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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 property authorized.
- Transaction dollar amounts are properly calculated and accurately recorded.
- Transactions are property 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)
https://www.oregonlegislature.gov/bills_laws/ors/ors297.html

Borrowing and Bonds of Local Governments (ORS 287)
https://www.oregonlegislature.gov/bills_laws/ors/ors287.html

Depositories of Public Funds and Securities (ORS 295)
https://www.oregonlegislature.gov/bills_laws/ors/ors295.html

Minimum Standards of Audits (OAR 162-001-000 through 162-020-0330)
https://secure.sos.state.or.us/oard/displayChapterRules.action

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

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

SDAO Reference Library/Accounting: http://www.sdao.com/S4/MemberHome.aspx

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

Secretary of State Audits Division: http://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 Statues 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 that 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: http://www.oregon.gov/DOR/

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

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

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

Oregon Local Budget Law (ORS 294):
http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors294.html

SDAO Reference Library/Budget: http://www.sdao.com/S4/MemberHome.aspx

CONTRACTING
(Chapter 3)

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INTRODUCTION

Like all public agencies, Oregon special districts are required to comply with public contracting laws when purchasing goods and services, and for construction projects.

Public entities need to adopt rules that are consistent with Oregon's public contracting laws. They may adopt all or part of the Model Public Contracting Rules as the contracting rules for that entity. They also may expressly decline to adopt the Model Rules, and adopt their own rules. The Model Rules will apply, by default, to any public entity that has adopted no contracting rules. Whether a contracting agency adopts the Model Rules affirmatively or adopts its own rules, the agency must review any changes to statute or the Model Rules to determine if the agency's rules likewise need to be updated or modified.

The public contracting statutes require all public bodies to procure public contracts through a competitive bid process, with some exceptions and permitted exemptions. Local governments are given much flexibility with their contracting processes, particularly in the procurement of goods and services. However, in most cases this latitude is not available unless the governing body expressly adopts rules that grant and define the district's authority in certain areas. For example, local contracting agencies need to adopt rules that address the following:

- Contracts or classes of contracts that are exempt from competitive bidding;
- Dollar limits for contracts subject to "informal bidding requirements," rather than formal ones;
- Definition of "personal services" and procedures for granting personal services contracts;
- Use of sole-source procurements;
- Delegation of authority for decision-making in the award of public contracts;
- Procedures for pre-qualifying bidders; and
- Procedures for disposal of surplus property.

This chapter is designed to provide a basic understanding of the laws as they pertain to special districts, and instructions for implementing them. This chapter is intended as an informational tool only. It should not be used as a substitute for assistance of qualified legal counsel.

APPLICABLE LAWS AND RULES

Chapter 279 governs public contracting, and is divided into three subparts, as follows:

- ORS 279A (General Provisions – applies to all public contracts)

- ORS 279B (Public Procurement – applies to the purchase of goods and routine services ("procurements") and, for state agencies, to the purchase of personal services)

- 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 services with contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying and related services.)

For any public contract, a special district need look either to ORS 279A and 279B (for procurements), or ORS 279A and 279C (for public improvements). Similarly, the Model Public Contracting Rules are found in Oregon Administrative Rules Chapter 137, as follows:

- Division 46 – General Provisions (apply to all public contracts)

- Division 47 – Public Procurements for Goods and Services (implements ORS 279B)

- Division 48 – Consultant Selection: Architectural, Engineering and Land Surveying and Related Services Contracts (may adopt own rules of procedure as provided in ORS 279A.065(a).)

- Division 49 – General Provisions Related to Public Contracts for Construction Services (implements ORS 279C)

A copy of the Model Rules, and useful commentary, is available by contacting:

Model Public Contract Rules Manual
Department of Justice
Administrative Services
550 Justice Building
Salem, Oregon 97310
Phone: 503.378.4400
https://www.doj.state.or.us/wp-content/uploads/2017/06/publications_orderform.pdf

CONTRACTING AUTHORITY: LOCAL CONTRACT REVIEW BOARD
ORS 279A.060 provides that if the governing body of a local contracting agency takes no action to provide otherwise, the governing body is the LCRB. The roles of the LCRB are to:

- Adopt certain rules for public contracting;
- Establish rules for carrying out its public contracting duties;
- Grant exemptions from competitive bidding;
- Hold hearings on exemptions, when necessary; and
- Hear and decide appeals of disqualified bidders.

Delegation of Authority
Some portions of ORS Chapter 279 require certain authority to be exercised by the LCRB. This authority cannot be delegated because it is expressly granted in the Code. However, some portions of ORS Chapter 279 assign responsibility to the "contracting agency," which means the district's Board of Directors unless the Board delegates this authority to someone else. Through ORS 279A.075, certain administrative contracting responsibilities may be delegated to others, usually a district manager or purchasing officer. Therefore, every contracting agency should consider adopting a rule to this effect.

Finally, it is important to note that only the district's Board of Directors may contractually bind the district, though it may be able to delegate the authority to approve such contracts. Therefore, the district should adopt a policy that establishes the types of contracts, or value of contracts, that the designee is authorized to approve, and which contracts must go to the Board of Directors for approval.

THE BIDDING REQUIREMENTS: EXCEPTIONS AND EXEMPTIONS
Unless an exemption is declared, most contracts for purchases other than personal services contracts are awarded through a competitive, sealed bidding process, or competitive sealed proposal process and contracts are awarded to the lowest responsive, responsible bidder.

- Responsive Bid
  A bid or proposal that substantially complies with the invitation to bid or request for proposals and the requirements of the law.

- Lowest Responsible Bidder
  The lowest bidder who (A) has substantially complied with all prescribed public contracting procedures and requirements; (B) Has met the standards set forth in ORS 279B.110 or 279C.375; (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and (D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

Exceptions Provided by Statute
The following types of contracts relevant to special districts are not required to be competitively bid, according to ORS 279A.025:

- Contracts for the purchase and sale of real estate. (Instead, see ORS Chapters 273 and 276);

- Personal services contracts. (Rules are required.) A contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

- Contracts made with other contracting agencies or the federal government.

- Agreements authorized under ORS 190 or by a statute or ordinance or other authority for establishing agreements between or among governmental bodies.

- Grants.

  An agreement under which a contracting agency receives moneys, property or other assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency in which no substantial involvement by the grantor is anticipated.

  An agreement under which a contracting agency provides moneys, property or other assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient in which no substantial involvement by the contracting agency is anticipated.

  Grant **does not include** a public contract for a public improvement, for public works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair and maintenance necessary to preserve a public improvement, when under the public contract a contracting agency pays moneys that the contracting agency received under a grant.

- Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.

- Service contracts for health insurance entered into by the State Department of Health and Human Services.

- Contracts for professional or expert witnesses in litigation.

- Sole-source expenditures when rates are set by law or ordinance for purposes of source selection.

- Procurements from an Oregon Corrections Enterprises program.

- Energy saving performance contracts.

  A public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantees energy savings or performance.

- Contracts entered into pursuant to the incurring of debt or investment of funds by the public body.

- Contracts for employee benefit plans.

- Emergency Contracts. ORS 279B.080 allows the "head of a contracting agency" (i.e., the Board) or someone delegated this authority in writing, to make or authorize others to make emergency procurements of goods or services in an emergency. The emergency and the methods used to procure the goods or services must be documented. An emergency is defined as circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

  For an emergency procurement of construction services that are not public improvements, the contracting agency shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the contracting agency shall set a solicitation time period that the contracting agency determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

  Note: Although no rules are specifically required to declare the emergency or to act under emergency conditions, if the authority to act in an emergency is to be delegated by the Board, this must be done in writing. Thus, it is advisable to have the district's public contracting rules specify who is authorized to enter into emergency contracts, and under what conditions.

- Contracts between fire departments for fire protection equipment, if the following requirements are met:

  - The recipient makes a written request for the equipment;
  - The equipment is surplus to or unusable by the transferor;
  - The total fair market value of the equipment received does not exceed $50,000 per calendar year;
  - The transferor holds a public hearing, with 14 days' written notice published in a newspaper of general statewide circulation; and
  - The transferor makes written findings that the contract is in the public interest.

Note: These requirements apply even if the recipient fire department takes the equipment at no cost.

Exceptions for Contracts of Certain Dollar Amounts

These exemptions are embodied in ORS 279B.065 and ORS 279B.070, with some modifications. They do not apply to public improvements, which are addressed in ORS Chapter 279C.

Small Procurement
A "small procurement" is defined in ORS 279B.065 as "any procurement of goods or services not exceeding $10,000." Such contracts may be awarded in any manner provided for in the contracting agency's rules as being "practical or convenient" by the contracting agency, including direct selection. The rules also may provide for the degree to which the value of such a contract may be amended and still fall within this exception.

Intermediate Procurement
An "intermediate procurement" is defined in ORS 279B.070 as "any procurement of goods or services exceeding $10,000 but not exceeding $150,000." When seeking to award such a contract, the agency must obtain at least three informally solicited quotes from prospective contractors. The contract must be awarded to the offer whose quote or proposal will "best serve the interests of the contracting agency, taking into account price as well as other considerations." Rules adopted by the contracting agency may provide for the degree to which the value of the contract may be amended to still fall within the exception.

For procurements in excess of $150,000, formal bidding processes (i.e., advertisement, ITB/RFP, competitive process) must be followed, unless an exemption is taken by the procedures described below.

A contracting agency can amend an intermediate procurement beyond the $150,000 limit in accordance with OAR 137-047-0800 provided the cumulative amendments do not increase the total contract price greater than twenty-five percent (25%).

Exemptions by the Local Contract Review Board ("Special Procurement")
There are two types of special procurements described in ORS 279B.085: A "class special procurement," which includes an entire class of contracts, and a "contract-specific special procurement," which includes only one contract.

Class special procurements are for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

Contract-specific special procurements are for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods and services on a one-time basis or for a single project.

To use this process, a written request for the special procurement must be made to the LCRB, which describes the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement. A special procurement qualifies if it will:

- Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and

- Result in substantial cost savings to the contracting agency or to the public; or

- Otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the requirements that are applicable under ORS 279B.055 or 279B.060, 279B.065 or 279B.070 or under any other adopted rules.

A contracting agency shall give public notice of the LCRB's approval of a Special Procurement in accordance with ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the goods or services or class of goods or services to be acquired through the special procurement. The contracting agency shall give such public notice of the approval of a special procurement at least seven (7) days before award of the contract.

In addition, once the special procurement is authorized by the LCRB, the contract may be awarded to the offer or "whose offer the contracting agency determines in writing to be the most advantageous to the contracting agency." If the approval is for a class special procurement, contracts within that class may be awarded, in perpetuity, without further approvals or bidding.

Note: These provisions do not apply to public improvements, which are discussed in ORS Chapter 279C.

SOLE-SOURCE PROCUREMENTS

ORS 279B.075 permits a contracting agency to award a contract for goods or services without competition when the LCRB, or a person designated in writing by the LCRB, determines in writing, according to adopted rules, that the goods or services, or class of goods or services, are available from only one source.

The determination of a sole source must be based on written findings that *may* include:

- That the efficient utilization of existing goods requires the acquisition of compatible goods or services;

- That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

- That the goods or services are for use in a pilot or experimental project; *or*

- Other findings that support the conclusion that the goods or services are available from only one source.

Note: the statute *requires* findings to be adopted, but provides a list of justifications that *may* be included in the findings. It is not clear whether this means that the LCRB only may base its decision on the options listed, or whether it may base its decision on some reason not on the list. Until this ambiguity is addressed, it is recommended that the rules adopted by the public

entity for sole-source procurements require the findings to, at minimum, include at least one of the criteria listed in the statute.

To the extent reasonably practical, the contracting agency must negotiate with the sole source to obtain advantageous contract terms.

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.

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 and that, as identified by the contracting agency, is located in or draws the business enterprise's workforce from economically distressed areas, as designated by the Oregon Business Development Department.

A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045(3).

CONTRACTS WITH QUALIFIED NON-PROFIT 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 by the public agency, the contracting agency *must* obtain the product or service from the qualified non-profit agency. Such contracts may not be competitively bid.

QUALIFIED PRODUCTS LIST

A contracting agency may develop and maintain a qualified products list when the testing or examination of goods before initiating a procurement is necessary or desirable to best satisfy requirements of the contracting agency.

In developing a qualified products list, a contracting agency must give public notice, in accordance with ORS 279B.055(4), of the opportunity for potential contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential contractors, sellers or suppliers to submit goods for the testing and examination. Any potential contractor,

seller or supplier, even though not solicited, may offer its goods for consideration.

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 that offered the goods for testing or examination, including by using only numerical designations. Furthermore, a contracting agency may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.

The inclusion of goods on a qualified products list is not the same thing as prequalification of prospective contractors, even if they sell or supply the goods on the qualified products list.

PREQUALIFICATION OF BIDDERS

Districts have the option of prequalifying all bidders for a particular contract or type of contract.

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, unless otherwise prescribed by rules adopted by the LCRB.

Within 30 days of receipt of an application for prequalification (or sooner if the applicant requests it sooner, and it is practicable to do so), the contracting agency must notify the prospective bidder whether the bidder meets the standards of responsibility in ORS 279B.110(2); whether the bidder is qualified to compete for the type or nature of the contract or class of contracts; and the period of time the prequalification is in effect. If the contracting agency denies prequalification, it must state which standard(s) of responsibility were not met, or the bidder will be deemed to be prequalified. The notice also must state the applicant's right to a hearing. If the applicant is not prequalified, the applicant may demand a hearing within 3 business days after receipt of the notice that prequalification was denied.

If the contracting agency subsequently determines that the prequalified bidder is not qualified, the agency must issue reasonable notice to the bidder that the bidder is no longer qualified, or that the contracting agency has modified the prequalification, and the notice must state the reasons for the revocation or modification of prequalification. Again, the notice must state the applicant's right to a hearing, and the applicant may demand a hearing within 3 days of receipt of the notice. A revocation or revision does not apply to contracts that have already been advertised.

DEBARMENT OF BIDDERS

After providing the bidder with 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 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. The decision must state the reasons for disqualification and inform the bidder of their right to appeal.

Any person who wishes to appeal the debarment must, within three business days after receipt of the disqualification notice, notify the district of the appeal. Upon receipt of the notice, the district must immediately notify the LCRB, which conducts the appeal hearing.

PREFERENCE FOR OREGON PRODUCTS AND SERVICES

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 or services that have been manufactured or produced in Oregon. 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 – i.e., a contractor who is not located or registered to do business in Oregon—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.

On or before January 1 of each year, the Oregon Department of Administrative Services is required to publish 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.

OAR 137-046-0300 of the Model Public Contracting Rules provides procedures for determining if goods are manufactured in Oregon, determining whether bids are identical, and drawing lots to select the winning bid when bids are identical.

PERSONAL SERVICES CONTRACTS

For non-state agencies (such as special districts), "personal services" are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists, architects and engineers, and land surveyors (procured under ORS 279C.105 or 279C.110). Routine types of services typically based on price, such as janitorial, food service, or maintenance contracts, may also be included in the definition of "personal services."

Note: 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. A district that legally wants to enter into personal services contracts, must adopt rules for doing so, or may not enter into these kinds of contracts. See sample Personal Services Contract policy at end of chapter.

Architects, Engineers, Photogrammetric Mapping, Transportation Planning and Land Surveying Services

Under ORS 279C.105, each contracting agency authorized (by its own rules) to enter into personal services contracts with architects, engineers, photogrammetric mapping, transportation planning and land surveying services, must adopt procedures for screening and selection under ORS 279C.110 and ORS 279C.120. ORS 279C.110(3) states that procedures for the selection of these "consultants" are "within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency's scope, schedule and objectives for a particular project if the estimated cost for service does not exceed $250,000," including providing for the direct appointment (without competition) if the value of the project does not exceed $100,000.

Note: The requirement to establish a dollar limit for direct appointment of a contractor does NOT apply to other types of personal services contracts.) This statute also permits a

contracting agency to establish procedures for breaking a tie, and permits negotiation of such things as scope of services, compensation, and contract conditions. Furthermore, ORS 279C.115 permits direct appointment of such consultants if the contract is a continuation of an existing contract, and other conditions are satisfied.

Chapter 137, Division 48 of the Model Rules deals with selection of these kinds of consultants. It's important to note that, although under ORS 279A.065(4), the Model Rules will apply automatically to a district that has not adopted its own contracting rules, the provisions relating to architects, engineers, photogrammetric mapping, transportation services and land surveying services will *not* automatically apply.

Public improvement projects expected to exceed $900,000, with at least 10 percent of the contract amount coming from state funds are required to use qualification-based selection ("QBS") procedures when selecting architects, engineers, photogrammetric mapping, transportation planning and land surveying services. Essentially, this means that the agency must solicit proposals from such professionals only on the basis of qualifications for the job and may negotiate price only after it has made its qualification-based selection. If the agency and the selected contractor cannot agree on a price for the services, the agency is free to terminate the negotiations and move on to the next qualified candidate. [ORS 279C.110(6).]

Note: QBS is not unique to state contracting. Many projects receiving federal funds may require a QBS process as well. Federal laws and regulations will "trump" state law when the two conflict. Therefore, if a special district is receiving federal funds, it must carefully review the terms of the grant or loan to ensure compliance with this and other requirements.

PURCHASING THROUGH THE STATE OF OREGON

Districts can purchase certain supplies and equipment through the State Department of Administrative Services without going through the bid process. The State 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:

1225 Ferry St. SE
Salem, Oregon 97310
503.378.4642

SALE OF SURPLUS PROPERTY

Under ORS 279A.185, local contracting agencies may dispose of surplus property in accordance with adopted rules. These rules will determine how the contracting agency will dispose of surplus property, including exempting such contracts from competitive bidding if desired.

Note: 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. Thus, it is advisable to adopt rules addressing disposition of surplus property. See sample Surplus Property Disposal policy at the end of this chapter.

COOPERATIVE PROCUREMENTS

A contracting agency may participate in, sponsor, conduct or administer a joint cooperative procurement or interstate cooperative procurement of goods and services, but not public improvements.

Joint Cooperative Procurements

A joint cooperative procurement is a cooperative procurement in which the participating contracting agencies or the cooperative procurement group and the agencies' or groups' contract requirements for price agreements are identified.

A joint cooperative procurement is valid only if:

- The original solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in statutes for procurements of goods and services, special procurements, or public improvement contracts;

- The original solicitation and the original contract or price agreement identifies the participating group or individual agencies, and specifies the estimated contract requirements; and

- No material change is made in the terms, conditions or prices of the contract between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

A joint cooperative procurement may not be a permissive cooperative procurement.

Permissive Cooperative Procurements

A permissive cooperative procurement is a cooperative procurement in which the participating agencies are not identified. In other words, it may be subsequently used by other parties who are not known at the time the contract is entered into.

A contracting agency may establish a contract or price agreement through a permissive cooperative procurement only if:

- The original solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in statutes relating to procurement of goods and services.

- "Substantially equivalent" means that the solicitation and award process: (1) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals; (2) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120 (2); and (3) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage com-petition.

- The administering contracting agency's solicitation and the original contract allow other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;

- The contractor agrees to extend the terms, conditions and prices of the original contract to the purchasing contracting agency; and

- No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

A purchasing contracting agency must provide public notice of intent to establish a contract or price agreement through a permissive cooperative procurement if the estimated amount of the procurement exceeds $250,000. OAR 137-046-0440 provides procedures for determining when the procurement will exceed $250,000, which may be helpful to special districts as well.

The notice of intent must include:

- A description of the procurement;

- An estimated amount of the procurement;

- The name of the administering contracting agency; and

- A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through a permissive cooperative procurement.

The notice must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c), relating to competitive sealed bidding for goods and services.

Unless otherwise specified in the agency's rules, the purchasing contracting agency must give public notice at least seven days before the deadline for submitting comments regarding the intent to establish a contract or price agreement through a permissive cooperative agreement.

If required to provide notice, the purchasing contracting agency must provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively bid, an opportunity to comment. Vendors must submit comments within seven days after the notice of intent is published.

If comments on the permissive cooperative procurement are received, the purchasing contracting agency must make a written determination that establishing a contract or price agreement through a permissive cooperative procurement is in the best interest of the purchasing contracting agency before establishing a contract or price agreement, and must provide a copy of the written determination to any vendor who submitted comments.

Interstate Cooperative Procurements

Interstate cooperative procurement is a permissive cooperative procurement in which the administering contracting agency is authorized to enter into public contracts, and in which one or more of the participating agencies are located outside of Oregon.

A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

- The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified statutes relating to procurement of goods and services;

- The administering contracting agency's solicitation and the original contract allow other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract; and

- The administering contracting agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the purchasing contracting agency.

In addition to these requirements:

- The purchasing contracting agency, or the cooperative procurement group, of which the purchasing contracting agency is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions and prices of the original contract, and the solicitation must be advertised in Oregon; *or*

- The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, must advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

The notice of intent must include:

- A description of the procurement.
- An estimated amount of the procurement.
- The name of the administering contracting agency.
- A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c).

Unless otherwise specified in its adopted rules, the purchasing contracting agency must give public notice at least seven days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

If required to provide such notice of intent, the purchasing contracting agency must provide vendors who would otherwise be prospective bidders or proposers if the procurement were competitively procured under ORS chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement. Vendors must submit comments within seven days after the notice of intent is published.

If the purchasing contracting agency receives comments, the agency must make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of the purchasing contracting agency before it may establish a contract or price agreement through the interstate cooperative procurement. It then must provide a copy of the written determination to any vendor who submitted comments.

For an interstate cooperative procurement, an administering contracting agency may be any governmental body, domestic or foreign, authorized under its laws, rules or regulations to enter into contracts for the procurement of goods and services for use by a governmental body.

PROTESTS AND DISPUTES

A protest regarding the procurement process, the contents of solicitation documents or the award or proposed award of any original contract may only 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.

PUBLIC PROCUREMENTS: ADVERTISING; NOTICE; AWARD OF CONTRACT

The process for advertising a bid or proposal now depends on what is being purchased. Therefore, the following section describes only the processes for advertising for procurement of goods and services. The processes for advertising for public improvements are addressed later in this chapter.

The contracting agency may choose whether to proceed using an invitation to bid (“ITB”) (ORS 279B.055), or a request for proposals (“RFP") (ORS 279B.060). This requirement does not apply to public contracts for small procurements, intermediate procurements, emergency procurements or special procurements.

As a general rule, ITBs are likely to be most useful when the item to be procured is not particularly unique, and price will be paramount in making the award decision. RFPs may be most 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.

Another important factor to consider is that either process may be used to award multiple public contracts for goods or services when specified in the solicitation document. The statute does not elaborate on whether the “multiple contracts” must be for the same goods and services, or even related to each other. However, OAR 137-047-0600(4)(c) and (d) state as follows:

Multiple Awards shall not be made if a single Award will meet the Contracting Agency’s needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any (solicitation) shall not preclude the Contracting Agency from Awarding a single Contract for such (solicitation). If the (solicitation) permits the

Award of multiple Contracts, the Contracting Agency shall specify in the (solicitation) the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services."

Although no rules are specifically required for special districts to use these two types of solicitation, a district would be prudent to adopt the Model Rules relating to these processes, or similar rules of its own, to ensure fair competition in public contracting.

PUBLIC IMPROVEMENT CONTRACTS

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 emergency work, minor alterations, or ordinary repair and maintenance needed to preserve the public improvement.

The definition 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 clearly addresses situations such as whether a public entity may receive a donation of construction services, or whether it must put contracts out to bid when they are being entirely funded by a private source, as in a public-private partnership agreement.

Contracts for construction projects that are not public improvements must be competitively bid like a public procurement of goods and services under ORS 279B (ORS 279C.320). However, other aspects of laws that apply to public improvements – such as payment of prevailing wage – may apply.

As a reminder, ORS 279C applies to public improvements only. The entirety of OAR Chapter 137, Section 49, applies to public contracts for construction services. ORS Chapter 279A applies to all public contracts, therefore, it also applies to public improvement contracts.

Minor Alterations, Ordinary Repair or Maintenance

These types of projects are not included in the definition of "public improvement." They may be awarded according to the processes for obtaining goods and services under ORS 279B.

BOLI Filing

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 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 public agencies awarding public works contracts 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 are available for providing this information (WH-118 and WH-119); they 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

Prevailing Wage

For "public works" of $50,000 or more, the prevailing wage rate must be paid by all contractors and subcontractors. "Public work" is defined substantially similarly to "public improvement." 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.

Prevailing wages on public works is addressed in ORS 279C.800 through 279C.870, and are enforced by the Bureau of Labor and Industries (BOLI).

Compliance with prevailing wage requirements is the responsibility of the contractor or subcontractor. However, public agencies are required to include this requirement in both the solicitation document and the ensuing contract. When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

If a public agency is required to include state and federal prevailing wage rates in the bid specifications, they must also include information showing which prevailing wage rate is higher for workers in each trade or occupation in each locality (ORS 279C.815(2)(a).

Public agencies also are required to notify BOLI – on forms provided by BOLI – within 30 days of awarding a contract subject to prevailing wage. Subcontractor disclosure forms must be included. (ORS 279C.835.)

EXEMPTIONS FROM COMPETITIVE BIDDING

Exemptions from competitive bidding for public improvement contracts include:

- Contracts under $5,000.
- Contracts between $5,000 and $100,000 (or $50,000 for transportation projects) if the process for obtaining competitive quotes for intermediate procurements (see ORS 279B.070) are followed.
- Contracts with qualified non-profit agencies providing employment for the disabled.
- Contracts or a class of public improvement contracts for which an exemption has been adopted after making findings that doing so is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition, and that the awarding of public improvement contracts under the exemption will result in substantial cost savings to the public agency. A public hearing is required for an exemption for a public improvement contract.
    - In making findings for a class exemption for public improvement contracts the contracting agency must clearly identify characteristics of the class, using some combination of project descriptions, locations, time periods, contract values, or other factors that the class has in common. Classes may not be identified solely based on their funding source (such as "all grant-funded projects").
- Certain projects for the Department of Veterans Affairs under ORS 407.135 and 407.145(1).

An exemption of a public improvement contract requires a public hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. (ORS 279C.335(5)(c).

"IN-HOUSE" PROJECTS

It is a common misconception that public entities are required to contract out public improvement contracts. They're not. If a special district has qualified personnel who can complete the improvement, it may use them, 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. To this end, the district must prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost must include a reasonable allowance for the cost, including investment cost, of any equipment used. In this context, "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."

- Districts must keep an accurate account of the costs of performing the work, including all engineering and administration expenses and costs, including investment costs, of any equipment used.

- The above rules do not apply to improvements for the distribution or transmission of electric power.

ADVERTISEMENTS

Advertisements for bids 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.

However, if the contract has an estimated cost in excess of $125,000, the advertisement *must* be published in a trade journal or newspaper of statewide circulation. The LCRB may, by rule, require an advertisement to be published more than once or in one or more additional publications.

At minimum, all advertisements for public bids must contain the following information:

- 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, a date must be specified under 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 project. The date and time must not be set less than five days from the date the advertisement is published and 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 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

A contracting agency preparing solicitation documents for a public improvement contract shall, at a minimum, include:

- 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, the federal prevailing wage rates under the Davis Bacon Act (40 U.S.C. 3141 et. seq.) or both the state and federal prevailing wage rates, no bid will be received or considered unless the bid contains a statement by the bidder that ORS 279C.838 or 279C.840 or USC 3141 et. seq. will be complied with. [prevailing wage 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, if any.

- The method by which the district will provide addenda to the Solicitation Document.

SOLE SOURCE PRODUCTS

According to ORS 279C.345, specifications for a public improvement contract may not expressly or implicitly require any product by brand name or make, nor the product of any particular manufacturer or seller, unless the LCRB has adopted an exemption to permit this. The exemption must be based on findings that:

- It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts;

- The specification of the product would result in substantial cost savings to the contracting agency;

- There is only one manufacturer or seller of the product of the quality required; or

- Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment and supplies.

BID OPENING

All bids submitted to the district must comply with all requirements of the Invitation to Bid, 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.

- Attached to a surety bond, cashier's check, or certified check for bid security unless the contract has been exempted from the requirement. Such security must not exceed 10 percent of the amount bid for the contract.

DISCLOSURE OF SUBCONTRACTORS

Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract of more than $100,000, a "responsive" bidder must disclose its first-tier subcontractors. The disclosure must be provided for each first-tier subcontractor 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.

The contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday, or Thursday and a time between 2 p.m. and 5 p.m. except for public improvement projects for maintenance or construction of highways, bridges or other transportation facilities.

The disclosure of the first-tier sub-contractors must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract.

SUBSTITUTION OF FIRST-TIER SUBCONTRACTOR

A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. Substitutions of first-tier subcontractors are permitted in the following circumstances:

- When the disclosed subcontractor fails or refuses to execute a written contract after having had a reasonable opportunity to do so.
- When the disclosed subcontractor becomes bankrupt or insolvent.
- When the disclosed subcontractor fails or refuses to perform the subcontract.
- When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.
- When the contractor demonstrates to the public contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.
- When the disclosed subcontractor does not hold a license from the Construction Contractors Board, and is required to be licensed by the board.
- When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and

specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

- When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.

- When the substitution is for good cause. The Construction Contractors Board defines “good cause” in OAR 812-002-0325 as follows: “Good cause” includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.

- When the substitution is reasonably based on the contract alternates chosen by the contracting agency.

After bids are opened, the subcontractor disclosures must be made available for public inspection.

NON-RESIDENT BIDDERS

When determining the low bidder, the district must add a percentage increase on the bids of nonresidents equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides. A “resident bidder” means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid and has a business address in this state. 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.

REJECTION OF BIDS

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. However, the negotiation may 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.

AWARDING THE CONTRACT

The general rule in awarding public contracts is that they must be awarded to the *responsible* bidder who submits the lowest *responsive* bid or proposal. An unresponsive bid from a responsible bidder must be rejected. Similarly, a responsive bid must be rejected if the bidder is determined to be not responsible.

"Responsive Bid"

ORS 279B.005(1)(e) defines "responsive bid" or "responsive proposal" as a bid or proposal that substantially complies with the invitation to bid or request for proposals, and all prescribed procurement procedures and requirements.

"Responsible Bidder"

ORS 279B.110 defines responsibility of bidders and proposers. In determining whether a bidder or proposer has met the standards of responsibility, the contracting agency must consider whether a bidder or proposer:

- Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

- Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency must document the bidder's or proposer's record of performance if the contracting agency finds under this paragraph that the bidder or proposer is not responsible.

- Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or proposer's record of integrity may consider, among other things, whether the bidder or proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's performance of a contract or subcontract. The contracting agency must document the bidder's or pro-poser's record of integrity if the contracting agency finds under this paragraph that the bidder or proposer is not responsible.

- Is legally qualified to contract with the contracting agency.

- Has supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency must determine the bidder's or proposer's responsibility based upon available information or may find that the bidder or proposer is not responsible; and

- Was not debarred by the contracting agency under ORS 279B.130. The contracting agency must prepare a written determination of non-responsibility if the bidder or proposer does not meet the standards of responsibility.

After a contracting agency has opened and determined that the contracting agency will award a public improvement contract, the contracting agency shall award the contract to the lowest responsible bidder.

Notice of Intent to Award Contract
At least seven days before awarding a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post electronically or otherwise, a note of the contracting agency's intent to award a contract. This subsection does not apply to a contract to which competitive bidding does not apply under ORS 279C.335(1)(c) or (d). The notice and the manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

In determining the lowest responsible bidder, the contracting agency shall:

- Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

- Determine whether the bidder is responsible. A responsible bidder must demonstrate to the contracting agency that the bidder:

    - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise necessary to meet all contractual requirements.

    - Holds current licenses that businesses or service professionals operating in the state must hold in order to undertake or perform the work specified in the contract.

    - Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents

    - Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

    - Has made the disclosure required under ORS 279C.370.

    - Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the

time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder's record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.

- Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's performance of a contract or a subcontract. The contracting agency must document the bidder's record of integrity if the contracting agency funds under this subparagraph that the bidder is not responsible.

- Is legally qualified to contract with the contracting agency.

- Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency must determine the bidder's responsibility based on available information, or may find that the bidder is not responsible.

- Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection by completing a Responsibility Determination Form (see below).

- Submit the Responsibility Determination Form, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

The Successful Bidder Shall:

- Promptly execute a formal contract; and

- Execute and deliver to the contracting agency a performance bond and a payment bond when required by ORS 279C.380. This requirement is for public improvement contracts that exceed $100,000 or $50,000 for highways, bridges and other transportation contracts.

PERFORMANCE AND PAYMENTS BONDS

Performance Bonds

Performance bonds are for the protection of the contracting agency that awarded the contract and any public agency or agencies for whose benefit the contract was awarded. The contracting agency may also require a performance bond and payment bond on a class of public improvement projects that have been exempted by the LCRB.

The performance bond must be in an amount equal to the full contract price. A contracting agency may waive the requirement of a performance bond and permit the successful bidder to

submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

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.

Payment Bonds
Payment bonds ensure that laborers, subcontractors and suppliers on the project are paid in the event the contractor doesn't pay them what is owed. Requiring a payment bond protects the district by enabling unpaid persons to bring a claim against the bond, rather than pursuing a claim against the district as the owner of the project. The amount of the payment bond must be equal to the full contract price.

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 279A065.

With limited exceptions, competitive proposals are subject to the following requirements of competitive bidding:

- Advertisement under ORS 279C.360.
- Requirements for solicitation documents under ORS 279C.365.
- Disqualification due to a Construction Contractors Board listing as described in ORS 279C.375(3)(a).
- Contract execution and bonding requirements under ORS 279C.375 and 279C.380.
- Determination of responsibility under ORS 279C.375 (3)(b).

- Rejection of bids under ORS 279C.395; and

- Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

However, competitive proposals are not subject to the following requirements of competitive bidding:

- First-tier subcontractor disclosure under ORS 279C.370; and

- Reciprocal preference under ORS 279A.120.

If the award of a public improvement contract advertised by the issuance of an RFP may be made without negotiation, the contracting agency may require proposal security as follows:

- In a form and amount determined to be reasonably necessary or prudent to protect the interests of the contracting agency.

- The contracting agency must retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract and provide any required bonds or insurance.

- The contracting agency must return the proposal security to all proposers upon the execution of the contract, or earlier in the selection process.

A contracting agency may not be required to award a contract advertised by RFP based on price, but 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." Other factors may not be used in the evaluation. For each RFP, the contracting agency must prepare a list of proposals received.

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.

However, a contracting agency may withhold from disclosure to the public any trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. The fact that proposals are opened at a public meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals. If an RFP is canceled after

proposals are received, the contracting agency may return a proposal to the proposer. The contracting agency must keep a list of returned proposals in the file for the solicitation.

As provided in the RFP, a contracting agency may conduct discussions with proposers who submit proposals that the agency has determined to be closely competitive, or to have a reasonable chance of being selected for award. The discussions may be conducted for the purpose of clarification, to ensure full understanding of, and responsiveness to, the solicitation requirements. The contracting agency must accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best and final offers. In conducting discussions, the contracting agency may not disclose information derived from proposals submitted by competing proposers.

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 by rules adopted under ORS 279A.065. When applicable, in any instance in which the contracting agency determines that impasse has been reached in negotiations with a highest ranked proposer, the contracting agency may terminate negotiations with that proposer and commence negotiations with the next highest ranked proposer.

The process for cancellation of RFPs and the rejection of proposals are the same as for ITBs (279C.395).

At least seven 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.

DISQUALIFIED BIDDERS

A contracting agency may disqualify a person from consideration for award of the agency's public improvement contracts and may also petition the Construction Contractor's Board to disqualify a person for reasons listed under ORS 279C.440(2). Under either circumstance, the person must be provided with notice and a reasonable opportunity to be heard.

The contracting agency or the Construction Contractor's Board must issue a written decision to disqualify a person that shall:

- State the reason for the action taken.

- Inform the disqualified person of the appeal right under ORS 279C.445 and 279C.450 if the decision to disqualify was issued by the contracting agency or ORS Chapter 183 if the decision to disqualify was issued by the Construction Contractors Board.

- A copy of the decision must be mailed or otherwise furnished immediately to the disqualified person.

LEGAL REMEDIES

Legal remedies for violations of public contracting laws are provided in the following statutes:

- 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.450 Appeal of prequalification and disqualification 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

APPENDIX A: PUBLIC CONTRACT LAWS ATTACHMENT

Section I. Licensing and Registration.
The Contractor and all Subcontractors who perform construction Work on the Project must be registered with the Construction Contractors Board pursuant to ORS 701.035 to 701.055.

Any landscape Contractor who performs Work on the Project, as described in ORS 671.502(2), must hold a valid landscape Contractor's license issued under ORS 671.510 to 671.710.

Section II. Payment of Prevailing Rates of Wages.
The Contractor and Subcontractors engaged in the Work shall comply with all applicable requirements of ORS 279C.800 to 279C.870. The Contractor and Subcontractor shall pay to each Worker employed by the Contractor or Subcontractor the prevailing wage established by the Commissioner of the Bureau of Labor and Industries for Worker's trade or occupation. The current prevailing rates of wage are incorporated in the Contract Documents. Prevailing wages are not required to be paid to inmates employed through prison work programs. OR Const. Art. I, Section 41(8).

Pursuant to ORS 279C.825, the public agency shall pay a fee to the Bureau of Labor and Industries equal to one-tenth of one percent of the Contract Price, but not less than $250 or more than $7,500. The fee shall be paid at the time the public agency enters into a public works project.

The Contractor is urged to review the applicable statutes prior to commencement of the Work. This requirement to pay the prevailing wage rate will apply to all workers employed on the project by the prime contractor, subcontractors, subcontractors at every tier, and other persons doing or contracting to do the whole or any part of the Work required for the Project. The Contractor shall incorporate this provision in all subcontracts for the Work.

The Contractor and any Subcontractor engaged in the Work shall keep the prevailing wage rates for the Work posted in a conspicuous and accessible place in or about the Work Site. [ORS 279C.840(4)]

The Contractor or the Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with the Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each Worker which the Contractor or the Subcontractor has employed for performance of the Work and further certifying that no Worker employed on the Work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents. A true copy of each certified statement must also be filed with the Commissioner of the Bureau of Labor and Industries. The certified statement must comply with all applicable provisions of ORS 279C.845.

There is no representation on the part of the Owner or the Architect that labor can be obtained at the hourly rates required by this contract. It is the responsibility of the Contractor to inform itself as to local labor conditions and perspective changes or adjustments of wages rates. No increase in the Contract Sum will be allowed or authorized on account of a payment of wage rates in excess of the prevailing wage rates.

Each Subcontract shall include the provisions of this section and wages rates applicable to the Work performed under the Subcontract.

Section III. Contractor Requirements.
Pursuant to ORS 279C.505, the Contractor shall:

- Make payment promptly, as due, to all persons providing to the Contractor labor or material for the Work.

- Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Work.

- Not permit any lien or claim to be filed or prosecuted against the public agency on account of any labor or material furnished.

- Pay to the Department of Revenue all sums withheld from employees' wages pursuant to ORS 316.167.

Section IV. Hours of Work; Overtime Pay.
Pursuant to ORS 279C.520 and 279C.540, unless the Contractor is a party to a valid, existing collective bargaining agreement with a labor organization which provides otherwise, no person shall be employed for the Work for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires and in such cases, except for persons who provide personal services defined in ORS 279A.055, the employee shall be paid at least time and a half pay for:

- All overtime in excess of eight hours a day or 40 hours in any one week when the Work week is five consecutive days, Monday through Friday;

- All overtime in excess of 10 hours a day or 40 hours in any one week when the Work week is four consecutive days, Monday through Friday; and

- All Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Section V. Contractor's Relations with Subcontractors.
Pursuant to ORS 279A.110, the Contractor shall not discriminate against minority- or woman-owned or emerging small business enterprises in the awarding of subcontracts.

Pursuant to ORS 279C.580, the Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner under such contract; and

- An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the public contracting agency, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. A Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the public contracting agency or Contractor when payment was due.

  The interest penalty shall be:

  - For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

  - Computed at the rate specified in ORS 279C.515(2).

The Contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this section in each of its subcontracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor or supplier. [ORS 279C.580(4).]

These clauses are not intended to impair the right of a Contractor or a Subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

- Permit the Contractor or a Subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a Subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a Subcontractor to furnish a performance bond and a payment bond;

- Permit the Contractor or Subcontractor to make a determination that part or all of the Subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

- Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

    - A written notice of any withholding is issued to a subcontractor with a copy to the contracting agency specifying the amount to be withheld and specific causes for the withholding under the terms of the contract, and actions to be taken by the Subcontractor in order to receive payment of the amounts withheld; and

    - A copy of any notice issued by a Contractor pursuant to sub-subparagraph (i) of this subparagraph has been furnished to the public contracting agency.
      [ORS 279C.580(5)(c)]

For purposes of this contract, a "good faith dispute" means a documented dispute concerning:

- Unsatisfactory job progress.
- Defective Work not remedied.
- Third party claims filed or reasonable evidence that claims will be filed.
- Failure to make timely payments for labor, equipment and materials.
- Damage to prime Contractor or Subcontractor.
- Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum. [ORS 279C.580(5)(b)]

Section VI. Payment of Third-Party Claim.

Pursuant to ORS 279C.515(1), the following shall apply to this contract:

- If the Contractor fails, neglects, or refuses to make prompt payment of any Third-Party Claim for Work furnished to the Contractor or a Subcontractor by any person in connection with this Contract when due, the Owner may pay such Third-Party Claim to the person furnishing the Work and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The Owner may make payments by check or warrant naming both the Contractor and the person or entity entitled to payment under ORS 279.314. The payment to a Third-Party Claim in the manner authorized in this subsection will not relieve the Contractor or the Contractor's surety from the Contractor's obligations with respect to any unpaid Third-Party Claims.

- If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district

that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of the interest may not be waived. [ORS 279C.515(2)]

- If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. [ORS 279C.515(4)]

Section VII. Payment for Medical Services.
Pursuant to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person or entity that furnishes medical, surgical, or hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

Payment of a claim in the manner described in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

Section VIII. Workers Compensation.
All employers Working under this contract are subject employers that will comply with ORS 656.017 (Workers Compensation), or employers that are exempt under ORS 656.126. [ORS 279C.530]

Section VIX. Oregon Products.
Pursuant to ORS 279A.120(2)(a), the Contractor shall use products that have been manufactured in Oregon, provided that price, fitness, availability, and quality are otherwise equal.

Section VX. Recycling Requirements.
Pursuant to ORS 279C.510(1), the Contractor shall salvage or recycle construction and demolition debris if feasible and cost-effective.

Pursuant to ORS 279C.510(2), if any lawn or landscape maintenance is required, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

Except as provided in the Specifications, the Contractor shall use recycled materials to the extent required by ORS 279A.125.

Section VXI. Reports to Department of Revenue.
If the Contractor is not domiciled or registered to do business in the State of Oregon, and the Contract Price exceeds $10,000, the Contractor shall submit reports to the Oregon Department of Revenue as required by ORS 279A.120(3).

Section VXII. Drug-Testing Program.
Pursuant to ORS 279C.505(2), it is a condition to this contract that the Contractor shall demonstrate that an employee drug testing program is in place.

Section VXIII. Miscellaneous Provisions.
The Contractor shall not provide or offer to provide, in connection with this contract, any appreciable pecuniary or material benefit to any officer or employee of the Owner in violation of ORS Chapter 244.

The contract may include a provision stating terms of compensation to a contractor when the contract is terminated for reasons considered to be in the public interest.

RESOURCES
Administrative Services Purchasing – Reciprocal Preference Law re Non-resident Bidders:
http://www.oregon.gov/das/Procurement/Pages/Recippref.aspx

Attorney General's Model Public Contracting Rules: OAR Chapter 137, Divisions 46, 47, 48, 49
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_046.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html

Bureau of Labor and Industries Prevailing Wage Information:
http://www.oregon.gov/boli/WHD/PWR/Pages/index.aspx

Construction Contractor's Board Home Page: http://www.oregon.gov/CCB/Pages/index.aspx

Department of Administrative Services Purchasing Home Page:
http://www.oregon.gov/DAS/EGS/ps/Pages/index.aspx

Public Contracting Statute (ORS 279):
https://www.oregonlegislature.gov/bills_laws/ors/ors279A.html
https://www.oregonlegislature.gov/bills_laws/ors/ors279B.html
https://www.oregonlegislature.gov/bills_laws/ors/ors279C.html

SDAO Reference Library/Public Contracting: http://www.sdao.com/S4/MemberHome.aspx

ELECTIONS
(Chapter 4)

TABLE OF CONTENTS

INTRODUCTION
As a board member or manager of a special district, it is necessary to understand the election requirements for special districts. Special districts must hold elections to select board members, ask for a new or increased tax rate, or vote on bond measures.

Laws governing the conduct of local elections are administered by the Secretary of State's Election Division and by each county's elections officer (county clerk). Administrative rules and directives are issued by the Secretary of State to provide uniformity in local elections. County elections officers are responsible for conducting and administering local elections. Please contact your county before proceeding with election preparations.

When any measure is to be voted upon, the district board must notify the county elections officer. The county clerk is responsible for overseeing all further requirements. It is recommended that each person responsible for coordinating elections work closely with the county elections officer to assure that correct procedures are followed.

While the majority of special districts are included under the same election statutes (ORS 255), there are six districts that have different election requirements. These districts are:

- Drainage Districts (ORS 547)
- Emergency Communications Districts (ORS 401.807)
- Irrigation Districts (ORS 545)
- People's Utility Districts (ORS 261)
- Hospital Districts (ORS 441)
- Soil and Water Conservation Districts (ORS 568.210)

Although most election requirements are similar for all local governments, the six districts listed above should consult their enabling statutes for the appropriate election procedures.

The State of Oregon's District Referral Manual
The State of Oregon's Elections Divisions prepare the *County, City and District Referral Manual* and distributes copies to 36 county clerks, who serve as county election officers. Copies are then made available locally. In most counties, the county clerk mails a copy of the manual to each voting district in the county's jurisdiction. Manual provides current election dates and a calendar showing the final filing dates for various types of elections.
http://sos.oregon.gov/elections/Documents/ReferralManual.pdf

The Elections Division also publishes a *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. http://sos.oregon.gov/elections/Documents/campaign-finance.pdf

To obtain copies of these manuals either accesses them via the web or call or write:

Secretary of State's Office
Elections Division
141 State Capitol
Salem, Oregon 97310-0722
(503) 986-1518
http://sos.oregon.gov/voting-elections/Pages/default.aspx

ELECTION DATES FOR TAX PURPOSES
Districts can hold elections 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.

Districts may, in any year, submit a measure to vote at any one or more of the four dates listed above. Districts may also hold an election to request that voters approve permanent tax rate authority at any of the four dates listed above. Elections of governing board members may only be held in May of odd-numbered years (unless a new district is being formed---board members are elected at the time of formation).

An exception to the four election dates stated above is when a ballot measure proposes formation of a new special district with a permanent rate limitation. Measures for special district formations with permanent rate authority must be at a May or November election.

A special election may be held on a date other than one of the above if the district elections authority by resolution finds 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.

FILLING VACANCIES ON THE DISTRICT BOARD
When a vacancy becomes available on a district board between elections, the vacancy shall be filled by appointment of the remaining board members. If a majority of the board is vacant or if a majority cannot agree, the county court shall fill the position.

The person appointed to fill a vacancy by the board or the county court will serve until June 30th following the next regular district election at which governing body members are elected (May in odd numbered years). The successor elected at the next regular election shall serve for the unexpired term.

ELECTION NOTICES
Governing Body Election Notices
When a district board member election is to be held, the elections officer (the county clerk) publishes a notice that includes the following information:

- Date of the election.
- Governing body positions up for vote.
- The last date candidates may file for office.
- The newspaper(s) in which the notice is to be published. The newspaper must be 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, notice may be published on the county's website for a minimum of ten days and/or notice may be given by mail to each district elector.

Bond or Measure Election Notices
Before a bond or measure election, the district must deliver notice 61 days before the election to the county clerk, which asks for:

- The date of the election.
- The ballot title.

Any notice of a bond election must also include:

- The purpose for which the bonds are to be used.
- The amount and term of the bonds.
- The kind of bonds proposed to be issued.

** If the measure is to be held in November, and the district already submitted the same measure at the proceeding September election, then the measure must be filed 47 days before the election.

CANDIDATES FILING FOR DISTRICT OFFICES
Candidates for district offices can either declare their candidacy by submitting a filing fee (with the proper forms), or petition for nomination. Contact your county clerk's office to receive all required filing forms.

A candidate includes any of the following:

- An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual's consent, for nomination or election to a public office.
- An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received, or the expenditure is made, and whether or not the name of the individual is printed on the ballot.
- A public office holder against whom a recall petition has been completed and filed.

Candidate Responsibilities
A candidate may either serve as the candidate's own treasurer or may designate a principal campaign committee and appoint a separate treasurer. The treasurer must be a registered voter in Oregon. Only the candidate or a designated treasurer may sign the Statement of Organization and Contribution and Expenditure reports.

The candidate is responsible for:

- establishing and maintaining a dedicated campaign account in an Oregon financial institution for depositing contributions and making expenditures;

- signing and filing a Statement of Organization;
- signing and filing transactions;
- keeping detailed financial records current to within seven calendar days after the date of receiving a contribution or making an expenditure; and
- preserving records as described in the Secretary of State Archive Divisions Records Retention Schedule.

Liability
Both the candidate and the treasurer are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.

Oregon election law provides for civil penalties. The maximum penalty for each late transaction, except for a change in transaction amount, is 10% of the amount of the transaction. The maximum penalty for a change in transaction amount is 10% of the net change or 10% of the current transaction amount, whichever is less. The maximum penalty for a late Certificate of Limited Contributions and Expenditures is $350.

Candidates Filing by Petition or Declaration
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)
  http://sos.oregon.gov/elections/Documents/SEL190.pdf
- Statement of Organization (SEL 220)
  http://sos.oregon.gov/elections/Documents/SEL220.pdf
- Campaign Account Information (SEL 223)
  http://sos.oregon.gov/elections/Documents/SEL223.pdf

A candidate is not required to establish a campaign account, file a Statement of Organization or file contribution and expenditure reports if all three of the following conditions are met:

- The candidate serves as the candidate's own treasurer.
- The candidate does not have an existing candidate committee.
- The candidate does not expect to receive or spend more than $350 for the entire election. This $350 includes personal funds spent for any campaign-related costs, such as any expense incurred in circulating a nominating petition and paying the Voters' Pamphlet filing fee.

If the candidate has an existing candidate committee, the candidate or treasurer must file an amended Statement of Organization for Candidate Committee (SEL 220) within 10 days of changing any information on the Statement of Organization, but not later than the date of the filing of the prospective petition. The amendment will reflect any changes (designation of office sought, applicable election, etc.).

The Statement of Organization must be filed within 3 business days of receiving a contribution or making an expenditure, but no later than when the completed petition is filed. District candidates must file their Statement of Organization and contribution and expenditure reports with the Secretary of State.

Special District Petition for Nomination (SEL 191)
A "final or perfected" petition must meet the following criteria:

- The petition must be signed by at least 10 percent of the voters or 25 voters (whichever is less) residing in the district.
- The electors signing the petition must include their signatures, printed names, precinct names or numbers (if known) and residence addresses.
- Candidates gathering signatures from more than one county (multi-county districts only) must not have signatures from more than one county on a page. Signatures of electors from more than one county in a multi-county district, must be verified by a county elections official before submission.
- Each signature sheet must be verified on its face by the signed statement of the circulator that the circulator believes each individual is an elector qualified to sign the petition.
- Signatures must be submitted to the county clerk of the county in which the signer is registered for verification purposes.

Deadline to File Completed Petition
The deadline for Primary and General Elections is sooner than the 110th day and no later than 5:00 p.m. on the 70th day before the election.

The deadline for Regular District Elections or First Election Where Members of Newly Formed District Board are formed is no sooner than the 101st day and no later than 5:00 p.m. on the 61st day before the election.

CANDIDATE WITHDRAWAL
To withdraw from candidacy or nomination, a candidate must file a Withdrawal of Candidacy or Nomination (SEL 150). http://sos.oregon.gov/elections/Documents/SEL150.pdf

A nominee for election to a district board must withdraw the nomination no later than 5:00 p.m. on the 70th day before a primary or general election or no later than 5:00 p.m. on the 61st day before a regular district election (or the first election at which members of the district board are elected).

INITIATIVE AND REFERENDUM PETITION PROCESS
The specific requirements for the exercise of initiative and referendum in special districts are as follows:

- File form SEL 803 (Local Initiative and Referendum Prospective Petition) on the 61st day before the election with the county elections official containing the ballot title and an explanatory statement if required.
  http://sos.oregon.gov/elections/Documents/SEL803.pdf

- The initiative petition must include the text of the proposed measure and a referendum petition must include the text of the ordinance adopted by the governing body of the district. Additionally, a Petition for Local Measure (SEL 370) must be filed for an initiative and referendum petition. http://sos.oregon.gov/elections/Documents/SEL370.pdf

  If the petition designates fewer than three chief petitioners, additional chief petitioners, up to a total of three, may be added before final approval of the cover and signature sheets. A chief petitioner may not resign or be replaced by another individual before final approval of the cover and signature sheets. A letter signed by all current chief petitioners must accompany the SEL 370 when designating additional or different chief petitioners. At least one original chief petitioner must remain as a chief petitioner throughout the process. If all original chief petitioners resign, the initiative must be refilled.

  Include a statement in the prospective petition declaring whether one or more persons will be paid for obtaining signatures of electors.

After receiving the prospective initiative petition, the county elections official must notify the chief petitioners, no later than five 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.

Ballot Title for Referendum Petitions
The county elections official forwards two copies of the prospective referendum petition to the District Attorney for preparation of the ballot title. The District Attorney has five business days to prepare a ballot title and return it to the county elections official. Oregon statutes require that the ballot title contain the following elements:

- A caption not to exceed 10 words -- The caption must reasonably identify the subject of the referendum;

- A question not to exceed 20 words -- The question must plainly phrase the chief purpose of the referendum so that an affirmative response corresponds to a yes vote on the ballot; and

- A summary not to exceed 175 words -- The summary must be concise and impartial and summarize the measure and its major effect.

The county elections official furnishes the chief petitioners with a copy of the ballot title. Receipt of the ballot title must be published in the next available edition of a newspaper of general circulation that includes a statement a statement that the ballot title has been received.

The notice includes all of the following:

- date of the election;

- statement that a ballot title has been received and that any voter may file a petition for review of the ballot title.

- the deadline for filing a petition for review of the ballot title with the circuit court.

- the ballot title drafted or information on how to obtain a copy.

- other information as applicable from the SEL 803 filed by the district elections authority.

After a petition to review a ballot title is filed, the Circuit Court conducts a review of the ballot title which is the first and final review. The Circuit Court then renders its decision and certifies a ballot title meeting the requirements of ORS 250.035 to the county elections official.

Circulating a Referendum Petition
After preparing the cover and signature sheets for the prospective referendum petition, the chief petitioners submit a draft to the county elections official for review. A complete copy of the ordinance must also be submitted with the draft cover and signature sheets.

The text, cover and signature sheets for a prospective referendum petition must be approved in writing by the county elections official before the chief petitioners may begin circulating the petition. The county elections official will inform the chief petitioner of the last day to submit signatures collected for the referendum petition.

Each person collecting signatures must carry at least one full and correct copy of the text of the ordinance and allow any person to review the text upon request. The circulator whose certification appears at the bottom of the petition sheet must personally witness each signature.

The number of active registered voter's signatures required to place a district initiative or referendum measure on the ballot is based upon a percentage of the total votes cast in the district for all candidates for governor at the last election in which a candidate for governor was elected to a full term.

For most districts the percentage of signatures required is not less than 15% for an initiative petition and not less than 10% for a referendum petition. Signature verification must be completed within 15 days of submission.

Once the referendum has been submitted for final signature verification, the chief petitioners' committee treasurer must file its first contribution and expenditure report no later than 5:00 p.m. on the 15th day after the signatures have been submitted.

After at least the constitutionally required number of signatures has been verified, the district elections official must establish the date for the measure election in accordance with ORS 255.345 and no later than the first regular district election following the 40th day after the order of the election.

Abstracts and Certificates of Election
Not later than the 20th day after an election, the county clerk shall prepare an abstract of the votes and deliver it to the district election authority. Not later than the 40th day after receiving the abstract, the district elections officer shall determine from it the results of the election.

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

Miscellaneous Provisions

Contests of Election, Recount, and Recall
The 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 may be found in ORS 258.
- Provisions regarding recall may be found in ORS 249 and OAR Chapter 165.

RESTRICTIONS ON POLITICAL CAMPAIGNING

While the following guidelines are offered, local officials are encouraged to consult with their attorney when specific questions arise. These guidelines apply to the expenditure of public funds, with a focus on the use of work time by public employees. Confusion about the use of funds may be avoided if interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/ distribute advocacy materials.

General

Public agencies are subject to the general rule prohibiting the use of public funds to advocate a position either in support of, or opposed to, a ballot measure. All information presented and paid for with tax dollars must be impartial. ORS 260.432 prohibits public employees from spending time "while on the job during working hours" to promote or oppose a ballot measure. While it does not apply to elected public officials, the definition of "public employees" includes not only paid staff, but also unpaid, appointed members of boards, commissions, and committees.

Issues relating to the use or misuse of public funds, equipment, materials, supplies, or space are likely to be dealt with under the provisions of ORS 294.100, which establishes personal liability for misappropriation of public funds.

Preparation and Distribution of Written Material

Local officials, both elected and appointed, can develop and distribute impartial and factual information on the effects of a ballot measure and may use public funds to do so. Such material should be informational, provide the public with a fair presentation of relevant facts, and not advocate a particular position. For example, staff may spend time doing research and preparing information that fairly assesses the effects of the measure on the agency. 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.

Written material prepared or distributed by public employees must be impartial, neutral, unbiased, equitable, and dispassionate. A statement is advocacy if, when read in its entirety, is clearly intended to generate votes for or against the measure. Factors, which may be used to determine the line between information and campaign 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.
- The overall impression a reader may be left with. Have facts been presented neutrally so that the reader has to decide how to vote, i.e., it informs rather than persuades?

- The tone of the material. Is it dispassionate rather than enthusiastic for one side or the other of the measure? Do headings, words, and phrases lend a positive, negative, or neutral tone in favor of, or opposition to, the measure?

- The quotes used. Are they all favorable or unfavorable? Are they all from persons on one or the other side of the measure?

- Reference to contact with supporting or opposing PACs—such references may imply a connection between the agency and the campaign.

- The content of the document - it cannot explicitly urge a "yes" or "no" vote.

If you have difficulty making a distinction between legitimate research/information efforts and possible campaign advocacy in specific instances, the Secretary of State's Office is willing to review staff work before its printing and distribution.

Published material (written or broadcast) relating to a ballot measure requires identification as to its source. The words "authorized by" and the name and address of the person, agency, or political committee responsible for the material should be seen or heard. Governing bodies are exempt from this requirement when they publish impartial material for information purposes related to a measure they are referring to the ballot. Regularly published agency newsletters are also exempt from this requirement. (Special editions or one-time publications are not exempt.) In both cases though, it needs to be apparent that the governing body has prepared and is distributing the material.

The Governing Body

A governing body of elected officials can take positions on ballot measures and 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 to bring the measure to the governing body. This research can describe background information on the measure, its potential effects, and pros and cons of the measure.

The governing body may not make a mass distribution of their advocacy position on a ballot measure to the public; however, if copies are requested by the public, the agency may use office facilities to copy the resolution expressing their position.

Elected Officials

Elected officials may spend their work time on ballot measures, whether the position they hold is paid or unpaid under ORS 260.432 (4) (a). The courts have recognized the right, if not the duty, of public officials to speak out on major issues, particularly on matters that affect the governmental body on which they serve. However, elected officials must be careful not to involve support staff in their advocacy campaign, e.g., staff persons cannot type advocacy statements or speeches for elected officials on agency time.

Agency Staff

Agency staff must use their own personal time if they want to advocate a position on a measure. A 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. Contents of the notice are contained in ORS 260.432 (3).

Employees may use breaks, lunch hours, and vacation time to advocate for or against a measure. Employees should keep notes on when they are using breaks, lunch, or vacation time for advocacy. If a public employee makes a presentation outside working hours which will include advocacy statements, it may still be advisable to announce to the audience that they are speaking not in their "official capacity" but as a private individual.

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

A public employee may not be coerced to vote for a measure or work to advocate for or against it. For example, a manager representing the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but must not threaten them with financial loss if they vote one way or another.

A public employee can make an impartial presentation of information relating to a ballot measure. This presentation can include a discussion about how the measure came into being (history) and its impacts, so long as it doesn't segue into advocacy. An elected official may follow a staff person's presentation and advocate in support of or opposition to the measure.

Political Action Committee (PAC)

Formation of a PAC must occur before any funds are collected. PACs must be filed with the county elections officer. The forms and guidebooks necessary to form a political committee and report contributions and expenditures are available from the county elections officer.

As a general rule then, public employees may say, "Here are the facts, please vote." Elected officials may say, "Here are the facts, please vote for/against this measure," provided public funds are not used to advocate that position and no public employee time is used to assist in delivering that message.

SAMPLE BALLOT MEASURES

Permanent Tax Rate Ballot Measure [ORS 280.070(6)]

Caption—10 words
a. Purpose is to identify the type of tax.
b. Do not put district name or dollar amounts in the caption.

Question—20 words
a. Include the name of the taxing district. The word "district" can be substituted for the full name if the full name is included in the summary.

b. State the tax rate per $1,000 of assessed value.

c. State the first fiscal year the tax will be imposed.

Summary—175 words
a. If the election is not in November of an even-numbered year, begin the summary with:
"This measure may be passed only at an election with at least 50 percent voter turnout."
This statement is not counted in the 175-word limit.

b. Explain the purpose in plain language. Do not advocate a yes or no answer.

Sample

March 2017 Election

CAPTION: Permanent Tax Rate Limit

QUESTION: Shall district be authorized to impose $0.52 per $1,000 of assessed value as a permanent rate limit beginning in 2017-2018?

SUMMARY: This measure may be passed only at an election with at least 50 percent voter turnout. The Sample Soil and Water Conservation District has operated for 25 years on the revenue from grants and user fees. Many grant programs are no longer available. This measure would establish a permanent tax rate limit for the district. The revenue from the new permanent rate would be used to help operate the district and help avoid future increases in user fees. In the first year of imposition the proposed rate will raise approximately $750,200.

One Year Local Option Tax [ORS 280.060(1)(b)]

Caption—10 words
a. Purpose is to identify the type of tax.
b. Do not put district name or dollar amounts in the caption.

Question—20 words
a. Include the name of the taxing district. The word "district" may be substituted for the full name if the full name is included in the summary.

b. State the tax rate per $1,000 of assessed value.

c. State whether the tax is for operating purposes or capital projects.

d. State the fiscal year the tax will be imposed and the number of years the tax will be imposed.

e. If this is a new local tax levy, include the following statement after the question: **"This measure may cause property taxes to increase more than three percent."** If the measure is renewing a currently existing local option tax, include the following statement instead: **"This measure renews current local option taxes."** These statements are not counted in the 20-word limit.

Summary—175 words
a. This example is in November of an even-numbered year, so the double majority statement is not included.
b. Explain the purpose in plain language. Do not advocate a yes or no answer.
c. Give the amount of tax that is estimated to be raised in the fiscal year the tax is imposed.

Sample

November 2017 Election

CAPTION: One-year Local Option Tax for Operations

QUESTION: Shall Progressive City impose $.18 per $1,000 of assessed value for one year for operations in 2014-2015? This measure may cause property taxes to increase more than three percent.

SUMMARY: The tax revenue from this measure would allow the district to operate its office five days a week, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

The office is currently open Monday through Wednesday from noon until 5:00 p.m.
The requested rate will raise approximately $130,000 in fiscal year 2017-2018.

Multiple- Year Local Option Tax Fixed Dollar Amount [ORS 280.060(1)(a)]

Caption—10 words
a. Purpose is to identify the type of tax.
b. Do not put district name or dollar amounts in the caption.

Question—20 words
a. Include the name of the taxing district. The word "district" may be substituted for the full name if the full name is included in the summary.

b. State the amount of tax to be imposed each year in dollars.

c. State whether the tax is for operating purposes or capital projects.

d. State the first fiscal year the tax will be imposed and the number of years the tax will be imposed.

e. If this is a new local option tax, Include the following statement after the question: **"This measure may cause property taxes to increase more than three percent."** If the measure is renewing a currently existing local option tax, include the following statement instead: **"This measure renews current local option taxes."** These statements are not counted in the 20-word limit.

Summary—175 words
a. Explain the purpose in plain language. Do not advocate a yes or no answer.

b. This example is in May, so the double majority statement is not included.

c. Include the total amount of tax to be raised by the measure.

d. If an estimated rate per $1,000 is given, include the statement: **"The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate and may reflect the impact of early payment discounts, compression and the collection rate."** This statement is not counted in the 175-word limit.

Sample

May 2017 Election

CAPTION: Six-year Capital Projects Local Option Tax

QUESTION: Shall Sample District impose $20,830 each year for six years for capital projects beginning in 2017-2018? This measure may cause property taxes to increase more than three percent.

SUMMARY: This measure may be passed only at an election with at least 50 percent voter turnout. The taxes needed for six years total $124,980, which will be imposed in equal amounts of $20,830 each year. The taxes will be used to purchase office furniture and equipment for the district headquarters building. It is estimated that the proposed tax will result in a rate of $.01 per $1,000 of assessed value in the first year. The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.

Outside Constitutional Limitations

1. Caption limited to 10 words
   a. Purpose is to identify the type of tax.

   b. Dollar figures should not appear in the caption.

   c. Example: "General Obligation Bonds for Capital Construction."

2. Question limited to 20 words
   a. Name of the district.

   b. The purpose of the bonds.

   d. The kind of bonds to be used.

   e. Include the following statement after the question: "If the bonds are approved, they will be payable from taxes on property or property ownership that is not subject to the limits of Sections 11and 11b, Article XI of the Oregon Constitution.

   e. Example: "Shall The Water District issue $3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?"

3. Summary limited to 175 words
   a. Explain the purpose in plain language.

   b. Do not advocate a yes or no answer.

   c. The purpose of the bond that includes a reasonably detailed, simple, understandable description of the use of proceeds.

   d. The term and amount of the bond.

   e. The type of bond.

Sample

Caption: "General Obligation Bonds for Capital Construction"

Question: "Shall the Water District issue $3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?"

Summary: This measure would allow The Water District to issue general obligation bonds to construct a water treatment plant to comply with the Safe Drinking Water Act. Currently, The Water District does not have a water filtration system and uses the chlorination process to disinfect the water system. The Water District has recently completed a master plan and seeks to implement recommendations of that plan. The $3,000,000 general obligation bond term will not exceed 20 years. If the bonds are approved, they will be payable from taxes on property ownership that is not subjected to the limits of Sections 11 and 11b, Article XI of the Oregon Constitution.

RESOURCES

Campaign Finance Manual: http://sos.oregon.gov/elections/Documents/campaign-finance.pdf

Department of Revenue Property Tax Division Website: http://www.oregon.gov/DOR/PTD

County, City and District Referral Manual:
http://sos.oregon.gov/elections/Documents/ReferralManual.pdf

Oregon Department of Revenue Tax Election Ballot Measures:
http://www.oregon.gov/DOR/PTD/docs/504-421.pdf

SDAO Reference Library/Elections
http://www.sdao.com/S4/MemberHome.aspx

Secretary of State Elections Division Website:
http://sos.oregon.gov/elections/Pages/default.aspx

Special District Elections (ORS 255):
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors255.html

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

TABLE OF CONTENTS

INTRODUCTION

The formation of most types of special districts is covered in Oregon Revised Statute (ORS) Chapter 198 - "Special Districts Generally." Some types of districts have additional requirements for formation that are found in that particular type of district's principal enabling statute. Please check the principal statutes for each type of special district being formed.

APPLICABLE OREGON REVISED STATUTES

The formation of most types of special districts is covered in Oregon Revised Statute (ORS) Chapter 198 - "Special Districts Generally." Some types of special districts have additional requirements for formation that are found in that particular type of district's principal enabling statute. ORS Chapter 198 covers the formation of the following districts:

	Type of District	Enabling Oregon Statutes
1.	Cemetery Maintenance District	ORS Chapter 265
2.	Domestic Water Supply	ORS Chapter 264
3.	Geothermal Heating District	ORS Chapter 523
4.	Health District	ORS 440.305 to 440.410
5.	Heritage Districts	ORS 358.442 to 358.474
6.	Highway Lighting District	ORS Chapter 372
7.	Library District	ORS 357.216 to 357.286
8.	Metropolitan Service District	ORS Chapter 268
9.	Park and Recreation District	ORS Chapter 266
10.	Port District	ORS 777.005 to 777.725
11.	Radio and Data District	ORS 403.500 to 403.542
12.	Road Assessment District	ORS 371.405 to 371.535
13.	Rural Fire Protection District	ORS Chapter 478
14.	Sand Control District	ORS 555.500 to 555.535
15.	Sanitary Authority, Water Supply Authority or Joint Water and Sanitary Authority	ORS 450.600 to 450.989
16.	Sanitary District	ORS 450.005 to 450.245
17.	Special Road District	ORS 371.305 to 371.360
18.	Transportation District	ORS 267.510 to 267.650
19.	Vector Control District	ORS 452.020 to 452.170
20.	Water Control District	ORS Chapter 553
21.	Water Improvement District	ORS Chapter 552
22.	Weather Modification District	ORS 558.200 to 558.540
23.	County Road District	ORS 371.055 to 371.110
24.	The Port of Portland	ORS Chapter 778.010
25.	Translator District	ORS 354.605 to 354.715

Special districts with formation requirements in addition to those specified in this chapter:

1.	Corporation for Irrigation, Drainage, Water Supply or Flood Control	554
2.	County Service District	451
3.	Drainage District	547
4.	Emergency Communications District	403.300 to 403.380
5.	Irrigation District	545
6.	Mass Transit District	267.010 to 267.390
7.	People's Utility District	261
8.	Rural Fire Protection District	478
9.	Soil and Water Conservation District	568.210 to 568.805

INITIAL STEPS

Special districts are the most rapidly growing form of government in the United States. One reason is the advantage districts enjoy over other forms of government: districts provide one service, and all funds collected are expended on this one type of service. This allows special districts to concentrate on a particular service, and avoid many of the controversies that surround general-purpose governments who must make funding decisions by weighing the needs of competing groups or interests.

The first step in forming a special district is usually to form a committee to analyze the need for the district and to discuss the steps that must be undertaken. Consideration should be given to the area that will be served, the assessed valuation of the area, the revenue that could be provided by a reasonable tax or user fee, long and short-term debt structure, if any, and how to generate needed funds for a security bond and possibly an election.

Formation may take as long as 12 to 24 months, depending on the type of district and whether the district will need to assess property taxes. Districts that involve public facilities construction may require advanced preparation (*i.e.*, sewer or water systems). In addition, there are important state and county deadlines, which must be met, and should be considered in the planning process.

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

- Interested citizens with time, energy, and a willingness to raise or bear certain expenses should form an unofficial or "ad hoc" committee. This committee should be formed approximately 9 to 12 months prior to March 31st -- the date by which the county assessor and the Department of Revenue must be officially notified of the formation of a new district.

- Even at this early stage, the committee would be well advised to employ an attorney familiar with their particular type of special district and election laws. If possible,

others who have gone through the process of formation should be contacted to gain additional information and assistance.

- The committee must determine who will initiate the formation and where the initiators will derive financial support. Costs will include obtaining a bond to accompany the formation petition, possible election fees, any attorney or consultant fees, printing fees, etc. Some of these costs are refundable if the district is formed. If the district is not formed, the members of the committee, or those that provided the funding, must bear the cost.

- The Committee should study the feasibility of forming a district by estimating the following:

  - The area to be served (rough boundaries should be established, specific boundaries will be required with the formal proposal).

  - The assessed valuation of the area to be served.

  - Sources of potential revenue, such as taxes, user fees, bonds, etc.

  - The anticipated level of services to be provided.

  - The cost to provide these services.

- Notices advising of any proposed public discussion regarding formation should be developed and distributed as widely as possible within the proposed district area. Available news media should be utilized and special effort given in making sure notices are brought to the attention of all voters and property owners. The notices should briefly describe the proposal; announce a date, time, and place for a public meeting to discuss the proposal; outline the proposed boundaries; and briefly discuss relevant issues.

- The committee should hold a meeting open to the public on the date, time, and place specified in the notice, in order to determine voter interest. At this meeting, the committee should:
  - Present information, data, and other research materials.
  - Present its recommendations.
  - Introduce any people available to serve as a resource, such as an attorney, consultant or representative from state organizations.
  - Present any other pertinent information or individuals regarding the need for the district and the services that it would provide.

After a limited time has been given to answering questions, those attending the meeting should be polled to determine if there is enough support to petition the county board on the matter. If it appears there is sufficient interest in the measure, the committee should begin the job of developing a formation plan.

FORMATION

A special district may be formed from contiguous or noncontiguous territory located in one or more adjoining counties. Exceptions to this may exist in individual principal acts that govern the formation and authorities of specific types of districts. A district may also include territory within a city if the city governing body consents to the formation. Territory within another district performing the same services as the proposed district may not be included in a new district unless the territory is withdrawn, either by a simultaneous withdrawal proceeding or automatically by statute, from the former district. The boundaries of a new district may only include territory that can be reasonably served by the facilities or services of the proposed district.

If two or more counties are affected by a formation proposal, the notices, proceedings, orders, and any other act required of a county board or county clerk must be given or taken to the person holding those offices in the principal county. The principal county is the county in which the greatest portion of the assessed valuation of all taxable property in the proposed district is located. Officers of any other affected county must cooperate with the officers of the principal county and must furnish such records and certificates as may be required. Once the principal county is determined, it will remain the county with jurisdiction over the special district for all purposes thereafter.

There are three procedures that may be used to form a special district:

- The filing of a petition for formation,
- The consent of all property owners within the area of the proposed district, or
- Initiation and order of the county board.

Following is an analysis of each of those procedures:

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. If the proposed district includes territory within a city, a certified copy of the resolution of the city's governing body approving the petition must be filed with the petition.

The petition must 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 territory means territory within which 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 that district board members are or are not to be elected and, if so, the number of members on the board.

- A proposed permanent tax 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. A permanent tax rate need not be included in the petition if no tax revenues are necessary to support the services and functions described in the economic feasibility statement. The permanent tax rate, if any, must be expressed as a total dollar amount and the tax rate must be expressed as a rate per thousand of assessed valuation. These rates must be calculated for the latest tax year for which information 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 request that proceedings be taken for formation of the district.

The petition for formation must be signed by at least:

- 15% 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% of the acreage, whichever is greater, within the territory to be included in the proposed district.

Before circulating the petition for formation of a district, the persons designated on the petition as the chief petitioners must complete an economic feasibility statement for the proposed district. That feasibility statement forms the basis for any proposed permanent tax rate. The feasibility statement 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.

Prior to circulation of any petition, the petitioners must file with the county clerk of the principal county a prospective petition. The prospective petition must include a description of the boundaries of the territory proposed to be included in the district.

The petition should provide space for each signer to sign his or her name, print his or her name and add the date of signing. The petition should also provide that if the person is signing the petition as an elector, the person shall add after the signature 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, the number of acres of land owned by the signer and the name of the county whose assessment role is used for the purpose of determining the signer's right to vote must be stated in the body of the petition or indicated opposite the signature. 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 such filing.

A petition must designate not more than three (3) persons as "chief petitioners," setting forth their names and mailing addresses.

A petition may consist of a single document or separate documents.

Petition Filing Requirements

A petition may not be accepted for filing by the county unless the signatures have been secured within six (6) months of the date on which the first signature on the petition

was obtained. Nor may a petition be accepted for filing if it is not accompanied by the economic feasibility statement required under ORS 198.749.

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 at which the petition for formation may be voted upon.

A petition for formation of a district may not be accepted for filing by the county unless the petition is accompanied by a bond, a cash deposit, or other security deposit.

- A bond must be in a form and in an amount approved by the county board not to exceed $100 for each precinct in the affected district and any territory to be included in the district, up to a maximum of $10,000. The bond must be conditioned that, if the attempted formation is not completed, the chief petitioners will pay the costs thereof.

- A cash deposit must be in an amount approved by the county board not to exceed $100 for each precinct in the affected district and any territory to be included in the district up to a maximum of $10,000. The cash deposit must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the cash deposit and the amount provided by each, and a statement signed by the chief petitioners that if the costs of the attempted formation exceed the deposit, the chief petitioners will pay to the county the amount of the excess costs.

- A security deposit other than a bond or cash deposit shall be of a kind and in an amount approved by the county board not to exceed $100 for each precinct in the affected district and any territory to be included in the district up to a maximum of $10,000. The security deposits must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the security deposit and the amount in mind provided by each, and a statement signed by the chief petitioners that if the costs of the attempted formation exceed the security deposited, the chief petitioners shall or will pay to the county the amount of the excess cost.

After circulation of the petition, the clerk of the principal county has ten (10) days from the date the petition is received to review the petition 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.

A petition may not be filed unless the certificate of the county clerk or the district secretary is attached thereto certifying that the county clerk or district secretary has compared the signatures of the signers with the appropriate records and that the county clerk or district secretary has ascertained the number of qualified signers appearing on the petition and that the petition is signed by the requisite number of qualified signers.

After a petition satisfying all the statutory requirements has been filed, the county board must set a date for hearing on the petition and will give notice of the hearing by posting and publication as specified in ORS 198.730 and 198.800(2). Chief petitioners are advised to keep in constant contact with the county clerk and the board of county commissioners to assure that the functions required of the county by the statutes are actually performed in a timely manner.

Formation by Consent of Property Owners

Pursuant to ORS 198.830, a special district may be created by consent of all property owners within the area of the proposed district. The owners of all real property within an area may petition the county board to form a district. The petition must contain all the information required by ORS 198.750 to 198.755, 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.

The county board then holds a hearing on the petition. 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 will adopt an order approving formation of the district. If the formation is approved, any election otherwise required by law is dispensed with. The board shall enter an order creating the district, and the persons nominated by the petition and accepting nomination, as members of the board shall constitute the first board of the district.

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.

Notice of the hearing set by the board order must be posted in at least three public places and published by two insertions in a newspaper. In addition, the notice must state that the county board has entered an order declaring its intention to initiate formation. The hearing and election on the proposal, and the election of the initial board members, is to be conducted pursuant to ORS 198.800 to 198.825.

Hearing

Once proper petitions have been circulated and filed with the principal county and have been approved by endorsement by any agency required by the principal act, the county is required to set a hearing on the petition. The hearing must be held 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 any hearing on the petition, any person interested in the proposed formation of a district may appear and present written statement for or against the granting of the petition. At the hearing on the petition for formation, the county board may receive oral or written testimony favoring or opposing the district formation. 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.

Upon conclusion of the hearing, the county board must evaluate the formation petition by applying the 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, between 20 and 50 days from the date of the order, for a final hearing on the petition. The order must also state that if no written requests for an election are filed, the board will adopt an order creating the district at the final hearing. Notice of the final hearing is given by publication.

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% 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.

If a sufficient number of requests for an election are filed with the county on or before the date of the final hearing, or if the petition for formation includes a permanent tax rate for the proposed district, the board provides by an order for the holding of an election to submit to the electors the question of forming the district.

The board must cause notice of the election to be published by two insertions in a newspaper. If requests for an election are filed by less than the required number of persons and no permanent tax rate is included in the petition, the county board shall dismiss the requests for an election and enter an order creating the district. Nevertheless, the county board must order an election for the purpose of electing the first members of the district board. The procedure for nominating and electing the first board is provided in ORS Chapter 255.

If no permanent tax rate is proposed, the only question before the electors is whether the proposed district should be formed. When the proposal for information includes a permanent tax rate for the proposed district, the ballot title shall 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.

When the proposal for formation includes a permanent tax rate limit for the proposed district, the district will be authorized to impose operating taxes not in excess of the permanent rate limit if the proposal is approved by a majority of the votes cast in an election held in May or November of any year.

The county board has thirty (30) days after the date of the election to canvass the votes and adopt an order regarding the proposed formation. If a majority vote favors formation of the district, the board adopts an order creating the district. After the date of the formation order, the inhabitants of the territory within the new district become 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 post the security with the county.

If a majority votes against formation of the district, the county board will adopt 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.

Challenges to District Formation

Pursuant to ORS 198.785, any citizen 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. Such citizen 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 and the circuit court's decision is appeasable.

In addition, proceedings to challenge the validity of a formation of a district may be brought by filing a writ of review pursuant to ORS 33.710 or ORS 34.010 to 34.100.

STEPS FOR DISTRICT FORMATION

- Establish a working committee.
    - Set up community meetings and contact local agencies.
    - Draft maps and research property values.
- Review estimated costs and boundaries at public meetings.
- Draw up petitions. Submit prospective petition to county clerk. Begin preparing an Economic Feasibility Statement.
- Circulate petitions. Obtain resolutions from any affected cities.

- Submit petitions, Economic Feasibility Report, and security deposit 180 days prior to election to County Clerk and Surveyor for review.

- County schedules hearing date and bond posted.

- County holds initial hearing.

- County holds second hearing.

- County enacts formation resolution or schedules election date.

- Formation materials submitted to Department of Revenue.

- Submit formation order to Assessor's Office.

- Hold formation and Board Member election (formation elections including permanent tax rates may only be held in May or November).

Note: If there is a formation election held, the permanent tax rate, if any, must be included in that election.

MERGERS AND CONSOLIDATIONS

Pursuant to ORS 198.885 to 198.915, two or more districts providing like services may consolidate and form a new district or a district may merge its operations into a surviving district. Consolidation and merger are statutory methods for creating a special district by joining two or more existing districts into a single new or surviving district.

Districts which are merged into other districts are considered to be annexed by and absorbed into the surviving district. Districts which consolidate, however, become an entirely new district.

Mergers and consolidations are designed to promote efficiency in providing governmental service. In fact, Oregon law encourages and facilitates mergers and consolidations among water and sanitary service providers located within a single river basin or other region.

Initiation of Merger or Consolidation

Creation of a new district by merger or consolidation may be initiated in any 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 shall 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. A petition under this statute must contain all the matters required stated in the petition under Bullet 1 above 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 (ORS 198.895(3).

- 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.

A proposal to merge or consolidate districts may provide that a city be joined to the surviving or successor district for the purpose of receiving service from the district.

If a proposal to merge or consolidate districts includes a proposal to join a city to the surviving or successor district, the proposal may be initiated as provided in ORS 198.895.

The procedures and requirements for preparing, circulating, and filing a petition in a district or city proposed to be included in a proposed consolidation are described in ORS 198.705 to 198.955. A petition for merger or consolidation must be signed by not less than 15% 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% of the acreage located in each district, whichever is the greater number of signers. ORS 198.755(4).

A petition for consolidation or merger 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).

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 will constitute a quorum for the transaction of business. The assembly, by a majority of all members present, must adopt an order calling an election in each affected entity. That order must include all matters required in ORS 198.745. The order adopted by the assembly 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 election or representation by zone or sub-district. If required by the principal Act, the plan must also include a map of the proposed zone or sub-district boundaries.

It should be noted that zones or sub-districts must be based on equal distribution of population. Also, if the merger or consolidation is initiated by petition, and the petition includes a debt distribution plan, the order adopted by the assembly must include that plan. ORS 198.903.

Election

As indicated above, there is held a joint assembly of the affected governing bodies. By a majority vote of all of the members present, the joint assembly adopts an order calling for an election in each affected entity. The electors of each district and city involved in the merger or consolidation must approve the merger or consolidation, and the majority of votes in any one of the districts or city against consolidation or merger defeats the proposal. However, where there are more than two districts, or districts and cities, 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 those approving districts or cities, and the areas where the proposal is not approved would not be part of the merged or consolidated district.

If the proposal for merger or consolidation is approved by a majority of the votes cast in each affected entity required for approval of the proposal, the governing body of the affected 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 the governing body of each affected entity constitutes a quorum for the transaction of business. The purpose of the joint meeting is to elect members of the board of the successor district and to declare the formation of the consolidated district. The newly elected board meets immediately and adopts a resolution declaring the districts consolidated and each affected city joined to the district, as the case may be.

The number of board members elected is as provided in the principal Act of the surviving or successor district, and the terms of office of such members are provided in ORS 198.910(3).

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 shall be subject to all the liabilities of the district in the same manner and to the same extent as other territory included in the district.

In a merger or consolidation, board members of the new or surviving district are apportioned as required by ORS 198.912. 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 by one member when the percentage of electors or owners of land is at least 20 percent but less than 40 percent of the successor or surviving district. When the percentage is between 40 and 60 percent, they are represented by two members.

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).

Effect of Consolidation or Merger

Once a consolidation is effective, the successor district succeeds to all the property, contract rights, and powers of the former districts. The former districts must turn over to the board of the successor district all funds, property, contracts, and records of the former districts, and uncollected taxes, assessments, or charges levied by the former districts become the property of the successor district. The successor district board must levy taxes and assessments for the liquidation of any prior existing indebtedness in accordance with the debt distribution plan.

Where two or more districts have merged or consolidated, the tax rate of the surviving district or successor district is that 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.

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:

- Withdrawal of such territory is proposed and the territory is actually withdrawn by means of withdrawal proceedings conducted in the other district simultaneously with the annexation proceedings, and the proposed boundary changes are approved for both districts; or

- The principal Act provides for automatic withdrawal of the affected territory in such case.

The boundary lines of a special district must include only such territory as may reasonably be served by the facilities or services of the district. Therefore, if property proposed to be annexed cannot be served by the district, the county board may remove that territory or the annexation may be challenged in court on that ground.

Application of Statutes
The process of annexation to special districts is governed by ORS 198.850 through 198.869. Those statutes refer to other statutes that indicate particular procedural requirements. The processes provided for in those statutes apply to annexation to special districts that are listed in ORS 198.010. Annexations to districts not listed in that statute would be accomplished pursuant to the statute creating the particular district (principal Act). Territory within a district may not be included within or annexed to another district subject to the same principal act.

Initiation of Annexation
A proceeding to annex territory to a special district may be initiated by any one of the following methods:

- By electors. Pursuant to ORS 198.850(1) electors of an area who wish to annex to a special district may file an annexation petition with the county board of the county in which the territory proposed to be annexed is located. Prior to filing the petition with the county board, the petition must be approved by the board of the affected district, by endorsement on the petition, and by any other agency which is required by the principal Act of the particular district to endorse or approve the petition.

- By the district board. Pursuant to ORS 198.850(3), annexation may be initiated by the district board by adoption of a resolution setting forth the following:

    - The intention of the district to initiate the annexation of territory to the district and citing the principal Act of the district.

- The name of the district and the proposed territory to be annexed.

- By the county board. The county board may initiate an annexation to a special district by the same process indicated above. See ORS 198.850(3).

- Other agencies. If authorized by the principal Act, any other agencies so authorized may initiate an annexation to a special district pursuant to the process indicated above. See ORS 198.850(3).

- By a landowner. An owner of land may petition the county for annexation of such land. A public hearing is held, but no election. See ORS 198.857.

- By a city. A city may propose annexation of city territory to a special district to receive services. Such annexation is initiated by a resolution or motion of the city delivered to the district board. If the district board approves the proposal from the city, the board calls an election in the district and the city calls an election in the city on the same day. If the proposal passes in both jurisdictions, the county adopts an order annexing the city to the district. See ORS 198.866 and 198.867.

Contents of Petition
A petition by electors should include the following information:

- An endorsement on the petition by the district or any agency required by the principal Act to endorse or approve the petition.

- A statement of how the proposal complies with the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.

- 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.

Where an annexation is initiated by resolution of a district or the county board, or by any other public agency authorized to do so by the principal Act, the resolution should set forth the matters indicated above. In addition, if the initiation is by a district board, it may include an effective date, which is not later than 10 years after the date of the order declaring the annexation.

Sufficiency of Petition
Before any further proceedings are conducted, the county must determine whether the petition is sufficient. The petition must:

- 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; and

- Where an annexation is initiated by resolution of a district or the county board, or by any other public agency authorized to do so by the principal act, the resolution should set forth the matters indicated above. In addition, if the initiation is by a district board, it may include an effective date, which is not later than 10 years after the date of the order declaring the annexation.

Notice of Hearing
The county board must set a date for hearing on the petition, which hearing shall be held not less than 30 days nor more than 50 days after the date the petition is filed. The county board shall cause notice of the hearing to be posted in at least three public places and published by two insertions in a newspaper. The notice should 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.

Hearing
At the time and place announced in the notice, the county will conduct a hearing pursuant to ORS 198.805. 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 inter-governmental service agreements and if the area could be benefited by the annexation. The county must adopt written findings of compliance with those criteria. The county may adjourn the hearing from time to time but not exceeding four 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 should make its determination, consistent with the above criteria, and adopt findings in support of that determination.

If the board approves the petition, as presented or as modified, or if the boundary commission does so and transmits its approval to the county board, the board shall enter an order declaring approval of the petition.

Election

The county board must order an election on the proposed annexation to be held in the territory proposed for annexation to the special district and in the special district in the following circumstances:

- If the annexation petition is signed by less than all of the owners of all of the lands in the territory proposed to be annexed and the county board receives the requisite number of requests for an election pursuant to ORS 198.815; or

- If the annexation petition is signed by less than the majority of the electors registered in the territory proposed to be annexed and by the owners of half or less than half of the land in the territory and the county board receives the requisite number of requests for an election pursuant to ORS 198.815.

The election must be held both in the territory proposed to be annexed and in the affected district on the same day. After the election, the district board must certify the results of the election in the district to the county board. The county shall order the annexation only if a majority of the votes in the territory to be annexed and a majority of the votes in the district are in favor of the annexation. Without such double majority, the county board shall declare that the proposal has failed.

If the annexation petition is signed by all the owners of land in the territory proposed to be annexed, or is signed 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 shall be dispensed with. Also, if an individual landowner files a petition to annex this land, there is no election.

After the hearing on the petition, if the county board approves the petition as presented or as modified, or if an election is held, and the electors approve the annexation, the county board shall enter an order describing the boundaries of the territory to be annexed and declaring it annexed to the district.

After the election, if any, is held, if it is determined by the county board that the majority of the votes cast were in favor of the annexation to the district, the board shall

enter an order approving the annexation. The order shall be entered within 30 days after the date of the election.

Effect of Annexation
After the date of entry of an order by the county board annexing territory to a district, the annexed territory becomes subject to all outstanding indebtedness of the district, including bonded debt, in the same manner as other territory in the district, unless otherwise provided in a debt distribution plan established under ORS 198.900.

City Annexation to a District
The governing body of a city may adopt a resolution or motion to propose annexation to a district for the purpose of receiving services from the district. Upon adoption of such annexation proposal, the governing body of the city shall certify to the district board a copy of the proposal.

The district board shall then approve or disapprove the city's annexation proposal. If the district board approves the proposal, the board shall adopt an order or resolution calling an election in the district. The order or resolution shall:

- Provide for giving notice of the election.
- Designate the district or the territory within which the election is to be held.
- Fix a date for the election.
- State the substance of the question to be submitted to the electors.
- Specify any terms or conditions provided for in the annexation proposal.
- Contain such other matters as may be necessary to provide for or give notice of the election and to provide for the conduct thereof in the canvass of the returns thereupon.

In addition, the order or resolution may contain a plan for zoning or sub-districting the district as enlarged by the annexation if the principal act for the district provides for election or representation by zone or sub-district.

The district board must certify a copy of the resolution or order to the governing body of the city. Upon receipt of the resolution or order from the district board, the city shall call an election on the date specified in the order or resolution of the district board. The election must be held on a date specified in ORS 255.345 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 to the county board of the principal county for the district the fact of approval. If the electors of the district approve the election, the district board must certify the results of the election to the city and the county board. Upon receipt of the certificate from the city and the district, the county board enters an order annexing the territory included in the city to the district. Thereafter, the city territory is annexed to 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.

Contracts to Annex

Pursuant to ORS 198.869, a special district and a landowner may contract regarding provision of exterritorial service and consent to eventual annexation of property to the district. Such agreement must be recorded in county records and, when recorded is binding on all successors with an interest in that property.

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 speaking, withdrawal of territory from a district may occur when the territory to be withdrawn has not been or cannot be served by the district.

Initiation of Withdrawal

A withdrawal of territory from a special district may be initiated by either of two methods:

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

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

Procedure

With some exceptions, the statutory procedure for withdrawing territory from the special district is the same as the statutory procedure for annexing property to a district. The procedures governing the county board's conduct of hearings, adoption of orders, and calling an election, are the procedures 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 has not been, or would not be 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 fifteen percent (15%) 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 simply 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 a majority of the votes cast favors the proposed withdrawal of territory, the county board adopts and enters an order withdrawing the territory from the district. If a majority of the votes cast opposes the proposed withdrawal, the county board adopts and enters an order declaring the election result. The election is held district wide.

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.

Effect 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. However, the withdrawn area remains subject to any bonded or other indebtedness existing at the time of the order. The proportionate share of such indebtedness is based upon the assessed valuation, or according to the assessment role in the year of the levy, of all the property contained in the district immediately prior to the withdrawal.

Notwithstanding the above, the governing body of the district shall relieve an area withdrawn from the district from taxation for its proportionate share of outstanding bonded or other indebtedness 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.

However, if 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 withdrawn territory is taxed in an amount sufficient to satisfy its proportionate share of that indebtedness.

DISSOLUTION

Dissolution of a special district is a process of terminating the district's existence and disposing of any remaining assets.

Initiation

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

- By a petition of electors requesting dissolution of the district, filed with the county board. Such petition must be signed by not less than 15% of the electors registered in the district or the owners of 15% of the acreage of the district.

- By resolution of the district board filed 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 resolution of the county board 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.

Within five days after a petition is filed or a resolution of the county board is adopted, as provided for above, a copy shall be filed with the district's secretary, if any, or with any other district officer who can with reasonable diligence be located. If there are no qualified district board members at the time, the county board shall act as, or appoint, 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.

Procedures

When dissolution proceedings have been initiated, the district board must make findings of fact concerning the district's finances. Specifically, those findings must include the following:

- 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.

In addition, 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 or, in the case of a county service district, to the county in which the district is located.

Within 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 must be made available for inspection by any interested person.

Within 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.

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.

After 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. 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 one year after the date of the election.

Disposition of District's 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 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.

Dissolution of Inactive District

The procedures for dissolution of inactive districts are somewhat different.

Special districts that fail to file for three consecutive years reports required by ORS 294.555 or 297.405 to 297.555 with the Secretary of State or Department of Revenue, as the case may be, either of those state agencies must notify the county board of the county where the district is located. Within 30 days after such notice to the county board, the county must initiate proceedings to dissolve the special district and may appoint three individuals, which are residents of the district, to assist in locating the assets, debts and records of the district.

Within 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 shall 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 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 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. Such order 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. In such case, the county proceeds under ORS Chapter 451.410 to 451.610 to create a county service district.

If the county board finds that the district is not active and there is no need for the district, the board shall thereupon constitute 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 shall be credited to the county general fund. If the district was located in more than one county, the surplus shall be apportioned and turned over to each county in which the district was located. The funds and assets are apportioned according to the proportion in each county of the assessed valuation of taxable property in the district.

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. If the only debt of the district is the cost of dissolution proceedings, the county shall pay the cost of the proceedings.

RESOURCES

Audits of Public Funds and Financial Records (ORS 297):
https://www.oregonlegislature.gov/bills_laws/ors/ors297.html

County and Municipal Financial Administration (ORS 294):
https://www.oregonlegislature.gov/bills_laws/ors/ors294.html

SDAO Reference Library/Formation: http://www.sdao.com/S4/MemberHome.aspx

Special District Elections (ORS 255):
https://www.oregonlegislature.gov/bills_laws/ors/ors255.html

Special Districts Generally (ORS 198):
https://www.oregonlegislature.gov/bills_laws/ors/ors198.html

GRANTS AND LOANS
(Chapter 6)

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INTRODUCTION
Applying for grants and loans can be an excellent way to get funds for improving the services districts provide. Usually funds must be used for specific programs that add value to the community. Funds are generally not granted to meet normal operating expenditures.

Receiving needed aid is often not as easy as it sounds. Filling out applications can be time-consuming and complicated for districts with little or no staff. Patience is essential; it can take months to gather materials necessary for grant and loan applications.

There are three main sources for grants and loans: the Federal government, State government, and private sources. Exploring all three will increase the chances of finding funding to meet the district's needs. Most often, funds are combined from various sources to meet the goals of the district's program. Providing matching funds can also be helpful.

SOME GENERAL TIPS
- Begin early.
- Apply early and often.
- Don’t forget to include a cover letter with your application.
- Answer all questions.
- If rejected, revise your proposal and apply again.
- Be explicit and specific.
- Be realisting in designing the project.
- Make explicit the connection between your research questions, your objectives and methods, your methods and results, and your results and dissemination plan.
- Follow the application guidelines exactly.

DEVELOPING A PLAN
The most important step in applying for a grant or loan is the development of an effective plan. Careful consideration and documentation is essential in determining what the dedicated funds will be used for. If the district cannot justify the need for the funds and prove that the money is essential, then it is likely that funds won't be granted.

A schedule should be implemented and a detailed plan generated. Good planning and a demonstration that the plan is well formulated will be essential for proving the merits of your project to any funding source.

Suggested steps to be completed when developing a plan:

- Legislative Commitment: The district board agrees to implement an ongoing comprehensive capital planning process. Some kind of staff support is assigned.

- Set a Timetable: A timetable is developed, taking into account the annual budget cycle of the district. Development of a GANT chart can be of great assistance in displaying the schedule of the project.

- Identify Roles: The district board identifies who will develop, monitor, and recommend revisions to the capital planning process. It could be a citizen’s group, a number of department heads, or some mixture of staff and public.

- Establish Criteria: Criteria is established for use in prioritizing project proposals against local needs and goals.

- Gather Information: Necessary information is gathered -- existing plans and documents, or an inventory of the condition and adequacy of all systems. This crucial step develops the first-cut list of local needs as proposed projects.

- Financial Analysis: Examining historic and projected revenues and expenditures, estimating the district's cash flow and long-term financial condition, and taking a hard look at present and future capital financing alternatives -- is performed. Account for and be able to justify every dollar that you are asking for.

- Funding Sources: Funding sources are identified and recommendations made regarding the type of funding most appropriate for specific kinds of capital improvements.

- Project Proposals: The project proposals are evaluated using the project selection criteria developed earlier, and a preliminary project list is made.

- Selecting Funding Sources: Priority projects are matched with fund sources, taking into account when the financing will become available. The list is further fine-tuned and the resulting preliminary capital plan is submitted to the district board for review and approval.

- Public Review: Opportunities for public review and comment are made available. Following consideration of local input, any adjustments are made and the district board formally adopts the capital plan.

- Planning Period: The first year of the five or six-year capital plan is adopted as the capital budget for the given fiscal year, allowing implementation of the plan to begin.

- Implementation: Implementation of the plan is monitored by the district board and assigned staff.

APPLICATION POINTERS

Once the plan is completed, the district can proceed with the application process. Explore many different alternatives and find the agency or organization that is most likely to fund your project. Most funds for public infrastructure projects will be loans. Districts with projects that relate to improving health, education, or community support may have an easier time finding grant funds from private sources.

Once the district decides where to apply, it should give careful consideration to the following:

- Know the needs and priorities of your district.

  Six year plans, comprehensive plans, public facility plans, water plans, and sewer plans can help a district allocate scarce local and grant funds to the most important needs. Plans should be appropriate to the community. Nothing is worse than spending all your money analyzing problems and then having no money to pay for solutions. Involve citizens in setting priorities, they will have a better understanding of your district's revenue needs. Plans are important for three reasons:

  - They help the district make better decisions.

  - Some grant and loan programs require a plan as a condition of funding.

  - The information and priorities in the plans are useful when writing the grant.

- Know the grant loan programs and the program staff.

Competition is tough for most grants and loans. Most major projects are funded by a "package" of funding from several sources, sometimes in several phases. The more you know, the more competitive your application.

- Do initial research on the grant and loan program available. Find out which programs are most likely to fund the solution to your problem.
- Contact the program staff. Attend the application seminar. Ask questions. Ask staff for a "one to one" conference where you discuss your project and how to apply.
- Get a copy of a successful application for a similar problem and read it. How did they do it? Program staff will provide you with a copy, generally for free, ask them.
- Read the application package.

- Get help if you need it.

  Many districts can do most grants alone. Some districts need a little help. There are several sources of inexpensive grant writing help that may be available to you.

  - United Way offers inexpensive programs on how to write grants. Go or send a staff person.
  - If you belong to a Council of Governments or Regional Planning Commission and need some help, ask them.
  - If your grant or loan application will promote economic development, the local Economic Development Council may be able to help.
  - If your grant or loan will aid low-income persons, your Community Action Council may be able to help.
  - If you decide you need a consultant, check lots of references, get a contact, and establish a firm price.

- Get the application written.

  Most applications take two or three months to pull together. Cost estimates, letters of support, and writing all take time. Last minute applications are usually not very competitive.

  Be accurate, but tell a story. Tell how many are affected by the problem. Personalize the problem. Tell why the problem is important from both a local and statewide perspective. Explain how the problem and solution meet the grant or loan program criteria.

  Make sure cost estimates are accurate. Especially for public facilities projects, the cost estimate is not a job for nonprofessionals. Preliminary engineering should be done on all public facilities before the application is submitted. Get an estimate and the details to back it up. Include the detail in an appendix to the application. You will get a better estimate if you require detailed data.

- Learn from your mistakes and successes**.** If you are not funded, there is always next year. Because of heavy competition, good projects are not always funded.

If you are not funded, ask the program staff for a conference to discuss why the application was not approved. Take notes and do better next year. Don't argue. Remember, it is your job to communicate to program staff through the application. Help them find and understand the information included in the application.

- Establish a track record of delivering on your promises**.**

  If you are funded, do a good job of administering the project. Do what you said you were going to do. Your application should include enough funds to do the job right. Municipalities with good track records have a better chance of being funded in the future.

DEVELOPING A PROPOSAL

Competition for grant funds can be intense. Every non-profit corporation or local government with a project that will improve the community is likely to be applying for some type of aid. The key is to make your proposal stand out and the merits of your project seem more important. Know what the funding organization wants and then 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.

Writing the Proposal

Structure, attention to specifications, concise persuasive writing, and a reasonable budget are the critical elements of the writing stage. There are many ways to organize proposals. Read the guidelines for specifications about required information and how it should be arranged.

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.

Narratives

- Statement of need - purpose, goals, measurable objectives, and a compelling, logical reason why the proposal should be supported. Background provides perspective and is often a welcome component.
- Approach - method and process of accomplishing goals and objectives, description of intended scope of work with expected outcomes, outline of activities, description of personnel functions with names of key staff and consultants, if possible.
- Method of evaluation - some require very technical measurements of results. Inquire about expectations.
- Project timeline - paints a picture of project flow that includes start and end dates, schedule of activities, and projected outcomes. Should be detailed enough to include staff selection and start dates.
- Credentials - information about the applicant that certifies ability to successfully undertake the proposed effort. Typically includes institutional or individual track record and resumes.

Tips on Writing the Narrative
Narratives typically must satisfy the following questions:

- 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?
- Who are we (organization, independent producer) and how do we qualify to meet this need?

Budget
Budgets are cost projections. They are also a window into how projects will be implemented and managed. Well planned budgets reflect carefully thought out 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.

Supporting Materials
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.

Policies about the inclusion of supporting materials differ widely among funders. Whether to allow them usually depends upon how materials contribute to a proposal's evaluation. Restrictions are often based on excess volume, the element of bias, and relevance. Find out if supporting materials are desired or even allowed.

Be prepared to invest the time to collect resources, produce a tape, document capability, update a resume, collect letters, and include reference reports or whatever is needed.

Authorized Signatures
Authorized signatures are required. Proposals may be rejected for lack of an authorized signature. Be sure to allow the time to acquire a needed signature.

Specifications
Tailor proposal writing to specifications found in the guidelines. Include only the number of pages allowed. Observe the format. Is there a form to complete? Must the proposal be typed, double spaced, on 8-1/2 x 11 inch pages? Are cover pages allowed or desired? Caution! - the beautifully bound proposal is not always appreciated or allowed. Be concise. Elaborations should add depth and scope, not page fillers. Be prepared to write one or more drafts.

Submission Checklist
- The proposal must be **neat, complete, and on time**, with the requested number of copies and original authorized signatures.

- Address the proposal as directed in the guidelines.

- Be sure to include required documentation.

Follow-Up
Contact the funding source about the status, evaluation, and outcome of your proposal. It is important to request feedback about a proposal's strengths and weaknesses, although this information is sometimes unavailable, especially with a large volume of submissions.

Reference information may also be useful if you choose to approach the same or different funder again with your idea.

TYPES OF AID
Federal Aid: Federal funds are available through both loans and grants. Most Federal dollars are distributed to states first and then local governments apply for the funds through their individual states. Important points to remember when considering federal aid include:

- Be patient: It can take a long time for Federal funds to be approved.

- Be accurate: Don't leave anything out of the application materials. Make sure every question is answered and every blank filled.

- Be prepared: Federal dollars are often attached to strict requirements for accepting the money. Be prepared to expand your administrative support to keep up with all of the new paper work that will be required.

- Matching funds: Many Federal programs will require that the district find matching funds from state or local sources.

State Aid: Most money from the State of Oregon is in the form of loans. Individual state agencies administer programs that relate to their purpose. Grant money is also available and often in the form of Federal dollars administered through the state.

- Although state aid can be easier to get than federal aid, the district must understand that the funds will not be granted immediately.

- Don't leave anything out or miss any details.

- Stay in contact with the agency that will be making the decision. Know the individuals involved with your application and ask how the process is going and if they need anything from your district.

Private Aid**:** Most private money is in the form of grants, available for almost any need. Competition for money from private grant sources can be intense. Many grants do not allow governments to apply, so read the eligibility requirements carefully.

- Prepare specific, clean, and detailed grant applications. Prove that the district needs the money and that it is a project that the grantor should be interested in.

- Don't spend a great deal of time preparing grant applications until you are fairly certain that the granting source is interested. Write a letter explaining the proposed project and ask for their opinion.

- Thousands of grants are available, do careful research to find out which will fit your organization the best.

Applying for grants from private sources is much different than applying for aid from the Federal government or the State because private sources likely know little or nothing of your organiza-tion or what it does. Time must be dedicated in the proposal to explain the mission of your district, the population it serves, and the nature of the services it provides.

- Be Brief: 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: Make sure that you 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.

- Clarity: Have persons not involved in the project or even with the district read the applica-tion to see if they understand it.

- Accuracy: Don't make mistakes. Persons reviewing the application will assume that if you make mistakes on the application you will probably make mistakes administering the grant.

- Packaging: 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.

- Copies: Only submit as many copies as required.

- Original: Don't send out hundreds of the same material to different sources. Tailor each application, letter, and proposal to meet the specific needs of each granting source.

- Credibility: Design a detailed program. Substantiate how all of the money will be spent, provide a detailed timetable, and thoroughly describe the scope of your problem.

RESOURCES
This list of resources is only a sample of what is available. If you know of any other sources for funds that should be added to the list, please let SDAO know and we will add them to future updates.

Some of the programs relate only to specific types of districts, while others are broad in their scope. Browse through the directory and see if a program can help your district solve a current or future problem.

Note: Before requesting any applications, contact the organization administering the program, explain what you have in mind, and find out if you are eligible to apply.

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

Type of Assistance: Grants

Distributes in excess of $9 million annually, as follows: 26% to community welfare; 20% to children; 12% to education; 16% to arts; 9% to humanities; 9% to health and science; and 6% to environment. Accepts applications throughout the year. Applicants must hold 501c(3) tax-exempt status.

Cow Creek/ Umpqua Indian Foundation
2371 NE Stephens Street
Roseburg, Oregon 97470
541-957-8945
www.cowcreekfoundation.org

Type of Assistance: Grants

Distributes up to $15,000 per grant to a wide array of categories. Uses a very simple application process with two due dates per year. Proposals accepted from Douglas, Jackson, Klamath, Coos, Josephine, Lane and Deschutes counties. Has a decent track record for awarding grant to quasi-governmental organizations and special districts.

Department of Environmental Quality
811 SW 6th Avenue
Portland, Oregon 97204-1390
503-229-5630
http://www.oregon.gov/deq/Pages/index.aspx

Type of Assistance: Loans

Grant for Site-Specific Assessments designed to promote redevelopment or property transfer; Low interest loan fund that is available for water and sanitary systems; Grant for nonpoint source water quality and watershed enhancement projects that address the short and long term NPS priorities available to Soil and Water Conservation Districts; Loan fund for very large pollution control projects, including wastewater and solid waste facilities.

Economic Development Administration
915 Second Avenue
Room 1890
Seattle, WA 98174
https://www.eda.gov/resources/economic-development-directory/states/or.htm

Type of Assistance: Grants

Grants are provided to help distressed communities attract new industry, encourage business expansion, diversify economies, and generate long-term, private sector jobs. Projects funded for water and sewer facilities primarily serving industry and commerce.

Proposed projects must be located within an EDA-designated redevelopment area (RA). Projects must be consistent with an approved overall economic development program.

The Ford Family Foundation
1600 NW Stewart Parkway
Roseburg, Oregon 97471-1957
(541) 957-5574
www.tfff.org

Type of Assistance: Grants

Prefers to fund in small rural communities with population of less then 30,000. With few exceptions, this foundation will not fund projects of governmental units, but has provided funding to special districts at the request of their voluntary governing boards-particularly in smaller communized. Generally funds no more than 30% of a project's full budget, see guidelines for specific details on each grant category. For Assistance Grants, the maximum grant size is $5,000 and requires a minimum of a 20% cash match. Pre-applications may be submitted at any time.

Historic Preservation Fund
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

Type of Assistance: Grants

The Oregon State Historic Preservation Office has funds available 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.

Jackson Foundation
111 SW 5th Avenue, Suite 600
Portland, Oregon 97204
503-464-4920
www.thejacksonfoundation.com

Type of Assistance: Grants for Portland Metropolitan area.

Grants awarded for money to be used within the State of Oregon for charitable and educational purposes, and for the advancement of public welfare.

Local Parks Grant
Oregon Parks and Recreation Department
Grants Programs
725 Summer Street NE
Salem Oregon 97301
503-986-0705
www.oregon.gov/oprd/grants/Pages/local.aspx

Type of Assistance: Grants

OPRD gives more than $4 million annually to Oregon communities for outdoor recreation projects, and has awarded nearly $50 million in grants across the state since 1999. The grants are funded from voter-approved Lottery money.

Meyer Memorial Trust
425 NW 10th Avenue, Suite 400
Portland, Oregon 97209
503-228-5512
www.mmt.org

Type of Assistance: Grants

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

Type of Assistance: Grants

A nonprofit foundation that seeks to advance, support, and promote the health of the people of Oregon and southwest Washington. This one would be of interest to hospital districts and health districts.

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

Type of Assistance: Loans for energy saving measures

The objective of the Small Scale Energy Loan Program (SELP) is to promote energy conservation and renewable energy resource development in Oregon. The program offers competitive fixed interest rate laons 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
Oregon Community Development Programs
775 Summer Street NE, Suite 200
Salem, Oregon 97310-1280
503- 986-0123
www.oregon4biz.com

Type of Assistance: Grants

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

Type of Assistance: Grants

The grants are fairly small in size, call for information. Funds can be used 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/sfm/pages/grants.aspx

Type of Assistance: Grants

Financial assistance for fire districts. Additional information on website.

Oregon Transportation And Growth Management Program
Oregon Department of Transportation
555 13th Street NE
Salem, Oregon 97301
503-986-4349
www.oregon.gov/lcd/tgm/pages/index.aspx

Type of Assistance: Grants

GM Grants 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.

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

Type of Assistance: Grants

Although this foundation is located in Washington State, it extends its grant making programs to Oregon. Additional information is available on the web site.

USDA Rural Development
1220 SW 3rd Avenue, Suite 1801
Portland, OR 97204
(503) 414-3300
https://www.rd.usda.gov/or

Type of Assistance: Loans and Grants

Rural Development announces the availability of money formany of its programs in the Federal Register, through a Notice of Funds Availability (NOFA). Please 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

Type of Assistance: Grants and Information

Authorizes Federal 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

Type of Assistance: Loans

Loans for community water supply projects. Visit the website for more information.

Resources For 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.foundationdatabook.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
www.grants.gov

All federal grant opportunities are now listed at www.grants.gov. This relieves grant seekers of needing to follow the web pages or individual listings of the various departments of the federal government. Grant seekers should be encouraged to logon to the website very early in their grant research efforts. The web page has a number of user-friendly research tools that permit 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. Indeed, this website has become very organized, user-friendly, up-to-date, and single-point-of-contact for all federal grant programs.

Grant Information on the Internet
The internet is a useful tool when conducting research for grant and funding resources. There are many helpful search engines that can provide webpage addresses for funding resources. Some search engines to try are:

www.google.com
www.bing.com
www.altavista.com
www.ask.com
www.go.com
www.hotbot.com
www.lycos.com
www.metacrawler.com
www.yahoo.com

To conduct a search, enter the key words of the topic you are researching. For instance, to search grant information, enter “grants” or “funding sources”. Many web pages have grant application contact names and phone numbers, an online grant application process, or downloadable grant applications.

INVESTMENTS
(Chapter 7)

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INTRODUCTION
Investing is an important part of using district funds efficiently, and maximizing resources. Even small districts with limited expertise can take advantage of investment opportunities that have been created specifically for small public organizations.

Oregon Revised Statute, Chapter 294, "Municipal Financial Administration," provides the investment authorization for special districts. If this chapter does not specifically authorize an investment, then districts are forbidden from making that type of investment. In addition, no district may invest money unless its board has authorized the investment.

Normally, the district board appoints a staff investment officer, such as the manager or chief financial officer, and approves the investment policy. The adoption of an investment policy provides authorization and guidelines for the types of investments that will be permitted. The policy should be put in writing and state that it complies with applicable state statutes. The policy should also set guidelines for diversification, liquidity, and maturity of investments.

The Oregon Short Term Fund Board, "strongly recommends that local governments with limited amounts of money to invest, or with limited time and resources to devote to their investment, concentrate on making sure that their investments are safe (there is no appreciable risk that the investment will fail) and liquid (the investment can be easily converted to cash)." The lowest priority of objectives should be attached to maximizing the rate of return.

CASH MANAGEMENT
Investing is part of a 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, which temporarily exceed cash flow requirements. Typically these funds are monies 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 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, investment earnings can even reduce tax rates or user charges.

FIDUCIARY RESPONSIBILITIES OF BOARD MEMBERS
Board members can be held personally liable for certain financial misdeeds of the organization. There are several actions board members should take to protect themselves from exposure to litigation. These include:

- Purchase of appropriate liability insurance coverage for the governing body. *Note: If you do not currently have this coverage, SDIS has coverage options available to members.*
- Put an investment policy in writing.
- Insist on adequate financial reporting from staff.

- Understand the board's powers, responsibilities, and any legal restrictions.

- Seek expert advice before taking any action in which the board lacks reasonable competence to handle.

- Understand the principals of investment so that the board can manage the investment manager.

THE INVESTMENT POLICY

Since any investment made by a district requires authorization by the board, it is recommended that all districts have an adopted investment policy. A policy is useful regardless of the type of investing a district intends to pursue. The policy should be easily understood by individuals with or without investment expertise.

The Oregon Short Term Fund Board recommends, in its "Local Government Investment Policy Guidelines," creating a written investment policy for several reasons. An investment policy can:

- Increase investment flexibility.

- Reduce investment risk.

- Improve the district board's understanding of the investment process.

- Allow the district 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 provide the investment officer 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 should consist of the following:

- Scope: Identifies funds under the authority of the policy.

- Objectivies: (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
    - Separation of investment decisions and recordkeeping

- Safekeeping & Custody:
  - Delivery vs. Payment protocol

- Safekeeping/Custody by 3rd Party

- Authorized Investments: Specific authorized investment types should be listed

- Risk Parameters:
  - Credit Risk:
    - Ratings requirements
    - Exposure limitations
  - Interest Rate Risk:
    - Maximum investment maturity
    - Maximum average maturity
  - Concentration Risk:
    - Diversification requirements
  - Liquidity Risk:
    - Minimum liquidity guidance
    - 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

INVESTMENT METHODS AVAILABLE TO SPECIAL DISTRICTS

Oregon law restricts special districts to specific types of investments. The following is a short description of the types of investments that districts can legally utilize.

- 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.

- Corproate 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.

A list of investments allowed under ORS 294.040 and 294.810 may be found on the Oregon State Treasury website:

Other Investments

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 if these investments are contemplated.

INVESTMENT RESTRICTIONS

Oregon law places certain restrictions on local government investing. ORS 294 prohibits local governments from:

- Committing to invest funds more than 14 days in advance of settlement.

- Agreeing to invest funds or sell securities for a fee other than interest.

- Lending securities, unless authorized by an investment policy which has been reviewed by the Short Term Fund Board.

- Paying for securities before the local government or a custodian bank receives physical delivery of the securities.

- Delivering securities to a purchaser prior to receiving payment in full.

In addition, 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. This eighteen month restriction does not apply to money which the local government is specifically authorized by state law to hold for more than one year, if the money is invested in securities which mature when the money is expected to be needed and to certain reserves for bonds and construction projects.

WRITTEN INVESTMENT PROCUDURES

Instituting written investment procedures offers several benefits apart from an investment policy. Written procedures outline the process for making investment decisions, detail the activities of the investment staff, and specify how investment decisions are to be carried out. An investment policy should succinctly state the entity's investment objectives, outline the risk tolerances of the governing body, and delegate authority to investment personnel. In contrast, an investment procedure should formalize the investment process and put the investment policy into action.

Well-written investment procedures will 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 is helpful to think through the entire investment process from beginning to end, and then document the activities that take place. Investment procedures should begin with a review of the daily cash position and include a review of maturing investments and incoming payments.

Next, the procedures should 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 your entity's portfolio? Written procedures should outline or detail how investment transactions will be handled.

To help ensure compliance with the investment policy and adherence to internal controls, the items listed below should be included in the procedure:

- 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 go beyond the daily routine and 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):
https://www.oregonlegislature.gov/bills_laws/ors/ors294.html

Local Government Investment Pool:
http://www.oregon.gov/treasury/divisions/finance/localgov/pages/lgip%20resources.aspx

Oregon State Treasury Finance Division Home Page:
http://www.oregon.gov/treasury/Divisions/Finance/Pages/default.aspx

Public Funds Collaterization Program:
http://www.oregon.gov/treasury/Divisions/Finance/FinancialInstitutions/Pages/PFCP%20for%20Banks.aspx

SDAO Reference Library/Accounting: http://www.sdao.com/S4/MemberHome.aspx

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.

- 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 does 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.

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. When a request is submitted in writing, the district must respond within five business days acknowledging the receipt of that request. You then have an additional 10 business days to fulfill the request or issue a written response estimating how long fulfillment will take. The district is not subject to this response timeframe

if it is awaiting a response from the requestor seeking clarification of the inquiry or if the requestor has not agreed to pay for the records, provided that the cost is $25 or more. Other considerations that apply are:

- Complicated requests.
- Large volume of requests.
- Requests involving documents not readily available, or if the necessary staff are unavailable to fulfill the request.

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 or not 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 statue 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 for release of the record. The District may seek the advice of the District Attorney prior to denial of an inspection request. Upon receipt of the petition for review to the District Attorney, 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:
https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=589

Attorney General's Public Meetings and Records Manual:
http://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 Reference Library/Meetings and Records: http://www.sdao.com/S4/MemberHome.aspx