [See ORS 198.885 to 198.915.]

A district that merges into another district is considered to be annexed by and absorbed into the "surviving district." Two or more districts that consolidate become an entirely new district ("successor district").

In general, mergers and consolidations occur between districts formed under the same principal Act. However, ORS 198.885(3) permits districts providing water and sanitary services to merge or consolidate, and ORS 198.885(4) allows a county service district to merge with another type of district that provides similar services. Districts also may merge or consolidate with a city for purposes of having the city receive services the

districts provide. In any case, voters in each of the affected jurisdictions must approve the change.

Initiation of Merger or Consolidation. A merger or consolidation may be initiated in one of four ways:

- By duplicate petitions filed by the electors of two or more districts with the boards of the districts to be merged or consolidated. ORS 198.895(1). The petition must state the names of the affected districts and the name of the surviving or successor district and whether the merger or consolidation must be approved by each district.
- By duplicate petitions filed by the electors of two or more districts with the district boards and by the electors of a city with the city governing body, if the proposed consolidation includes joining a city to the surviving or successor district. ORS 198.895(3). The petition must address all of the matters required in the petition under the preceding paragraph except that the petition must also state the name of the city proposed to join the surviving or successor district and whether the merger or consolidation must be approved by each district or city in order to be effective
- By duplicate petitions filed by the electors of a single district with the district board, and by the electors of a city with the city governing body, if the proposal is to join a city to the district. ORS 198.895(4). A petition under this statute must contain the name of the district, the name of the city, and must state that the proposal must be approved by the district and the city in order to be effective.
- By resolution adopted by the boards of two or more districts. If the merger or consolidation proposes to join a city to the successor district, the city governing body must also adopt a resolution approving the consolidation. ORS 198.895(5). A resolution adopted or approved under this statute must contain all the matters required to be stated in a petition to merge or to consolidate.

Petition Requirements. A petition for merger or consolidation must be signed by not less than 15 percent of the electors or 100 electors, whichever is less, registered in each district proposed to merge or consolidate; or by 15 owners of land in each district or by the owners of 10 percent of the acreage located in each district, whichever is the greater number of signers.

The petition may include a plan for the distribution of debt, which is to be voted upon as a part of the proposal. The plan may provide for any distribution of indebtedness and may require that merging or consolidating districts, and any city to be joined to the surviving or successor district, remain solely liable for all or any portion of the indebtedness outstanding at the time of the consolidation or merger. ORS 198.900(1).

The petition also may propose a new name for the surviving or successor district.

Joint Assembly; Call for Election. When the governing body of each affected district or city has received a petition containing the required number of signatures, or has adopted or approved a resolution, the governing body of the affected entity having the largest population according to the most recent federal decennial census must call a joint assembly of the governing bodies of the affected entities. The governing body calling the joint assembly must give notice of the time and place of the assembly by certified mail.

At the joint assembly, a majority of the members of each governing body constitute a quorum for the transaction of business. A majority of all members present must adopt an order calling an election in each affected entity. The order must include all matters required in ORS 198.745. The order may include a plan for zoning or sub-districting the surviving or successor district for the purpose of nominating or electing members of its board if the principal Act for the district provides for this type of representation. Zones or sub-districts must be based on equal distribution of population, and, if required by the principal Act, the plan must also include a map of the proposed zone or sub-district boundaries. The final order calling the election is then submitted to the county clerk for inclusion on the ballot for the next available election date.

Election. The electors of each district and city involved in the merger or consolidation must approve the change. However, where there are more than two entities involved and the proposal specifically provides that it will be effective in all districts or cities where it has been approved and does not require the approval of all areas to be effective, the election will be effective in the districts or cities where it is approved, and the areas where it is not approved would not be part of the merged or consolidated district.

Joint Meeting; Election of Board. If the proposal for merger or consolidation is approved by a majority of voters for each entity, the governing body of the entity with the largest population must call and give notice of a joint meeting of the governing bodies of the affected entities. The meeting must be held at a time and place designated by the governing body calling the meeting not later than ten (10) days after the canvass of the vote in the entity last canvassed. At the meeting, a majority of the members of each governing body constitutes a quorum for the transaction of business. The purpose of the joint meeting is to elect members of the board of the successor or surviving district.

The number of board members elected the number provided in the principal Act of the surviving or successor district, and the terms of office of the members are provided in ORS 198.910(3). Otherwise, selection of board members will depend on the relative sizes of the affected entities. If two or more of the affected districts each have 20 percent or more of the electors or owners of land within the successor or surviving district, then each affected district is represented on the board as follows:

- (1) By one member when the percentage of electors or owners of land in the affected district is at least 20 percent but less than 40 percent of the electors or owners of land within the successor or surviving district.
- (2) By two members when the percentage of electors or owners of land in the affected district is at least 40 percent but less than 60 percent of the electors or owners of land within the successor or surviving district.
- (3) By the number of board members remaining after apportionment of board members under subsections (1) and (2) of this section when, among all of the affected districts, the percentage of electors or owners of land in the affected district is the highest percentage of electors or owners of land within the successor or surviving district.

At the first regular election held in the surviving or successor district, two or three board members are required to be elected as provided for in ORS 198.910(3).

Resolution Declaring Completion of Change. Once elected, the newly elected board meets immediately and adopts a resolution declaring the merger or consolidation complete. ORS 198.780 requires duplicate copies of the board's final order to be filed with the Department of Revenue, the Secretary of State, the county clerk, and the county assessor within ten (10) days of its adoption.

From the date of adoption of the resolution, the merger or consolidation is complete and the city territory, if any, together with any territory thereafter annexed to the city, is included in the boundaries of the surviving or successor district and is subject to all the liabilities of the district in the same manner and to the same extent as other territory included in the district.

Per ORS 198.780, duplicate copies of the district board's final resolution of consolidation or merger must be filed with the Secretary of State, the Department of Revenue, the county assessor, and the county clerk.

Effects of Consolidation or Merger. Once a consolidation is effective, the successor district succeeds to all the property, contract rights, and powers of the former district(s) or cities.

Once a merger is effective, the merging entity is considered annexed into the surviving district, and the surviving district assumes the duties and obligations, including debt obligations, of the merging district.

The former entities must turn over to the board of the successor or surviving district all funds, property, contracts, and records of the former entity, and uncollected taxes,

assessments, or charges levied by the former districts become the property of the successor or surviving district.

If provided in the debt distribution plan, the successor or surviving district board must levy taxes and assessments for the liquidation of any prior existing indebtedness.

Where two or more districts have merged or consolidated, the tax rate of the surviving district or successor district is the rate that would produce the same tax revenue as the merging or consolidating districts would have cumulatively produced in the year of consolidation or merger if the consolidation or merger had not occurred. *Oregon Constitution Article XI, Section 11(3)(d)*.

ANNEXATION

Annexation is the process by which territory may be added to a special district. The process of annexation to special districts is governed by ORS 198.850 through 198.869. A district considering annexing additional territory should review those statutes as well as its principal Act to ensure all requirements are met.

A district may consist of contiguous or noncontiguous territory located in one or more adjoining counties. If any part of territory to be annexed is within a city, the petition must be accompanied by a certified copy of a resolution of the governing body of the city approving the petition.

A district may not, by annexation or otherwise, include territory included within another district formed under the same principal Act when the other district is authorized to perform and is performing the services the affected district is authorized to perform unless the territory served by the existing district is withdrawn through appropriate procedures.

Finally, the boundary of a special district must include only such territory as may reasonably be served by the facilities or services of the district. If property proposed to be annexed cannot be served by the district, the county board may remove that territory or the annexation may be subject to a legal challenge.

Initiation of Annexation. Annexation to a district may be initiated in the following ways, which may or may not require an election:

1. **Election Required:** When an election is required, two or more proposals for annexation of territory may be voted on at the same time, but each proposal must be stated separately on the ballot.
 - **Initiation by Elector Petition.** Electors who wish to annex to a district may file an annexation petition with the county board. Before the petition is filed it must be

approved by written indorsement by the board of the affected district, and by any other agency from which the principal Act requires approval.

When determining whether to approve an annexation petition, the county board must consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

If the annexation petition is not signed by all the owners of all the lands in the territory proposed to be annexed, or by a majority of the electors registered in the territory proposed to be annexed *and* by the owners of more than half of the land in the territory, the county board must order an election in the territory to be annexed and in the affected district on the same day.

If voters in both elections approve the annexation, the district board certifies the results of the election to the county board, which then issues an order of annexation and approves the boundaries of the territory to be annexed. If a majority of the votes cast in both elections do not favor annexation, the county board issues an order declaring that the annexation was not approved.

To be legally sufficient, the petition must, at minimum, include the following:

- State that the petition is filed pursuant to ORS 198.705 to 198.955;
- State the names of all affected districts and all affected counties;
- Designate the principal Act of each affected district;
- State the nature of the proposal (annexation);
- State whether the territory subject to the petition is inhabited or uninhabited. “Uninhabited territory” means territory within which there reside less than 12 electors who were residents within the territory 30 days prior to the date a proceeding for annexation is commenced (ORS 198.705(19));
- State any proposed terms and conditions, if any, to which the proposed annexation is to be subject;
- State opposite each signature whether the signers of the petition are landowners within the district or electors registered in the district or both;
- Request that proceedings be taken to annex the proposed territory;

- Include a description of the boundaries of the territory proposed to be annexed;
- Include an affidavit of the person circulating the petition stating that every person who signed the petition did so in the presence of the person circulating the petition;
- Be signed by not less than (a) 15% of the electors or 100 electors, whichever is less, registered in the area proposed to be annexed; or (b) 15 owners of land or the owners of 10% of the acreage, whichever is the greater number of signers, within the area proposed to be annexed;
- Include the printed name of each signer and the date of signing;
- If the signer is signing as an elector, include the person's place of residence, giving street and number or a designation sufficient to enable the place of residence to be readily ascertained;
- If the signer is signing the petition as a landowner, include the number of acres of land owned by the signer and the name of the county whose assessment roll is used for the purpose of determining the signer's right to vote;
- If the signer is a legal representative of a property owner, the signature shall be accompanied by a certified copy of the signer's authority to sign as a legal representative;
- Include endorsement on the petition by the district or any agency required by the principal act to endorse or approve the petition;
- Include whether or not any of the proposed property to be annexed is within a city. If so, a copy of a resolution of the governing body of the city approving the petition should be attached.
- Initiation by Board Resolution. The district board or the county board may initiate an annexation by resolution. The resolution is filed with the county board and must include the following:
 - (a) The intention of the board to initiate the formation of a district and citing the principal Act.
 - (b) The name and boundaries of the proposed area to be annexed.
 - (c) The date, time and place of a public hearing on the proposal.

If any part of the area to be annexed is included in a city, the resolution must be accompanied by a certified copy of a resolution from the city approving the annexation.

An annexation initiated by the district board may include an effective date that is not later than 10 years after the date of the order declaring the annexation.

2. No Election Required (“Consent” Annexations).

- Petition by All Electors/Landowners. If the annexation petition is signed by all of the owners of all land in the territory proposed to be annexed or by a majority of the electors registered in the territory proposed to be annexed *and* by the owners of more than half of the land in the territory, an election in the territory and in the district is not required.
- Petition by a Single Landowner. When the owner of a parcel of land wants to annex that land to a district, the owner may file an annexation petition with the county board. The petition must declare that the petition is filed pursuant to ORS 198.857, state the name of the affected district and all affected counties, indicate the principal Act of the affected district, and be signed by the owner of the landowner.

Before the petition is filed with the county board, it must be formally approved by the board of the affected district and by any other agency required by the principal Act to indorse or approve the petition.

If the petition meets all requirements, the county board sets a date for a public hearing on the petition at least 20, but no more than 50, days after the date the petition is filed. Written notice of the hearing must be mailed to the petitioner and to the board of the affected district.

Following the hearing, the county board must consider the local comprehensive plan for the area and whether approving the petition will affect any existing service agreements between the district and another public entity. If the petition is approved, the county board enters an order describing the boundaries of the land and declaring the land annexed to the district.

3. Annexation of City to District. The governing body of a city may adopt a resolution or motion to propose annexation to a district for the purpose of receiving service from the district and submit the proposal to the district board.

The district board must approve or disapprove the city's annexation proposal. If the district board approves the proposal, it must adopt an order or resolution to call an election in the district unless:

- (a) The population of the city is less than 20 percent of the population of the district; or
- (b) The entire boundary of the city is encompassed within the boundary of the district.

But, if 10 percent of the electors or 100 electors of the district, whichever is less, sign and present to the county board a petition requesting an election, the board must call an election in the district.

At minimum, the order or resolution of the district board must include the following:

- (1) Provide for giving notice of the special election or elections upon the question.
- (2) Designate each district or other territory within which the election or elections are to be held.
- (3) Fix a date for the election, which must be the same for each parcel of territory being considered for annexation.
- (4) State the substance of the question or questions to be submitted to the electors.
- (5) Specify any terms and conditions of the annexation.
- (6) Provide for and give notice of the election or elections.
- (7) If applicable, contain a plan for zoning or subdistricting the district as enlarged by the annexation if the principal Act for the district provides for election or representation by zone or subdistrict.

The district board then certifies a copy of the resolution or order to the governing body of the city, which likewise calls an election in the city on the date specified in the order or resolution of the district board.

The election must be held on the special district election date that is not sooner than the 90th day after the date of the district order or resolution calling the election.

If the electors of the city approve the annexation, the city governing body must certify the result and submit the certification to the district board and the county board. If the electors of the district approve the annexation, the district board must

certify the result, attach the city's certificate to its own certification, and present both certificates to the county board.

Upon receipt of both certifications, the county board enters an order annexing the territory included in the city to the district. Thereafter, the city territory, together with any territory thereafter annexed to the city, is included in the boundaries of the district and is subject to all liabilities of the district in the same manner and to the same extent as other territory included in the district.

4. Contract for Eventual Annexation. If the district's principal Act allows for service outside of the district boundaries ("extraterritorial service"), the district may enter into a contract with a landowner located outside the district boundary to provide services. The agreement for extraterritorial service may include a consent to eventual annexation of property of the landowner. To ensure that the agreement binds the landowner and any later owners of the land, the agreement must be recorded in the county property records.

Hearing on Annexation Petition. ORS 198.800 to 198.820 apply to a county hearing on a petition or resolution for annexation. The county board must set a date for hearing on the petition between 30 and 50 days after the date the petition is filed and must cause notice of the hearing to be posted in at least three public places and published by two insertions in a newspaper. The notice must state:

- The purpose of the proposal,
- The boundaries of the proposed annexation,
- The time and place of the hearing on the petition, and
- That all interested persons may appear and be heard.

At the time and place announced in the notice, the county conducts the hearing. All interested persons may appear and be heard. The county must determine at the hearing whether the proposal is consistent with the local comprehensive plan and intergovernmental service agreements and if the area could be benefited by the annexation and adopt written findings of compliance with those criteria. The county may adjourn the hearing from time to time but not exceeding four (4) weeks in all without additional notice. The county may alter the boundaries proposed in the petition to either include or exclude territory based upon benefit of such inclusion or exclusion. The board may not modify the boundaries to exclude from the proposed area any land that could be benefited nor may the board include any land that may not be benefited.

If the county board determines that any land has been improperly omitted from the proposal and that the owner of such property has not appeared at the hearing, the

board shall continue the hearing and order notice given to the non-appearing owner requiring the owner to appear before the board and show cause, if any, why the land of the owner should not be included in the proposal. Service of such notice is prescribed by ORS 198.805(2).

At the conclusion of the hearing, the board makes its determination consistent with the required criteria adopts findings in support of that determination, and enters an order approving the petition, and calling an election if needed.

Per ORS 198.780, duplicate copies of the final county order approving the annexation must be filed with the Secretary of State, the Department of Revenue, the county assessor, and the county clerk.

Effects of Annexation. After the date of entry of an order by the county board annexing territory to a district, the territory annexed becomes subject to the outstanding indebtedness, bonded or otherwise, of the district in the same manner as the territory within the district, unless otherwise provided in a debt distribution plan established under ORS 198.900. The annexed territory also is subject to the permanent rate limit and any local option taxes imposed by the annexing district.

WITHDRAWAL OF TERRITORY

Territory of a special district can be withdrawn from the district pursuant to the procedures contained in ORS 198.870 to 198.882. Generally, withdrawal of territory may occur when the territory to be withdrawn has not been or cannot be served by the district.

Initiation of Withdrawal. Withdrawal of territory from a special district may be initiated in one of two ways:

- A property owner within the district petitions the county board to withdraw the owner's property from the district.
- The electors of an area within a special district petition the county board to withdraw their property from the district.

For either of the above methods, the petition must be signed by not less than 15 percent of the electors or 100 electors registered in the district, or by 15 landowners or the owners of 10 percent of the acreage, whichever is the greater number of signers. Petitioners must cause notice of the filing of the petition to be given in writing to the secretary of the district. Within five (5) days after the petition is filed, the petitioners must furnish the secretary of the district with a copy of the petition filed.

Process. With minor exceptions, the procedures governing the county board's conduct of hearings, adoption of orders, and calling an election on the question of withdrawal of territory from a district are the same as those set forth in the preceding section on annexation.

The county board may approve a petition for withdrawal as presented or may approve the petition with modified boundaries. The county board must approve the petition if it is not feasible for the territory described in the petition to receive service from the district. The board must deny the petition if it appears that it is or would be feasible for the territory described in the petition to receive service from the district.

Election. An election on the petition for withdrawal may or may not be required.

If written requests for an election are filed by 15 percent or one hundred (100) electors, whichever is less, an election must be held. If a sufficient number of written requests for election have not been filed at the time of the county board's final hearing on the proposed withdrawal, an election is not required, and the county board adopts an order withdrawing the territory from the district. If sufficient requests are timely filed, the county board must call an election on the proposed withdrawal if those requests are filed on or before the date of the board's final hearing on the withdrawal.

If an election is required, it is held district-wide. Following the election, the county board adopts an order declaring the outcome. Regardless of the result of the election, the county board must cause a copy of the order to be filed with the secretary of the district.

Per ORS 198.780, duplicate copies of the final county order approving the withdrawal must be filed with the Secretary of State, the Department of Revenue, the county assessor, and the county clerk.

Effects of Withdrawal. From the date of the entry of the order by the county board, the area withdrawn from a district is thereafter free from assessments and taxes levied thereafter by the district, but it remains subject to its proportionate share of any bonded or other indebtedness existing at the time of the order.

However, if no district services have been provided to the withdrawn area and the area withdrawn does not exceed five percent (5%) of the equalized assessed valuation of the taxable property within the entire district prior to the withdrawal, and provided the total unlimited taxing power of the district over the area not withdrawn does not wholly satisfy the bonded or other indebtedness incurred prior to the withdrawal, the governing body of the district must relieve an area withdrawn from the district from taxation for its proportionate share of outstanding bonded or other indebtedness.

DISSOLUTION

Dissolution of a special district terminates the district's existence and disposes of any remaining assets.

Initiation. Dissolution of a special district may be initiated in one of three ways:

- **By Petition.** Electors may file a petition for dissolution of the district with the county board. The petition must be signed by not less than 15 percent of the electors registered in the district or the owners of 15 percent of the acreage of the district.
- **By District Resolution.** The district board may file a resolution seeking dissolution with the county board when the district board determines that it is in the best interest of the district's inhabitants that the district be dissolved and liquidated.
- **By County Resolution.** The county board may adopt a resolution seeking dissolution of the district if:
 - The district has failed to elect district board members to fill vacancies on the district board.
 - If the territory within the district is uninhabited.
 - If the county board determines it is in the best interest of the people of the county that the district be dissolved and liquidated.

Process. Within five (5) days after a petition is filed or a resolution of the county board is adopted, as provided for above, a copy must be filed with the district board or its representative. If there are no qualified district board members at the time, the county board acts as, or appoints, a board of trustees to act on behalf of the district regarding the dissolution proceedings.

If the district to be dissolved is located within the jurisdiction of a local government boundary commission, the dissolution must be reviewed and approved according to the boundary commission's procedures for the review of major boundary changes.

When dissolution proceedings have been initiated, the district board must make findings of fact concerning the district's finances, including:

- A description of the indebtedness and the name of the holder and owner of each, if known.
- A description of each parcel of real property and interest in real property and, if the property was acquired from delinquent taxes or assessments, the amount of such taxes and assessments on each parcel of property.

- Uncollected taxes, assessments, and charges levied by the district and the amount upon each lot or tract of land.
- A description of the personal property and all other assets of the district.
- The estimated cost of dissolution.

The district board must also propose a plan of dissolution and liquidation as required by ORS 198.925(2) and 198.930. The plan of dissolution and liquidation may include provisions for transfer and conveyance of all assets of the district to any other district that agrees to assume the duties and obligations of the dissolving district, or, in the case of a county service district, to the county in which the district is located.

Within thirty (30) days after initiation of the dissolution proceeding, the findings of fact and the proposed plan of dissolution and liquidation must be filed in the office of the county clerk and made available for inspection by any interested person.

Election. Within ten (10) days after the district board files the dissolution and liquidation plan with the county clerk, the district board calls an election to determine whether the district shall be dissolved, its indebtedness liquidated and its assets disposed of in accordance with the proposed dissolution and liquidation plan. The notice of election must briefly summarize the dissolution and liquidation plan and state that the plan is available for examination at the office of the county clerk.

An election is not required and the county board may declare the district dissolved and proceed to wind up the district's affairs, if the county board finds:

- The dissolution is in the best interest of the people of the county; and
- The territory within the affected district is uninhabited;
- The district has failed regularly to elect district board members in accordance with the district principal act; or
- For a county service district, dissolution is required because there is no public need for continuation of the district.

After the Election. If a majority of the district's electors approve dissolution of the district, the district board declares the district dissolved. The district board then becomes a board of trustees which pays or obtains releases of the district's debt and disposes of the district property. If the district is located entirely within the boundaries of a single county, the district board may designate the county board as the board of trustees for the purpose of winding up the district's affairs.

Once the district's affairs have been fully settled, the board of trustees deposits all of the district's books and records with the county clerk, or with the entity that is assuming

the dissolving district's duties and obligations. The board of trustees must execute, under oath, and file with the county board a statement that the district has been dissolved and its affairs liquidated. As of the date of the statement, the corporate existence of the district is terminated for all purposes.

If a majority of the district's electors opposes dissolution, the district board declares the dissolution proposal failed and makes the election results a part of the district's records. No subsequent election on dissolution of the district may be held for at least one (1) year after the date of the election.

Disposition of Assets. The board of trustees may convey all of the dissolving district's assets to another district if the other district assumes all of the debt and obligations of the dissolving district, continues to furnish the services provided by the dissolving district pursuant to the dissolution and liquidation plan, and if the consent of all known holders of valid indebtedness against the district has been obtained or the plan provides for payment of the non-assenting holders.

The board of trustees may also turn over to the county treasurer or the entity assuming the dissolving district's duties and obligations any surplus funds remaining after payment of all of the district's indebtedness. If the district's assets are insufficient to pay the indebtedness, the board of trustees must levy taxes within the district for the liquidation of the indebtedness. However, if property of the district is within the corporate limits of a city, the property vests in the city upon dissolution and any property of the district located outside the city's corporate limits vests in the county upon dissolution.

Per ORS 198.780, duplicate copies of the final statement of the dissolving district's board of trustees must be filed with the Secretary of State, the Department of Revenue, the county assessor, and the county clerk.

Dissolution of Inactive District. If a special district fails to file reports required by ORS 294.555 or 297.405 to 297.555 (i.e., budget documents) for three consecutive years with the Secretary of State or Department of Revenue, as the case may be, either of those agencies must notify the county board of the county where the district is located. Within thirty (30) days after notice to the county board, the county must initiate proceedings to dissolve the special district and may appoint three residents of the district to assist in locating the assets, debts and records of the district.

Within sixty (60) days after receiving the notice from either state agency, the county board must prepare a financial statement for the district and file it with the county clerk. The financial statement must include:

- The date of formation of the district.

- The date of the last election of officers and the names of such officers;
- The amount of each outstanding bond, coupon, or other indebtedness with a general description of such indebtedness and the name of the holder and owner of each;
- A description of each parcel of real property and interest in real property owned by the district;
- Any uncollected charges, taxes, and assessments levied by the district;
- A description of all personal property and of all other assets of the district; and
- The estimated cost of dissolution.

Upon filing the financial statement, the county board must enter an order calling for a hearing on the question of dissolving the district. The hearing must be called not less than 21 nor more than 30 days after the filing of the statement. If the county is within the jurisdiction of a local government boundary commission, the county board must, within ten (10) days after filing a financial statement, file with the boundary commission a resolution requesting dissolution of the district.

If the county is not within a local government boundary commission, the notice of hearing by the county must be given by publication once each week for not less than three (3) weeks in a newspaper of general circulation within the district. The notice must state the time and place of the hearing and that all interested persons may appear and be heard. The notice must also state that all persons having claims against the district must present them at the time of the hearing.

After the hearing, the county board must determine whether the district is in fact operating as an active district. Once the reports required by ORS 294.555 and 297.405 to 297.555 are properly filed by the county for the district, the county must then enter an order that may (a) terminate all further proceedings if the county finds that continuation of the district is necessary, or (b) continue the hearing to initiate proceedings to incorporate or annex the district area into a county service district.

If the county board finds that the district is not active and there is no need for the district, the county board then becomes a board of trustees for the purpose of paying the debts and disposing of the property of the district. Any surplus funds and assets remaining to the credit of the district after payment of the debts of the district are credited to the county general fund, or, if the district was located in more than one county, apportioned between the counties according to the proportion in each county of the assessed valuation of taxable property in the district.

If the only debt of the district is the cost of dissolution proceedings, the county must pay the cost of the proceedings. If the assets of the district are insufficient to pay the debts of the district, the county board must levy taxes for the liquidation of the debts.

RESOURCES

The Oregon Secretary of State's Elections Division provides a variety of manuals and forms for elections at the links provided. If you are unable to locate the appropriate information or form, check with your county clerk, who can direct you.

- State of Oregon: Elections - Manuals & Quick Guides:
sos.oregon.gov/elections/Pages/manuals-tutorials.aspx
- State of Oregon: Elections - Election Forms:
sos.oregon.gov/elections/Pages/electionforms.aspx

The Oregon Department of Revenue provides the following resources to guide the boundary change process, particularly as it applies to assessing and collecting property taxes:

- Boundary Change Checklist, 150-504-408 (oregon.gov):
www.oregon.gov/dor/forms/FormsPubs/boundary-change-checklist_504-408.pdf
- Boundary Change Information, 150-504-405 (oregon.gov):
www.oregon.gov/dor/forms/FormsPubs/boundary-change_504-405.pdf

**GRANTS AND LOANS
(Chapter 6)**

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INTRODUCTION

Special districts are uniquely qualified to receive grants and loans that are available to public entities. Grants and loans can be an excellent way to obtain or supplement funding for projects and capital improvements to improve or expand district services.

Getting additional funding can sometimes allow the district to take on projects or programs it wouldn't otherwise be able to do, or to get creative with pilot projects or experimental programs. Special districts always have to keep in mind, however, that any new or pilot program or service must still fall clearly within the statutory authority granted to the district under its principal act. For this reason, districts should consult with legal counsel before pursuing a "nontraditional" program or service to be sure it can be done while still complying with the law.

Grants provide "free money" and loan terms can be very favorable, but obtaining these forms of aid takes more patience and effort than many first-time applicants realize. Completing applications can be time-consuming and complicated. Funders nearly always require lots of detailed information and documentation which can take months to gather, and there is no guarantee that the funding will be granted. The process can be particularly daunting or difficult for small districts with little or no paid staff.

Because grant and loan funds usually must be used for specific programs or projects and not to cover normal operating costs, the decision to pursue them should be part of a larger plan to achieve a specific goal. Once the goal is identified, the district can be strategic about locating funding sources to help achieve it. This helps to ensure that staff time and energy are focused where success is most likely.

TYPES OF AID

The three main sources for grants and loans for special districts are the federal government, state government, and private entities, such as non-profit foundations. Most funding for public infrastructure projects will be in the form of loans, or grant/loan combinations. Private sources are more likely to provide grants to support projects and programs that benefit the local community, such as improving health, providing education or training, or providing other community support.

Exploring all three types of aid will increase the chances of finding funding to meet the district's needs:

- **Federal (U.S. Government):** Federal funds are available through both loans and grants. Most federal dollars are distributed to states first and local governments apply for the funds through their individual states.
- **State (Oregon):** Most money from the State of Oregon is in the form of loans administered by specific state agencies. Grant money may be available as well, often in the form of federal dollars administered through the state. Special districts should stay

in touch with the agency that will be making the decision, and get to know the individuals involved with your application.

- Private Sources. Most private money is in the form of grants. Many grants do not allow governments to apply, so read the eligibility requirements carefully.

Regardless of the source of funding, keep these considerations in mind:

- Be patient: It can take a long time for applications to be reviewed and for funds to be approved. Federal programs usually take longer than state programs, and state programs usually take longer than private programs.
- Be accurate: Don't leave anything out of the application materials. Make sure every question is answered and every blank filled. Because competition for funds is usually intense, even slight omissions or mistakes can result in disqualification for funding.
- Be prepared: Funding, especially federal funding, almost always comes with strict conditions attached. Accurate budgets and accounting information, clear and properly adopted spending and contracting policies, and applicable strategic or capital improvement plans will nearly always be requested and can be put in place prior to beginning the application process. If funding is granted, increased administrative support may be needed to keep up with additional required record-keeping and reporting.
- Matching funds: Many funding programs will require that the district provide matching funds from its own budget or from other sources.

GENERAL TIPS

- Develop a plan. (See “Section 3. The Plan,” below.)
- Start early.
- Research the grant or loan program carefully to be sure the district is eligible and that the funding program is a good fit for what you want to achieve. (See “Section 4. Before the Application,” below.)
- Note application deadlines and allow plenty of time to complete the application. (See “Before the Submission,” below.)
- Be realistic in designing the project or program. It should be clearly do-able with the offered funding.
- Apply early; you may have a chance to fix or change your application if needed before the application deadline.
- Include a cover letter with your application.
- Answer all questions. Follow the application guidelines exactly.
- Be explicit. Clearly explain the connections between your research objectives, your questions and methods, your results, and your plans for executing the project or program. (See “Section 5. Preparing a Proposal” below.)

- Write clearly and succinctly. Your application will very likely be evaluated only on its contents and you will not be given a chance to explain or clarify further before a decision is made on it.
- If rejected, revise your proposal and apply again.

THE PLAN

Applying for a grant or loan begins with the development of a realistic, detailed plan to show what the dedicated funds will be used for. If the district cannot justify the need for the funds, it is unlikely to receive them. Not only are the information and priorities in the plan useful when writing a grant or loan application, some grant and loan programs require a plan as a condition of funding.

Ideally, the plan will be part of a comprehensive capital or strategic planning process that addresses the following:

- Legislative Commitment: The planned program or project is part of a comprehensive, ongoing planning process supported by the district board, and the board has approved assigning staff to implement the plan.
- Timetable: A proposed timetable for implementation has been developed using a Gantt chart or something similar, taking into account the district's annual budget cycle.
- Roles: The district board has identified a person or group who will develop, monitor, and recommend revisions to the planning process, such as a citizen's group, several department heads, or some mixture of staff and public.
- Criteria: Criteria have been established for prioritizing ideas and proposals in light of local needs and district goals.
- Information: Necessary information has been identified and gathered, such as existing plans and documents or an inventory of the condition and adequacy of all systems, to inform the planning process and help with the development of priorities.
- Financial Analysis: Historic and projected revenues and expenditures and the district's cash flow and long-term financial condition have been analyzed to accurately determine the need for funding.
- Funding Sources: Current and future financing alternatives have been reviewed and evaluated to determine which are most appropriate for specific kinds of improvements or programming.
- Prioritization of Needs: Needs have been evaluated using the criteria developed earlier, and a preliminary project list has been made.

- Selecting Funding Sources: Top priority projects have been matched with identified funding sources, taking into account when the financing will become available. The resulting preliminary plan has been reviewed and approved by the board.
- Public Review: The public has been given one or more opportunities to review and comment on the preliminary plan. The board has considered public input, made revisions as needed, and formally adopted the final capital plan.
- Implementation Period: The cost to implement the plan is reflected in the district's budget. Implementation of the plan begins and is monitored going forward by the district board and assigned staff.

BEFORE THE APPLICATION

After completing the plan, the district can proceed with the application process. The following pointers may help with the application:

- Know the district's needs and priorities. Strategic plans, comprehensive plans, and capital improvement plans can help a district allocate scarce and new funds to the most important needs identified in your community. Involve citizens in setting priorities so they will have a better understanding of the district's revenue needs.
- Learn the process. Competition is tough for most grants and loans. The more you know about the process the more competitive your application will be.
 - Research the criteria for application and approval of funding. Review the application package. Consider how much time and effort will be required to submit the required information, and whether there are steps you can take in advance – such as specific planning or seeking public input – that will make your application more competitive.
 - Attend an application seminar. Ask questions. Contact the program staff. Ask for a one-on-one conference where you discuss your project and get advice on how to apply.
 - If you ask, program staff usually will provide you with copies of successful applications for a similar project or program for you to review. Consider contacting the applicant directly to get advice based on their experience.
- Get help if you need it. Several sources of inexpensive grant-writing help may be available. For example:
 - The United Way
 - Councils of Governments
 - Regional Planning Commissions
 - For programs that promote economic development, the local Economic Development Council
 - For programs to aid low-income persons, the Community Action Council

You also may want to hire a professional consultant or grant-writer. Check with your professional network for a referral. Be sure to check references and get a written agreement with a fixed price or not-to-exceed amount.

PREPARING A PROPOSAL

A well-prepared application can take two or three months or more to pull together. The key is to make your proposal stand out and the merits of your project seem more important than the other applicants'. The proposal must be neat, complete, and on time.

Structure, attention to specifications, concise persuasive writing, and a realistic, well-supported budget are the critical elements of the proposal. Know what the funding organization wants and give it to them. Make the proposal easy to understand, clean, and appealing, and demonstrate that your project has been well planned and thought out. Tailor proposals to specifications found in the application guidelines.

Writing tips:

- Tell a story. What need are you trying to address or what problem are you trying to solve? How many people are affected by it? How will meeting the need or solving the problem help people? Is the need just local, or is it part of a larger issue? Explain how the problem and solution meet the grant or loan program criteria.
- Be specific and to the point. Go only into as much detail as needed to adequately explain your project and the need for the funds you are requesting.
- Define terms and acronyms. Define all of the jargon that you may use in the application. Remember that those reviewing the application will probably not know very much about your district or the services you provide.
- Be clear. Have someone not involved in the project or even with the district read the application to see if they understand it.
- Be accurate. In addition to potentially causing your application to be disqualified, mistakes or inaccuracies may also communicate to those reviewing the application that if you make mistakes on the application you will probably make mistakes administering the grant.
- Don't use elaborate proposal packaging. Make the proposal clean and neat but don't give the impression that you have wasted valuable resources creating the proposal.
- Submit originals and copies only as directed. Don't send unnecessary copies of the same material to different sources. Tailor each application, letter, and proposal to meet the specific needs of each granting source. Only submit as many copies as required.

Proposal Components. Standard proposal components are: The narrative; budget; appendix of support material; and authorized signature. Sometimes proposal applications require abstracts or summaries, an explanation of budget items, and certifications.

- Narrative: Describe the purpose, goals, measurable objectives, and a compelling, logical reason why the proposal should be supported. Background provides perspective and is often a welcome component. Address the following questions:
 - Who are we (organization, independent producer) and how do we qualify to meet this need?
 - What do we want?
 - What concern will be addressed and why?
 - Who will benefit and how?
 - What specific objectives can be accomplished and how?
 - How will results be measured?
 - How does this funding request relate to the funder's purpose, objectives, and priorities?

- Describe the proposed method and process for accomplishing goals and objectives; description of intended scope of work with expected outcomes; outline of activities; personnel roles and functions with names of key staff and consultants, if possible.

- Describe the method of evaluation to measure results.

- Provide a detailed project timeline, including start and end dates, phases of implementation, schedule of activities, and projected outcomes.

- Provide credentials about the applicant that certify ability to successfully undertake the proposed effort. Typically includes institutional or individual track record and resumes.

- Budget: Cost projections provide a window into how projects will be implemented and managed. Well-planned budgets reflect carefully planned projects. Funders use these factors to assess budgets:
 - Can the job be accomplished with this budget?
 - Are costs reasonable for the market, or too high or low?
 - Is the budget consistent with proposed activities?
 - Is there sufficient budget detail and explanation?

Many funders provide mandatory budget forms that must be submitted with the proposal. Don't forget to list in-kind and matching revenue where appropriate. Be flexible about your budget in case the funder chooses to negotiate costs.

Especially for public facilities projects, preliminary engineering should be done before the application is submitted and cost estimates should be prepared by construction professionals. Include the details of the estimate in an appendix to the application.

- **Supporting Materials:** Policies about the inclusion of supporting materials differ widely among funders. Whether to allow them usually depends upon how the materials contribute to a proposal's evaluation. Find out if supporting materials are desired or even allowed.

When included, supporting materials are often arranged in an appendix. These materials may endorse the project and the applicant, provide certifications, add information about project personnel and consultants, exhibit tables and charts, etc.

- **Authorized Signatures:** Proposals may be rejected for lack of an authorized signature. Be sure to allow the time to acquire a needed signature.

AFTER THE SUBMISSION

Follow up. Once your application has been submitted, follow up once or twice with the funding agency to make sure the application was received, to check on the status, and to find out if anything further is needed from the district. Ideally, you will check back enough to indicate you are still engaged but not so often that the staff begins to find you annoying.

Learn from your mistakes and successes. Establish a track record for professionalism. Competition is heavy for funding and good projects are not always funded, but funders are likely to remember your level of professionalism if you apply again. If you are not funded, ask the program staff for a conference to discuss why the application was not approved. Don't argue. Take notes and apply them next time.

If you are funded, be conscientious when implementing the project. Recipients with good track records when receiving and spending funds have a better chance of being funded in the future.

RESOURCES

A sample of available funders is provided below. Some of the programs relate only to specific types of districts, while others are broader in scope. Before requesting an application, contact the organization administering the program to check eligibility.

A. Private Sources, Generally

The Collins Foundation
1618 SW First Avenue, Suite 505
Portland, Oregon 97201-5708
503-227-7171

www.collinsfoundation.org

Grants in support of arts and culture; child welfare and development; education; environmental protection; health equity; and programs to enhance community welfare.

Funding is granted for programs and projects, capacity-building efforts, collaborations, capital projects, challenge match campaigns, and general operations. Applicants must hold 501c(3) tax-exempt status or be tax-exempt public entities.

Cow Creek Umpqua Indian Foundation

2371 NE Stephens Street

Roseburg, Oregon 97470

541-957-8945

www.cowcreekfoundation.org

Twice per year distributes grants of up to \$15,000 each to qualified non-profit tax-exempt charitable organizations in Douglas, Jackson, Klamath, Coos, Josephine, Lane and Deschutes counties, and to local government bodies within Douglas County (in whose boundaries the Cow Creek Tribal Land is located). The Foundation prefers to make small grants that will make a real impact on the project or for the sponsoring program. It generally does not provide support for major capital projects (aside from emergency maintenance and repairs), capital equipment costs, sports programs, special events, and one-time programming. Primary areas for funding are:

- BASIC NEEDS – Food and Emergency Support
- ABUSE PREVENTION & INTERVENTION for Children and Adults
- EDUCATION – Early childhood education and parent education, Vocational education and job training, After school programs, Positive youth development, and Arts education
- HEALTH & WELLNESS
- COMMUNITY SUPPORT

Jackson Foundation

111 SW 5th Avenue, Suite 600

Portland, Oregon 97204

503-464-4920

www.thejacksonfoundation.com

Grants for Portland Metropolitan area, to be used within Oregon for charitable and educational purposes, and for the advancement of public welfare.

Meyer Memorial Trust

425 NW 10th Avenue, Suite 400

Portland, Oregon 97209

503-228-5512

www.mmt.org

General-purpose grants awarded for a variety of projects including human services, health, education, arts and culture, social benefit and environmental.

Northwest Health Foundation
221 NW Second Avenue, Suite 300
Portland, Oregon 97209
503-220-1955
www.nwhf.org

Grants to advance, support, and promote the health of the people of Oregon and southwest Washington.

Paul G. Allen Foundation
505 5th Avenue South, Suite 900
Seattle, Washington 98104
www.pgafoundations.com

Grants to Oregon and Washington applicants.

B. Public Sources, Generally

Department of Environmental Quality (DEQ)
700 NE Multnomah, Suite 600
Portland, Oregon 97232-4100
503-229-5696

▪ Clean Water State Revolving Fund

<https://www.oregon.gov/deq/wq/cwsrf/pages/default.aspx>

Below-market rate loans for the planning, design and construction of water pollution control activities. Eligible public agencies include tribal nations, cities, counties, sanitary districts, soil and water conservation districts, irrigation districts, various special districts and certain intergovernmental entities. "Public agency" in this program is defined by ORS 468.423. If you are unsure whether your organization qualifies, contact DEQ at 503-229-5622.

▪ Nonpoint Source (NPS) Grant Program

Matching grants for projects to reduce and mitigate the effects of nonpoint source pollutants - such as sediment, pesticides, and nutrients - to waters of the state. The funding source is the United States Environmental Protection Agency (U.S. EPA) Clean Water Act (CWA) section 319 grant (CWA 319 grant) to the State Nonpoint Source program. Grant funds may be used to subcontract with private entities, such as environmental consulting or engineering firms, in order to complete portions of projects that are beyond the capacity of the grantee organization.

Economic Development Administration
915 Second Avenue
Room 1890
Seattle, WA 98174

Grants to provide economically distressed communities and regions with comprehensive and flexible resources to address a wide variety of economic needs. Support creation and retention of jobs and increased private investment, advancing innovation, enhancing the manufacturing capacities of regions, providing workforce development opportunities, and growing ecosystems that attract foreign direct investment. Designed to leverage existing regional assets and support the implementation of economic development strategies that advance new ideas and creative approaches to advance economic prosperity in distressed communities, including those negatively impacted by changes to the coal economy.

Oregon Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, Oregon 97301
503-986-0690

www.oregon.gov/oprd/hcd/shpo/pages/index.aspx

- Historic Preservation Fund. Grants for archaeological and historic preservation projects. These funds may be used for surveys, inventories, and evaluation of historic and prehistoric resources. Grants may be used to nominate multiple property resources to the National Register of Historic Places.
- Local Parks Grant. Grants to Oregon communities for outdoor recreation projects. The grants are funded from voter-approved Lottery money.

Oregon Department of Energy
Small Scale Energy Loan Program (SELP)
550 Capitol Street NE. 1st Floor
Salem, Oregon 97301
800-221-8035

www.oregon.gov/energy/loans/Pages/selphm.aspx

Loans for energy saving measures to promote energy conservation and renewable energy resource development in Oregon. The program offers competitive fixed interest rate loans for projects that save energy, produce energy from renewable resources, use recycled materials to create products, and use alternative fuels.

Oregon Economic & Community Development Department
775 Summer Street NE, Suite 200
Salem, Oregon 97310-1280
503- 986-0123

www.oregon4biz.com

Grants and loans focusing on economic development projects. Emphasis on water and sanitary projects that are essential for economic development.

Oregon Forestry Department

2600 State Street
Salem, Oregon 97310
503-945-7200

www.oregon.gov/odf

Small grants for training, equipment, and management needs.

Oregon State Fire Marshal's Office
3565 Trelstad Avenue SE
Salem, Oregon 97317
503-373-1540

www.oregon.gov/osp/programs/Pages/SFM_Programs.aspx

Grants for fire districts for hazmat preparedness and other programs.

Oregon Department of Transportation
Oregon Transportation And Growth Management Program
555 13th Street NE
Salem, Oregon 97301
503-986-4349

www.oregon.gov/lcd/tgm/pages/index.aspx

Grants to help local communities plan for streets and land use in a way that leads to more livable, economically vital, and sustainable communities and that increases opportunities for transit, walking and bicycling.

USDA Rural Development
1220 SW 3rd Avenue, Suite 1801
Portland, OR 97204
(503) 414-3300

www.rd.usda.gov/or

Loans and Grants. Rural Development announces the availability of money for many of its programs in the Federal Register, through a Notice of Funds Availability (NOFA). Visit the website for more information.

US Department Of Transportation
Oregon Division Federal Aid
530 Center Street NE, Suite 420
Salem, Oregon 97201
503-399-5749

<https://www.fhwa.dot.gov/ordiv>

Grants for surface transportation programs for highways, highway safety, and transit.

Water Resources Department
Water Development Loan Program
725 Summer Street NE, Suite A
Salem, Oregon 97301

503-986-0900

www.oregon.gov/owrd/pages/mgmt_wdlp.aspx

Loans for community water supply projects.

C. Water Systems and Watershed Management Services.

The State of Oregon has assembled the following list of funding sources for public water systems and protection of the public water supply, but some of those listed provide assistance for other programs as well. Go to each link or website for specifics on eligibility. Source: www.oregon.gov/deq/wq/programs/Pages/DWP-Funding.aspx

State agencies:

Oregon Health Authority

Business Oregon - Infrastructure Finance Authority

Infrastructure Finance Authority
Safe Drinking Water Revolving Loan Fund
Drinking Water Source Protection Fund
Water/Wastewater Funding Program
Special Public Works Fund
Community Development Block Grant
Port Revolving Loan Fund

Oregon Department of Environmental Quality

Clean Water State Revolving Fund Sponsorship Option, Planning Loans, Nonpoint Source Loans, or Local Community Loans
Supplemental Environmental Projects
Nonpoint Source Implementation 319 Grants

Oregon Water Resources Department

Integrated Water Resources Strategy Grants
Municipal Water Management and Conservation Planning
Water Rights and Watermasters

Oregon Department of Forestry

Community Forest Program
Conservation Stewardship Program
Forest Legacy Program
Forest Stewardship Program
Healthy Forests Reserve Program

Oregon Department of Agriculture

Natural Resources Program
Pesticide Analytical and Response Center
Soil and Water Conservation Districts

Oregon Watershed Enhancement Board
Oregon Sea Grant
Source Water Collaborative (Led by U.S. Environmental Protection Agency)

Federal agencies:

U.S. Environmental Protection Agency

Catalog of Federal Funding Sources for Watershed Protection
Environmental Finance Centers
Cooperative Watershed Management Program

U.S. Department of Agriculture

Farm Service Agency Conservation Programs
Natural Resources Conservation Service
Rural Development Water and Waste Disposal Direct Loans and Grants

U.S. Department of Commerce

Community Development Block Grant Planning Program

Land trusts:

Coalition of Oregon Land Trusts
Land Trust Alliance
The Trust for Public Land
The Nature Conservancy
Locate a land trust in Oregon

Foundations:

The Oregon Community Foundation / Community Grant Program
National Fish and Wildlife Foundation
Access Fund Foundation
The Collins Foundation
Giles W. and Elise G. Mead Foundation
Rose E. Tucker Charitable Trust
Doris Duke Charitable Foundation
Bonneville Environmental Foundation
The Bullitt Foundation
Water Research Foundation - Source Water Protection Cost-Benefit Tool
Weyerhaeuser Foundation
Laird Norton Foundation

Other Resources:

Rural Community Assistance Corporation
Ecotrust

D. Resources for Locating Funding Sources.

Private Foundations

- GuideStar
www.guidestar.org
Online database of more than 850,000 U.S. private nonprofit organizations including foundations.

- The Oregon Foundation DataBook
C&D Publishing
1017 SW Morrison, Suite 500
Portland, Oregon 97205
503-274-8780
www.foundationdatobook.com/pages/or/or1.html

- The Foundation Center
79 Fifth Avenue/16th Street
New York, New York 10003-3076
212-620-4230
www.foundationcenter.org

Government Funding. All federal grant opportunities are now listed at www.grants.gov. The web page permits users to review all new grant announcements since their last visit, search for grants by keyword, or receive electronic notices of new grants as they are posted.

**INVESTMENTS
(Chapter 7)**

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INTRODUCTION

Investing is an important way to use district funds responsibly and maximize resources. Even small districts with limited expertise can take advantage of investment opportunities that have been created specifically for small public entities.

Priorities for investment of public funds are, in this order: (1) safety (no appreciable risk the investment will fail); (2) liquidity (the investment can be easily converted to cash if needed); and (3) rate of return.

Special districts are authorized to invest by Oregon Revised Statutes (ORS) chapter 294, "County and Municipal Financial Administration." That chapter specifically describes the types of investments that are permitted. If an investment is not specifically authorized in the chapter, it is not permitted. In addition to requiring statutory authority, all investments must be approved by the district's board of directors.

In most cases, the district board appoints an investment officer, who is usually a staff member such as the manager or chief financial officer. The board also approves an investment policy. The policy should be in writing; state the statutes that apply; and provide parameters and guidelines for the types of investments that the district will make, including guidelines for diversification, liquidity, and maturity of investments.

RESOURCES AND GUIDANCE

Oregon Short Term Fund Board. The Oregon Short Term Fund Board, which is managed by the Oregon State Treasury, provides investment advice and resources to local governments. [See "The Investment Policy," below.]

Local Government Investment Pool. Established in 1973, the Local Government Investment Pool (LGIP) is an open-ended, no-load diversified portfolio offered to eligible participants, which include -- but are not limited to -- any municipality, political subdivision, or public corporation of Oregon that by law is made the custodian of, or has control of, any public funds. The pool is commingled with state funds in the Oregon Short Term Fund (OSTF).

Any county, municipality, school district, political subdivision, public corporation, or tribal government is eligible to participate in the LGIP. An entity eligible to participate in the pool may have some or all of the following characteristics:

- Participation in the Oregon Public Employees Retirement System (PERS).
- Subject to audit laws under ORS chapter 297.
- Subject to public meeting or records laws.
- Subject to local budget laws under ORS chapter 294.
- Officers and board members subject to government ethics laws under ORS chapter 244.

CASH MANAGEMENT

Investing is part of the district's cash management program. The objective of cash management is to have sufficient liquidity to pay obligations when they are due while minimizing borrowing expenses and maximizing investment revenues from surplus funds.

Surplus funds are monies that temporarily exceed cash flow requirements. Typically, these funds are reserved for capital expenditures, fall tax turnovers (when a large percentage of annual revenue is received in a short period of time and will not be disbursed until later in the year), bond sale proceeds, carryover funds from the previous fiscal year (cash on hand), system development charge (SDC) income, grant proceeds, etc.

Good cash management practices encourage the investment of monies, which in turn increases revenue. Reasonable rates of return on investments can be obtained while maintaining security and liquidity. In some cases, the application of investment earnings can allow districts to reduce tax rates or user charges.

FIDUCIARY RESPONSIBILITIES OF BOARD MEMBERS

Board members can be held personally liable for handling or managing public money in a way that violates the law. Board members should take the following steps to protect themselves from this exposure:

- Understand the board's powers, responsibilities, and legal limitations.
- Understand the principals of investment so that the board can manage the district's investment manager.
- Have a written investment policy and follow it.
- Insist on adequate financial reporting from staff.
- Seek expert advice before taking any action that the board lacks reasonable competence to handle.
- Purchase appropriate liability insurance coverage for board members. Note: If you do not currently have this coverage, SDIS has coverage options available to members.

INVESTMENT METHODS AVAILABLE

Oregon law restricts special districts to specific types of investments. The following investments are permitted pursuant to ORS 294.035, 294.040, and ORS 294.810:

- US Treasury Obligations: U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States for the timely payment of principal and interest.
- US Agency Obligations: Senior debenture obligations of US federal agencies and instrumentalities or U.S. government sponsored enterprises (GSE).
- Oregon Short Term Fund.
- Corporate Indebtedness
- Commercial Paper issued under the authority of section 3(a)2 or 3(a)3 of the Securities Act of 1933.

- Corporate Bonds
- Repurchase Agreements
- Municipal Debt
- Bankers Acceptances
- Qualified Institution Time Deposits/Savings Accounts/Certificates of Deposit

In addition, Oregon statutes permit certain other investments and transactions for special purpose funds in limited circumstances. For example, fixed or variable life insurance or annuity contracts, guaranteed investment contracts, and, for deferred compensation funds, share and savings accounts in credit unions and trusts. Seek advice of legal counsel or other professional familiar with public investments if your district is contemplating these types of investments.

INVESTMENT RESTRICTIONS

According to ORS 294.145, the custodial officer may not:

- Make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction;
- Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest;
- Lend securities to any person or institution, except:
 - On a fully collateralized basis; and
 - When the lending is specifically permitted under an investment policy adopted pursuant to ORS 294.135 (1)(a);
- Pay for any securities purchased by the custodial officer until the officer has received sufficient evidence of title to the securities. Evidence of title must be consistent with modern investment, banking and commercial practices and may include physical possession, book entry and automated recordation of such title. However, the custodial officer may instruct one or more custodial agents or banks to accept or release securities as that custodial officer considers advisable to be held in safekeeping for collection of principal and interest or other income; or
- Deliver securities to the purchaser of the securities upon sale prior to receiving payment in full for the securities. However, the custodial officer may deliver the securities to any custodial agent or bank upon instructions to hold the securities pending receipt by the custodial agent or bank of full payment for the securities.

In addition, as a general rule, according to ORS 294.135 investments may not have a maturity in excess of eighteen months unless the governing body adopts a written investment policy, and that policy is reviewed by the Oregon Short Term Fund Board. The investment policy must include guidelines concerning maximum investment maturity dates and require readoption, not less than annually.

THE INVESTMENT POLICY

Every district that invests public funds should have an adopted investment policy for the board of directors to follow when it considers and approves investments. The policy should be written so it can be easily understood by individuals with or without investment expertise.

The investment policy can:

- Increase investment flexibility.
- Reduce investment risk.
- Improve the board's understanding of the investment process.
- Allow the board to deal with the investment policy in a consistent and clear manner.
- Acquaint the investment officer with the investment preferences of their board, and with rules to avoid misunderstanding and liability.
- Provide written guidance to new or substitute investment officers who may not be familiar with investment or the district's past practices, and who might otherwise make inappropriate investments.

Key elements of an investment policy are as follows:

- Scope: Identifies funds under the authority of the policy.
- Objectives (prioritized):
 - Safety
 - Liquidity
 - Return
- Standards of care:
 - Prudence (Prudent Person Standard)
 - Ethics and conflicts of interest

 - Indemnification for investment decisions
 - Delegation of authority
 - Internal controls
 - o Separation of investment decisions and recordkeeping
- Safekeeping and custody:
 - Delivery vs. payment protocol
 - Safekeeping/custody by third party
- Authorized investments: Specific authorized investment types should be listed.
- Risk parameters:
 - Credit risk:
 - o Ratings requirements
 - o Exposure limitations

- Interest rate risk:
 - o Maximum investment maturity
 - o Maximum average maturity
- Concentration risk:
 - o Diversification requirements
- Liquidity risk:
 - o Minimum liquidity guidance
 - o Maturity buckets
- Transaction counterparties:
 - Minimum requirements to approve broker/dealers
 - Minimum requirements to approve investment advisers
- Policy compliance:
 - Reporting requirements:
 - Required data
 - Periodicity of reporting
 - Recipients of reports
 - Guideline violation resolution
- Policy maintenance:
 - Periodic policy review

The Oregon Short Term Fund Board assists local governments in the development of investment policies concerning funds invested outside of the Oregon Short Term Fund. To aid in this process, the Board has developed a sample investment policy from which local governments may draw from when developing their own policies. A sample investment policy can be found at www.oregon.gov/treasury/public-financial-services/Documents/Public-Financial-Services-Local-Government-Resources/Oregon-Sample-Investment-Policy-for-Local-Governments.pdf.

The Board also reviews and comments on local government investment policies as required under ORS 294.135. For a summary of the review process, see www.oregon.gov/treasury/public-financial-services/Documents/Oregon-Bond-Center/LG-Investment-Policy-Review.pdf.

WRITTEN INVESTMENT PROCEDURES

While the investment policy should succinctly state the entity's investment objectives, outline the risk tolerances of the governing body, and delegate authority to investment personnel, written investment procedures should formalize the process and put the investment policy into

action. They outline the process for making investment decisions, detail the activities of the investment staff, and specify how investment decisions are to be carried out.

Investment procedures should answer the following questions:

- Who is authorized to initiate investment transactions?
- Who is authorized to approve investment transactions?
- Who is authorized to initiate fund transfers or wire transactions?
- Who will make investment bookkeeping and accounting entries?
- Who are the approved broker/dealers and financial institutions for transacting business on a day-to-day basis?
- Who is the safekeeping agent and what are the delivery instructions?

When developing written procedures, it's helpful to think through the entire investment process from beginning to end, and then document the activities that take place. Written procedures should outline or detail how investment transactions will be handled. They should begin with a review of the daily cash position and include a review of maturing investments and incoming payments. They should then detail how investment decisions will be made. How will cash flow needs be determined? What are current and expected interest rates? What other investments are in in the district's portfolio?

To help ensure compliance with the investment policy and adherence to internal controls, the procedures should include the following items:

- Governing statutes, regulations, ordinances, resolutions, and policies.
- Duties of personnel.
- Limitations of employee authority.
- Flowchart of transaction initiation and execution.
- Lists of authorized broker/dealers and financial institutions who may be called for competitive quotes on securities.
- List of relevant bank account numbers, safekeeping, and delivery instructions.
- Descriptions of relevant cycles and functions, including review and approval processes.
- Timelines for report preparation and report distribution lists.
- Methodologies and formulas for allocations, distributions, and other calculations.
- Samples of all forms and reports.
- Descriptions of back-up and disaster recovery procedures.
- Implementation dates and dates of revisions.

Some investment procedure manuals also outline what activities should take place on a monthly, quarterly, periodic, and annual basis. For example, the procedure manual might include information on how broker/dealers and financial institutions are selected, how often those institutions are reviewed for creditworthiness, and who is responsible for this review.

Written procedures should be reviewed and updated annually.

RESOURCES

County and Municipal Financial Administration (ORS 294):

www.oregonlegislature.gov/bills_laws/ors/ors294.html

Local Government Investment Pool: www.oregon.gov/treasury/public-financial-services/oregon-short-term-funds/pages/local-government-resources.aspx

Public Funds Collateralization Program: www.oregon.gov/treasury/public-financial-services/public-depository-information/Pages/default.aspx

SDAO Resource Library/Accounting: www.sdaoresourcelibrary.com

**MEETINGS AND RECORDS
(Chapter 8)**

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OREGON PUBLIC MEETINGS LAW

The purpose of the Oregon Meetings Law is to assure that meetings of public bodies are open to the public, so the public will know of the activities and actions of its public officials. The key requirements of the law are to hold meetings that are open to the public unless an executive session is authorized, to give notice of meetings, and to take minutes. In addition, there are requirements regarding location, voting, and accessibility for disabled persons. All of these requirements are discussed in Oregon Revised Statute 192.610 to 192.690.

What is a Public Meeting?

A meeting is a convening of a quorum of the governing body of a public body for the purpose of deciding or deliberating upon a public issue. Unless the following criteria are met, the meeting is not a public meeting, and the open meetings law does not apply:

- If less than a quorum of a board meets and discusses a public issue, it is not a public meeting.
- If a quorum of the board meets for a reason other than deliberation or decision on a public issue (e.g., a party, a seminar, a reception, etc.) it is not a public meeting.
- If a quorum meets for a reason other than deliberation or decision on a public issue, but then engages in such discussion, the meeting becomes a public meeting and would be unlawful unless proper notice had been given.

An advisory body, subcommittee, task force, or other official group that has authority to make recommendations to a public body on policy or administration is also required to comply with public meetings law.

A staff meeting is not covered under Public Meetings Law because it does not require a quorum, and because staff simply makes recommendations to the board which is the policy making body. If, however, a staff meeting includes enough board members as to constitute a quorum, then it must be open to the public.

Public Meetings Law is not a “public participation law.” The right of the public to attend meetings does not include the right to participate by giving testimony or comment. However, the public must be allowed to give comment on employment of a public officer or the standards to be used in hiring a chief executive officer.

PUBLIC NOTICE

The law requires that public notice be given of the time and place of meetings. This includes regular, special, and emergency meetings and workshops, and also includes meetings of subcommittees and advisory committees established by the governing body.

- Notices must be reasonably calculated to give actual notice to interested persons, including news media that have requested notice.
- The same notice must be given if a meeting is to only include an executive session. Any notice of an executive session must also include the specific statutory provision authorizing the executive session. If a regular, special, or emergency meeting is to be held which will include an executive session, the notice of executive session should be included in the notice along with the statutory authority. (See section on Executive Sessions for statutory authority.)

- Notice must include a list of the principal subjects anticipated to be considered at the meeting. The agenda does not need to go into detail about subjects scheduled for discussion but should be sufficiently descriptive so that interested persons will have an accurate picture of the anticipated agenda topics.
- The law does not require that every proposed item of business be described in the notice, but rather a reasonable effort to inform the public of the nature of the more important issues to be considered. Additional subjects may be considered at the meeting, even though not included in the notice.
- Paid display advertising is not required, and the governing body does not have a duty to be absolutely certain that the notice is published.

Regularly Scheduled Meetings: Press re-leases should be issued to:

- *Wire Service:* Associated Press and United Press International.
- *Local Media Representatives:* If the meeting involves a local matter, then the notice should be sent to local media.
- *Mailing Lists:* Districts maintaining mailing lists of persons or groups for notice of public meetings should send notice to the persons on the list.
- *Interested Persons:* If a district is aware of persons interested in receiving notice of a meeting, these persons should be notified.
- *Notice Boards:* Some smaller communities have a designated area or bulletin board for posting notices. Governing bodies may want to post notices of meetings in such areas.

Special Meetings: Special meetings require at least 24 hours notice. Such notice should include a press release or telephone call to media, particularly media that has requested prior notice. Special meeting notice should also include telephone, letter, or fax notice to other interested parties.

Emergency Meetings: Emergency meetings may be held on less than 24 hours notice. An actual emergency must exist, and the minutes must describe the emergency, which justifies less than 24 hours notice. Notice of an emergency meeting must be “appropriate to the circumstances,” which should at least include a reasonable attempt to contact the media and other known interested persons.

- An actual emergency on one item does not permit consideration of other items at the emergency meeting.
- Work schedule conflicts or inconvenience of board members is not a justification for an emergency meeting.

Notice of Ordinances: If an ordinance is to be considered, ORS 198.540 requires that the meeting agenda be published between 4 and 10 days before the meeting and that it be posted in three places 10 days before the meeting.

MEETING LOCATIONS

The governing body is responsible to assure that there is adequate room for public attendance. Unexpected overflow crowds need not be accommodated, but reasonable efforts should be made to allow unexpected crowds to attend.

- To the extent possible, every public meeting (not including executive sessions) should allow the opportunity to allow participation via telephone, video or other electronic or virtual means. Additionally, to the extent public comment is allowed, the governing body must make effort to allow members of the public to offer that testimony in a virtual format. To the extent written comments are allowed, the governing body should take steps to allow the comments to be considered in a timely manner.
- Meetings must be held within the geographic boundaries of the district, at the district's administrative headquarters, or at any other nearest practical location. Emergency meetings and training sessions are not subject to those alternative requirements.
- Public meetings may be held in private places, such as restaurants or residences, as long as adequate notice of the location is given so that interested persons may attend, and accommodations can be made for public attendance.
- Meetings may not be held where discrimination on the basis of race, creed, color, sex, age, national origin, or disability is practiced.
- Public meetings must be held in places accessible to individuals with mobility and other impairments, and a good faith effort to provide needed interpreters for hearing-impaired persons needs to be made. A hearing-impaired person requesting an interpreter must give the governing body at least 48 hours notice.

PUBLIC ATTENDANCE AND PARTICIPATION

The Public Meetings Law requires that attendance be allowed, but not participation by the public. Public participation or input can be disallowed on all but the following three issues:

- Employment of a public officer.
- Determination of standards to be used in hiring a chief executive officer.
- Determination of standards to be used in evaluating the employment-related performance of a chief executive officer.

Control of Meetings

The presiding officer has the inherent authority to keep order and impose reasonable restrictions necessary for the orderly and efficient conduct of a meeting. Unless the board decides otherwise, the presiding officer may regulate or disallow public input, may limit public input to relevant points, and may establish time limits for such input. Persons who fail to comply with such reasonable regulations or who otherwise disturb the meeting may be asked to leave, and upon failure to do so, may be treated as a trespasser.

- Members of the public cannot be prohibited from unobtrusively recording public meetings.
- Smoking is banned at public meetings at meeting places that are rented, leased, or owned by the district. The presiding officer should make an announcement at the beginning of each meeting to remind participants that smoking is not allowed.

Voting

All official actions by governing bodies must be taken by public vote of the governing body, and the results of such vote, including how each board member voted on each issue, must be covered in the minutes. Secret ballots are prohibited. Failure to record a vote is not grounds to reverse that decision without a showing of intentional manipulation of the voting.

MINUTES AND RECORD KEEPING

Written minutes must be taken of all meetings. Minutes need not be verbatim transcripts, nor are tape recordings required. Minutes, in whatever form, must give a true reflection of matters discussed at the meeting and the views of the participants. Governing bodies must prepare minutes and have them available to the public within a reasonable time after the meeting. Minutes must be made available to the public even though not formally approved by the board.

Any tape recordings or written minutes of public board meetings or executive sessions shall be retained by the district until such time as their disposal is authorized by rule or specific authorization of the State Archivist pursuant to ORS 192.105. It is recommended that minutes be retained forever. Minutes of executive sessions may be kept in the form of a tape recording rather than written minutes, and such minutes are not public records.

Written minutes must include:

- Members present.
- Motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition.
- Results of all votes taken unless the district board has more than 25 members present.
- The substance of any discussion of any matter.
- A reference to any document discussed at the meeting.

EXECUTIVE SESSIONS

District boards may meet in executive (closed) session only under certain, statutorily authorized situations, and there are civil penalties for violation of executive session laws. The following are among the permissible purposes for executive sessions:

- **Employment of Public Officers, Employees, and Agents**
A meeting to discuss the specific hiring of a public officer, employee, or staff member. This provision applies only if the vacancy for the position has been advertised, regular procedures for hiring have been adopted, and, for a public officer, the public has the opportunity to comment on the employment. [ORS 192.660(2)(a)]
- **Discipline of Public Officers and Employees**
A meeting called to discuss the discipline or termination of a public officer, employee, or staff member, or hear complaints or charges brought against that person, unless the person asks for an open hearing. [ORS 192.660(2)(b)]
- **Public Hospital Medical Staff**

Authorized for considering matters pertaining to the function of the medical staff licensed under ORS chapter 441. Meetings of medical peer review committees held under ORS 441.005 are also exempt from Public Meetings Law. [ORS 192.660(2)(c)]

- **Labor Negotiator Consultations**
A meeting for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations. The media may be excluded from the executive session. [ORS 192.660(2)(d)]
- **Real Property Transactions**
A meeting to discuss or negotiate on a property transaction. May not include discussion of a public body's long-term space needs or general policies concerning lease sites. [ORS 192.660(2)(e)]
- **Exempt Public Records**
If any of the records or information considered exempt from Public Records Law is discussed at a meeting, then the district may hold an executive session. [ORS 192.660(2)(f)]
- **Trade Negotiations**
To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations. [ORS 192.660(2)(g)]
- **Legal Counsel**
A meeting may be held in executive session for the purpose of consulting with legal counsel concerning the legal rights and duties of current litigation or litigation likely to be filed. The governing body must bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation. [ORS 192.660(2)(h)]
- **Performance Evaluations**
A meeting to review the performance of a chief executive officer, other officers, employees, and staff members of the district. An executive session may not be held if the person whose performance is being reviewed and evaluated requests an "open hearing." [ORS 192.660(2)(i)]
- **Public Investments**
An executive session may be called to negotiate with private persons or businesses regarding proposed acquisition, exchange, or liquidation of public investments. [ORS 192.660(2)(j)]
- **Health Professional Licensee Investigation**
A meeting to consider information obtained as part of an investigation or licensee or applicant conduct. Confidential information must be protected even when the board convenes in public session for the purposes of deciding whether or not to issue a notice of intent to impose a disciplinary sanction on a licensee or to deny or approve an application for licensure. [ORS 192.660(2)(k)]
- **Labor Negotiations**
Labor negotiations can be held in an open meeting unless both sides of the negotiations request that they be held in executive session. Such executive sessions are not subject to

the notification requirements of ORS 192.640. This subsection allows governing bodies to engage in labor negotiations with employees' representatives. [ORS 192.660(2)(n)].

Executive sessions may be called during regular meetings, special, or emergency meetings, for which proper notice has been given. Also, a meeting may be called which is only an executive session. The presiding officer must first announce the statutory authority for the executive session before going into session.

The media cannot be excluded from an executive session, except for sessions regarding labor negotiations. Media representatives in attendance at an executive session should be instructed not to report or disclose matters discussed at the session; if such instruction is not given, the media may disclose the discussions. The presiding officer may prohibit the media from recording an executive session. The media includes newsgathering representatives (i.e., reporters) of news media that ordinarily reports activities of the public body, or ordinarily report matters of the nature under consideration by the public body.

Even though certain persons can be excluded from executive sessions, it does not restrict the authority of the governing body to invite persons not part of the board to attend executive sessions.

All final decisions must be made outside of the executive session. The public must have a chance to be aware of the final decision. A vote of the district board relating to information discussed in the executive session can satisfy this requirement. However, executive sessions may not be held for the purpose of taking any final action or making any final decision.

ENFORCEMENT

Enforcement of the Public Meetings Law may be by litigation brought by an interested person to force compliance or to determine the applicability of the law to particular meetings. A decision made in a meeting that violates the Public Meeting Law may be ratified at a subsequent meeting that complies with the law, and a recommendation made by a committee in violation of the Public Meetings Law can be ratified by the board in accepting the recommendation at an open meeting. Normally, courts will not void a decision made at an improper public meeting without a finding of intentional conduct. In addition, the Oregon Government Ethics Commission may consider complaints against public officials for violation of executive session laws and may impose civil penalties of up to \$1,000.

OREGON PUBLIC RECORDS LAW

The purpose of Public Records Law is to assure that all records of a public agency, with some exceptions, are available for inspection and copying by the public.

- Every person has a right to inspect any non-exempt public records of a public body in the state. The intent, identity, motivations, or need of the person requesting the records are irrelevant.
- Public Records Law applies to all public bodies but may also apply to private bodies established by public agencies or other groups which are the functional equivalent of a public body.

What is a Public Record?

Public Records Laws apply to all government records, no matter what kind. As defined by the Oregon Statutes, public records are any information that is prepared, owned, used, or retained by a state agency or political subdivision that relates to an activity, transaction or function of a state agency or political subdivision; and that is necessary to satisfy the fiscal, legal, administrative, or historical policies, requirements or needs of the state agency or political subdivision.

Public agencies are required to maintain a public record without regard to the technology or medium used to create or communicate the record. Public records can be in the form of paper, tape, film, photographs, discs, pictures, sounds, symbols, or any other physical medium used to record information. Many public bodies use electronic mail (e-mail) for communications. E-mail is a public record. Even after individual e-mail messages are “deleted” from a computer, the messages generally continue to exist on computer back-up tapes, which are also public records. As with any public record, a public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.

Public Records Laws do not require public bodies to create public records. For example, if a district has information stored in a computer and the public requests that it be provided with a copy of the information in a different form than the district stores the information, the district is not required to manipulate the information to create the requested document. Alternate forms must be provided if the person is asking because of a disability, unless to do so would impose an undue financial or administrative burden on the district.

If an outside body, such as a private contractor, prepares a document for a district that contains information that can be considered public information, the records are considered public and fall within Public Records Laws. However, a record created by a private organization or individual does not become a public record simply because it is reviewed by a public body. For example, sample materials prepared and owned by a private company are not considered public records when they are simply reviewed by the public body and no decisions to use the materials have been made.

OBTAINING PUBLIC RECORDS

Districts must ensure that their records are made accessible to the public. A written public records policy must be made available to the public listing the individual responsible for receiving the request, cost, and how costs are determined.

A public entity must provide, as appropriate:

- A statement that it does not possess, or is not the custodian of, the record.
- Copies of all requested public records to which an exemption does not apply.
- A statement that it is the custodian of at least some of the requested records, an estimate of the time the public body requires before inspection can be made or copies of the records provided, and an estimate of the fees to be paid as a condition of receiving the records.
- A statement that it is the custodian of at least some of the requested records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.

- A statement that it is uncertain whether it possesses the record and that it will search for the record and make an appropriate response as soon as practicable.
- A statement that state or federal law prohibits it from acknowledging whether the record exists, or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction and citing the applicable law.

Timeline for Response

The district must acknowledge receipt within five business days unless the request is fulfilled before then. After acknowledging the request, the district has 15 business days to respond to the request. If the district is unable to meet the 15-day deadline, the district must notify the requestor, in writing of the delay and provide a reasonable estimated date of completion. The timeline for response is suspended if the district has provided a fee estimate and are waiting to receive payment, or the district requests additional information to clarify the request. The request for clarification must be done in good faith and not for the purpose of delay. There are some limited exceptions to the timeline, such as limited staff or other requests, but they are very narrowly construed, and districts should consult with SDAO or their own legal counsel in advance of relying on the exemptions.

Copying

If the records can be copied, then it is the responsibility of the district to furnish a copy of the records to the requester. Private individuals also have the right to make their own copies, using their own equipment, or inspect copies of the records. The district has the right to protect the records if it feels that the method used to copy the records will cause them damage.

Records must be available during usual business hours to persons wishing to either review or copy the records. The requester of the records is obligated to come to the district to get the records. The district need not deliver any records.

Fees

Districts are allowed to charge a fee for copying or locating records. The fee must be reasonable and reflect the actual cost of making the records available. Fees must be limited to no more than \$25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants the public body to proceed. Services that are permissible to charge a fee for include:

- The time spent by staff in locating the requested records.
- Reviewing records in order to delete exempt material.
- Supervising a person's inspection of original documents in order to protect the records.
- Copying records.
- Certifying documents as true copies.
- Sending records by special methods, such as express mail.

Fees should be consistent and included in the official policies of the district. A per-page charge is recommended that includes the expenses involved with handling and providing access to the records.

The requestor of the records does have the right to petition for a waiver of the fee if the records are of "public interest." If the records simply relate to a personal matter, such as seeking information relating to defense in a criminal matter, then the request for a waiver can be denied.

PUBLIC RECORDS EXEMPT FROM DISCLOSURE

If a district denies a request for a public record, it has the burden to prove that the record is exempt from disclosure. If the record is exempt from disclosure, the district is not required to provide the record. In many instances, the district has the authority to voluntarily provide records, even if they are exempt from disclosure. If a district does voluntarily provide an exempt record to an individual, it does not give up the right to deny access of the record to another individual in the future.

The district records officer should use the following steps when deciding whether to honor a request for the district's records:

- Is there any good reason not to disclose the records?
- If the answer is yes, is the record exempt from disclosure?
- If there is any question as to whether the record is exempt, and the district does not wish to release the record, then legal counsel should be consulted.

An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal tele-phone number remains available for public inspection.

Documents that are exempt from disclosure unless "the public interest requires disclosure in the particular instance," include the following:

- **Public Records Pertaining to Litigation**
Litigation records in which the district is part of the complaint or which the district believes that it is likely to become part of the complaint. This exemption does not apply to litigation which has been concluded. [ORS 192.501(1)]
- **Trade Secrets**
The information must not be patented, it must only be known to a limited number of persons, it must have the potential of deriving economic value, and it must give its users the chance to obtain a business advantage over competitors not having the information. [ORS 192.501(2)]
- **Criminal Investigatory Material**
Information compiled in a criminal investigation that if divulged may deprive a person of a fair trial, constitute an invasion of privacy, disclose the identity of a confidential source, disclose investigation techniques, or endanger the safety of law enforcement officers. [ORS 192.501(3)]

- **Tests and Examination Material**
Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. [ORS 192.501(4)]
- **Business Records Required to be Submitted**
Records which will identify a particular business and its production levels. [ORS 192.501(5)]
- **Real Estate Appraisal Information**
Information relating to the appraisal of real estate prior to its acquisition. [ORS 192.501(6)]
- **Employee Representation Cards**
The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections. [ORS 192.501(7)]
- **Civil Rights Investigation Material**
Information relating to complaints of discrimination in housing, places of public accommodation, or private vocational, professional or trade schools. However, the actual complaint is not exempt. [ORS 192.501(8)]
- **Unfair Labor Practices Complaints**
Information which relates to unfair labor practice investigations and complaints before the Employment Relations Board. The complaint itself would not be exempt from disclosure. [ORS 192.501(9)]
- **Debt Collection Agency Investigation Records**
Records, reports, and other information received or compiled by the Director of Consumer and Business Services concerning debt collection. [ORS 192.501(10)]
- **Archaeological Site Information**
Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. [ORS 192.501(11)]
- **Personnel Discipline Actions**
A personnel discipline action, or materials or documents supporting that action, if a sanction was imposed. This exemption does not apply when an employee of a public body resigns during an employer investigation or in lieu of disciplinary action. [ORS 192.501(12)]
- **Information About Threatened or Endangered Species**
Information regarding the habitat, location, or population of any threatened or endangered species, if the requestor of the records will use the information to further endanger the species. [ORS 192.501(13)]
- **Faculty Research**
Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented. [ORS 192.501(14)]
- **Computer Programs for the Use of Public Bodies**
Computer programs developed or purchased by or for a public body for its own use, not including the original data or the mathematical formulas used to manipulate the data. [ORS 192.501(15)]
- **Agricultural Producer Indebtedness Mediation Data**

Data and information provided by participants to mediation for agricultural producers in danger of foreclosure. [ORS 192.501(16)]

- **Unsafe Workplace Investigation Materials**
Investigatory information relating to complaints of violations of laws governing workplace safety. It does not cover the complaint itself but provides for confidentiality of the identity of the employee making the complaint. [ORS 192.501(17)]
- **Public Safety Plans**
Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure would endanger the life or physical safety of a citizen or law enforcement officer or jeopardize the law enforcement activity involved. [ORS 192.501(18)]
- **Telecommunications Utility Audits**
An external or internal audit or audit report pertaining to a telecommunications carrier. [ORS 192.501(19)]
- **Residence Address of Elector**
Requires the county clerk to keep the elector's residence address exempt from disclosure if requested by an elector who demonstrates to the satisfaction of the county clerk that the elector's personal safety or that of any family member residing with the elector is in danger. [ORS 192.501(20)]
- **Housing Authority and Urban Renewal Agency Records**
Certain records, communications and information submitted to a housing authority as defined in ORS 456.005 by applicants for and recipients of loans, grants, and tax credits. [ORS 192.501(21)]
- **Interference with Property or Service**
Records or information that if disclosed would allow a person to gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body. [ORS 192.501 (22)]
- **Security Measures**
Records or information that would reveal the security measures taken or recommended to be taken to protect [ORS 192.501 (23)]:
 - An individual
 - Buildings or other property used or owned by a public body
 - Information processing, communication, or telecommunication systems, including the information contained therein, that are used or operated by a public body

- **OHSU Donation Records**
Writings prepared by or under the direction of officials of Oregon Health Sciences University about a person and the person's potential interest in donating money or property to the university or the person's actual donation unless disclosure is authorized by the person. [ORS 192.501(24)]
- **Financial Transfer Records**
Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number. [ORS 192.501(27)]
- **Attorney-Client Privilege Records**
A public body that denies a request for a record that would otherwise be exempt under attorney-client privilege must provide a “condensed version” of the factual information in the record without waiving the privilege. A person whose request is denied may petition a court for review to make sure the condensed version is accurate.
- **Work Papers and Documents for Audits**
Work papers and related documents are exempt from disclosure until the final audit is released. Copies of the draft audit sent to an audited entity are disclosable. Affected audits are those that are conducted under nationally recognized auditing standards.
- **Email Addresses in a Public Body’s Possession**
This exemption does not apply to email addresses assigned by a public body to a public employee for use by that employee in the course of his or her public employment.

The following public records are always exempt from disclosure (ORS 192.502):

- **Internal Advisory Communications** Communication within a public body or between public bodies if it is advisory or preliminary to any final action. If the communication covers purely factual materials, or if the public interest in frank communication outweighs the public interest of disclosure then the records are exempt from disclosure.
- **Personal Privacy Exemption**
Information, which would constitute an unreasonable invasion of privacy if publicly disclosed. Unless the public interest by clear and convincing evidence requires disclosure in the particular instance.
- **Public Employee Addresses, Social Security Number, Birth Dates and Telephone Numbers**
Addresses, social security numbers, dates of birth and telephone numbers contained in personnel records maintained by employer or recipient of volunteer services. Does not apply to employees or volunteers if they are elected officials or that public interest requires disclosure in a particular instance.
- **Confidential Submissions**
In order for records submitted by a citizen of the district in confidence to be exempt, they must meet the following tests:

- The informant must have submitted the information on the condition that it would be kept confidential.
 - The informant must not have been required by law to provide the information.
 - The information itself must be of a nature that reasonably should be kept confidential.
 - The public body must show that it has obliged itself in *good faith* not to disclose the information.
 - Disclosure of the information must cause harm to the public interest.
- **Corrections and Parole Board Records**
Information or records from the Department of Corrections which if made available to the public would interfere with the rehabilitation of a person in custody.
 - **Lending Institution Records**
Records, reports and other information received or compiled by the Department of Consumer and Business Services to the extent that interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.
 - **Presentence and Probation Reports** Presentence and probation reports filed with court order.
 - **Federal Law Exemption**
Any public records or information the disclosure of which is prohibited by federal law. For example, public assistance and unemployment insurance records, and certain student records.
 - **Other Oregon Statutes Establishing Specific Exemptions**
Any public records or information the disclosure of which is prohibited, restricted, or otherwise made confidential or privileged under Oregon law.
 - **Transferred Records**
Public records or information furnished by a public body to any other public officer or public body in connection with performance of the duties of the recipient.
 - **Security Programs for Transportation of Radioactive Materials**
Records of the Energy Facility Sitting Council concerning the review or approval of security programs pursuant to sitting of nuclear power plants.
 - **PERS Nonfinancial Information about Members**
Employee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees Retirement System.
 - **Records Relating to Treasury or OIC Publicly Traded Investments**
Confidential records provided to the State Treasurer or Oregon Investment Council by private businesses or individuals related to proposed public investments.
 - **Public Employee Retirement Fund and Industrial Accident Fund Monthly Reports**

The monthly reports prepared and submitted concerning the Public Employee Retirement Fund and Industrial Accident Fund may be exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

- **Abandoned Property Reports**
Reports of abandoned property filed by the property holder.
- **Economic Development Information**
Information submitted to the Oregon Economic Development Department, including personal financial statements, financial statements of applicants, customer lists, information of an applicant pertaining to litigation, production and sales data, or marketing strategy information.
- **Transient Lodging Tax Records**
Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid.
- **Information for Obtaining Court Appointed Counsel**
All information supplied by a person for the purpose of requesting court-appointed counsel.
- **Workers' Compensation Claim Records**
Workers' compensation claims records that can be used to discriminate unlawfully against persons previously injured on the job who has filed a workers' compensation claim.
- **OHSU Sensitive Business Records**
Records of financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.
- **OHSU Candidates for University President**
Records of the Oregon Health Sciences University regarding candidates for the position of university president.
- **Library Records**
The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.
- **Housing and Community Services Department Records**
Records, communications and information submitted by applicants for and recipients of loans, grants and tax credits:
 - Personal and corporate financial statements and information, including tax returns
 - Credit reports
 - Project appraisals
 - Market studies and analyses
 - Articles of incorporation, partnership agreements and operating agreements
 - Commitment letters
 - Project pro forma statements
 - Project cost certifications and cost data
 - Audits
 - Project tenant correspondence requested to be confidential
 - Tenant files relating to certification.

- Housing assistance payment requests
- **Forestland Geographic Information System**
Raster Geographical Information System (GIS) digital databases provided voluntarily and in confidence to the State Forestry Department.
- **Electricity Sale or Purchase of Electric Power**
Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers.
- **Klamath Cogeneration Project**
Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project.
- **Public Utility Customer Information**
Personally identifiable information about customers of a municipal electric utility or a people's utility district, or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109.
- **Security Programs**
Information about or approval of programs relating to the security of:
 - Generation, storage or conveyance of electricity; gas in liquefied or gaseous form; hazardous substance as defined in ORS 453.005(7)(a), (b) and (d); petroleum products; sewage; or water.
 - Telecommunication systems, including cellular, wireless or radio systems.
 - Data transmission by whatever means provided.
- **Public Safety Officer Addresses, Telephone Numbers and Electronic Mail Addresses**
The home address, home telephone number and electronic mail address if requested by a public safety officer, defined in ORS 181.610 to include "corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and fire service professionals." This exemption does not apply to addresses and telephone numbers that are contained in county real property or lien records.
- **Separation of Exempt and Nonexempt Material**

If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

Other Public Record Exemption Rules

- After 25 years, exempt records lose their exemption and may be available to the public.
- Records may be exempt for up to 75 years if they contain information about the physical or mental health, or psychiatric care or treatment of a living individual.
- Records less than 75 years old which are sealed by statute or by a court order are exempt unless a court orders disclosure.
- Records of a person who is or has been in custody or under the supervision of a state agency, court or local government are exempt from disclosure for 25 years following termination of the custody to the extent that disclosure would interfere with rehabilitation of the person. The public interest in confidentiality may outweigh the exemption.
- Student records required by state or federal law to exempt from disclosure.

ENFORCEMENT

A person denied the right to inspect or obtain a copy of a public record may petition the District Attorney (DA) for release of the record. The district may seek the advice of the DA prior to denial of an inspection request. Upon receipt of the petition for review to the DA, the DA will ask the district for a copy of the record for review. The district should provide a copy to the DA with an explanation justifying denial of disclosure. The DA has seven days to deny or grant the petition, and failure of the DA to decide within the seven-day period constitutes denial of disclosure. If the DA denies disclosure, the petition may seek judicial review. If the DA orders disclosure, against the denial by the district, the district may give notice and file suit in Circuit Court for a judicial determination.

Districts should seek the advice of legal counsel if they receive a request, which is difficult to arrange, or if they feel the request should be denied on the basis that the records are exempt from the Public Records Laws. The State Attorney General has concluded that, "when a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with the deadline the requester seeks to impose."

RESOURCES

Archives Division – Records Retention Requirements:

secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=589

Attorney General's Public Meetings and Records Manual:

www.doj.state.or.us/public_records/pages/index.aspx

Public Meetings and Records (ORS 192):

https://www.oregonlegislature.gov/bills_laws/ors/ors192.html

SDAO Resource Library/Meetings and Records: www.sdaoresourcelibrary.com



S|D|A|O

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