



OREGON LAW COMMISSION

EXHIBIT: B
OREGON LAW COMMISSION
DATE: June 7, 2002
PAGES: 9
SUBMITTED BY: Dennis Koho,
David Kenagy & Wendy Johnson

245 WINTER STREET SE
SALEM, OREGON 97301

PHONE 503-370-6973
FAX 503-370-6998

Rep. Lane Shetterly, Chair
Sen. Kate Brown, Vice-chair
Mr. Steve Blackhurst
Chief Justice Wallace P. Carson Jr.
Mr. Jeff Carter
Ms. Sandra Hansberger
Prof. Hans Linde
Mr. Gregory Mowe
Attorney Gen. Hardy Myers
Dean Symeon Symeonides
Prof. Bernie Vail
Prof. Dom Vetri
Rep. Max Williams

Dean David R. Kenagy
Executive Director

Wendy J. Johnson
Asst. Executive Director

Rosalie M. Schele
Administrative Assistant

Gregory A. Chaimov
Legislative Counsel

David Heynderickx
Deputy Counsel

Bill Taylor
Judiciary Counsel

Andrea B. Shartel
Judiciary Counsel

Public Body Definition (LC 9898)

Report

Prepared by
Dennis E. Koho
Research Assistant
Willamette University College of Law

From
The Offices of the Executive Director
David R. Kenagy
and
Assistant Executive Director
Wendy J. Johnson

Draft
June 7, 2002



The Oregon Law Commission
is housed at the Willamette
University College of Law,
which also provides executive,
administrative and research
support for the Commission.

DRAFT REPORT FOR THE PUBLIC BODY WORK GROUP

Prepared by Dennis Koho

I. Introductory Summary

The proposed bill, LC 9898, that accompanies this report is a continuation of the efforts of House Bill 2425 (2001) which was successfully advanced by the Oregon Law Commission during the 2001 Legislative Session and is now codified as ORS 174.108 to 174.118. This draft 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 names of the types of districts as 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 District 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 Law Commission. A Work Group was formed, chaired by Commissioner Bernard Vail.² The Work Group first considered amending all of the implicated

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 Rep. Lane Shetterly, Steve Blackhurst, Sandra Hansberger, Phillip Schradle, Bradd Swank, and Eric Carlson.

C:\OLC\Public Body pb_five1.doc

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 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 full 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.

IV. Objectives of the Proposal

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

³ This session's members and interested persons included Bernie Vail, Steve Blackhurst, Phillip Schradle, Rep. Lane Shetterly, Hasina Squires, and Bradd Swank.

C:\OLC\Public Body pb_five1.doc

bodies⁴ in the 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

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 use the term "special district." Adding to the misperception, school districts are not defined to be "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 districts entities listed in ORS 174.117(2), it was decided that the phrase "local service district" more accurately described 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 draft for the 2003 session are the many statutes that authorize the creation of a particular type of local service district and then 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, it seemed apparent that the laws that describe the entity are merely attempting to indicate that the entity is a governmental body (*i.e.* not a private corporation). In any event, the nature of the powers the entity possesses dictates the status of the body rather than a label for the body. After much discussion, it was decided that the best approach was to avoid reintroducing some vague, undefined label in these statutes (*e.g.* "governmental body"). Following this approach, the statutes

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.

have been amended to remove the wording that attempts to describe the nature of the entity created. The listed powers of each body remain in the draft bill.

The proposed bill, in the form of LC 9898, references the new definition of "public body" found in ORS 174.109 in a variety of different statutes affecting several types of public body entities. Also, where last session's HB 2425 provided distinctive names for particular districts, LC 9898 inserts those names into the authorizing statutes.

In addition to the above general types of drafting decisions reflected in LC 9898, a short section-by-section analysis of the bill draft 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, "all cities, counties and local service districts located in this state." In addition, a correction was made to the "economic improvement district" provision as statutory provisions were inadvertently left out in HB 2425.

Sections 2 through 62 amend ORS 223.001 - .775, affecting economic improvement districts. The term "local government" from ORS 174.109 is substituted for "governmental unit."

Sections 63 through 76 amend ORS 261.010 - .330, affecting people's utility districts. The word "city" from ORS 174.109 is substituted for "municipality" and the words "people's utility" are inserted prior to the word "district" as needed.

Sections 77 and 78 amend ORS 264.110 and 264.240, affecting domestic water supply districts. The name "domestic water supply districts" replaces "municipal corporations" and other wording changes are made for consistency. Also, the name "local government" replaces "city or like corporation."

Sections 79 and 80 amend ORS 265.010 and 265.140, affecting cemetery maintenance districts. Wording is improved for clarification.

Sections 81 through 83 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. The new public body reference replaces "[t]he State of Oregon or any political subdivision in this state."

Sections 84 and 85 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 and is not a substantive change. In addition, the Work Group wanted to delete the "public corporation" term as no one is sure what that undefined term includes.

Sections 86 through 88 amend ORS 268.020, 268.300 and 268.393, affecting metropolitan service districts. The words "metropolitan service" are inserted in front of "district" and the words "city and county" are substituted for "local government."

Section 89 amends ORS 357.261, affecting library districts. The word "library" is inserted in front of "district" and resulting unnecessary wording is deleted.

Sections 90 through 92 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 93 and 94 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 95 through 97 amend ORS 371.480, 371.485 and 371.520, affecting road assessment districts. The words "road assessment" are 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 98 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 99 amends ORS 401.842, affecting emergency communications districts. The words "9-1-1 communication" are inserted in front of "district" and resulting unnecessary wording is deleted.

Sections 100 through 102 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. In addition, reference is made to ORS 174.116 where a district's powers are enumerated.

Section 103 amends ORS 450.075, affecting sanitary districts. In addition to a minor grammatical change, wording referring to other governments or governmental agencies is replaced with "public body as defined in ORS 174.109." 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 104 and 105 amend ORS 450.693 and 450.695, affecting water authorities. References to municipalities and districts are replaced with "local government as defined by ORS 174.116."

Sections 106 and 107 amend ORS 450.817 and 450.835, affecting sanitary authorities. References to municipalities, districts, and other governmental agencies are replaced with "public body as defined by ORS 174.109."

Sections 108 and 109 amend ORS 451.410 and 451.485, affecting county service districts. The words "municipal corporation" are replaced with "district" and minor wording improvements are made. In addition, "government agencies" is replaced with "public bodies" as defined by ORS 174.109 or any agency of the federal government.

Section 110 amends ORS 478.300, affecting rural fire protection districts. Wording referring to other governments or governmental agencies is replaced with "public body as defined in ORS 174.109."

Sections 111 through 114 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. Related wording changes are made and references to municipalities and districts are replaced with "local government as defined by ORS 174.116."

Section 115 amends ORS 545.257, affecting irrigation districts. A reference to municipalities and other districts is replaced with "other public bodies as defined by ORS 174.109."

Section 116 amends ORS 547.045, affecting drainage districts. A reference to the public definition in ORS 174.109 is made. "State institution" references ORS 179.321 as appropriate and director is elaborated to reference the Department of Human Resources to provide clarification.

Section 117 amends ORS 552.305, affecting water improvement districts. Wording referring to "municipal corporation" is replaced with "public body as defined in ORS 174.109."

Sections 118 through 122 amend ORS 553.010, 553.090, 553.110, 553.250 and 553.710, affecting water control districts. References to a variety of governmental entities are clarified by replacing those references with "public body as defined in ORS 174.109." The Work Group had trouble discerning the intent of the statutes in Sections 120 and 121. Indeed, the Group would flag Chapter 553 in its entirety as replete with confusion and ambiguity. Again, the Group's intent was to make consistent wording changes, not to make substantive changes. These statutes could be left alone for the purpose of this bill.

Sections 123 through 125 amend ORS 568.210, 568.225, and 568.410, affecting soil and water conservation districts. References to other governments are replaced with references to ORS 174.109 or 174.116, as appropriate. Additional cumbersome wording is streamlined.

Sections 126 through 129 amend ORS 777.010, 777.112, 777.113 and 778.010, affecting ports. References to a variety of governmental entities are clarified by replacing those references with "public body as defined in ORS 174.109" and related wording changes are made. The draft potentially adds school districts and local service districts in Section 127; the Work Group was not certain what "municipal corporation" was intended to include.

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 draft bill.

VIII. Appendices

HB 2425 [enrolled]

Oregon Law Commission report for HB 2425

LC 9898

Follow Up Notes to May 29 Work Group Meeting

[After resolution of these issues they will be noted as necessary in the report.]

In Section 88, Hasina Squires (lobbyist for the Special Districts Association of Oregon) will check that a change from "government" to "city and county" is accurate.

Regarding Section 104, Hasina will check to see if school districts should be included. "Local government" does not include school districts and perhaps the old term of "municipality" does include school districts; however, municipality likely only covers cities and counties. Still, there are intergovernmental agreement statutes that arguably also cover this issue and thus the provision is not so important.

Hasina will check on the term "county service district." It is a heading only in the ORS and not defined and perhaps it should be.

Regarding Section 111, Hasina will check to see if school districts should be included.

Regarding Section 113, unsure of what "communities" includes; perhaps should include school districts. Appears that the provision intends to include all private and public entities, but it is confusing.