

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

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## 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:

<u>Type of District</u>	<u>Enabling Oregon Statutes</u>
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 appealable.

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 extraterritorial 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](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](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](https://www.oregonlegislature.gov/bills_laws/ors/ors255.html)

Special Districts Generally (ORS 198):

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors198.html](https://www.oregonlegislature.gov/bills_laws/ors/ors198.html)