



**SPECIAL DISTRICTS
ASSOCIATION OF OREGON**



Special District Elected Official's Guide

Special Districts Association of Oregon

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STATE AGENCY RESOURCES

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A Elected Official's Guide to Governing a Special District

FOREWORD

The Special Districts Association of Oregon was formed in 1979 to give special districts a stronger and united voice at the Oregon Legislature. As with similar associations that support cities, counties, schools, and local government, the Association provides advocacy with state administrative agencies and other units of government, training, information resources, and other support programs. SDAO has grown its membership to over 900 local government members.

The association is governed by a twelve member Board of Directors that exercises general supervision over the affairs of the organization. The Board's governance and formulation of policies are exercised in accordance with the association's bylaws. The annual business meeting of SDAO members, held in conjunction with the February annual conference, gives members an opportunity to elect, for two-year terms, their association's Board of Directors.

In 1985 the Board of Directors established the Special Districts Insurance Services (SDIS) Trust to escape the volatilities of the traditional insurance market. The SDIS Trust is governed by a seven member Board of Trustees, appointed by the association Board, and operates under a Declaration of Trust. The Trust governs through its adopted bylaws and is responsible for protecting and managing funds related to the insurance programs, and developing arrangements and strategies necessary to implement the programs.

SDAO has become increasingly important as the membership has grown and the operation of special districts has become more complex. It has become an effective lobbying and educational organization that strives to serve the needs of its members.

KEEPING UP TO DATE

The longer a person serves in public office, the more you realize things change. For example, a Government Standards and Practices Commission ruling in 2004 can be changed in 2005. Often the Legislature changes laws that affect the day-to-day operations of a special district. Almost every legislative session laws on elections, tax and finance and land use are changed.

How best then to keep informed on the changes? Being active in an association is probably the single best way to keep on top of issues for your district. SDAO offers training sessions around the state as well as an annual conference in February each year. In addition, many types of districts have associations that serve the specific needs of individual types of districts.

For a listing of associations for individual types of districts or services, see the following page on the SDAO website:

Link: <http://www.sdao.com/resources.htm>

While individual associations can offer detailed training specific to a type of district, SDAO and some state agencies offer training that applies to all types of districts. For a list of training opportunities offered by SDAO and others see the following page on the SDAO website:

Link: http://www.sdao.com/training_sdao.htm

You can also call SDAO for information on upcoming training opportunities.

If a person can only attend one meeting a year, the annual SDAO conference is probably the best event. At the SDAO conference there are not only training sessions, but caucus meetings are held based on the type of district where legislative and others issues are discussed. This provides an opportunity to meet with elected and appointed officials who share the same issues as your district, and hear how they have dealt with problems or opportunities. For dates and times of the upcoming conferences contact SDAO.

Methods of City Annexation

Cities can annex without a vote in the same manner as districts: a petition signed by all the property owners, a health hazard annexation or a petition signed by a majority of electors and by the owners of the majority of the land to be annexed. In addition, cities can annex lands if the owners of a majority of the land and the majority of the assessed valuation sign “consent to annex” agreements previous to the actual annexation. Some cities require these agreements before providing any services outside the city limits, and then act on the annexation at a later date. The agreements are valid for one year unless extended to a longer period of time in the written agreement signed by the property owners.

As for districts, other annexation methods require a vote of the electors to be approved.

Boundary Commissions

At one time, there were three boundary commissions in Oregon covering the Metro area, Marion County and Lane County. Today only the Lane County Boundary Commission remains. Annexations, mergers, consolidations and formations in Lane County require Boundary Commission approval.

Mergers and Consolidations

The statutes (ORS 198.885 to 198.915) provide that two or more districts providing like services may consolidate and form a new district or they may merge operations into a single surviving district. In other words, districts that merge are considered annexed into an existing district, while districts that consolidate create an entirely new district. In a merger, the tax rate of the surviving district is applied to the annexed territory. In a consolidation, and new entity is created and assigned a new tax rate.

Mergers and consolidations can be a way to provide more cost effective service for residents, and can keep rural districts viable in the face of city annexations or in some cases with cities. The procedures for merging and consolidation of districts can be found in ORS 198.895.

Districts considering a merger or consolidation should use professional assistance to determine the results of the merger. Plans need to me made for distribution of debt, provision of services, new tax rates and management of personnel.

INTRODUCTION

What is a “Special District”

In Oregon, as well as across the nation, special districts are the most rapidly growing form of government. There are many reasons for the growth in district formations, but most are created because they allow the creation of a financing source for a sole purpose. If a community or area has a specific need, a district can fill that need with targeted funding that can only be used to meet that need. With a special district, voters and tax payers know that all the money collected goes to the specific need, and cannot be sent to fund an unrelated activity. For that reason and others, there are over 1,000 special districts in Oregon. Most special districts are small, and rely heavily on volunteers, with many districts having few or no paid employees.

The authority to create special districts in Oregon is found in the Oregon Revised Statutes (ORS), Chapter 198. The chapter lists the services that can be provided by a district and general rules for creation, governance and dissolution of districts. The most numerous types of districts by number are fire, water, irrigation, road, sanitary, port and park and recreation. In all, the statutes allow for over 30 types of districts.

Link: <http://landru.leg.state.or.us/ors/>

The Differences Between a City, County and a District

Cities in Oregon have constitutional authority called “home rule.” This allows a city to legislate and provide services as they choose unless limited by specific statute or law. Counties and special districts do not have “home rule” authority and are limited to activities specifically allowed by statute. The exception is home rule counties, which by adoption of a voter approved charter can assume home rule authority. Currently, eight of Oregon’s thirty-six counties have home rule authority.

Generally, cities and counties can provide multiple services and collect a wide variety of fees and taxes to support those activities. Districts generally provide only a single service, and the sources of income are specifically authorized by the ORS. In some limited cases, districts can provide more than one service. For example, a rural fire protection district can levy taxes for street lighting. These types of exceptions generally occur when the Legislature approves a bill to assist a specific community with a need.

The specific authority of each type of special district is referenced in the list of district types found in ORS 198.010, ORS 198.180 and ORS 198.210.

County Service Districts and Authorities

Oregon law also provides for county service districts in ORS 451. County service districts operate in much the same way as special service districts with a separate budget and funds dedicated to the specific services that are authorized. The major difference is that county service districts are governed by the county board of commissioners, not by a separate elected body as is done in service districts under ORS 198. However, some counties appoint an advisory board to actually govern the district, under the authority of the county. Also, county service districts can provide more than one service, although most county service districts in Oregon provide a single service.

Authorities are a “super” service district authorized in ORS 450 for the provision of water and sanitary services. Authorities have elected boards and operate in the same manner as a special district, but the territory within a water or sanitary authority cannot be withdrawn from the authority upon annexation by a city. Authorities are designed for larger, regional governments that serve multiple cities and unincorporated areas.

Link: <http://bluebook.state.or.us/local/cities/citieshome.htm>

ELECTIONS

General Information

Laws governing local elections are administered by the Secretary of State’s office and by each county election officer or county clerk. Administrative rules governing elections are written by the Secretary of State to ensure uniform election processes statewide, while the actual election is conducted by each county. When considering running for office or when you have an election question it is generally best to first contact your county election official.

The Secretary of State’s Elections Division prepares and distributes several reference manuals that all districts should become familiar with. Those publications are the *District Elections Manual* and the *Campaign Finance Manual*.

Link: <http://www.sos.state.or.us/elections/manuals/district.pdf>

Most districts are included under the same election statutes (ORS 255). However, there are six types of districts that have different election requirements and they need to refer to their own enabling statutes for

- The annexation petition is signed by a majority of the electors registered in the territory and by the owners of half or more of the land in the territory to be annexed.
- The annexation is ordered by the state as a health hazard annexation (applies to provision of sanitary sewer only).

The state statute that controls annexations by districts is:

Link: <http://www.leg.state.or.us/ors/198.html>

The specific section is ORS 198.850. Annexations for districts are a joint process with the county. Districts receiving annexation requests or desiring to annex territory should work closely with the county. It is also important to note that a district cannot annex into the territory of another district that provides the same service.

Districts may also annex lands within a city, but are required to have the approval of the city council, and in most cases, a vote is required of the residents of the city and the district.

Annexation of District Territory

A city may propose withdrawal of territory within a district into the city. A city annexation into a district does not require the approval of the county or district, only the approval of the city council, and in some cases, the approval of the voters.

City annexations are subject to the same procedures as district annexations, with the difference that the city can act on the annexation without county approval. When a city annexes territory, the land is automatically withdrawn from neighboring districts that provide fire, water, park and recreation, highway lighting, county service districts, road districts, or sanitary districts. However, the city may contract with the district to continue to provide services within the annexed territory. The controlling statute on annexations is ORS 222.

Link: <http://www.leg.state.or.us/ors/222.html>

If all the territory of the above named districts is annexed into a city, the district is automatically dissolved and the city assumes all responsibility for the operation and assets of the prior district.

The second is the Employment Law Guide issued by the same department which has employer information in an easy to understand format.

Link: <http://www.dol.gov/compliance/guide/index.htm>

ANNEXATIONS, MERGERS AND CONSOLIDATIONS

The boundaries of special districts can change in several ways. While annexations, mergers and consolidations can happen infrequently, and the laws are complex, directors should become familiar with annexation processes and laws.

Annexations to a District

Annexations are where territory is either added to a district or withdrawn from the district as the result of an annexation by an adjoining city.

Annexations to a district can generally be initiated in the following ways:

- By Voters: Electors of an area who wish to annex may file an annexation petition with the county commission. Prior to filing the petition, the board of the district must approve.
- By the District Board: An annexation may be initiated by a resolution of the district board and sent to the county.
- By the County Commission: The county board may initiate an annexation with the approval of the district board.
- By a State Agency: Health hazard annexations may be initiated by the Oregon State Health Division.
- By a Landowner: An individual owner of land may petition the county for annexation to a district, with the approval of the district the land is added without an election.

While annexations can be initiated as listed above, some annexations require a vote of the electors in the area to be annexed, while others can be done without a vote. Generally, a vote is not required if:

- The annexation petition is signed by all the owners of the lands in the territory proposed to be annexed.

specific election laws. Those districts are: drainage districts, emergency communications districts, irrigation districts, people's utility districts, hospital districts and soil and water conservation districts.

Placing Measures on the Ballot

Districts may, in any year, submit a measure to the voters at any one or more of the following dates:

- The second Tuesday in March.
- The third Tuesday in May (Primary Election).
- The third Tuesday in September.
- The first Tuesday after the first Monday in November (General Election).

Special elections other than one of the above dates can only occur if the district elections authority approves an election to finance repairs to property damaged.

Typically, these election dates are used for bond measures to authorize the construction of facilities or the purchase of equipment. Other examples would be local option levies, annexations, or mergers that require a vote.

A district must provide notice to the county clerk at least 61 days before a bond or measure election, unless the district already submitted the same measure in the preceding September election, in which case the measure must be filed at least 47 days before the election. The district must also submit a ballot title for the measure and if a bond election is requested, the notice must include the purpose for which the bonds are to be used and the amount and term of the bonds and the kind of bonds to be issued.

Filing for Office

Candidates for special district offices can either file by submitting a filing fee and filling out the proper forms at the county clerk or elections office, or by submitting a petition for nomination, which also can be obtained from the county. All candidates are required to establish a campaign committee before receiving or spending any money to support their race. The exception is if the candidate serves as his or her own treasurer and does not receive or expend more than \$300. It is important for a candidate to check with the county clerk or elections officer well in advance of filing for office to obtain all the necessary forms and information.

If a candidate decides to withdraw from an election, the nominee must withdraw no later than 5:00 p.m. on the 70th day before a primary or general election. A form must be signed and included is a statement indicating the reason for the withdrawal.

The statute that covers special district elections is ORS 255.

Link: <http://landru.leg.state.or.us/ors/255.html>

Filling Vacancies on the Board

When a vacancy occurs on a district board between elections, the vacancy shall be filled by appointment by the remaining board members. If there is not a majority of the board available or if a majority of the board cannot agree on filling the vacancy, the county commission will fill the position. A quorum for the purposes of filing a vacancy on the board is a majority of the elected board, for example three members present out of a five person board, or two of a three person board.

Another example would be if a recall election is held, and a quorum of the board (e.g. three members out of five) is not available the vacancies are filled by the board of county commissioners. In yet another example, if four members are present but cannot get a majority of three to vote to fill a position, then the decision would go to the board of county commissioners. A person filling a vacancy will serve until June 30th following the next regular district election at which board members are elected, which is May in odd numbered years. The successor elected at the next regular election serve for the remainder of the unexpired term, if any.

Recall Elections

The procedure for recall of elected officials is found in two places in the statutes. For the majority of districts that are listed in ORS 255.012 the controlling statutes are ORS 249.865. For other types of districts not listed in ORS 255 (for example, irrigation and drainage districts) the controlling statute is ORS 198.430.

Link: <http://landru.leg.state.or.us/ors/255.html>

Link: <http://landru.leg.state.or.us/ors/249.html>

Link: <http://landru.leg.state.or.us/ors/198.html>

THE ROLE OF THE BOARD AND THE MANAGER

In general, it is the responsibility of the elected board to establish policy and the role of the manager to implement policy. This line sometimes moves depending on the size and responsibilities of a district and whether or not the staff is paid or volunteer. Boards should be careful to have a clear understanding with their manager on respective roles and responsibilities either in writing or documented in board minutes. It is also important for board members to understand that their authority is not as an individual, but as a board. A board member, for example, does not have the authority to direct staff or take any position on behalf of the district unless authorized by the full board of directors.

The board does have the responsibility of hiring the district manager, evaluating his or her performance and occasionally dismissing. All three areas require compliance with applicable state and federal laws, even if the hire is an “at will” employee and can be fired without cause. The district manager is the only employee the board generally hires, fires or evaluates other than when the board adopts personnel policies or a public hearing on other employee actions.

The termination process of district managers and employees is a leading cause of lawsuits against districts and board members personally. For this reason directors need to pay close attention when developing personnel policies and when hiring or firing a district manager. Generally, districts should utilize legal counsel familiar with employment and labor law when dealing with personnel decisions. Never forget that one of the most important jobs of a board is to establish and maintain overall district personnel policies and procedures.

Information Sources

An excellent resource guide for hiring, evaluating and firing employees is the SDAO Management and Policy Resource Guide, which is available by calling 1-800-285-5461. The Guide has a comprehensive review of all phases of employment issues and sample forms and policies for districts to use.

There are two good sources for information on federal employment laws. The first is the US Department of Labor web site where each law can be accessed.

Link: <http://www.dol.gov/compliance/laws/main.htm>

Another publication of the DOR that includes all details and specific requirements is the *Local Budgeting Manual*, which can be found at:

Link: <http://www.oregon.gov/DOR/PTD/docs/local-b/504-420.pdf>

If you wish to speak to someone at DOR about local budget law, call 503-945-8293. You may also order hard copies of DOR publications.

After the Budget is Adopted

An adopted budget can be changed after July 1, of the budget year.

However, if a board expends funds outside of the adopted budget, or if the board does not amend the budget until after the non-budget funds are expended, board members may be individually sued. It is therefore, imperative that funds only be expended as approved in an adopted budget.

An adopted budget can be amended in two ways: resolution transfers and supplemental changes. A resolution transfer is moving funds between line items, usually within a fund. An example is moving funds from contingency to office expense. The total transfer must equal the original funds available, thus the total amount of the budget is not changed, only the category where the funds are spent.

Audit Requirements

The final phase of the budgeting cycle is the audit of the previous budget (biennial or annual). The audit must be conducted either by the Secretary of State's office or by an auditor certified by the Oregon State Board of Accountancy to do municipal audits. The audit should include:

- Financial statements with appropriate notes
- Auditors opinion of the financial statements
- Auditors comments about the districts financial affairs and compliance with legal requirements

Municipal audit law can be found in ORRS 297.405.

Link: <http://www.leg.state.or.us/ors/297.html>

Certain districts are exempt from the full audit requirements. Those districts with annual total receipts and expenditures of less than \$150,000 may file a schedule form "in lieu" with the Secretary of State or districts with annual receipts and expenditures of \$150,000 to \$500,000 may file an "audit review" which is a simpler and less expensive review done by a certified municipal auditor.

The right to petition for the recall of a public officer is found in the Oregon Constitution, and is implemented by the previously listed statutes. The statutes provide for a very specific form and content of the recall petition and must be submitted to the local election authority before being circulated. Generally, a recall petition must be signed by a number of electors representing 15 percent of the total votes cast in the district for all candidate for Governor at the most recent election for Governor. Petitioners have 100 days to collect signatures after it has been filed with the county elections officer.

If the recall is certified for the ballot, the person being recalled has the right to submit to the election official a statement of not more than 200 words that will be printed on the official and sample ballots for the recall.

The link to the Secretary of States "Recall Manual" is:

Link: <http://www.sos.state.or.us/elections/manuals/recall.pdf>

Initiative and Referendum

The right to initiate district legislation or refer legislation or actions of a district board to the voters is found in subsection (5) of section 1, Article IV of the Oregon Constitution. An initiative petition consists of the proposed ordinance while a referendum petition consists of the text of an ordinance or other legislative enactment adopted by the governing body of the district that is to be ratified or repealed by the voters of the district. Administrative actions by the governing authority, such as zoning and land use decisions, purchasing, and most expenditures, are not subject to the initiative and referendum process. The requirements for initiative and referendum petitions can be found in the Secretary of State's election manual at:

Link: <http://www.sos.state.or.us/elections/manuals/district.pdf>

Measure Campaigns

All public agencies are subject to a general rule prohibiting the use of public funds to advocate a position either in support or opposition to a ballot measure. All information presented and paid for with public funds must be impartial. In addition, public employees are prohibited from spending any time while on the job during working hours to promote or oppose a ballot measure. The definition of "public employee" does not apply to elected officials, but does apply to paid staff, including unpaid, appointed members of boards, commissions or committees. Specific information can be found in ORS 260.432.

Link: <http://landru.leg.state.or.us/ors/260.html>

Issues regarding the use or misuse of public funds, equipment, materials, supplies or space can be found in ORS 294.100, which also establishes personal liability of elected officials for misuse of public funds.

Link: <http://landru.leg.state.or.us/ors/294.html>

If a district has questions or concerns about information they may provide to the public involving ballot measure, they should contact the Elections Division at 503-986-1518. In some cases, the Elections Division will review proposed informational mailers and comment on their compliance with the law.

Elected officials can take positions on ballot measures and staff can record votes and resolutions in support or opposition to a measure as part of their normal duties. Staff can also research measures including the potential effects and the pros and cons of the measure for the district. The district cannot make mass distributions of the position of the elected board, but if copies are requested by the public, the district may use office facilities to copy the resolution expressing the opinion of the board.

The courts have recognized the right of elected officials to speak out on issues, particularly those that impact the district which they serve. However, elected officials cannot involve support staff in their efforts.

District staff must use their own personal time if they want to advocate a position on a ballot measure. Public employers are required to post a notice that outlines legal restrictions on political activity of public employee while on the job during working hours. The contents of the notice can be found at ORS 260.432(3).

ROLES AND RESPONSIBILITIES OF ELECTED OFFICIALS

Power and Authority of Special Districts

Unlike cities, special districts have only the powers that are expressly provided for or necessarily implied in the Oregon Revised Statutes (ORS). These authorities can be found generally in ORS 198, and within the principal act that governs the various types of districts. A listing of the principal statute for each type of district can be found in ORS 198.010 through ORS 198.210.

The statute that covers local budget law is ORS 294.

Link: <http://landru.leg.state.or.us/ors/294.html>

These statutes cover most types of districts; however, there are certain districts that are exempt. The exempt list includes drainage, irrigation road, hospital, diking, health and intergovernmental entities created under ORS 190. For a complete list see ORS 294.316. Districts exempt from ORS 294 have budgeting requirements listed in their individual enabling statutes.

Each district is required to adopt an annual or biennial budget that begins on July 1 and ends on June 30.

Preparing a Budget

The first step in the budget process is the appointment of a budget officer, who is responsible to the board for the initial preparation of the budget, and who manages the budget process during each phase.

The Oregon Department of Revenue provides an excellent handbook with simple directions for a budget officer to follow.

Link: <http://www.oregon.gov/DOR/PTD/docs/local-b/504-406.pdf>

The guide, called the *Basic Budgeting Book*, includes forms and sample timelines for the budgeting officer to follow and use during the budget process. In the basic budget process, there are ten steps:

- Budget officer is appointed.
- Proposed budget is prepared.
- Budget officer publishes notice.
- Budget Committee meets.
- Budget Committee approves budget.
- Budget summary and notice of budget hearing published.
- Budget hearing held by board.
- Budget adopted, appropriations made and tax levy declared (if any).
- Taxes certified.
- Post adoption changes.

Notices required during the budget process are found in ORS 294.416 to 294.425.

make that announcement **only once at each meeting**, even if the issue involves a series of votes.

Advisory Opinions and Staff Opinions

To assist public officials in avoiding ethics violations, the GSPC lists both Staff Opinions and Advisory Opinions on its web site. A Staff Opinion is an informal opinion that addresses only the application of Government Standards and Practices law or Lobbying Regulation law to the facts stated in the request. Any relevant information, which was not included by the requester of this opinion in the stated facts, could completely change the outcome of this opinion. Other laws or requirements may also apply. The opinion does not exempt a public official from liability under the applicable law for any action or transaction carried out in accordance with the opinion. The opinion is the personal assessment of the executive director of the Oregon Government Standards and Practices Commission.

Link: http://egov.oregon.gov/GSPC/docs/staff_opinion_description.pdf

Link: http://egov.oregon.gov/GSPC/docs/advisory_opinion_descript.pdf

Link: http://egov.oregon.gov/GSPC/opinion_category.shtml

When in doubt regarding specific activity, you may almost always find an existing opinion related to the topic at hand. If not, you may request an opinion from the GSPC.

Link: <http://egov.oregon.gov/GSPC/opinion.shtml>

BUDGETING

One of the primary responsibilities of a district board is the adoption of an annual or biennial budget for the district. Most districts are covered by local budgeting law which is a collection of statutes and rules which establish a very specific process. The purpose of the law is to:

- Establish a clear and specific process for local governments to follow in preparing, presenting and using budgets.
- Encourage citizen involvement in the process of developing the budget.
- Provide a system for estimating expenses, resources and tax revenue.
- Provide a method for outlining services and the fiscal policy on how they will be accomplished.

Link: <http://landru.leg.state.or.us/ors/198.html>

Implied powers are acts necessary to carry out the express powers granted by the statutes. For example, being authorized to provide drinking water implies the authority to purchase chemicals, operate a filtration plant and other actions necessary to carry out the express powers of the district. When a district decides to expand its role or responsibilities it should seek legal advice to insure that actions taken by the district are within the scope of powers authorized by the statutes.

Another power of a district is eminent domain. This is when a district decides to acquire private property without the consent of the land owner. If this decision is necessary the district must compensate the owner for the fair market value of the property. The process requires an appraisal and an offer to purchase. If the owner declines the district may seek a court order to transfer the property to the district, and if the owner and the district cannot agree on a price, a jury trial is held to determine the fair market value. Generally speaking, using eminent domain is done only as a last resort.

Powers and Responsibilities of the Board

Elected board members have no individual powers separate from the powers of the board, and have no authority to act individually without delegation of authority from the board. If a board member acts without authority from the board, the individual can be exposed to personal and district liability. It is the responsibility of right of board members to participate in board meetings and vote on district issues as part of the board.

Also, individual board members have no individual authority to direct district staff or administrative activities without delegation of that authority from the board. Generally, the board is the policy making body, while staff, to the extent that funds exist, implements policy and administer the district. If a district has no staff, individual board members can assume administrative functions, but only with the authorization of the board. It is a good idea to make sure any delegation of powers to a board member is in writing, in case a public objection is raised, or in the case of a potential lawsuit.

Liability and Exposure

The Oregon Tort Claims Act (ORS 30.260 to 30.300), governs district tort liability and provides for the defense and indemnity of public officials and limits damages.

Link: <http://landru.leg.state.or.us/ors/30.html>

Under the Act, damage awards against districts or their officers, employees or agents are limited as follows:

- \$50,000 property damage per occurrence
- \$100,000 for all other claims per occurrence
- \$500,000 for all claims arising out of a single occurrence
- No punitive damages

Further, districts and their officers, employees and agents are immune from tort liability for injuries covered by workers' compensation, claims regarding assessment or collection of taxes and claims based on performance or failure to perform a discretionary function.

A district must provide indemnification for any tort claims, groundless or otherwise, occurring in the performance of duty, with the exception that indemnity is not required for malfeasance or wanton or willful neglect of duty. Unless investigation demonstrates that a claim arose out of the official's or employee's malfeasance or willful or wanton neglect, the district must provide counsel to defend the claim. For this reason, it is critical for the district to notify immediately the district's insurer of any claims.

The Special Districts Insurance Services (SDIS) and some other insurers provide "pre-loss legal" services designed to assist districts before the claim is filed. If there is a potential claim, districts should contact their insurer and seek assistance, as normally the insurer will defend the district if a claim is filed. The SDAO claims office can be contacted at 1-800-670-7066

If sued, do the following:

- Immediately provide the document to the district's counsel, insurance agent and insurer.
- Do not discuss the matter publicly. Executive sessions may be called to discuss pending or threatened litigation with district counsel.
- Preserve attorney-client privilege.
- Gather and preserve all related documents.

Link: <http://landru.leg.state.or.us/ors/244.html>

Link: http://egov.oregon.gov/GSPC/docs/sei01_sample.pdf

Prohibition against the use of office for financial gain

ORS 244.040 states that "No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office..." This provision is the basis for violations relating to use of public equipment (such as cell phones and vehicles) and accepting offers for discounted rates from merchants and service providers. The prohibition does not include acceptance of official salary, reimbursement of expenses, honoraria and unsolicited awards for professional achievement.

Conflicts of interest

As the term implies, a **potential** conflict of interest occurs when a public official takes official action that **could** affect the financial interests of the public official, or the official's relatives or businesses with which they are associated. An **actual** conflict of interest occurs when a public official takes official action that definitely **would** have such an effect.

An elected official or a person appointed to a board or commission must publicly declare a potential or actual conflict of interest **prior** to abstaining, discussing, recommending, voting or taking other official action on an issue. The official also must explain the nature of the conflict. The declaration and the nature of the conflict must be noted in the minutes. *(Note: Abstaining instead of disclosing a conflict of interest does not fulfill statutory requirements because the act of abstaining is an official action and the law requires disclosure before action is taken.)*

In the case of a potential conflict of interest, an official may participate in the action, once the nature of the conflict has been announced. In the case of an actual conflict of interest, the person must:

- Announce the nature of the conflict; and
- Not take any official action on the issue.

At each session or meeting at which the issue is addressed, the official must make the same public disclosure. However, the official is required to

violation of executive session laws, and may impose penalties on elected officials up to \$1,000.

ETHICS

Government Standards and Practices Commission

In response to the Watergate scandal, Oregon voters in 1974 approved a statewide ballot measure creating what is now known as the Government Standards and Practices Commission (GSPC). The ballot measure also created a code of ethical conduct in the form of ORS Chapter 244. *The ethics statute applies to all elected and appointed officials, employees and volunteers at all levels of state and local government in all three branches.*

The Commission itself consists of seven members, all appointed by the Governor and confirmed by the Senate. Each leader of the Democratic and Republican parties in each house of the Legislative Assembly may recommend an appointee. The remaining three members are appointed at the discretion of the Governor, however, no more than two appointees shall be from the same major political party. The term of office is four years.

Link: <http://landru.leg.state.or.us/ors/244.html>

Regulated Activities

The GSPC is charged with regulating the activities of public officials in three primary areas: financial disclosure; prohibition against the use of office for financial gain, and conflicts of interest. Additionally, the GSPC also enforces public meetings laws under (ORS 192.610 to 192.690).

Link: <http://landru.leg.state.or.us/ors/192.html>

Financial disclosure

Certain public officials are required to file statements of economic interest (SEI). The GSPC has developed a form requesting information about the sources of the official's household income, business interests, and other financial matters for the purpose of making general information about an official's income sources and business relationships available to the public. No specific dollar amounts are required. For a list of individuals who must file a SEI, and a sample form, see Chapter 244.050 and Sample Statement of Economic Interest Form.

It is important to note that the Oregon Tort Claims Act does not protect a director or staff member from federal laws and lawsuits. For example, a manager or a elected official can still be sued under federal law for violations of laws such as the Americans with Disabilities Act (ADA) or for civil rights violations. Again, if a district believes there is a potential for a federal suit being filed, they should notify their insurance carrier immediately.

Personal Liability

Individual directors can be personally liable if they act with malfeasance or with willful or wanton neglect of duty. Directors can also be personally liable if they act without authorization from the board. Other areas of personal liability include violations of ethics laws and election laws.

Directors should always work within the authority of the board, and seek competent personal legal advice on ethical and election issues if questions arise.

BOARD MEETINGS

Types of Decisions

A district board typically makes three types of decisions: legislative, administrative and quasi-judicial. Legislative decisions constitute law or policy of the district. Administrative decisions generally implement adopted law or policies. Quasi-judicial decisions are those that must follow specific state or federal due process requirements.

Adopting Rules of Procedure

There are not specific statutory requirements governing the parliamentary procedures of a district. Boards can adopt model rules such as *Robert's Rules of Order* or draft their own rules of procedure. It is recommended that districts not adopt any model rule in its entirety, as most are designed for boards of legislative bodies much different than a special district board. A district should adopt their own procedures that fit their needs, or use parts of a model rule and add their own procedures. The objective is to have rules that work for your district and are then followed closely.

Link: <http://www.robertsrules.com>

Forms of Actions

Districts usually take action by the use of ordinances, resolutions and motions.

- Ordinances: Ordinances are generally used to adopt law or policy for the district. They are subject to the statutory process found in ORS

198.510 to 198.600. The process must be followed strictly or the ordinance may be found to be invalid. Ordinances are subject to the initiative and referendum laws.

- Resolutions: Resolutions are used to express policy or opinion of the board or to approve an action such as a contract or major expenditure of funds. A resolution should not be used for adoption of law or policy that applies to the residents of the district. A resolution may be used for the adoption of internal regulations such as personnel rules.
- Motions: Motions are a way to place a matter before the board for consideration. It is a procedural device rather than a written document. Motions should not be used to adopt or approve a matter that will create policy or have major effect beyond the meeting itself.

Quorums and Voting

District boards must have a quorum in order to have an official meeting. A quorum is defined as more than 50% of the members of the entire board. When a board member declines to vote, but is present, the quorum is generally not affected.

In Oregon, it takes a majority of the entire membership of the board to adopt a motion, resolution or ordinance or take any other action. A majority of a quorum is insufficient. This means that three affirmative votes on a five person board are required to pass a motion, even if there is a quorum.

Notices and Taking Public Testimony

Districts are subject to the Oregon Meetings Law, which was written to ensure that public bodies are open to the public and that activities and actions of a public agency are known. The law may be found at:

Link: <http://landru.leg.state.or.us/ors/192.html>

A meeting subject to the law is one where there is a quorum of the governing body present for the purpose of deciding or deliberating upon a public issue. Although districts are encouraged to accept public comment, there is no requirement to do so. Public comment should be taken in a way that helps the district and not disrupt the meeting process. If a public body meets with less than a quorum, or if they meet for a reason other than to deliberate or make a decision such as attending a conference it is not a public meeting. However, if a quorum meets for a purpose other than deliberation or decision on a public issue and then engages in such

discussions, the meeting becomes public and would be unlawful unless proper notice had been given.

Oregon law requires that public notice be given of the time and place of meetings. This includes regular, special and emergency meetings and also includes meetings of subcommittees and advisory committees established by the board. The rules of public notice are extensive and can be found in ORS 192.610 to 192.690 (see link above). It is important that districts follow the spirit and the letter of the statute in issuing public notices.

Executive Sessions

Districts may have executive sessions (meetings closed to the public) under specific circumstances that are authorized by the statutes. Executive sessions may be held for the following purposes:

- Employment of public officers, employees and agents
- Discipline of public officers and employees
- Performance evaluations of public officers and employees
- Labor negotiator consultations
- Labor negotiations
- Consideration of exempt public records
- Consultation with legal counsel regarding litigation
- Real property transaction
- Public investments

No executive session may be held for the purpose of taking a final action or decision, only a preliminary decision can be made. Executive sessions may be called during a regular, special or emergency meeting for which proper notice has been given, or a noticed executive session can be held without being part of another meeting.

The media cannot be excluded from an executive session, except when the purpose is to do labor negotiations. Media representatives in attendance at an executive session must be instructed not to report or disclose matters discussed. If not instructed, the media may disclose the executive session discussion. The presiding officer of the board may prohibit the media from recording an executive session. Compliance of the media to the rules is based primarily on cooperation, not on the imposition of any penalties.

Districts are encouraged to consult legal counsel before calling an executive session to ensure that the notice, procedures and subject of the session comply with state law. The Oregon Government Standards and Practices Commission may consider complaints against public officials for