

Public Body Work Group Report

I. Introductory Summary

The proposed bill that accompanies this report is a continuation of the law improvement objectives of House Bill 2425 (2001) which was recommended by the Oregon Law Commission and enacted during the 2001 Legislative Session. House Bill 2425 is now codified at ORS 174.108 to 174.118. This proposed bill is another example of the ongoing nature of the Law Commission's sometimes mundane but nevertheless important work in improving Oregon's laws. The bill would amend the special districts statutory provisions in the Oregon Revised Statutes by using the nomenclature adopted in HB 2425, by updating references to various public bodies found in the statutes, and by making necessary wording changes for consistency and clarity.

The bill can be likened to our beaches. The Oregon Revised Statutes and Oregon beaches are, for the most part, clean, but over the years they both accumulate litter or debris from use. Each needs, on occasion, some clean up work done. This bill, then, is the Special Districts Clean-up Bill.

II. History of the Project

The Oregon Law Commission first addressed the problem of multiple terms for public bodies in preparation for the 2001 Legislative Session. The problem was described in a *Willamette Law Review* article written by William Long.¹ The article highlighted the difficulties caused by the multiple terms used for various public bodies in the Oregon statutes. For example, left over from the 1850's in a few statutes is the term "body politic and corporate." Originally, the term recognized some difference in public bodies that possessed certain corporation-like powers not then inherent in public bodies generally. Today, that difference does not exist, and yet the term remains scattered throughout the statutes.

Based on conversations between Mr. Long and David Heynderickx, Senior Deputy Legislative Counsel, Mr. Heynderickx brought the matter to the attention of the Oregon Law Commission. A Work Group was formed, chaired by Commissioner Professor Bernard Vail.² The Work Group first considered amending all of the implicated statutes with uniform, understandable definitions. That approach was rejected due in large part to the vast number of statutes that would need to be amended.

After considerable discussion, the Work Group suggested and the Law Commission agreed that a phased approach was best. First, the Law Commission recommended that definitions be enacted that were prospective in nature. Such definitions would be used in future legislation, when appropriate, and over time, an increasing number of statutes would reference the standard definitions. Second, the Legislature as part of its ongoing amendments to the statutes, could

¹ William R. Long, *A Modest Proposal on Public Bodies*, 36 *Willamette L. Rev.* 83 (Winter 2000).

² Other members of the Work Group were Steve Blackhurst, Eric Carlson, Prof. Sandra Hansberger, David Heynderickx, Phillip Schradle, Rep. Lane Shetterly, and Bradd Swank.

gradually adopt the definitions in individual subject matter areas with input from persons directly affected by the statutes as to the meaning of the many ambiguous terms that are in use. This approach found favor with the Legislature, and House Bill 2425 was adopted in the 2001 Session without a negative vote.

For the 2003 Legislative Session, the Law Commission's Public Body Work Group³ turned its attention to the question of which existing laws ought to incorporate the new definition, embarking on step two of the long-term solution. Many references to "public body" can be found in the statutes, including the Public Records Law and the Tort Claims Act. While many areas of the law would benefit from references to the new definitions, the Work Group proposed and the Law Commission authorized the Work Group to take a more narrow focus in the first effort to use the new definitions. The Work Group recommended beginning the process of incorporating the new definitions by addressing special district legislation.

III. Statement of the Problem Area

Passage of House Bill 2425 in the 2001 Legislative Session assured future legislation affecting "public bodies" will have the opportunity to use the new standardized definitions. However, existing laws still need a comprehensive review of the use of the term. The 2001 legislation was only prospective and did not eliminate inconsistent or ambiguous uses of the multiple terms describing public bodies already in the Oregon Revised Statutes.

IV. Objectives of the Proposal

This proposal seeks to improve the law by clarifying terms used for public bodies⁴ in the

³ This session's members and interested persons included:

Members:

Prof. Bernard Vail, Chair	Northwestern School of Law, Lewis & Clark College
Rep. Lane Shetterly	Shetterly Irick Shetterly & Ozias
Philip Schradle	Department of Justice, Special Counsel
Bradd Swank	Office of State Court Administrator

Interested Participants:

Susan Grabe	Oregon State Bar
Dave Heynderickx	Office of Legislative Counsel
Wendy Johnson	Oregon Law Commission
David Kenagy	Oregon Law Commission
Craig Prins	Judiciary Committee
Hasina Squires	Western Advocates Inc.

⁴ HB 2425 (2001) is codified in part in ORS 174.109 which reads: "Subject to ORS 174.108, as used in the statutes of this state 'public body' means state government bodies, local government bodies and special government bodies." Terms used in that statute are defined in subsequent statutes.

special district statutes. It also makes related wording and housekeeping changes by eliminating redundancies and antiquated word usage in the special district statutes.

V. Review of Legal Solutions Existing or Proposed Elsewhere

The Law Commission staff researched efforts by other jurisdictions to address this problem and discovered other states have not addressed the problem.

VI. The Proposal

A. General Principles

After some discussion with representatives of the “districts” now defined under the new ORS 174.116, it was decided that use of the term “district” alone was somewhat confusing. Districts, along with cities, counties, and all subdivisions of cities, counties, and districts are defined as “local government.” See ORS 174.116(1)(a). Most of these “districts” also commonly use the term “special district.” Adding to the misperception, school districts are not defined as “districts” under ORS 174.116; instead they are defined by the term “special government body” under ORS 174.117. Looking at the essential elements of the various district entities listed in ORS 174.117(2), it was decided that the phrase “local service district” more accurately describes the nature of these public bodies rather than the generic term of “district.” All of these districts are indeed “local” in the sense that they have boundaries that are smaller than the entire state and all provide “services” of one sort or another to those within the boundaries.

One of the principal issues addressed by this bill proposed for the 2003 session is the many statutes that authorize the creation of a particular type of local service district and then simply declare the entity to be a “municipal corporation,” a “body politic,” a “public body, corporate and politic,” a combination of such terms, or some other equally unhelpful phrase. Still other statutes authorizing the creation of such districts make no attempt to describe the nature of the entity. In general, these statutes attempt to indicate that the described entity is somehow a governmental body rather than a *private* corporation. Since the statutory powers the entity possesses dictates the status of the body rather than any label, it was decided to avoid reintroducing undefined labels in these statutes (*e.g.* “governmental body”). Following this approach, the statutes have been amended to remove such wording. The listed statutory powers of each body however remain in the proposed bill.

Another principle used throughout the proposed bill is that references to the new definitions of “public body” found in ORS 174.109 and to “local government” found in ORS 174.116 are made throughout the bill. Also, where last session’s HB 2425 provided distinctive names for particular districts the bill inserts those names into the authorizing statutes.

Lastly, throughout the bill references to the various entities with whom the districts may contract were deleted and references to ORS Chapter 190 are inserted. Chapter 190 provides statutes of general applicability regarding intergovernmental agreements between local governments and a wide variety of other government bodies (*e.g.* states, the federal government, Indian Tribes, etc.). The existing statutes governing districts contain many old terms for public bodies that are archaic, confusing and redundant. These statutes conflict with ORS Chapter 190 to

the extent they suggest that districts can only contract with certain public bodies. The Work Group believes the substitutions are keeping with the legislature's intent reflected in ORS 190.

B. Section-by-Section Analysis

In addition to the above general types of drafting decisions reflected in the proposed bill, a short section-by-section analysis of the highlights of the bill follows:

Section 1 adds the words "local service" in front of "districts" in ORS 174.116 so that the definition of "local government" would read in part, "all cities, counties and local service districts located in this state." In addition, corrections were made to add "economic improvement districts," "fair districts," and "airport districts." These provisions were inadvertently left out of last session's HB 2425.

Sections 2 through 62 amend provisions in ORS Chapter 223. General principle amendments described above are made throughout these sections.

Section 63, affecting definitions adopted by the Legislative Assembly in ORS 310.140 to implement amendments to Section 11b of Article XI of the Oregon Constitution adopted by initiative petition, has general principle amendments described above.

Section 64, affecting procedures for property tax assessment in ORS 371.655, has general principle amendments described above.

Sections 65 through 79 amend provisions in ORS Chapter 261, affecting People's Utility Districts. The word "city" from ORS 174.109 is substituted for "municipality" throughout and the phrase "people's utility" is inserted prior to the word "district" as needed. Other wording changes are made to assist readability.

Sections 81 through 87 amend provisions in ORS Chapter 264, affecting domestic water supply districts. The chapter heading, "domestic water supply districts," is used throughout and replaces "municipal corporations." Other wording changes are made for consistency.

Sections 88 through 91 amend Chapter 265, affecting cemetery maintenance districts. Wording is improved for clarification.

Sections 92 through 94 amend ORS 267.200, 267.225 and 267.380, affecting mass transit districts. The words "mass transit" are inserted in front of "district" and resulting unnecessary wording is deleted. General principle amendments are made throughout these sections.

Sections 95 and 96 amend ORS 267.550 and 267.560, affecting transportation districts. The word "transportation" is inserted in front of "district" and resulting unnecessary wording is deleted. "Public bodies as defined in ORS 174.109" is substituted for "public corporations, cities or counties." While ORS 174.109 (which includes the State of Oregon) is broader than "public corporation, cities or counties," the Work Group believes this matches the statute's intent. In addition, the Work Group deleted the "public corporation" term as no one is sure what that undefined term includes.

Sections 97 through 99 amend ORS 268.020, 268.300 and 268.393, affecting metropolitan service districts. The words “metropolitan service” are inserted in front of “district” and these sections also have general principle amendments described above.

Section 100 amends ORS 357.261, affecting library districts. The word “library” is inserted in front of “district” and resulting unnecessary wording is deleted.

Sections 101 through 103 amend ORS 371.060, 371.067 and 371.105, affecting county road districts. The word “incorporated” is deleted where it appears in front of “city” and other wording changes are made for consistency.

Sections 104 and 105 amend ORS 371.305 and 371.336, affecting special road districts. Because all cities in Oregon are incorporated (*i.e.* have boundaries), indicating that a city is “incorporated” is redundant. Thus, the word “incorporated” is deleted where it appears in front of “city.” Additional cumbersome wording is streamlined.

Sections 106 through 109 amend ORS 371.405, 371.480, 371.485 and 371.520, affecting road assessment districts. The phrase “road assessment” is inserted in front of “district” and resulting unnecessary wording is deleted. In addition, the word “incorporated” is deleted where it appears in front of “city” and other wording changes are made for consistency.

Section 110 amends ORS 372.140, affecting highway lighting districts. The words “highway lighting” are inserted in front of “district” and reference is made to ORS 174.116 where a district’s powers are enumerated.

Section 111 amends ORS 401.842, affecting emergency communications districts. The words “9-1-1 communication” are inserted in front of “district” and unnecessary wording is deleted.

Sections 112 through 114 amend ORS 440.320, 440.360 and 440.370, affecting health districts. The word “health” is inserted in front of “district” and related wording changes are made.

Section 115 amends ORS 440.505, affecting port hospitals. “Municipal corporation” references are deleted.

Sections 116 and 117 amend ORS 450.075 and 450.160, affecting sanitary districts. Wording referring to other governments, governmental agencies and municipalities is replaced with “public body as defined in ORS 174.109” or “local governments as defined in ORS 174.116” as appropriate. The Group was unsure if “governmental agency” should include the federal government. Thus, the Group decided to leave in the term rather than use the public body definition from 174.109 to ensure that a change in the law was not inadvertently made.

Sections 118 and 119 amend ORS 450.693 and 450.695, affecting water authorities.

Sections 120 through 122 amend ORS 450.817, 450.835 and 450.875, affecting sanitary authorities.

Sections 123 through 125 amend ORS 451.410, 451.485 and 451.520, affecting county service districts. The words “municipal corporation” are replaced with “district” and wording improvements are made.

Sections 126 and 127 amend ORS 478.300 and 478.990, affecting rural fire protection districts. Wording referring to other governments or governmental agencies is replaced with “public body as defined in ORS 174.109.” In addition, section 127 deletes references to grants of jurisdiction to state, municipal and justice courts for violations of rural fire protection district rules and regulations. The deletions in section 127 were made because they are redundant; justice courts are covered in ORS 51.050 and municipal courts are covered in ORS 221.339.

Sections 128 through 131 amend ORS 523.030, 523.050, 523.130 and 523.240, affecting geothermal heating districts. The words “geothermal heating” are inserted in front of the word “district” and “geothermal heating district” is used in place of existing wording where appropriate. General principle amendments are made throughout these sections.

Sections 132 and 133 amend ORS 545.057 and 545.257, affecting irrigation districts. General principle amendments are made throughout these sections. In addition, “an incorporated city” is replaced with “a city.”

Section 134 amends ORS 547.045, affecting drainage districts. “State institution” references ORS 179.321 as appropriate and the Department of Human Services is referenced to provide clarification.

Sections 135 through 137 amend ORS 552.113, 552.305 and 552.320, affecting water improvement districts.

Sections 138 through 142 amend provisions in ORS Chapter 553, affecting water control districts. General principle amendments are made throughout these sections.

Section 143 amends ORS 565.275, affecting fair districts. Antiquated and unnecessary wording referring to “a public body, corporate and politic” is deleted.

Sections 144 through 147 amend ORS 568.210, 568.225, 568.410 and 568.805, affecting soil and water conservation districts. Additional cumbersome wording is streamlined. Section 147 limits a port district’s ability to issue bonds and make assessments but it is not a substantive change as the limit was already in the definition section at Section 144.

Sections 148 through 152 amend ORS 777.010, 777.112, 777.113 and 778.010, affecting ports. General principle amendments are made throughout these sections.

Sections 153 through 157 amend ORS 285A.603, 285A.654, 285A.657, 285A.666, and Section 19, Chapter 607, Oregon Laws 1987, affecting the Port of Portland and the Port Revolving Fund. References to ports “incorporated” are changed to “formed.”

Section 158 amends ORS 838.035, affecting airport districts. Antiquated and unnecessary wording referring to “a public body, corporate and politic” is deleted.

VII. Conclusion

This bill improves consistency in terminology, wording, and grammar in the various special district statutes in furtherance of the goal of providing standard definitions for public bodies. No significant substantive changes were intended by the Work Group in this proposed bill.